



# Anti-money laundering and counter-terrorist financing measures

# Cambodia

## Mutual Evaluation Report

September 2017





The Asia/Pacific Group on Money Laundering (APG) is an autonomous and collaborative international organisation founded in 1997 in Bangkok, Thailand consisting of 41 members and a number of international and regional observers. Some of the key international organisations who participate with, and support, the efforts of the APG in the region include the Financial Action Task Force, International Monetary Fund, World Bank, OECD, United Nations Office on Drugs and Crime, Asian Development Bank and the Egmont Group of Financial Intelligence Units.

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## EXECUTIVE SUMMARY

1. This report provides a summary of the anti-money laundering and countering the financing of terrorism (AML/CFT) measures in place in Cambodia as at the date of the on-site visit (4 to 16 December 2016). It analyses the level of compliance with the *FATF 40 Recommendations* and the level of effectiveness of Cambodia's AML/CFT system, and provides recommendations on how the system could be strengthened.

### A. Key Findings

- Cambodia has made significant improvements to its level of technical compliance with the FATF Standards since its 2007 mutual evaluation, including in relation to important 'building block' FATF Recommendations (criminalisation of money laundering and terrorist financing, customer due diligence, record-keeping and suspicious transaction reporting). However, further improvements in technical compliance are necessary to make Cambodia's regime effective in the context of serious money laundering (ML) threats and vulnerabilities.
- Cambodia finalised its first national risk assessment (NRA) in November 2016, immediately before the assessment team's on-site visit, and has developed some understanding of its ML and terrorist financing (TF) risks. The main risks faced by Cambodia include ML from fraud/scams, corruption and bribery, drug trafficking, human trafficking, illegal logging, wildlife crime and goods and cash smuggling. There are gaps in the scope of the NRA with respect to risks posed by legal persons, foreign trusts, the NPO sector and dealers in precious metals and stones. The NRA also did not consider the risks associated with illicit inflow and outflow of funds (both through movement of cash and trade-based money laundering). In terms of ML vulnerabilities, there are higher risks associated with the casino and real estate sectors, as well as the banking sector. However, the ML risks associated with banking, remittance and lawyers are higher than as assessed by Cambodia. To be more comprehensive, future assessments of ML/TF risks will require better data, case studies and feedback from stakeholders, within and outside government.
- Cambodia has not yet sufficiently shared the results of its 2016 NRA with the private sector or within the public sector, nor has it implemented a comprehensive, risk-based approach to allocating resources and implementing measures to prevent or mitigate ML/TF. However, agencies with responsibility for AML/CFT work were generally aware of the risks identified in the NRA. Cambodia has a good institutional basis for national co-operation and co-ordination, but effectiveness needs to be improved, particularly at the operational level. The planned review of Cambodia's national AML/CFT strategy informed by an understanding of risk will assist in guiding policy and effectiveness improvements.

- Cambodia has made minimal use of financial intelligence in investigating ML/TF or predicate offences, including in developing evidence or tracing proceeds related to ML/TF. The limited ability of Cambodia's Financial Intelligence Unit (CAFIU) to produce financial intelligence significantly undermines use of financial intelligence by competent authorities and levels of dissemination do not satisfy the operational needs of LEAs.
- The narrow scope of STR reporting (95% received from banks) and low number of cross-border cash declarations limit the data available to CAFIU for analysis and do not align with the assessed ML/TF risks. The NRA rated casinos and real estate as areas of higher risk but there are limited reports received from entities outside the banking sector.
- While Cambodia's legal system provides a broad set of powers and responsibilities for law enforcement agencies (LEAs) to investigate and prosecute ML offences, there is no policy or practice of 'following the money' to identify and investigate ML and only three ML investigations have been conducted, none of which proceeded to prosecution. Despite investigations of some predicate offences, no prosecutions or convictions have occurred for ML. Sanctions available for ML are not sufficiently dissuasive.
- Cambodia's legal framework for confiscation is generally sound. However, despite some confiscation in relation to drug trafficking and corruption, Cambodia does not demonstrate many of the characteristics of an effective system for confiscating proceeds and instrumentalities of crime. Confiscation is not pursued as a policy objective and it is not clear that LEAs consider confiscation when investigating predicate offences, or that the amount sought to be confiscated fully represents the available proceeds.
- Cambodia has a good legal framework to combat TF and has allocated substantial resources to combating terrorism and its financing. There have been no prosecutions or convictions for TF activity in Cambodia, but this is not inconsistent with the TF risk profile. Historically, however, Cambodia has demonstrated an ability to identify and investigate potential and actual cases of terrorism and TF and to cooperate domestically and internationally in the course of an investigation.
- Cambodia has a reasonable legal framework to deprive terrorists, terrorist organisations and terrorist financiers of assets and instrumentalities related to TF activities, though some improvements are required to the legal framework and to mechanisms to disseminate updates to United Nations sanctions lists. Cambodia can designate individuals and entities as terrorists under United Nations Security Council Resolution (UNSCR) 1373 if the need arises. No terrorist assets have been identified or frozen under relevant UNSCRs.
- Cambodia has a large NGO/NPO sector overseen by the Ministry of Interior (MOI), for domestic NGOs, and the Ministry of Foreign Affairs and International (MFA-IC) for foreign and international NGOs. No review has been conducted of the TF risks and vulnerabilities within the NPO sector, and no outreach has been delivered to the sector on the threat of terrorist abuse.
- Cambodia does not have a legislative basis for, nor has it taken steps to implement, targeted financial sanctions (TFS) relating to combating proliferation of weapons of mass destruction. The authorities do not systematically disseminate UN notices on proliferation financing (PF) to financial institutions (FIs) or designated non-financial businesses and professions (DNFBPs), despite there being a good diplomatic and political relationship between Cambodia and the Democratic People's Republic of Korea (DPRK).

- Regarding preventative measures, the understanding of ML/TF risks and AML/CFT obligations varies within the financial sector. Commercial banks, securities firms and insurance companies have a more advanced understanding as compared to the specialised banks, micro-finance institutions (MFIs), money remittance operators, money changers and financial leasing companies.
- There has been limited interaction between supervisors and DNFBPs, particularly real estate agents, small casinos, dealers in precious metals and stones, lawyers, stand-alone accounting and auditing firms. As a result, there is low understanding of ML/TF risks and AML/CFT obligations among these entities. Implementation of customer due diligence (CDD) obligations, including the collection of beneficial ownership information, is low. The CDD threshold for casinos is set at USD 10,000, which is higher than required under the FATF standards.
- AML/CFT supervision has focused on banks and deposit taking MFIs, with few supervisory activities conducted on other FIs and no supervision of DNFBPs. This is problematic given the inherent risk of some DNFBPs and the vulnerabilities stemming from a lack of supervision. Risk-based AML/CFT supervision is only applied to the banking sector. No sanctions have been imposed on REs for breaches of AML/CFT obligations, however, CAFIU has identified deficiencies during on-site inspections and required FIs to submit remedial plans to rectify the deficiencies.
- The vast majority of legal persons in Cambodia are registered in the online business register. Basic information held in the register is publicly available online and competent authorities can gain timely access to shareholder information held by the Ministry of Commerce (MOC). However, there are some concerns regarding the accuracy and currency of this information. The best source of beneficial ownership information is the information collected by reporting entities (REs) pursuant to their CDD obligations. However, many DNFBPs and some non-bank FIs fail to comply with their obligations. There are no mechanisms in place to mitigate the, admittedly low, risks posed by bearer shares, bearer share warrants, nominee shares or nominee directors.
- While trusts cannot be created under Cambodian law, there is no explicit prohibition on foreign trusts operating in Cambodia. There are no mitigating measures in place to prevent the misuse of foreign trusts for ML/TF purposes.
- Cambodia has a reasonable legal framework for international cooperation. However, in the absence of a general mutual legal assistance (MLA) law (currently in draft), there is no domestic legal framework for the provision and receipt of MLA outside of the ASEAN MLA Treaty and special laws relating to drugs, corruption and terrorism. Broadly, while Cambodia is responsive to incoming international requests for cooperation, as permitted by limited capacity and resources, its use of international cooperation is limited and does not match its ML risk profile.

## **B. *Risks and General Situation***

2. Despite its world-renowned ancient history, Cambodia's economy, bureaucracy and institutions are young and still developing. It was as recently as 1993 that Cambodia completed its transition to the present day State of Cambodia. Previously, under the rule of the Khmer Rouge, it had experienced large scale loss of life (approximately two million lives lost to executions, disease, starvation, and forced labour) and complete destruction of governance infrastructure. In this context, Cambodia is commended for its commitment to AML/CFT efforts and the improvements made since its 2007 APG mutual evaluation.

3. Cambodia's significant cash economy, systemic capacity and resource constraints of supervisors and LEAs, geographical position and porous borders increase its vulnerabilities to ML/TF. Cambodia is exposed to a range of ML threats, with its most significant threats coming from fraud/scams, corruption and bribery, drug trafficking, human trafficking, illegal logging, wildlife crime and goods and cash smuggling. The sectors most vulnerable to ML are the casino, real estate, lawyers, remittance and banking sectors, due to their materiality and/or lack of supervision.

4. While Cambodia has benefited from a period of political stability and has demonstrated high-level commitment to addressing AML/CFT issues, the capability, integrity and transparency of institutions, rule of law, and the effectiveness of Cambodia's judicial system are hindered by capacity constraints and high levels of corruption. There are capacity constraints in many key agencies, both in terms of insufficient staffing levels and staff capability.

### **C. Overall Level of Effectiveness and Technical Compliance**

5. Cambodia has significantly increased its technical compliance with the FATF Standards since its 2007 mutual evaluation, though some significant deficiencies remain, including in relation to the coverage of politically exposed persons (PEPs), regulation and supervision of DNFBPs, proliferation financing, preventive measures (CDD), regulation and supervision of NPOs, transparency and beneficial ownership and mutual legal assistance arrangements. In terms of effectiveness, Cambodia has stronger results in relation to investigation of TF offences and activities, and moderate results in relation to risk, policy and co-ordination; international cooperation; TF preventive measures and financial sanctions. Though some measures are in place, only low levels of effectiveness have been achieved in relation to supervision; preventive measures; use of financial intelligence; ML investigation and prosecution; confiscation; and legal persons and arrangements; and no measures are in place for PF financial sanctions.

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

6. Cambodia demonstrates a mixed level of understanding of its ML/TF risks, ranging from medium to low across the competent authorities and the private sector. Generally, the working group members who participated in the NRA exercise, banks and microfinance deposit taking institutions (MDIs) show a reasonable understanding of risks, while the remainder exhibit a low level of understanding. This should improve as the results of the NRA are more broadly disseminated to public and private stakeholders.

7. Cambodia is commended for completing its first NRA in late 2016. However, the NRA has some limitations as it is based solely on information on identified (detected) criminal activities and does not include information ML/TF risks from other credible sources, such as research on threats and vulnerabilities, trends and typology analyses or strategic analyses. There are also gaps in the scope of the NRA with respect to risks posed by legal persons, foreign trusts, the NPO/NGO sector and dealers in precious metals and stones. The NRA also did not consider the risks associated with illicit inflow and outflow of funds (both through movement of cash and trade-based money laundering).

8. The lack of a wide range of data and absence of other assessments of ML/TF undermines the reasonableness and consistency of the NRA. However, notwithstanding these issues, the assessment team broadly agrees with the authorities on the main ML/TF risks faced by Cambodia.

9. Cambodia's *National AML/CFT Strategies 2013 – 2017* have been a key driver for changes to laws, regulations and policies related to AML/CFT. However, there are as yet no coordinated policies



and actions that align with, or are based on, identified risks. The 2016 NRA has not yet resulted in a significant review of Cambodia's AML/CFT policies or strategies to combat ML/TF, but such a review is planned.

10. There is well-established inter-agency cooperation and coordination, through the National Coordination Committee (NCC), at a policy level. However, there is no coordination mechanism to execute the decisions of the NCC or for broader operational level coordination on AML/CFT issues between relevant agencies. There is no legal and regulatory framework and no coordination mechanisms to combat PF.

11. There are major shortcomings in the statistics provided by Cambodia on matters relevant to the effectiveness and efficiency of its AML/CFT systems. For example, Cambodia has not kept statistics to demonstrate that the LEAs have utilised financial intelligence from the FIU throughout all stages of their predicate and ML investigations.

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

12. There is minimal use of financial intelligence and information across competent authorities investigating ML/TF or predicate offences, including in developing evidence or tracing proceeds related to ML/TF. Similarly, there is no evidence that financial intelligence and information is used by the competent supervisory authorities during their supervisory activities.

13. CAFIU produces very limited operational analysis and no strategic analysis, due to resource and other constraints. CAFIU's limited ability to produce financial intelligence significantly undermines use of financial intelligence by competent authorities in investigating ML/TF.

14. Cambodia's legal system provides a broad set of powers and responsibilities for LEAs to investigate and prosecute ML offences. However, effectiveness has not been demonstrated, with only three ML investigations, none of which proceeded to prosecution. The value of "following the money" and investigating and prosecuting ML does not appear to be widely understood or applied in practice.

15. Across LEAs there is an absence of coordination and effective cooperation at the operational level. One particular issue is CAFIU's current inability to identify potential cases of ML in its financial intelligence products, which has hindered the initiation of ML investigations by LEAs.

16. Despite some confiscation in relation to drug trafficking and corruption, Cambodia does not demonstrate many of the characteristics of an effective system for confiscating proceeds and instrumentalities of crime. Confiscation is not pursued as a policy objective and it is not clear that confiscation is considered by LEAs when investigating predicate offences, or that the amount sought to be confiscated fully represents the available proceeds.

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

17. Cambodia has a strong legal framework to combat TF and has allocated substantial resources to combating terrorism and its financing.

18. There have been no TF related prosecutions or convictions in Cambodia, which is not inconsistent with Cambodia's medium low TF risk profile. However, Cambodia has demonstrated its ability to identify and investigate potential and actual cases of terrorism and TF and to cooperate domestically and internationally in the course of an investigation.

19. Cambodia has a reasonable legal framework to deprive terrorists, terrorist organisations and terrorist financiers of assets and instrumentalities related to TF activities. The standing court order issued in 2014 under the 2014 Sub-decree on the Freezing of Property of Designated Terrorists and Organizations allows Cambodia to freeze the assets of individuals and entities on the Al Qaida, Taliban, ISIL (Da'esh) UN lists without delay. Further, Cambodia can, through its domestic designation mechanism, designate individuals and entities as terrorists under UNSCR 1373 if the need arises. This has not yet occurred. No assets have been frozen in connection with TFS, which is consistent with Cambodia's medium low TF risk profile.

20. Changes to the UN Sanctions Lists are disseminated by MFA-IC to regulators and then on to the banking, MFI, and insurance sectors, but not to other FIs or DNFBPs. Awareness of obligations relating to TFS against terrorism varies across REs, with some money or value transfer service (MVTs) providers, NGOs and DNFBPs remaining unaware of their obligations relating to the UN Sanctions Lists.

21. Cambodia has a large NGO sector overseen by MOI for domestic NGOs, and MFA-IC for foreign and international NGOs. There has been no review conducted on the TF risks and vulnerabilities within the NPO sector, and no outreach has been delivered on the threat of terrorist abuse. However, competent authorities believe, and the assessment team agrees, the risk is low and have not seen any indicators of TF activity in recent years.

22. Cambodia does not have a legislative basis for, nor has it taken steps to implement, TFS relating to combating proliferation. The authorities do not systematically disseminate UN notices on PF to financial institutions or DNFBPs. Understanding of the vulnerable sectors for PF and the risk of UN sanctions evasion requires enhancement.

### *C.4 Preventive Measures (Chapter 5 - IO4; R.9-23)*

23. Cambodia introduced significant enhancements to its preventive measures following its 2007 mutual evaluation report with the issuance of the AML/CFT Law in 2007 and issuance of two Prakas (regulations) in 2008 (for FIs supervised by the National Bank of Cambodia – NBC) and 2010 (for other entities). These requirements improved compliance with the then 2003 FATF Standards, however, Cambodia has not issued additional preventive measures since 2010 to further strengthen its AML/CFT regime to come into compliance with the 2012 FATF Recommendations. As a result, there are deficiencies in the definition of PEPs, requirements in forming correspondent banking relationship, regulation of MVTs, regulation of DNFBPs, regulation around wire transfers, reliance on third parties and measures to be undertaken for high-risk countries and requirements with respect to internal controls and foreign branches and subsidiaries.

24. The understanding of ML/TF risks and existing AML/CFT obligations varies across different institutions within the financial sector. Commercial banks, securities firms and insurance companies have a more advanced understanding, due to their exposure to global group-wide policies and international obligations, as compared to the specialised banks, MFIs, money remittance operators, money changers and financial leasing companies.

25. Regulators focus their limited resources on commercial banks' operations, due to their materiality and the risk posed by the sector, rated as medium risk in Cambodia's NRA. However, insufficient attention is placed on remittance operators, in particular mobile payment service providers.

26. Commercial banks, insurance companies and securities firms generally have AML/CFT policies and procedures in place and have implemented risk mitigation measures that are commensurate with their risks. The CDD processes in MFIs and financial leasing sectors focus on credit assessment and generally these sectors, including money changers, do not have adequate monitoring systems.

27. Limited interaction between the supervisors and DNFBPs, particularly real estate agencies, small casinos, dealers in precious metals and stones, lawyers, and stand-alone accounting and auditing firms, has resulted in a low understanding of ML/TF risks and AML/CFT obligations among these entities. Implementation of CDD measures, including the collection of beneficial ownership information, is low. There has been no on-site supervision of DNFBPs or sector-specific AML/CFT guidance issued to govern the widely different sectors. The CDD threshold for casinos is set at USD10,000, which is higher than the FATF standards.

28. Some high risk sectors such as the casino and real estate sectors do not have a specific law governing them. In the absence of on-site supervision, it is not clear to what extent CDD and record-keeping requirements, enhanced due diligence, reporting of STRs and other controls are being applied.

29. The banking sector contributes over 95% of STRs received by CAFIU. The level of reporting by other sectors is very low or non-existent. This does not match the risk profile of some sectors, such as the remittance, casino and real estate sectors.

#### *C.5 Supervision (Chapter 6 - IO3; R.26-28, 34-35)*

30. While Cambodia has clear powers for relevant competent authorities to conduct AML/CFT supervision, there are shortcomings in the sanctions available. Regulatory gaps also exist in the verification processes undertaken for 'fit and proper' tests, the limited application of a risk-based approach for supervision, and there are significant shortcomings in the supervision of DNFBPs.

31. CAFIU takes primary responsibility for AML/CFT supervision in Cambodia. CAFIU's AML supervision has focused on banks (in collaboration with NBC) and deposit taking MFIs, with few supervisory activities conducted for other FIs and no supervision of DNFBPs. In the securities and insurance sectors, the Securities and Exchange Commission of Cambodia (SECC) and the Financial Industry Department of the Ministry of Economy and Finance (MEF) have included an AML/CFT component in their prudential on-site supervision since 2015 (securities) and October 2016 (insurance).

32. Most FIs and DNFBPs in Cambodia must be licensed by competent authorities. In practice, the application of fit and proper requirements is not rigorous for some DNFBPs and for registered MFIs and money changers.

33. While all supervisors were involved in the NRA process, they have a mixed understanding of ML/TF risk. Risk-based AML/CFT supervision is only applied to the banking sector and with the exception of banks' self-assessments of risk, limited AML/CFT off-site supervision has been conducted.

34. No sanctions have been imposed on REs for breaches of AML/CFT obligations, however, CAFIU has identified deficiencies during on-site inspections and required the RE to submit a remedial plan to rectify the deficiencies.

35. CAFIU has delivered 36 awareness raising workshops since 2013, the majority of which were to FIs, with DNFBPs receiving minimal outreach and guidance.

*C.6 Transparency of Legal Persons and Arrangements (Chapter 7 - IO5; R.24-25)*

36. Cambodia has a reasonable legal framework for transparency in basic information related to legal entities, but there are deficiencies in the collection and availability of beneficial ownership information. While trusts cannot be created under Cambodian law, there is a lack of regulation for the activities of foreign trusts in Cambodia.

37. Relevant competent authorities have not yet identified, assessed or understood the vulnerabilities and the extent to which legal persons created in Cambodia or foreign trusts operating in Cambodia can be or are being misused for ML/TF. There are no measures in place to mitigate the risks posed by bearer shares, bearer share warrants, nominee shares or nominee directors. However, the understanding amongst competent authorities is that there are reportedly no bearer shares, bearer share warrants, nominee shares or nominee directors in the Cambodian market, and accordingly the risk they pose is low.

38. Information on the creation and types of legal persons is widely available in both Khmer and English. Basic information for a vast majority of legal persons in Cambodia is held in an online business register, which is publicly available online. Competent authorities can gain timely access to shareholder information held by MOC. However, there are some concerns regarding the accuracy and currency of this information due to a lack of monitoring and limited enforcement of obligations to update information contained in the Online Business Register.

39. The best source of beneficial ownership information is the information collected by REs pursuant to their CDD obligations. However, many DNFBPs and some non-bank FIs fail to comply with their obligations.

40. The sanctions available under Cambodian law for failure to comply with information requirements are not likely to be dissuasive and obligations on legal persons and REs are rarely enforced.

*C.7 International Cooperation (Chapter 8 - IO2; R.36-40)*

41. Cambodia has a reasonable legal framework for international cooperation. However, in the absence of a general MLA law (currently in draft), there is no domestic legal framework for the provision and receipt of MLA outside of the ASEAN MLA Treaty and special laws relating to drugs, corruption and terrorism.

42. Cambodia is responsive to incoming requests for formal international cooperation and has provided MLA and extradition to a range of jurisdictions, even in instances where there is no relevant treaty or law in place, on the basis of ratified international conventions and the principle of reciprocity. Cambodia's use of formal international cooperation is more limited than its provision of assistance. The lack of international cooperation requests relating to ML is inconsistent with Cambodia's risk profile given the transnational nature of Cambodia's main proceeds-generating crimes.

43. In relation to informal cooperation, Cambodian competent authorities, including CAFIU, General Commissariat of National Police (GCNP), Anti-Corruption Unit (ACU), General Department of Customs and Excise (GDCE), Secretariat to the National Counter Terrorism Committee (SNCTC), NBC

and SECC, are responsive to requests for international cooperation received from foreign counterparts and have generally provided timely assistance of satisfactory quality.

44. The Central Authority within the Ministry of Justice (MOJ) is significantly under-resourced and technical skills in international cooperation require improvement. In addition, there is no process for prioritisation and execution of international cooperation requests (for example, on the basis of risk or other factors) and no case management system to monitor progress of requests. A comprehensive database to maintain statistics on MLA and extradition is also lacking.

45. Other than CAFIU, competent authorities do not have any guidelines on the time it should take to respond to requests for formal or informal cooperation. As such, the response timeframes are ad hoc and unpredictable. The extradition process is dependent on the Court to make decisions regarding the execution of requests, which may cause delays.

46. Cambodia has never made or received a request for international cooperation to identify or exchange basic or beneficial ownership information. Deficiencies in relation to transparency of beneficial ownership may, in practice, impede the ability of competent authorities to provide formal or information cooperation in this area.

#### ***D. Priority Actions***

47. The prioritised recommended actions for Cambodia, based on these findings, are:

- i. Update the National AML/CFT Strategies to reflect Cambodia's current understanding of ML/TF risks and implement a comprehensive, risk-based approach to allocating resources and implementing measures to prevent or mitigate ML/TF on the basis of assessed risks, and improve co-ordination at strategic and operational levels.
- ii. Improve the capacity of CAFIU to produce significantly more high quality intelligence products for LEAs, including prompt dissemination of analysed STRs and strategic analysis.
- iii. Establish a consolidated AML strategy across LEAs which covers parallel investigations and use of financial intelligence in ML and predicate offence investigations. Clarify that all relevant agencies can conduct ML investigations, and specify the circumstances in which they should do so. Provide further training and direction to LEAs to increase investigation and prosecution of ML, particularly (but not only) in relation to more serious proceeds-generating offences. Increase penalties for ML, in particular for legal persons to encourage the use of these sanctions.
- iv. Adopt clear policies and strategies to pursue confiscation, including repatriation, sharing and restitution of criminal proceeds, instrumentalities, and property of equivalent value, in particular for areas identified to be high risk, such as cross-border goods and cash smuggling.
- v. Engage in substantially more risk-based AML/CFT supervisory activity, including commencing supervision of higher-risk DNFBPs as a matter of priority, conducting further outreach to smaller FIs and DNFBPs and monitoring and enforcing compliance by REs with requirements to identify the beneficial ownership.
- vi. Increase engagement and information sharing with FIs and DNFBPs to promote a better understanding of their AML/CFT obligations and ML/TF risks and trends facing Cambodia.

- vii. Implement TFS against proliferation, through the introduction of legal instruments and a framework for monitoring compliance.
- viii. Update the relevant legislative instruments to reflect revisions in the CDD requirements of the FATF standards, in particular:
  - a. broaden the definition of PEPs to include domestic PEPs;
  - b. lower the CDD threshold for casinos to USD 3,000;
  - c. require REs to determine whether the beneficial owner is a PEP;
  - d. allow REs to not pursue CDD if there is a risk of tipping-off the customer.
- ix. Strengthen future assessments of ML/TF risks to address gaps in coverage, such as legal persons and arrangements, and through the use of better data and information.

## E. Effectiveness & Technical Compliance Ratings

### Effectiveness Ratings (High, Substantial, Moderate, Low)

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

### Technical Compliance Ratings

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

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

## MUTUAL EVALUATION REPORT OF CAMBODIA

### *Preface*

This report summarises the AML/CFT measures in place in Cambodia as at the date of the on-site visit. It analyses the level of compliance with the *FATF 40 Recommendations* and the level of effectiveness of Cambodia's AML/CFT system, and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by Cambodia, and information obtained by the assessment team during its on-site visit to Cambodia from 4 to 16 December 2016.

The evaluation was conducted by an assessment team consisting of:

- Mr. Filipe Manuel Peixoto Pereira, Legal Advisor, Legal Affairs Bureau, Macao, China (legal expert)
- Ms. Lauren Hirsh, Senior Legal Officer, Australian Attorney-General's Department (legal expert)
- Ms. Wanyi Liu, Chief, Banking Bureau, Financial Services Commission, Chinese Taipei (financial expert)
- Ms. Zarifa IZan Zainol Abidin, Deputy Director, Bank Negara Malaysia (financial expert)
- Mr. Md. Masud Rana, Joint Director, Policy and International Wing, Bangladesh Financial Intelligence Unit (financial intelligence unit/law enforcement expert)
- Mr. Eliot Kennedy, Deputy Executive Secretary, APG secretariat
- Ms. Mitali Tyagi, Director Technical, Technical Assistance and Training, APG secretariat
- Ms. Suzie White, Executive Officer, APG secretariat
- Mr. David Mackey, Executive Officer (seconded), APG secretariat

The report was reviewed by Mr Tsang Wai Shing Philip, Hong Kong Police Force (law enforcement and general reviewer), Mr Geoff Brown, Financial Markets Authority New Zealand (supervision and general reviewer) and the FATF secretariat (legal and general reviewer).

Cambodia was previously evaluated by the World Bank in 2007, the report of which is available at [www.apgml.org](http://www.apgml.org). That evaluation was conducted according to the 2004 FATF Methodology.

Cambodia's 2007 evaluation rated Cambodia as partially compliant with 12 Recommendations, non-compliant with 34 and three Recommendations were non-applicable. No Recommendations were found to be compliant or largely compliant. Cambodia was rated non-compliant with 13 of the 16 Core and Key Recommendations.

Cambodia entered the APG's enhanced follow-up process in 2011 as compliance with 14 of the 16 Core/Key Recommendations remained at the non-compliant/partially compliant level. In 2014 Cambodia exited enhanced follow up and was placed on regular follow-up, following the enactment of the 2007 AML/CFT Law and other developments which resulted in seven Recommendations being considered to be at a level essentially equivalent to largely compliant. Cambodia exited the APG's 2<sup>nd</sup>



round follow-up process in 2014<sup>1</sup> with six Core/Key Recommendations (R.5, R.23, R.26, R.36, R.40, SR.V) remaining at the non-compliant/partially compliant level.

Cambodia was subject to the FATF's International Cooperation Review Group (ICRG) process from adoption of a prima facie review report in February 2011 until removal from the process in February 2015. Significant progress was made by Cambodia while under ICRG review, including establishing its National AML/CFT Coordination Committee, developing a National AML/CFT Strategy, enacting its AML/CFT Law, improving its FIU information system and training for CAFIU staff, commencing the Review Panel between CAFIU and the GCNP, and implementing a cross-border declaration system.

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<sup>1</sup> In accordance with members' decision at the 2013 APG Annual Meeting, all members on regular follow-up were phased out of the APG's 2<sup>nd</sup> round follow-up process in 2014.

## CHAPTER 1. ML/TF RISKS AND CONTEXT

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1. The Kingdom of Cambodia (“Cambodia”) occupies approximately 181,035 square kilometres on the Indochina Peninsula in Southeast Asia. It borders Vietnam in the east, Thailand in the northwest, Lao PDR in the northeast and the Gulf of Thailand in the southwest, with a coastline of approximately 500 kilometres.
2. Cambodia is a lower-middle-income country with a population of 15.58 million.<sup>2</sup> The majority of the population is Khmer in ethnicity (97.6%) and identifies as Buddhist by religion (96.9%).<sup>3</sup> Cambodia’s poverty rate fell from about 50% to 13.5% between 2007 and 2014.<sup>4</sup>
3. From the 1970s, Cambodia suffered more than two decades of internal conflict which resulted in hundreds of thousands of displaced persons, decimation of expertise and bureaucracy and the dismantling of the central planning and state-trading infrastructure. The Cambodian people have worked to rebuild their governance infrastructure and have taken important steps towards a market-based economy since the restoration of peace in the early 1990s.
4. Cambodia is a constitutional monarchy, with a monarch chosen as the head of state by the Royal Throne Council and with an elected Prime Minister as the head of government. His Majesty Norodom Sihamoni is the current King of Cambodia, following his selection by the Royal Throne Council in 2004. Samdech Hun Sen is the current Prime Minister and has been in power since 1985.
5. The Prime Minister and Ministers hold executive power and meet regularly with the Council of Ministers. The Parliament of Cambodia, which has legislative authority, is composed of a National Assembly (lower house) and a Senate (upper house). The National Assembly consists of at least 120 members, who proportionally represent the 24 provincial/municipal constituencies and are elected by Khmer citizens. The Senate should not exceed half the number of the National Assembly and senators are primarily elected by members of the National Assembly and of commune councils. Legislation can be initiated by either members of the National Assembly, the Senate or the Prime Minister. Draft laws are first reviewed by the National Assembly and then by the Senate.
6. Cambodia’s legal system follows the French-based civil legal system (an influence from French colonisation), but also includes elements of a common law system (an influence from the foreign aid assistance received following the Paris Peace Accords in 1991) and Cambodian customs.
7. Cambodia’s judicial system is tiered, with the Supreme Court and the Appellate Court as the higher courts, and the Provincial/Municipal Court and the Military Court as the lower courts. There is also a hybrid court known as the Extraordinary Chambers in the Courts of Cambodia.
8. In addition to changes in AML/CFT legislation, there have been significant developments in Cambodia’s general legal system since its 2007 MER, including the promulgation of the civil code, civil procedure code, criminal code and criminal procedure code.

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<sup>2</sup> <http://www.worldbank.org/en/country/cambodia>

<sup>3</sup> <https://www.cia.gov/library/publications/the-world-factbook/geos/cb.html>

<sup>4</sup> [www.adb.org/countries/Cambodia/poverty](http://www.adb.org/countries/Cambodia/poverty)

## *ML/TF Risks and Scoping of Higher-Risk Issues*

### *Overview of ML/TF Risks*

9. Cambodia is exposed to a range of ML threats, with its most significant threats assessed by Cambodia to be from fraud/scams, corruption and bribery, drug trafficking, human trafficking, illegal logging, wildlife crime and goods and cash smuggling. Cambodia's significant cash economy, systemic capacity and resource constraints of supervisors and LEAs, geographical position and porous borders increase its vulnerabilities. Global Financial Integrity estimated that USD 15,086 million in illicit financial flows left Cambodia from 2004 to 2013, averaging USD 1,509 million per year.<sup>5</sup>

10. The sectors most vulnerable to ML are the casino, real estate, lawyers, remittance and banking sectors, due to their materiality and/or lack of supervision. AML/CFT supervision has not commenced on casinos, real estate agents, lawyers or remittance companies.

11. The TF risk in Cambodia is medium low. Since Cambodia's 2007 MER, its risk of terrorism and TF has decreased as the groups of concern at that time are now inactive or have transitioned into political parties. However, the risk of TF in the region contributes to the risk faced by Cambodia. An ISIL online propaganda video in 2014 claimed that a Cambodian had joined ISIL in Iraq. However, no government or independent sources support this claim. An Australian-born Australian citizen, ISIL recruit of Cambodian and Fijian descent ('Abu Khaled al-Cambodi') was prominent in ISIL propaganda videos in 2015. There are no indications that he had any direct connection to persons or institutions in Cambodia.

### *Country's risk assessment & scoping of higher risk issues*

12. Cambodia conducted its first assessment of ML/TF risk in 2016 through a NRA, entitled *Cambodia National Money Laundering and Terrorism Financing Risk Assessment Report*. The NRA report, produced by a joint inter-ministerial working group using the World Bank risk assessment tool, was adopted on 29 November 2016 (that is, the week before the mutual evaluation on-site visit).

13. As at the time of the on-site visit, the NRA report was a classified document which had not been broadly disseminated outside the working group. A copy was however shared with the assessment team. The NRA report not only attempts to identify ML/TF risks, but also identifies deficiencies in the risk assessment process itself (e.g. lack of data), and outlines a series of actions to address both the ML/TF risks and the deficiencies in the process. This open and self-critical approach will benefit Cambodia in the future.

14. In addition to the quality issues already identified by Cambodia itself, the assessment team considers that the use of a limited range of data and the heavy reliance on statistics relating to discovered crimes, without consideration of the level of inherent risk (actual crime), undermines the reasonableness, comprehensiveness and consistency of the NRA. The scope of the NRA was limited to the extent that it excluded analysis of ML/TF risks relating to legal persons, foreign trusts, NPOs and dealers in precious metals and stones and, in the assessment team's view, did not sufficiently consider the risks associated with illicit inflows and outflow (both through movement of cash and trade-based money laundering).

<sup>5</sup> [http://www.gfintegrity.org/wp-content/uploads/2015/12/IFF-Update\\_2015-Final-1.pdf](http://www.gfintegrity.org/wp-content/uploads/2015/12/IFF-Update_2015-Final-1.pdf)

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15. Notwithstanding these issues, the assessment team broadly agrees with the main risks identified by Cambodia in its NRA, although there are some threats and vulnerabilities which the team rates as posing higher risk than Cambodia, based on the team's review of relevant literature and discussions with authorities. Specifically, the assessment team considers that the risks associated with smuggling of goods and cash are significantly higher than the 'low' risk rating assigned in the NRA, and that the ML risks associated with drug trafficking and corruption and bribery are somewhat higher than the rating in the NRA of 'medium low' and 'medium high' respectively. Furthermore, the assessment team considers that the ML risks associated with banking, remittance and lawyers are higher than as assessed by Cambodia. These issues are discussed further in Chapter 2.

16. Regarding TF, the team notes that Cambodia's NRA has assessed the risk as medium low, however authorities acknowledge that the actual risk may, in fact, be low. Having considered this issue carefully, including through discussions with Cambodian authorities and a review of the available literature, the team agrees with the NRA findings that the TF risk is medium low.

17. During the mutual evaluation on-site visit, the assessment team focused on the following higher risk issues, based on material submitted by Cambodia and information from open sources:

- governance and capacity, including the competent authorities' capacity challenges, including resources and skills, to implement an effective, risk based AML/CFT system;
- corruption, including the impact of corruption on Cambodia's AML/CFT efforts, and the extent to which corruption is being addressed as a major predicate crime for ML;
- threats of smuggling of drugs, wildlife and goods; illegal logging and smuggling; human trafficking; and fraud and scams, including Cambodia's response to these threats due to the risks they pose; and
- the vulnerabilities identified in the casino sector; real estate sector; cash economy and Cambodia's geographic position and cross-border vulnerabilities: Emphasis was placed on these identified vulnerabilities to assess whether Cambodia has measures to adequately respond to these risks.

18. In addition to the high risk issues identified above, proliferation financing (PF) was explored by the assessment team, given Cambodia's diplomatic ties and reported long standing and close relationship at a political level with the DPRK.<sup>6</sup> Concerns also exist that the Cambodia shipping flag registry (now closed) was used by DPRK front companies in favour of ships with ownership in the DPRK.

### *Materiality*

19. Cambodia's gross domestic product (GDP) in 2015 is estimated at approximately USD 18.05 billion.<sup>7</sup> GDP per capita in 2016 was USD 1,303, and the estimate for 2017 is USD 1,434 (official data from MEF).

20. Cambodia is a net importer, importing USD 10,669 million and exporting USD 8,543 million worth of goods globally in 2015.<sup>8</sup> Cambodia's top five export partners in 2015 were the United States (USD 1,137 million), United Kingdom (USD 869 million), Germany (USD 869 million), Japan (USD 572

<sup>6</sup> McPherson, 2014; Cosgrove, 2010

<sup>7</sup> <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD>

<sup>8</sup> <https://comtrade.un.org/data/>

million) and Canada (USD 551 million).<sup>9</sup> Cambodia's top five import partners in 2015 were China (USD 3,924 million), Thailand (USD 1,561 million), Vietnam (USD 926 million), Hong Kong, China (USD 714 million) and Singapore (USD 503 million).<sup>10</sup>

21. Cambodia's GDP by sector comprises agriculture (26.7%), industry (29.8%) and services (43.5%).<sup>11</sup> Cambodia's agricultural products include rice, rubber, corn, vegetables, cashews, cassava and silk.<sup>12</sup> The main industries in Cambodia are tourism, garments, construction, rice milling, fishing, wood and wood products, rubber, cement, gem mining and textiles.<sup>13</sup> Cambodia's GDP growth for 2015 was 7%,<sup>14</sup> supported primarily by growth in the construction and real estate sector, garment exports and tourism. Construction and real estate activities grew 18% in 2015, owing to the rise in investment and demand for housing and commercial and industrial buildings, particularly in the capitol Phnom Penh. Cambodia's garment industry continued to expand, with exports increasing by 12%. Tourism growth was 6%, supported by Cambodia's Open Sky Policy, the development of new tourism sites and improved infrastructure.

22. Cambodia has a cash-based, (US) dollarized economy, largely due to the low public confidence in the Cambodian Riel (KHR). Authorities have implemented strategies to increase the use of the Riel in order to enhance the effectiveness of the Cambodia's monetary policy. This has included improving the quality and safety of bank notes, enhancing the management of local currency circulation across the country and raising public awareness of the important of the use of the Riel. However, while demand for the Riel has increased, the amount in circulation and deposits are still low compared to the US dollar.

23. There is a focus on financial inclusion issues in Cambodia, with the Financial Sector Development Strategy for 2016-2025 including the government's vision to promote financial inclusion as a poverty reduction tool. Authorities are currently developing financial inclusion strategies for implementation and Cambodia became a member of the Alliance for Financial Inclusion in 2015. The micro-finance and NGO sectors have worked to improve financial inclusion in Cambodia for the last few decades. In addition, the NBC has been a member of Asia-Pacific Rural and Agricultural Credit Association since 2000 on Experiences Sharing and Promotion of Agricultural Loans, and has cooperated with the International Finance Corporation on consumer protection, good returns on financial capability and literacy, and with the United Nations Capital Development Fund on the National Strategy for Financial Inclusion.

### *Structural Elements*

24. Cambodia's nascent governance infrastructure and resource challenges are key factors when considering Cambodia's AML/CFT system. Cambodia is commended on the work it has done to restore its justice and legal systems and economy over the past two decades. As noted above, this has included the promulgation of the civil code, civil procedure code, criminal code and criminal procedure code, which provide a stronger basis for implementation of Cambodia's AML/CFT system. Since 1993 Cambodia has built its bureaucracy and institutions - including those responsible for AML/CFT - from a state of complete destruction. The loss of skills and expertise is slowly being replaced across government.

<sup>9</sup> <https://comtrade.un.org/data/>

<sup>10</sup> <https://comtrade.un.org/data/>

<sup>11</sup> <https://www.cia.gov/library/publications/the-world-factbook/geos/cb.html>

<sup>12</sup> <https://www.cia.gov/library/publications/the-world-factbook/geos/cb.html>

<sup>13</sup> <https://www.cia.gov/library/publications/the-world-factbook/geos/cb.html>

<sup>14</sup> <http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG>

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25. While Cambodia has benefited from a period of political stability and has demonstrated high-level commitment to addressing AML/CFT issues, the capability, integrity and transparency of institutions, rule of law, and the effectiveness of Cambodia's judicial system are nonetheless still hindered by capacity constraints and reported high levels of corruption. There are capacity constraints in many key agencies, both in terms of insufficient staffing levels and staff capability.

26. The World Justice Project's 2016 Rule of Law Index scored Cambodia 0.33 on a scale of 0 to 1 where 1 indicates strongest adherence to the rule of law.<sup>15</sup> Cambodia was rated 112 out of the 113 jurisdictions assessed by the project. The key areas of concern highlighted in the study were access to justice, open government and regulatory enforcement and accountability of government.

27. The table below summarises the governance indices from the 2005 and 2015 World Bank World Wide Governance Indicators Country Snapshots.<sup>16</sup> While Cambodia's ranking for political stability and absence of violence/terrorism, government effectiveness and control of corruption have improved since 2005, the 2015 rankings show a small decline in 'voice and accountability' and regulatory quality in Cambodia. Further, as a point-in-time assessment Cambodia's 2015 scores are in the bottom 20<sup>th</sup> percentile for voice and accountability, corruption control and rule of law.

**Table 1: Cambodia Governance Indicators 2005 and 2015 - World Bank World Wide Country Snapshot**

Indicator	Governance Score 2015 (-2.5 to +2.5) <sup>17</sup>	Percentile Rank 2015 (0-100) <sup>18</sup>	Governance Score 2005 (-2.5 to +2.5)	Percentile Rank 2005 (0-100)
Voice and Accountability	-1.09	18.72	-1.01	18.75
Political Stability & absence of violence / terrorism	-0.10	43.81	-0.42	34.78
Government effectiveness	-0.69	25.48	-0.96	16.10
Regulatory quality	-0.48	35.10	-0.48	35.29
Rule of law	-0.92	17.31	-1.18	11.00
Control of corruption	-1.04	12.50	-1.18	10.24

28. Such structural issues are having an effect on the development of Cambodia's economy and private sector. The Heritage Foundation's 2017 Index of Economic Freedom<sup>19</sup> scored Cambodia 59.5 on a scale of 0 to 100, where the world average is 60.9. This ranks Cambodia at 94<sup>th</sup> globally and 20<sup>th</sup> within the region, with an economic freedom status of "mostly unfree". The report notes that "lingering institutional weaknesses hold back the emergence of a more dynamic private sector. Weak property rights and pervasive corruption continue to constrain economic freedom, and institutionalisation of a more independent judicial system remains a key area of reform. The rigidity of the formal labour market is partly responsible for the existence of an underground dual labour market".<sup>20</sup> These, and other, independent studies and commentators have raised concerns regarding

<sup>15</sup> <http://worldjusticeproject.org/rule-of-law-index>

<sup>16</sup> <http://info.worldbank.org/governance/wgi/index.aspx>

<sup>17</sup> Estimate of governance measured on a scale from approximately -2.5 to +2.5. Higher values correspond to better governance.

<sup>18</sup> Indicates rank of country compared with all countries around the world. A percentile rank of 0 corresponds to the lowest ranking and 100 corresponds to the highest ranking.

<sup>19</sup> <http://www.heritage.org/index/>

<sup>20</sup> Heritage Foundation, 2017

the accountability of government in Cambodia and the subsequent impact on justice, regulatory enforcement and corruption. Developments in Cambodia against political opposition<sup>21</sup> may affect the accountability of institutions within the Cambodian government and the independence they are able to exercise.

29. Corruption is a significant issue in Cambodia. For example, under the World Bank's CPIA (transparency, accountability, and corruption in the public sector) rating, on a scale of 1 (low) to 6 (high), Cambodia was rated as 2.0 in 2015 (versus a global average of 2.88)<sup>22</sup>. According to the Global Corruption Barometer, in 2016, corruption remains an issue that requires continued action and which demands further focus on certain high risk areas<sup>23</sup>. Cambodia's Anti-Corruption Unit (ACU), which is mandated by the Law on Anti-Corruption to combat corruption in all sections and at all levels throughout Cambodia, has been using three-pronged approach to fight corruption: education, prevention, and law enforcement, with public participation and support and international cooperation. The impact of corruption on a fair judicial process in particular has been noted by observers<sup>24</sup> and the ACU has singled out the judicial and legal professions as being a target for anti-corruption initiatives.<sup>25</sup>

30. Freedom House's 2016 Freedom of the Press classifies the Press Freedom Status in Cambodia as 'Not Free'.<sup>26</sup> Political parties have reasonable access to print media, however the majority of Khmer-language newspapers are supported by associates of the government.<sup>27</sup> Despite this, large circulation newspapers are occasionally critical of some aspects of the government, primarily relating to corruption and land acquisition.<sup>28</sup> Opposition supporters more frequently rely on online publications and social media (which remains largely uncensored) to express opinion.<sup>29</sup> Broadcast media is heavily influenced by the government.<sup>30</sup>

31. During the course of the mutual evaluation, there was confusion amongst Cambodian authorities regarding which agency or agencies is/are responsible for investigating money laundering, which is an important structural issue. This is discussed further in the analysis of IO.7.

### **Background and other contextual factors**

32. Cambodia is a member of the Association of Southeast Asian Nations (ASEAN) having joined in 1999. ASEAN provides mechanisms and forums for information exchange, collaboration and

<sup>21</sup> <http://www.newmandala.org/dissent-death-cambodia/>; <http://www.smh.com.au/world/cambodias-hun-sen-cracks-down-on-dissent-amid-challenge-to-his-rule-20140105-hv7kj.html>; [https://www.nytimes.com/2016/02/18/world/asia/cambodia-hun-sen-sam-rainsy.html?\\_r=0](https://www.nytimes.com/2016/02/18/world/asia/cambodia-hun-sen-sam-rainsy.html?_r=0); <http://www.rfa.org/english/news/cambodia/cambodian-government-attempts-05172016161532.html>; [http://www.huffingtonpost.com/mary-wald/cambodian-political-repre\\_b\\_9657752.html](http://www.huffingtonpost.com/mary-wald/cambodian-political-repre_b_9657752.html); <http://thediplomat.com/2015/11/cambodia-hun-sen-draws-first-blood/>

<sup>22</sup> <http://data.worldbank.org/indicator/IQ.CPA.TRAN.XQ>

<sup>23</sup> [https://www.transparency.org/research/gcb/gcb\\_2015\\_16/0/](https://www.transparency.org/research/gcb/gcb_2015_16/0/)

<sup>24</sup> International Bar Association *Justice versus corruption: Challenges to the independence of the judiciary in Cambodia* International Bar Association's Human Rights Institute. London. September 2015; Transparency International *Corruption and Cambodia's Governance System: the need for reform* Transparency International Cambodia Phnom Penh 2014

<sup>25</sup> <https://www.cambodiadaily.com/morenews/courts-must-solve-corruption-conundrum-123755/>

<sup>26</sup> <https://freedomhouse.org/report/freedom-press/2016/cambodia>

<sup>27</sup> <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265326>

<sup>28</sup> <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265326>

<sup>29</sup> <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265326>

<sup>30</sup> <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265326>

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training opportunities between members, focused on economic growth, social progress, and regional peace and stability. More specifically, Cambodia has benefited from international legal cooperation via the ASEAN Mutual Legal Assistance Treaty. In addition, Cambodia has received significant technical assistance from ASEAN member states. For example, Thailand has provided support to the MOJ in drafting the Law on Mutual Legal Assistance. Moreover, capacity building for judges and prosecutors among ASEAN member has been provided in relation to money laundering and related topics (for example, cybercrime).

#### *AML/CFT strategy*

33. Cambodia's NCC has a strong statutory basis in the 2007 AML/CFT Law and reflects political level leadership and commitment to AML/CFT efforts. Since 2013 the NCC's has focused on building Cambodia's legal/institutional framework.

34. Cambodia has a set of national AML/CFT strategies, entitled *The National Strategies on Anti-Money Laundering and Combating the Financing of Terrorism 2013-2017* (the National AML/CFT Strategies). The National AML/CFT Strategies focus on the functionality of the NCC, the conduct of the NRA, building capacity of the financial intelligence unit (FIU), harmonising the law and establishing procedures, strengthening domestic and international cooperation and awareness-raising for REs. The National AML/CFT Strategies were devised prior to Cambodia's first NRA, and are therefore not informed by identified risks. However, Cambodia is planning to prepare and implement a new national strategy in 2017, which will be aligned with the findings of the NRA.

35. There is no clear coordination mechanism in relation to PF issues.

#### *Legal & institutional framework*

##### **Legal hierarchy in Cambodia**

36. Cambodia's hierarchy of laws is as follows:

- 1) The Constitution: the Supreme law of the Kingdom of Cambodia.
- 2) Treaties and conventions: according to Article 26 of the Constitution, the King shall sign and ratify international treaties and conventions, following the approval of the National Assembly. After such ratification, international treaties and conventions shall become one of the bases for judicial decisions.
- 3) Laws (Chhbab): Laws adopted by the Parliament (National Assembly and Senate) and promulgated by the King.
- 4) Royal Decree (Preah Reach Kret): Executive regulation proposed by the Council of Ministers and signed by the King executing his constitutional powers.
- 5) Sub-decree (Anu-Kret): Executive regulation prepared by relevant ministers, adopted by the Council of Ministers and signed by the Prime Minister and countersigned by the Minister(s) in charge after adoption by the Cabinet meeting. The Prime Minister can use this in exercising his/her own regulatory powers.
- 6) Ministerial Order (Prakas): Executive regulation issued at the ministerial level, prepared by the



relevant Ministries and signed by the relevant Minister(s) in exercising his/her own regulatory powers.

7) Decision (Sechdei Samrech): Executive regulation in the form of an individual decision of the Prime Minister and Decision (Prakas-Delka) of a Minister or a Governor, which is used in exercising his/her own regulatory powers.

8) Circular (Sarachor): An administrative instruction used to clarify matters related to government Ministries, signed by the Prime Minister as head of government, and by the Minister(s).

9) Provincial Deka (Arrete): A bylaw or legal rule approved by the provincial Councils.

Source: Council for development of Cambodia (CDC), Cambodia Investment Guidebook, December 2006; Hor Peng, Kong Phallack and Jorg Menzel (Eds.), *Introduction to Cambodian Law* (Konrad Adenauer Stiftung, 2012).

37. The legal framework for AML/CFT preventative measures is set out in the AML/CFT Law 2007 and the Law on Amendment of Article 3, Article 29 & Article 30 of the Law on AML/CFT 2013 (the AML/CFT Amendment Law), supported by the two Prakas on AML/CFT issued in 2008 and 2010 respectively. Money laundering is criminalised under the AML/CFT Amendment Law, and TF is criminalised under the Law on Counter Terrorism and Article 29 New-7 of the AML/CFT Amendment Law. The Criminal Code and Criminal Procedure Code contain important provisions (e.g. in relation to provisional/confiscation measures and powers of LEAs), and there are also relevant provisions in special laws on drugs and corruption.

38. The institutional framework for AML/CFT is as follows:

- **The Council of Ministers (COM):** The COM is headed by the Deputy Prime Minister and is mandated to regulate matters relating to all sectors and is involved in the review of all proposed draft laws or proposed amendments to existing laws.
- **National Coordinating Committee (NCC):** The NCC is a high level mechanism responsible for overall coordination of Cambodia's AML/CFT regime. It is led by the Governor of the National Bank of Cambodia (NBC).
- **Cambodia Financial Intelligence Unit (CAFIU):** CAFIU is the coordinating agency on ML/TF in Cambodia, is the Financial Intelligence Unit (FIU) for Cambodia and is also the AML/CFT supervisor. In its role as FIU, CAFIU receives, analyses and disseminates suspicious transaction reports (STRs) and cash transaction reports (CTRs). In its role as AML/CFT supervisor, CAFIU supervises regulated entities and conducts outreach activities to regulated entities and the public to raise awareness on AML/CFT. CAFIU is located within the NBC.
- **Office of the General Prosecutor:** The Office of the General Prosecutor is responsible for prosecuting offences, including ML and TF. Prosecutors are included in an investigation once the perpetration of any crime or misdemeanour is known.
- **Ministry of Interior (MOI)** houses the General Commissariat of National Police (GCNP). GCNP is the main policing organisation in Cambodia and has a dedicated unit responsible for ML/TF investigations. In addition, the General Information Department of GCNP is

responsible for monitoring casinos and the General Department of Administration of MOI is responsible for registering local NGOs<sup>31</sup> and monitoring all NGOs operating in Cambodia.

- **Anti-Corruption Unit (ACU):** The ACU and National Council Against Corruption (NCAC) together form the Anti-Corruption Institution. ACU is the authority mandated to implement the law, orders and regulations related to corruption, including ML related to corruption. ACU has law enforcement powers and performs its functions independently.
- **National Bank of Cambodia (NBC):** NBC exercises central bank functions including determining monetary policy objectives, issuing currency and performing transactions on behalf of Cambodia, and is responsible for licensing, regulating and supervising banks and other FIs.
- **Securities and Exchange Commission of Cambodia (SECC):** SECC is the licencing authority and regulator of the securities sector in Cambodia.
- **Ministry of Commerce (MOC):** The General Directorate of Trade Support Services of MOC is responsible for the registration of domestic and foreign companies in Cambodia.
- **Ministry of Economy and Finance (MEF):**
  - *Real Estate Trading and Pawn Business Department:* Real Estate Trading and Pawn Business Department is responsible for licensing and supervising property valuers and appraisers, real estate agents and property developers.
  - *Insurance and Pension Department:* Insurance and Pension Department is responsible for licensing and supervising the insurance sector.
  - *Department of Gambling Management Anti-money Laundering and Combating Financing Terrorism:* The Department of Gambling Management Anti-money Laundering and Combating Financing Terrorism is responsible for issuing casino licences and for collecting taxes from licenced casinos. It also controls lottery operations and licensing.
- **Ministry of Foreign Affairs and International Cooperation (MFA-IC):** MFA-IC is primarily responsible for diplomatic liaison, including in relation to UN Conventions. In addition, MFA-IC is responsible for the registration of international and foreign NGOs operating in Cambodia.
- **Ministry of Justice (MOJ):** MOJ is responsible for organising and controlling the administration of courts and prosecution offices, drafting laws and managing the administrative process involved from the proposal of a new law to its final approval by the National Assembly, and managing the Royal Academy for judicial professionals (including researching and training). In addition, the Central Authority within MOJ is responsible for mutual legal assistance and extradition.
- **National Counter Terrorism Committee (NCTC):** NCTC is the national body for strategy and policy guidance and is also the coordinating body for combating terrorism and TF. It is headed by the Prime Minister and supported by a Secretariat (SNCTC).
- **General Department of Customs and Excise (GDCE):** GDCE is responsible for revenue collection, and monitoring the movement of goods, conveyances and people across borders. It is responsible for enforcing and collecting cross-border currency declaration forms.

<sup>31</sup> A local NGO refers to a non-membership organisation, including a foundation established under the law of Cambodia by natural persons and/or legal entities, aiming at providing funds and services in one or several sectors for the public interest without generating or sharing profits among its members (Article 4, *Law on Associations and Non-governmental Organizations 2015*).

39. There are no authorities responsible for combating PF.

#### *Significant changes since last MER*

40. Cambodia's last mutual evaluation on-site visit took place in February 2007, with the report being adopted in July 2007. At that time there were limited AML/CFT measures in place. Since then the following significant changes have occurred:

- AML/CFT Law was promulgated in June 2007 and was amended in June 2013.
- Law on Counter Terrorism was promulgated in July 2007.
- Criminal Procedure Code was promulgated in August 2007.
- Civil Code was promulgated in November 2007.
- CAFIU was established in January 2008.
- Criminal Code (Penal Code) was promulgated in November 2009.
- Anti-Corruption Law was promulgated in April 2010 and was amended in August 2011.
- The National Coordination Committee (NCC) on AML/CFT was established in 2012.
- The NCC adopted the National AML/CFT Strategies in March 2013.
- Sub-Decree on Freezing of Property of Designated Terrorists and Organisations was promulgated in March 2014.
- Organisation and Functioning of the Courts, Statute of Judges and Prosecutors and the Supreme Council of Magistracy Laws were promulgated in July 2014.

#### *Financial sector and DNFBPs*

##### *Financial sector*

41. The financial sector in Cambodia is dominated by the banking sector, which covers about 90% of total financial sector assets. Total assets of the banking sector, as at December 2015, were USD 23.47 billion, representing 128% of GDP. As of December 2016, the banking system comprised 36 commercial banks (12 locally incorporated, 14 foreign subsidiaries, 10 foreign bank branches), 12 specialised banks, eight foreign bank representative offices, 58 microfinance institutions (MFIs) (eight microfinance deposit taking institutions and 50 microfinance institutions), and 109 registered microfinance operators. The banking sector is regulated by the NBC.

42. Cambodia's insurance market is still at an early stage of development. As at December 2016, there were 15 licensed insurance companies, comprising seven general insurers, four life insurers (one of which is inactive) and four micro-insurers. The insurance sector is regulated by the MEF.

43. Similarly, the securities sector in Cambodia is still developing, with the Cambodia Securities Exchange (CSX) having commenced trading in 2012. As at December 2016, there were 10 securities firms (seven underwriters, one dealer and two brokers) operating in CSX and three cash settlement agents (CSAs), providing cash settlement service for securities trading. Until the end of 2015, CSX had only one type of product available, namely equity securities, and three listed enterprises with a market capitalisation of approximately USD 180 million or 0.97% of GDP; while the total floating market capitalisation was approximately USD 42 million or 0.23% of GDP. The securities sector is regulated by SECC.

44. Other small financial service providers include nine leasing companies, one credit bureau, nine third party processors (providing money remittance services with over 10,000 agents

nationwide), eight licensed money changers and 2,010 registered money changers, 284 pawnshops and the Cambodian Post, which provides limited remittance services. Financial activities are also undertaken by informal FIs such as money lenders. There has been no assessment made to determine the size of the informal financial sector in Cambodia.

45. The table below lists the types of financial institutions in Cambodia's financial sector and their regulatory and supervisory authorities:

**Table 2: Cambodia financial sector as at 16 December 2016**

<i>Entity Types Financial Institutions</i>	<i>No. of Licensed REs</i>	<i>No. of Registered REs</i>	<i>License Authority</i>	<i>General or prudential Supervisor</i>	<i>AML/CFT Supervisor</i>
<i>Commercial Banks</i>	36	0	NBC	NBC	CAFIU
<i>Specialised Banks</i>	12	0	NBC	NBC	CAFIU
<i>Deposit taking MFIs</i>	8	0	NBC	NBC	CAFIU
<i>Licensed MFIs</i>	50	0	NBC	NBC	CAFIU
<i>Registered MFIs</i>	0	109	NBC	NBC	CAFIU
<i>Financial Leasing</i>	9	0	NBC	NBC	CAFIU
<i>Money changers</i>	8	2,010	NBC	NBC	CAFIU
<i>Money remittance services (third party processors)</i>	9	0	NBC	NBC	CAFIU
<i>Securities brokerage firms</i>	10	0	SECC	SECC	CAFIU-SECC
<i>Insurance companies</i>	19*	0	MEF	MEF	CAFIU-MEF

\* 5 life insurance, 7 general insurance, 7 micro-insurance companies

### *DNFBPs*

46. REs in the DNFBP sectors in Cambodia include real estate agents and developers, dealers in precious metals and stones (DPMS), lawyers, notaries, accountants, auditors, investment advisors, asset managers, casinos and gambling institutions. Although not required under the FATF standards, non-governmental organisations and foundations engaging in (non-profit) business activities and fund raising in the public interest are also REs in Cambodia. In practice, however, AML/CFT supervision of NGOs has not commenced.

47. As at December 2016, there were 63 licensed casinos operating in Cambodia, of which one (the largest) operates in Phnom Penh, constituting 44% of the sector, and the remainder in areas adjoining the Thai and Vietnamese borders. Cambodian nationals are not permitted to enter casinos however participation in illegal gaming is reportedly high.<sup>32</sup> According to the UNODC, more than 90% of patrons in the casinos in Poipet, on the Cambodia/Thailand border, are Thai.<sup>33</sup> Thai citizens do not require visas to cross the border and enter these casinos and the Thai Baht is accepted. It is estimated

<sup>32</sup> <https://www.unodc.org/southeastasiaandpacific/en/vietnam/2015/10/money-laundering/story.html>

<sup>33</sup> <https://www.unodc.org/southeastasiaandpacific/en/vietnam/2015/10/money-laundering/story.html>

that USD 12 million in cash crosses the border in Poipet alone every day.<sup>34</sup> The casino sector is regulated by MEF and MOI.

48. The number of registered real estate agents and licensed real estate developers has increased from 28 agents in 2007 to 138 in December 2016 and from two developers in 2010 to 118 in December 2016. Real estate agents were involved in approximately 30% of all transactions in Phnom Penh and around 60% of these transactions were conducted in cash. The remaining 70% of transactions outside of Phnom Penh are likely to be carried out in cash. Foreigners cannot legally own land in Cambodia (but can purchase apartments as long as they are not on the ground floor), however, it is common practice for foreigners to use nominees to purchase property. Real estate sector contributes 17.5% to GDP in 2015. The real estate sector is regulated by MEF. The table below lists DNFBPs in Cambodia that are subject to the AML/CFT Act.

**Table 3: Cambodian DNFBPs as at 16 December 2016**

<i>Entity Types DNFBPs</i>	<i>No. of Licensed REs</i>	<i>No. of Registered REs</i>	<i>License Authority</i>	<i>General or prudential Supervisor</i>	<i>AML/CFT Supervisor</i>
<i>Casinos and other gambling institutions</i>	75	0	MEF	MEF-MOI	CAFIU-MEF
<i>Real estate agents</i>	0	138	MEF	MEF	CAFIU-MEF
<i>Real estate developer</i>	118	0	MEF	MEF	CAFIU-MEF
<i>Lawyers</i>	1,207	0	Bar Association of Cambodia (BAR)	BAR	CAFIU-BAR
<i>Notaries</i>	45	0	MOJ	MOJ	
<i>Accountants/Auditors</i>	156 <sup>35</sup>	0	NAC	NAC	
<i>Dealers in precious metals and stones</i>	21	21	NBC	NBC	CAFIU-NBC
<i>Post office</i>	0	0			
<i>Investment advisors</i>	2 <sup>36</sup>	0	SECC	SECC	CAFIU-SECC
<i>Asset managers*</i>	-	-	-	-	-

\* No information available on number of licensed or registered asset managers

### *Preventive measures*

49. The AML/CFT Law, Prakas on AML/CFT 2008 (Prakas 2008) and Prakas on AML/CFT relating to All Reporting Entities Not Regulated by the National Bank of Cambodia 2010 (Prakas 2010) set out Cambodia's preventive measures. Prakas 2008 applies to banks and other FIs regulated by

<sup>34</sup> <https://www.unodc.org/southeastasiaandpacific/en/vietnam/2015/10/money-laundering/story.html>

<sup>35</sup> Accountants and auditors have to be members of Kampuchea Institute of Certified Public Accountants and Auditors (KICPAA). There are 156 active members of KICPAA (local and foreign) who are required to be licensed by the National Accounting Council (NAC) to practise in both accounting and auditing fields. During the current transitional period of the new law of accounting and auditing, there are no registered accountants (only auditors), but there will be registered accountants when the new sub-decree of KICPAA is endorsed.

<sup>36</sup> Investment advisors are licensed by SECC to providing advice about investments in securities to public investors for a fee, and to publish investment analysis on securities investment to public investors.

NBC, while Prakas 2010 applies to reporting entities not regulated by NBC. Requirements set out in Prakas are “enforceable means” in FATF terms.

### *Legal persons and arrangements*

50. The Law on Commercial Enterprises and the Law on Commercial Rules and Register set out the types of legal persons in Cambodia and the processes for creation of those legal persons. Legal arrangements cannot be established under Cambodian law,<sup>37</sup> however, there is nothing to prevent foreign trusts from operating in Cambodia and there are only limited mitigating measures in place to prevent misuse of such trusts for ML/TF purposes. Cambodia is currently drafting a Trust Law, which is expected to be enacted and promulgated in 2017. This Law will expand the Cambodian legal framework to recognise many forms of trust

51. The table below sets out the number and types of companies registered in Cambodia as at 31 December 2016.

**Table 4: Company Registrations as at 31 December 2016**

<i>Company Type</i>	<i>Number of entities</i>
Total Domestic Companies	44,297
- Private Limited Companies	43,845
- Public Limited Companies	451
- Partnerships	1
b-Foreign Businesses	1,031
- Representative Offices	470
- Branch offices	561

### *Supervisory arrangements*

52. As summarised in tables 2 and 3 above, the AML/CFT Law empowers CAFIU to be the AML/CFT supervisor, responsible for ensuring the compliance of REs through off-site and on-site inspections, in coordination with other supervisory agencies.

53. NBC is the prudential supervisor for banks, MFIs, financial leasing companies, money changers and money remittance services. The SECC is the prudential supervisor for the securities sector and MEF for the insurance sector. The SECC and MEF have incorporated AML components into their on-site supervision of entities.

54. AML/CFT supervision of DNFBPs by CAFIU has not yet commenced. MEF and MOI are the prudential supervisors for casinos and MEF is the prudential supervisor for the real estate sector.

<sup>37</sup> As outlined under the analysis of IO.5, Cambodia provided the evaluation team with information regarding an arrangement that can be established in Cambodia, known as a “financial trust”. While they are referred to as trusts in name, these arrangements are not trusts in nature and have not been considered as part of the analysis of R.25 or IO.5.

*International cooperation*

55. Cambodia's main proceeds-generating crimes – fraud/scams, corruption and bribery, drug trafficking, human trafficking, illegal logging, wildlife crime and goods and cash smuggling – transcend Cambodia's borders, heightening the need to cooperate with other jurisdictions to effectively detect and deter ML/TF.

56. The Central Authority in the MOJ is responsible for MLA and extradition. Cambodia has had limited formal international cooperation relating to ML/TF.

### *Key Findings and Recommended Actions*

#### **Key Findings**

- Cambodia demonstrates a mixed level of understanding of its ML/TF risks, ranging from medium to low across the competent authorities and the private sector. Generally, the working group members who participated in the NRA exercise, banks and MFIs show a reasonable understanding of risks, while the remainder exhibit a low level of understanding.
- Cambodia is commended for completing its first NRA in late 2016, immediately before the on-site visit. However, the NRA has some limitations as it is based solely on information on identified (detected) criminal activities and does not include information ML/TF risks from other credible sources, such as research on threats and vulnerabilities, trends and typology analyses or strategic analyses. These limitations are acknowledged by the Cambodian authorities and in part reflect that this is their first national assessment. The lack of a wide range of data and absence of other assessments of ML/TF undermines the reasonableness and consistency of the NRA. However, notwithstanding these issues, the assessment team broadly agrees with the authorities on the main ML/TF risks faced by Cambodia.
- Cambodia's National AML/CFT Strategies have been a key driver for changes to laws, regulations and policies related to AML/CFT. However, there are no coordinated policies and actions that align with, or are based on, identified risks. The 2016 NRA has not yet resulted in a significant review of Cambodia's AML/CFT policies or strategies to combat ML/TF, but such a review is planned.
- While Cambodia has identified a number of high risk areas, the legal and regulatory framework does not include enhanced measures for identified high risks areas such as the real estate and casino sectors. Similarly, supervision by the regulators is not conducted on a risk-sensitive basis. Other than banks and MFIs, there is a poor understanding of ML/TF risks, AML/CFT obligations and the typologies of ML/TF across DNFBPs and FIs.
- The activities of LEAs in investigating and prosecuting ML/TF and related predicate crimes are inconsistent with identified risks. Cambodia has conducted only three ML investigations and no prosecutions. There is no policy to 'follow the money' in investigating predicate crimes.
- There is well established inter-agency cooperation and coordination, through the NCC, at a policy level. However, there is no coordination mechanism to execute the decisions of the NCC or for broader operational level coordination on AML/CFT issues between relevant agencies.
- There is no legal and regulatory framework and no coordination mechanisms to combat PF.

#### **Recommended Actions**

- To develop a better understanding of ML/TF risks, Cambodia should:
  - Ensure that future NRAs cover ML/TF risk comprehensively and include a broader range of information including intelligence analysis, strategic analysis, a range of national and international research and reports and better analysis of 'inherent' threats rather than discovered



crimes;

- Introduce more systematic and coordinated collection of AML/CFT statistics to assist reviews or updates to the assessments of risk.
  - Undertake a comprehensive ML/TF risk assessment of all types of legal persons and legal arrangements (both foreign trusts operating in Cambodia and trusts to be introduced under the pending new general trusts law) and develop a strategy to effectively mitigate those risks;
  - Assess the TF risks associated with the NPO/NGO sector;
  - Consider the ML/TF risks associated with illicit inflow and outflow of funds (both through movement of cash and trade-based money laundering); and
  - Given the issues identified in this MER, consider updating its assessment of ML/TF risks sooner than in five years.
- As planned, revise the National AML/CFT Strategies, bearing in mind the risks identified in the NRA and the findings of this evaluation. Competent authorities should also develop their own action plan or strategy to implement the National AML/CFT Strategies. There should be a mechanism at the national/policy level to monitor the implementation progress of the revised National AML/CFT Strategies and competent authorities should allocate adequate resources in this regard.
  - Using the findings of NRA, including any further or future updates, apply enhanced measures for higher risk situations, or to justify exemptions, or simplified measures for lower risk situations.
  - Disseminate the findings of the NRA, including through outreach programs, to LEAs, regulators, other competent authorities (industry associations, self-regulatory bodies) and relevant private sector entities, including reporting entities.
  - Establish a stronger platform for cooperation and coordination at the operational level. In particular, enhance inter-agency cooperation and coordination among the LEAs and supervisors on AML/CFT. Similarly, adopt appropriate measures to enhance information exchange among LEAs and supervisors.
  - Ensure that competent authorities cooperate and coordinate in the development and implementation of policies and activities to combat PF, either by incorporating this into the revised National Strategies or otherwise.

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

### ***Immediate Outcome 1 (Risk, Policy and Coordination)***

#### *Country's understanding of its ML/TF risks*

58. Cambodia demonstrates some understanding of its ML/TF risks, but this understanding needs to be developed further. Cambodia has very recently completed its first ever NRA, adopted on 29 November 2016. Despite the limitations identified by the assessment team, completion of the 2016 NRA is an important first step in Cambodia's understanding of its ML/TF risks. Future

assessments of ML/TF risks will however require better data, case studies and feedback from stakeholders, within and outside government.

2

59. Cambodia has identified its overall ML risk as *medium high* by combining the overall *medium high* national ML threat and overall *medium* national vulnerability. The assessment team does not disagree with this overall conclusion. The overall TF risk is rated as *medium low*. Though there are limited incidents of terrorism and its financing occurring in Cambodia, the potential consequences of a terrorist/TF act and regional terrorism and TF risk environment are reflected in Cambodia's risk rating.

60. Cambodia consulted a reasonably representative range of public and private sector stakeholders in conducting the NRA through a series of workshops. The NCC, overseeing the NRA Working Group, and with the support of CAFIU, coordinated the preparation of the NRA. The NRA Working Group comprised nine sub-working groups<sup>38</sup> and met several times over the year and collected and collated relevant information and statistics. Upon completion of the NRA in late 2016, a workshop was held to raise awareness of the NRA results amongst competent authorities and self-regulatory bodies. Outreach to the private sector has however been limited overall, though further dissemination of the results of the NRA is planned. By including a diverse range of public and private sector stakeholders in the development of the NRA, Cambodia has taken a very important initial step to enhance the understanding of ML/TF risks within relevant entities, though further work is required.

61. A strength of Cambodia's NRA is that it has identified the main ML/TF threats by sector and proceeds-generating crimes. As outlined in Chapter 1, the assessment team broadly agrees with the authorities that the main risks faced by Cambodia include ML from fraud/scams, corruption and bribery, drug trafficking, human trafficking, illegal logging, wildlife crime and goods and cash smuggling. Additionally, the NRA takes an open, self-critical approach and accepts some deficiencies in the risk assessment process (e.g. lack of data) and outlines a series of actions to improve Cambodia's understanding of risk in the future.

62. However, there are gaps in the scope of the NRA as it excluded analysis of risks posed by legal persons, foreign trusts, the NPO/NGO sector and dealers in precious metals and stones. The NRA also did not consider the risks associated with illicit inflow and outflow of funds (both through movement of cash and trade-based money laundering).

63. While the assessment team agrees broadly with the NRA's findings, the team considers that the risks associated with smuggling of goods and cash are significantly higher than estimated in the NRA, and that the ML risks associated with drug trafficking and corruption and bribery are somewhat higher. In terms of ML vulnerabilities, the assessment team agrees with Cambodia's analysis that there are higher risks associated with the casino and real estate sectors (due in part to the lack of AML/CFT supervision of these sectors), as well as the banking sector (due to its materiality). However, the team considers that the ML risks associated with banking, remittance and lawyers are higher than as assessed by Cambodia (due to materiality and lack of AML/CFT supervision).

64. The NRA highlighted that the most common ML technique relies on banking transactions and unofficial money transfer businesses, but both the banking sector and remittance sector do not have adequate supervisory oversight commensurate with the risks. Further internal controls in some banks and remittance companies are not sufficiently robust to mitigate the ML/TF risks. As for the

<sup>38</sup>1) ML threat, 2) ML vulnerability, 3) banking sector vulnerability, 4) securities sector vulnerability, 5) insurance sector vulnerability, 6) other financial institutions, 7) DNFBPs sector, 8) TF risks, and 9) financial inclusion

legal profession (rated as low risk), the NRA indicated that most lawyers are not aware of the AML/CFT matters and yet they are involved in transactions involving high to medium risk sectors (i.e. real estate transactions, managing clients' banking accounts, creation of companies and legal arrangements, etc.). This profession poses a risk at least at the level of the accounting and auditing sector, which is at medium low.

65. Weaknesses in the NRA broadly stem from an overarching issue regarding the range and depth of data available and used. It is evident that the NRA did not benefit from the input of all credible sources available, including intelligence and expert research or reports, strategic intelligence analysis, trends and typologies related to ML/TF. For example, the NRA did not reflect sectoral or entity level risk assessments other than from banks and MFIs. With respect to data on crime, heavy reliance on statistics relating to discovered crimes, without consideration of the level of inherent risk (actual crime), places into doubt the accuracy of the findings. Therefore, despite Cambodia's use of robust tools for its first NRA, its understanding of its ML/TF risks requires further development.

66. Cambodia completed its NRA only a week before the on-site visit and, at that time, no actions had been taken to share the outcomes of the NRA with stakeholders, except a seminar held for the NRA working group. Understanding of ML/TF risks, threats and vulnerabilities across private and public sectors is mixed, though generally, medium to low. Though some outreach has been conducted, the assessment team found a lack of awareness among stakeholders. For example, there were differing views on the validity of the TF risk being rated medium low rather than low, and smuggling of goods and cash being rated low rather than medium to medium high.

67. The Cambodian authorities indicated that, while no firm decisions have been made, they intend to update their national ML/TF risk assessment every five years or so. While this is a not an unreasonable period generally, the assessment team would encourage Cambodia to consider conducting its first update a year or two sooner given the issues outlined above.

#### *National policies to address identified ML/TF risks*

68. The NCC, under the leadership of Governor of the NBC, is responsible for overall coordination of the AML/CFT regime. The NCC is also designated to develop and monitor the implementation of Cambodia's National AML/CFT Strategies. Though the National AML/CFT Strategies have been critical to the reforms to AML/CFT laws, regulations and policies in recent years, they are not yet aligned with the identified risks, threats and vulnerabilities. Cambodia indicated that it now plans to review its national AML/CFT policies and activities to reflect the results of the NRA, including the application of enhanced and simplified measures for higher and lower risk scenarios respectively.

69. As is outlined in the analysis of IO.6 and IO.3 respectively, the activities of the FIU and of AML/CFT supervisors are not yet fully aligned with the identified ML/TF risks.

70. All competent authorities, such as ACU, GCNP, National Authority for Combating Drugs (NACD), GDCE and the General Department of Taxation (GDT), having a judicial police function can initiate a preliminary investigation on a ML offence. Though capacity building and domestic coordination among the relevant stakeholders are two major elements of the National AML/CFT Strategies, there is no guidance available for investigation and asset recovery and management (for example, an ML/TF investigation manual, guidance for managing assets during ML/TF investigation etc.). The negligible rate of investigation of ML (see the analysis of IO.7) and of freezing, seizing and confiscation of proceeds of crime (see the analysis of IO.8) is inconsistent with the risks identified in

the NRA. Despite the medium low TF risk, Cambodia has relatively extensive resources and robust frameworks in place, including legal and operational instruments, to combat terrorism and TF (see the analysis of IO.9).

#### *Exemptions, enhanced and simplified measures*

71. The legal and regulatory framework does not include exemptions for CDD measures based on an assessment of low risk. However, REs exercise enhanced and simplified measures based on the generic requirements outlined in the Prakas 2008 and Prakas 2010. CAFIU has not demonstrated a clear link between these requirements and a well-founded understanding of risks, through the NRA or elsewhere.

72. Cambodia does not explicitly allow FIs or DNFBPs to take simplified measures in circumstances where lower risks are identified, for example in relation to leasing, insurance, pawnshops and lawyer. However, it does permit a form of simplified CDD for wire transactions under USD 1,000.

73. The legal and regulatory framework does not include enhanced measures in relation to recently identified higher risks, for example, in the real estate or casino sectors. Cambodia requires FIs/DNFBPs to perform additional CDD for some categories of customer, business relationships or transactions with a higher risk of ML such as for PEPs who are specified as being higher risk customers. However, these generic risk-based requirements pre-date the 2016 NRA.

#### *Objectives and activities of competent authorities*

74. The objectives and activities of the competent authorities are not yet aligned with the NRA. As noted above, the 2013-17 National AML/CFT Strategies are largely focused on institutional reforms and capacity building, rather than a mitigation of identified risks.

75. Given its very recent adoption, the 2016 NRA has not yet informed AML/CFT objectives at the national/policy and/or operational level. While law enforcement agencies appear to have a good understanding of predicate crime risks, their understanding of ML risk is less developed, which is reflected in the absence of ML investigations.

76. Overall, there are no indications that the criminal justice system (prosecutors, investigative judges and law enforcement agencies) focuses its resources and efforts on ML, including areas of higher ML risk. Only the GCNP has a specialised AML/CFT unit. The activities of GDCE are limited to fines for cash smuggling rather than pursuit of ML through investigations. To date there have been very few ML investigations and no ML prosecutions or convictions, and investigations of ML are not undertaken in parallel with predicate crime investigations.

77. The existing regulatory and supervisory activities by CAFIU and NBC show limited application of a risk-based approach to supervising banks and MFIs (see analysis of IO.3). Regulations for prudential supervision include reference to a risk-based approach with respect to ML/TF. However, it is not apparent that this applied in practice. No sanctions have been imposed for breaching AML/CFT compliance requirements. In terms of CAFIU's analytical role, it receives STRs and CTRs largely from banks and MFIs and not from other sectors identified as high risk. Furthermore, CAFIU's extremely limited analysis of these reports demonstrates a lack of responsiveness to risk.

78. Broadly, Cambodia has not implemented a comprehensive, risk-based approach to allocating resources and implementing measures to prevent or mitigate ML/TF on the basis of assessed risks. The limited supervision that has been undertaken over the last five years has covered banks and MFIs, which have higher risks due to materiality. However, other high risk sectors, such as real estate, casinos are not supervised and supervision of the remittances sector needs to be improved in the context of ML/TF. Self-regulatory organisations are not playing an active role in AML/CFT supervision, risk-based or otherwise.

#### *National coordination and cooperation*

79. An institutional framework is in place to provide the basis for the development of national policies and co-ordination on AML/CFT issues at a policy and operational level, but effectiveness needs to be improved, including through development of a risk-based national AML/CFT policy. The NCC has a strong statutory basis and reflects political level leadership and commitment to AML/CFT efforts. The NCC's focus has, to a large extent, been on building the legal/institutional framework. With significant legal/institutional reforms undertaken, more now needs to be done to prioritise and ensure effective implementation.

80. There is no coordination mechanism to execute the decisions of the NCC. Cambodian competent authorities are also not connected through a broader operational level coordination arrangement on AML/CFT issues. While CAFIU has memorandums of understanding (MOUs) to cooperate with other LEAs and regulators, there is no established mechanism to coordinate at the operational level with respect to AML/CFT.

81. Intelligence is not shared across all relevant competent authorities (see the analysis of IO.6). The Review Panel Group (RPG) established between CAFIU and GCNP in late 2014 is the sole formal mechanism for dissemination of the limited intelligence produced by CAFIU. Therefore, although all LEAs are authorized by law to investigate ML, and CAFIU can by law disseminate intelligence to a range of LEAs, in practice CAFIU has to date only shared intelligence with the GCNP. There have been no cases of parallel investigation or referral of cases to other competent authorities such as the ACU or GDCE.

82. Cambodia's mechanisms for coordination and cooperation on TF are more effective at the operational level, with the National Counter Terrorism Committee (NCTC) established as the lead coordinating body for combating terrorism and the Secretariat of the NCTC (SNCTC) established to support NCTC in its efforts. The NCTC National Counter-Terrorism Planning Book clearly delineates the roles and responsibilities of all competent authorities involved in counter-terrorism, including the Counter Terrorism and Transnational Crime Department of the GCNP and the Counter Terrorism Unit of the Royal Gendarmerie, which share responsibility with SNCTC for investigating terrorism and TF domestically. The Planning Book also describes the ways in which agencies should cooperate and coordinate to prepare for, prevent or respond to acts of terrorism.

83. Cambodia has established a National Authority for the Prohibition of Chemical, Nuclear, Biological and Radiological Weapons. However, this authority's mandate does not extend to combating the financing of proliferation of weapons of mass destruction.

84. On the regulatory aspects of Cambodia's system, NBC and CAFIU have demonstrated the ability to conduct supervision in a coordinated manner. However, improvements are necessary in extending this coordinated approach to other regulatory agencies and conducting supervision with a risk-based approach.

*Private sector's awareness of risks*

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85. Greater efforts are necessary by authorities to ensure that all FIs and DNFBPs, particularly those identified as being higher risk, are aware of the results of the NRA. Cambodia's 2016 NRA has not been publicly circulated.

86. Nevertheless, the banking sector (which provides a majority of STRs) seems reasonably well aware of ML/TF risks, followed by MFIs (the only sector other than banks with entity-level risk assessments).

87. Understanding of ML/TF risks outside of banks and MFIs varies from a low to medium level and the level of STR reporting is low. Importantly, the real estate, remittance and casino sectors are assessed as the highest level (medium high) of risk and yet demonstrate a poor understanding of ML/TF risk. Well-coordinated efforts are required to enhance the understanding of risk in these sectors, including that of their respective regulators.

88. In light of the materiality of the banking sector to ML/TF, the assessment team placed weight on the fact that this sector had a better understanding than other stakeholders. As important gatekeepers for ML/TF controls, it is significant that the banks were more actively involved in the risk assessment exercise and therefore have a better understanding of ML/TF risks.

89. Cambodia has organised three workshops to share the progress and final results of NRA to the NRA Working Group, comprised largely of public sector agencies actively involved in the NRA process. Cambodia has not yet communicated the results of NRA among all stakeholders including the financial sector and DNFBPs. The assessment team also noted generally limited engagement from the private sector during the NRA process.

90. More concerted outreach and education regarding the outcomes of the NRA is necessary to make private sector aware their relevant ML/TF risks. This may include regular on-site supervision and the issuance of proper guidance and research reflecting the outcomes of the risk assessment work, updated from time to time as the understanding of risk develops.

91. Cambodia has achieved a **moderate level of effectiveness** with Immediate Outcome 1.

## CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

### *Key Findings and Recommended Actions*

#### **Key Findings**

##### *Immediate Outcome 6*

- There is minimal use of financial intelligence and information by competent authorities investigating ML/TF or predicate offences, including in developing evidence or tracing proceeds related to ML/TF. Similarly, there is no evidence that the competent supervisory authorities use financial intelligence and information during their supervisory activities.
- CAFIU produces very limited operational analysis and no strategic analysis, due to resource and other constraints. CAFIU's limited ability to produce financial intelligence significantly undermines use of financial intelligence by competent authorities in investigating ML/TF. The low rate of spontaneous dissemination by CAFIU does not satisfy the operational needs of LEAs.
- There is a minimal exchange of financial information and intelligence between CAFIU and other competent authorities in Cambodia. Other than the RPG with GCNP, CAFIU has not demonstrated the use of mechanisms for effective sharing of intelligence/information with competent and supervisory authorities. The absence of coordinated and effective cooperation arrangements at the operational level significantly impedes the use of financial intelligence and information. Additionally, the absence of protected and secure channels for dissemination risks exposure of sensitive information.
- Although CAFIU has the authority to access a wide range of financial, administrative and criminal data, it has not, in any significant way, used data procured from other sources, such as cross-border data from GDCE, to develop intelligence products or disseminate information to LEAs.
- The narrow scope of STR reporting (95% received from banks), low number of cross-border cash declarations and data quality issues limits the data available to the FIU for analysis and does not align with the assessed ML/TF risks. The NRA rated casinos and real estate as areas of higher risk but there are limited reports received from REs outside the banking sector.

##### *Immediate Outcome 7*

- Cambodia's legal system provides a broad set of powers and responsibilities for LEAs to investigate and prosecute ML offences. However, effectiveness has not been demonstrated, with only three ML investigations, none of which proceeded to prosecution.
- Despite investigations of some predicate offences, such as corruption, illegal logging, drug trafficking, fraud/scams and human trafficking, no prosecutions or convictions have occurred for ML.

- Across all LEAs there is an absence of coordination and effective cooperation at the operational level. One particular issue is CAFIU's current inability to identify potential cases of ML in its financial intelligence products, which has hindered the initiation of ML investigations by LEAs (see analysis of IO.6).
- The value of "following the money" and investigating and prosecuting ML does not appear to be widely understood.
- While relatively high in Cambodian terms, sanctions available for ML are not sufficiently dissuasive in absolute terms, given the lucrative and transnational nature of ML.

#### *Immediate Outcome 8*

- Despite some confiscation in relation to drug trafficking and corruption, Cambodia does not demonstrate many of the characteristics of an effective system for confiscating proceeds and instrumentalities of crime.
- Confiscation is not pursued as a policy objective and it is not clear that confiscation is considered by LEAs when investigating predicate offences, or that the amount sought to be confiscated fully represents the available proceeds.
- From the information provided it appears LEAs are focusing on the instrumentalities of crime rather than the proceeds. In addition, while in theory LEAs can take non-conviction based confiscation action, this has not occurred in practice.

#### **Recommended Actions**

##### *Immediate Outcome 6*

- CAFIU should focus on producing significantly more high quality operational intelligence products (including prompt disseminations of analysed STRs, strategic analysis and trend and typologies products) for LEAs. Similarly, LEAs should make more and better use of financial intelligence and information, both from CAFIU and otherwise, in order to identify and investigate potential cases of ML.
- CAFIU should be staffed with additional expert analysts to work through its current backlog of analysis and meet ongoing analytical demands, and at least one permanent IT expert is required to support and enhance effective use of its IT platform and database.
- CAFIU should access and make use of data from financial, administrative and criminal databases when conducting financial analysis.
- The RPG should be widened to include all relevant competent authorities and the mechanism should be expanded to form a platform for effective domestic cooperation and coordination at the operational level.
- CAFIU should organise a targeted outreach program, based on risk, to improve private sector understanding of reporting obligations and data quality, and to raise awareness amongst the public sector on the benefits and use of financial intelligence produced by CAFIU.



*Immediate Outcome 7*

- Cambodia should increase the sanctions applicable to ML offences to encourage LEAs to pursue ML rather than solely focusing on predicate offences and confiscation.
- Cambodia should provide further training to its FIU and LEA officials in identifying and investigating ML.
- Cambodia should establish a consolidated AML strategy across its LEAs which covers parallel investigations and use of financial intelligence in ML and predicate offences. This strategy should clarify that all relevant agencies can conduct ML investigations, and specify the circumstances in which they should do so.

*Immediate Outcome 8*

- Cambodia should adopt clear policies and strategies at the national and operational levels to pursue confiscation, including repatriation, sharing and restitution of criminal proceeds, instrumentalities, and property of equivalent value, in particular for areas identified to be high risk, such as cross-border goods and cash smuggling. This should be done either as part of the consolidated AML strategy recommended under IO.7, or in parallel with it.
- Cambodia should provide targeted proceeds of crime confiscation training to all LEAs with judicial police powers (including GDCE), prosecutors and judiciary.
- Relevant authorities should maintain and monitor statistics relating to confiscation of proceeds of crime to better assess the effectiveness of asset forfeiture efforts in Cambodia and to identify the areas where confiscation is not being effectively pursued.
- Cambodia should establish a mechanism for managing and, when necessary, disposing of property frozen, seized or confiscated during the restraint phase.
- The Prosecutor's Office should build its expertise and focus on confiscation to ensure that confiscation action is considered and taken in appropriate cases. This could include establishing a specialised team or designating experts in the Prosecutor's Office to deal with confiscation. This team/ these experts would be responsible for cases involving confiscation or, at least, would assist the Prosecutors with that element of a case.

92. 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 & R29-32.

***Immediate Outcome 6 (Financial intelligence ML/TF)****Use of financial intelligence and other information*

93. Cambodian investigative authorities have very limited access to, and make very little use of, financial intelligence and information. Considering the negligible activity in investigating ML in particular (three ML investigations in total - see analyses of IO.7), financial intelligence is not being

used in ML/TF investigations or to develop evidence and trace proceeds related to ML/TF. The use of financial intelligence in investigations related to predicate crimes is somewhat higher but is still very limited (for example: GCNP is the only LEA that has requested and received financial information from CAFIU through the RPG for predicate offence investigations).

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94. The GCNP is currently the only LEA or regulatory authority receiving financial intelligence spontaneously from CAFIU. However, GCNP's use of financial intelligence and information overall is low and has declined since 2013. While one would expect the bulk of disseminations from CAFIU to be to the GCNP as the primary policing/investigative agency in Cambodia, some disseminations to other LEAs (e.g. the ACU and GCDE) would be expected, given Cambodia's risk and context.

95. GCNP has received 22 spontaneous disseminations from CAFIU since 2009, and only three in the last four years (2012 to 2016). In response, GCNP has opened 14 preliminary investigations (out of these 14 cases, six are finalised or close to being finalised and eight are still ongoing) and the rest of them are closed. Overall, fewer than 1% of the 3,388 STRs received by CAFIU over the same period were disseminated.

96. The GCNP has also made 67 requests to CAFIU for information in the last four years, including 58 in 2015 and 2016 (an increase since the establishment of the RPG mechanism in late 2014). CAFIU has not received any requests for financial information or intelligence from any other LEA. While the increasing number of requests made by the GCNP in the last two years is noted, numbers remain low and the limited use of financial intelligence indicates deficiencies in both the production and the uptake of financial information and intelligence across all the stakeholders.

97. As well as authorising LEAs to request information from CAFIU, Cambodian law allows LEAs to directly obtain access to certain financial data, with the approval of prosecutors and the investigating judge, from both public and private sector entities. This includes tax records, company records, real estate and movable property records. While LEAs have direct access to basic data on legal persons, they must request access from MOC or apply their powers to obtain access to beneficial ownership information. Despite these powers, Cambodian competent authorities do not use financial intelligence and information routinely, either for evidentiary purposes to support investigations and prosecutions, or to identify, trace and detection of criminal and proceeds of crime. The GCNP has traced and confiscated some assets, and arrested some targets, by using financial intelligence and information, but this is not common. However, there have been instances where foreign authorities were able to trace and confiscate assets and detain suspects in their jurisdiction by using financial intelligence/information obtained from CAFIU, either directly from CAFIU or via requests made to the GCNP (see analysis under IO.2).

98. CAFIU has powers to obtain access to a wide range of financial, administrative and law enforcement data. However, at present CAFIU only uses banking data to prepare financial intelligence. The AML/CFT Law also allows CAFIU to ask for additional information from a wide variety of sources (the RE submitting the STR, other REs, other government agencies etc) to undertake its analysis functions. While CAFIU does sometimes seek additional information from REs, it has not, in any significant way, used data procured from other sources, such as cross-border data from GDCE, in conducting its analysis.

99. In October 2014, the Cambodian government established the Review Panel Group, or RPG, consisting of officers from the GCNP and CAFIU, to enhance the working relationship between CAFIU and the GCNP and to increase the use of financial intelligence. RPG members usually meet monthly and discuss bilateral issues on ML/TF, including dissemination of financial intelligence and analysis,

feedback from the GCNP to CAFIU (and vice versa), and ML/TF case coordination. Through this mechanism, and otherwise, GCNP has requested additional information on banking records and transactions 67 times in last four years. Subsequently, CAFIU was able to respond with all required information. While the establishment and operation of the RPG is a welcome development, it has not so far resulted in any increase in the rate of spontaneous dissemination by CAFIU, nor to any increase in the investigation of ML.

100. To date, CAFIU has not received any STRs or other information related to terrorism or TF.

101. Overall, the use of financial intelligence and information across among competent authorities investigating ML/TF or predicate offences is very limited.

#### *STRs received and requested by competent authorities*

102. CAFIU receives STRs and CTRs, as shown in Tables 5 and 6, respectively.

**Table 5: Suspicious Transaction Reports (STRs) submitted**

No.	Type	2013	2014	2015	Dec. 2016	Total
1	Foreign Branch Bank	22	57	44	90	213
2	Locally Incorporated Bank	60	53	86	108	307
3	Subsidiary Bank	104	101	862	2029	3096
4	Specialised Bank	0	0	0	0	0
5	Microfinance (MFIs)	0	2	1	0	3
6	Microfinance Deposit taking (MDIs)	7	8	34	11	60
7	Insurance	0	1	2	9	12
8	Casino	0	0	0	6	6
<b>Total</b>		<b>193</b>	<b>222</b>	<b>1029</b>	<b>2253</b>	<b>3697</b>

**Table 6: Cash Transaction Reports (CTRs) submitted**

Sector	2013	2014	2015	Dec. 2016	Total
Banking Sector	1,263,096	1,735,337	2,288,158	2,637,744	7,924,335
Insurance Sector	0	2	3	11	16
Securities Sector	0	0	0	0	0

103. CAFIU receives STRs and CTRs predominantly from the banking sector, in particular from foreign banks. The Cambodian banking sector consists of 36 commercial banks (12 locally incorporated, 14 foreign subsidiaries, 10 foreign bank branches), 12 specialised banks and eight foreign bank representative offices, 58 MFIs, eight deposit taking microfinance institutions, and 109 registered microfinance operators. The 14 foreign subsidiaries submitted 53% of STRs in 2013, 45% in 2014, 83% in 2015 and 89% in 2016. The contribution of STRs from other segments in the banking sector is small by comparison to the foreign subsidiaries. So far, CAFIU has received 63 STRs from

MFIs and MDIs, 12 from insurance companies, and six from casinos. Additionally, in the period 2009 to 2016, CAFIU has received 8.7 million CTRs from REs, with 7.9 million received since 2013.

104. The narrow scope of sectoral reporting of STRs limits the reports available to the FIU for analysis and does not align with the assessed ML/TF risks, with the NRA rating casinos and real estate as areas of higher risk. The lack of reporting reflects, in part, the fact that AML/CFT supervision of DNFBPs has not yet commenced (see analysis of IO.3). CAFIU, as the AML/CFT regulator, has however recently conducted some outreach and awareness raising programs (workshops, training) to increase the levels and quality of reporting in these sectors, and it is hoped that this will have a positive effect. In the meantime, however, the gap in relation to reporting by REs outside the banking sector is notable and undermines effectiveness.

105. Among the REs, only banks and MFIs are sending STRs and CTRs electronically, with other entities still sending hard copy reports manually. CAFIU seeks additional information from REs through letters, as required. CAFIU maintains the information received through CTRs, STRs and cross-border declarations in a database. The accuracy and relevance of the received data is not checked and is not the subject of overarching analysis. The absence of any screening of the received data, limited guidance and outreach and very limited analysis undermines the utility of the reports and day to day functions of CAFIU.

106. The number of cross-border declaration reports is low in the context of Cambodia's cash-based, dollarized economy and the assessed risk profile. The GDCE detected 40, 57 and 62 incidents of non-declaration respectively in 2014, 2015 and 2016. All of these detections GDCE reported to CAFIU as a suspicion for ML/TF (see Table: 7(a)). Within the last three years, only one passenger declared cash above USD 10,000 and subsequently, the GDCE sent this information to CAFIU. However, CAFIU never uses this information during its day to day functions.

**Table 7(a): Cross-border cash smuggling detected and reported to the CAFIU by GDCE**

Year	Cases detected	Value of penalties imposed
2014	40 cases	USD 1,189,590
2015	57 cases	USD 1,535,414
2016	62 cases	USD 1,316,888

**Table 7(b): Cross-border currency declarations and information sent to CAFIU by the GDCE**

Year	Cases declared to customs by passengers	Amount
2014	0	0
2015	1	16,000,000 Japanese yen = USD 139,844
2016	0	0

107. The limited levels of STR reporting from non-bank FIs and from DNFBPs and the low levels of non- or false cross-border declaration data indicate significant gaps in understanding the AML/CFT obligations and risks across the public and private sectors. Similarly, significant weaknesses exist in assessing the accuracy and relevance of data. As a consequence of these deficiencies, Cambodia's

collection of reports is not supporting the effective use of financial intelligence by competent authorities.

### *Operational needs supported by FIU analysis and dissemination*

#### *(a) Analysis*

108. CAFIU has undertaken very limited analysis, with only very limited operational/tactical analysis and no strategic analysis having been undertaken. Analytical tools are available to CAFIU to enable it to search and match data or transactions, discover and visualise the links between persons, companies, accounts, and telephone numbers, and then transform this data into a report. However, CAFIU has not yet applied these tools in practice.

109. The analysis output is very low compared to the number of STRs received by CAFIU, as shown in Table 8 below. While CAFIU has the necessary authority, powers and systems to conduct operational and strategic analysis, it does not have enough trained staff to conduct any strategic analysis. The deployment of most of its analytical capacity to support the NRA and mutual evaluation processes has also meant that, over the past two years, CAFIU has analysed and disseminated very few STRs for operational purposes. Additional staff and training are required. While a number of staff have received training in both operational and strategic analysis, the lack of day-to-day analysis of STRs means that these skills have not been developed through practical operational experience, and may have reduced over time.

**Table 8: Breakdown of STRs**

Particulars/Year	2013	2014	2015	Dec. 2016
No. of STRs received	193	222	1029	2253
No. of STRs subject to full analysis	0	2	0	1
No. STRs not analysed	193	220	1029	2252
No. of analyses disseminated to LEAs	0	2	0	1
No. of analyses disseminated to regulators	0	0	0	0
No. of analyses disseminated to foreign counterparts	0	0	0	0
Total disseminations (Rate of dissemination as a percentage of all STRs)	0 (0%)	2 (0.9%)	0 (0%)	2 (0.04%)

110. CAFIU has received a much larger number of STRs in 2015 and 2016 than in previous years. However, most of these STRs have not been analysed and after cursory checks (primarily to determine if they relate to terrorism or TF) are simply entered into CAFIU's database. The lack of analysis means that a huge backlog of unanalysed STRs has developed over the last four years.

111. CAFIU disseminations to LEAs do not provide any indication of the predicate offences that may be relevant in a particular case, or whether ML/TF is involved. Apart from the fact that it may not always be possible to determine what the underlying criminality may be, this also reflects the lack of in-depth analysis of STRs by CAFIU. Conversely, the expectation amongst LEAs that CAFIU is solely

responsible for identifying the predicate offence linked to an STR further exacerbates the ineffectiveness of LEAs' application of financial intelligence and information to investigations.

112. CAFIU's IT platform was established with the support of the NBC and NBC staff maintain the database. There are no permanent IT staff members deployed to maintain CAFIU's server, computers and analytical tools. The absence of permanent IT staff may affect the ease of using and handling CAFIU's technical tools and database, as well as raising concerns regarding confidentiality.

113. The analysis wing of CAFIU consists of four staff members. The wing has not yet demonstrated that it can add value to the STR and CTR information it collects. While there is a policy to prioritize cases that include large transactions or are related to TF for analysis, CAFIU has not yet developed financial intelligence on these topics and relies on REs to identify that the transactions may have been related to terrorism. Additionally, as noted above, CAFIU is usually unable to indicate which reports, in particular STRs, may relate to which predicate crimes.

114. As outlined in Table 8 above, the overwhelming majority of STRs received by CAFIU are stored in the database without any proper assessment, review or analysis - STRs receive only a cursory look on the computer screen then they are stored in the database without a proper assessment, review or analysis. The lack of analysis seriously undermines the capacity of CAFIU to produce relevant financial intelligence. For example, it is noted that between 2013 and 2016, CAFIU received nine STRs related to PEPs (foreign or local). None of them have been analysed, despite the significant risk posed by corruption.

115. The very limited conduct of analysis is at least in part explained by resource constraints, in particular over the past two years as Cambodia completed its NRA and prepared for its mutual evaluation. However, the assessment team is not convinced that a lack of resources alone explains the almost complete lack of analysis and spontaneous dissemination of intelligence, particularly in previous years (ie before the NRA and mutual evaluation processes commenced). It is not clear to the assessment team whether a lack of expertise or technical capacity is also contributing to the lack of analysis and dissemination, despite the training given to staff, or whether there are other issues inhibiting the flow of intelligence, but in any case it is critical that CAFIU urgently starts performing its central function as an FIU to a much greater extent.

#### *(b) Dissemination*

116. As outlined above, CAFIU disseminates very limited intelligence to LEAs. Since its establishment, CAFIU has spontaneously disseminated 22 cases to the GCNP, as a result of its analysis.

117. In the last four years CAFIU responded to only 67 requests for information altogether, all from the GCNP. Other LEAs have made no use of CAFIU data or intelligence products. In all cases there is room for greater use of CAFIU data in support of investigations in relation to ML/TF and ML predicate offences.

118. The GCNP advised the assessment team that disseminations by CAFIU, in response to its requests, have been highly beneficial, however, the data on tracing, freezing or seizing assets by GCNP indicates that in fact CAFIU's intelligence and information played only a limited role in supporting the GCNP's operational needs.

**Table 9: Data on freezing, confiscation and number of persons detained as a result of CAFIU disseminations**

Year	Accounts frozen	Assets frozen	Assets confiscated	Persons detained
2013	1	14	5	10
2014	-	-	-	-
2015	7	10	-	4
2016	-	1	-	2

**Case study 1: Drug suppression operation with cooperation between GCNP and CAFIU**

The anti-drug department of the GCNP arrested four suspects in an operation to tackle drug production, processing and trafficking. The following were seized:

1. methamphetamine powder                      54kg
2. methamphetamine pills                        246.43g
3. heroin powder                                      345.32g
4. dried marijuana                                  7.85g
5. some other substances and some manufacturing equipment

In order to process the investigation, the GCNP's anti-drug department cooperated with CAFIU, via the RPG. As a result, they found the operation locations and accounts of the suspects. Phnom Penh Court ruled to confiscate assets and money of suspects as follows:

1. three apartments
2. six rubber plantations
3. money
4. passports and cell phones

All assets and money above are being maintained by a Phnom Penh Court.

119. Cambodia has not established a sufficiently secure channel for disseminating intelligence. The dissemination of CAFIU intelligence is undertaken by sending letters in hard copies marked confidential with a special messenger. While transmission by hard copy is not necessarily unprotected, it poses greater risk of breach of confidentiality and security of the information and intelligence.

120. CAFIU's ability to disseminate financial intelligence is limited to agencies with which it has MOUs. However, CAFIU has a pro-forma MOU that can be concluded relatively quickly in instances where cooperation is impeded by the lack of an MOU. In a few instances (see the analysis of IO. 2), CAFIU was unable to accommodate foreign cooperation requests due to absence of an MOU. While CAFIU has signed domestic MOUs with ACU, GDCE and MEF, it has never disseminated intelligence to those agencies.

### *Cooperation and exchange of information/financial intelligence*

121. As outlined above there is minimal exchange of financial information and intelligence between CAFIU and other competent authorities in Cambodia. CAFIU has established bilateral

cooperation frameworks with the LEAs and supervisory authorities such as GDCE, MEF, GCNP, MOI, ACU, General Directorate of Banking Supervision (within NBC), General Department of Identification (within MOI), General Department of Immigration (within MOI) and GDT. However, CAFIU has not in practice demonstrated use of these mechanisms to effectively share intelligence/information.

122. CAFIU and GCNP created the RPG to expedite cooperation and exchange of information and intelligence. The assessment team recommends that this platform should be broadened to include other competent authorities that are in a position to investigate ML/TF. The RPG could also be used to ensure effective domestic operational cooperation, outside of information sharing, to create a robust AML/CFT environment on a risk sensitive basis. The absence of coordinated and effective cooperation arrangements at the operational level significantly impedes the use of financial intelligence and information thereby impacting on the robustness of Cambodia's AML/CFT regime.

**Table 10: Domestic information sharing statistics**

Description	2013	2014	2015	Dec-2016
Information shared with RPG	1	6	30	30

123. CAFIU has responded to all 67 requests for information or intelligence received from the GCNP through the RPG mechanism in the last four years. This mechanism could be developed more systematically to assist risk-based approaches to ML/TF investigation and AML/CFT supervision. Similarly, investigation/supervisory agencies should ensure they have access to relevant financial intelligence developed by other agencies (ACU, GCNP, GDT and GDCE) to assist risk-based interventions.

124. CAFIU receives GDCE data related to cross-border declarations through direct monthly reports and through *ad hoc* communications under the MOU. While there are indications that GDCE is increasing its focus on compliance with declaration systems to detecting undeclared cash or BNIs, the negligible number declaration still undermines its effort considering the risk and context. This could be enhanced with capacity building and awareness raising.

125. Cambodia has achieved a **low level of effectiveness** for Immediate Outcome 6.

### ***Immediate Outcome 7 (ML investigation and prosecution)***

#### *ML identification and investigation*

126. Cambodia's legal system provides a broad set of powers and responsibilities for LEAs to investigate and prosecute ML offences. There are many ways to initiate a ML case: through STRs, public reports, requests from authorities, exchange of information and LEA detection. Nevertheless, effectiveness has not been demonstrated, with only three ML investigations, none of which proceeded to prosecution. Despite investigations of some predicate offences (for example corruption, illegal logging, drug trafficking, fraud/scams and human trafficking), no prosecutions or convictions have occurred for ML.

127. There was some confusion amongst Cambodian authorities regarding which agency or agencies is/are responsible for investigating ML. Cambodia indicated in its technical compliance and effectiveness responses, and in its NRA that ACU had sole investigative responsibility for ML, other



than ML associated with drugs or TF (which are the responsibility of the GCNP), on the basis that ML is deemed to be a corruption offence in the Law on Anti-Corruption.

128. During the on-site it was clarified that, at least in theory, all public agencies with a judicial police function, such as ACU, GCNP, GDCE and the GDT, can initiate a preliminary investigation of ML. Once complete, a preliminary investigation would be handed over to the prosecutor to decide whether to proceed with the investigation and to determine the most appropriate investigative agency/ies to conduct the full investigation (see analysis of Rec. 31).

129. The lack of a clear allocation of responsibility to LEAs for ML investigations, depending on the predicate crime involved, may be contributing to the lack of ML investigations. Cambodia should establish a consolidated AML policy and strategy across its LEAs, which encourages or requires the conduct of parallel investigations and use of financial intelligence in investigations of ML and predicate offences. This strategy should clarify that all relevant agencies can conduct ML investigations, and specify the circumstances in which they should do so.

130. In practice, the two LEAs most likely to initiate an ML investigation are the GCNP and, when the ML is related to corruption or an associated offence, the ACU. The GCNP has a specific unit to combat ML, the Anti-Drug Department within the International Crime Division. Despite the existence of this unit, as noted above there have been only three ML investigations, two of which were conducted by the ACU and one by the GCNP, and none proceeded to prosecution.

131. Insufficient information related to the suspect, the transnational nature of some crimes and delays in collaboration were perceived as the biggest challenges for the judicial police (LEAs). A limited capacity within the ACU in relation to ML identification and investigation was also raised as an issue by the ACU. Another significant issue is CAFIU's current inability to identify potential cases of ML in its financial intelligence products, which has hindered the initiation of ML investigations by LEAs (see analysis of IO.6).

132. Workshops have been conducted for judges and prosecutors to improve their capacity to investigate ML, such as a workshop on the AML/CFT Amendment Law in October 2013; a workshop on the AML/CFT Law in July 2014; and a workshop on AML/CFT Law in January 2015. However, there are no guidelines, manuals or policies on how to conduct ML investigations for any judicial police officer or prosecutor. Further training of FIU and LEA officials in identifying ML would be beneficial.

133. In summary, identification of ML, through disseminations from CAFIU or otherwise, is lacking and there is also a strong preference among LEAs to investigate predicate offences and, to some extent, pursue the associated proceeds of crime. This is a common challenge in many jurisdictions, but the almost complete lack of ML investigations is certainly not consistent with Cambodia's ML risks and is a significant deficiency. It should also be noted that apart from some investigations conducted by ACU, no parallel financial investigations have been undertaken by other agencies to identify and investigate potential cases of ML. The value of "following the money" and investigating and prosecuting ML does not appear to be widely understood.<sup>39</sup>

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<sup>39</sup> However, agencies are building capacity in investigating ML and intend to improve the frequency of parallel investigations in the future.

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

134. Given the fact that only three ML investigations have been conducted, and that they did not proceed to prosecution, it cannot be said that ML activity is being investigated and prosecuted consistently with the identified risks and threats.

135. The NCC was established in April 2012 to develop and monitor the implementation of the National AML/CFT Strategies, which were issued on 21 March 2013 and further supplemented in December 2014. Those strategies were developed to mainly focus on key deficiencies of the 2007 Mutual Evaluation Report. As noted in the analysis of IO.1 above, though capacity building and domestic coordination among the relevant agencies are two major elements of the National AML/CFT Strategies, there is no guidance available for investigations.

136. Cambodia's NRA was only adopted on 29 November 2016. Cambodia has therefore not yet developed an AML/CFT strategy and operational plan to address the main asset-generating crimes identified in the NRA or the laundering of the associated proceeds. As noted above, development of such a strategy and operational plan should be a high priority.

137. The main asset-generating activities identified by Cambodia are fraud/scams; drug trafficking, corruption and bribery; human trafficking; forestry and wild animal offence; cross-border goods smuggling and cross-border cash smuggling. Relevant statistics are shown in the next two tables.

**Table 11: Number of ML investigations and prosecutions**

	Number of offences	ML investigations	ML prosecutions
<b>Drug Trafficking</b>	4,910 (2008 – 2015)	1 (2008 – 2016)	0
<b>Corruption</b> (2011 - 2015)	36	2	0
<b>Human Trafficking</b> (until 2015)	1,092	0	0
<b>Illegal Logging MA</b> (2015)	2,189	0	0
<b>Illegal Logging GDCE</b> (2012 - 2014)	22	0	0
<b>Cross-border Goods Smuggling</b> (2012 - 2014)	27,794	0	0
<b>Cross-border Cash Smuggling</b> (2014 - 2016)	159	0	0

**Table 12: Requests for financial information (CAFIU)**

	Requests received		Requests answered		ML investigations Initiated
	Domestic	Foreign	Domestic	Foreign	
<b>Fraud/Scam</b> (2009 to 2015)	29	3	29	3	0
<b>Drug Trafficking</b> (2008/2015)	4	0	4	0	0
<b>Corruption</b> (2015)	1	0	1	0	0
<b>Human Trafficking</b> (2015)	0	1	0	1	0
<b>Illegal Logging</b> (2007/2015)	0	0	0	0	0

138. As shown in Tables 11 and 12, the main predicate offences identified in the NRA as threats for ML are being detected by LEAs. This should have prompted more ML investigations/parallel financial investigations than have occurred in Cambodia.

139. In conclusion, the targeting, conduct and outcomes of ML investigations are not consistent with the major proceeds-generating predicate crimes, particularly with fraud and scams; drug trafficking; corruption and bribery; human trafficking; cross-border goods smuggling and cross-border cash smuggling. In addition, the number of ML investigations (three) is negligible compared to the potential number of ML offences and associated illicit proceeds generated from the main predicate offences identified in the NRA.

#### *Types of ML cases pursued*

140. As noted above, there have been only three investigations of ML, two of them conducted by ACU and one by the GCNP. However these cases were not taken to prosecution. No stand-alone ML cases have been investigated and prosecuted, nor have any third-party laundering cases.

#### *Effectiveness, proportionality and dissuasiveness of sanctions*

141. Cambodia has not achieved any ML convictions. It is therefore not possible to assess the effectiveness, proportionality or dissuasiveness of any sanctions applied to natural or legal persons convicted of ML in practice. However, as discussed in the analysis of R.3 in the TC annex, the maximum penalties for ML for a natural person – imprisonment from two to five years and a fine from KGR 40,000,000 (forty million) (approximately USD 10,000) up to KHR 100,000,000 (one hundred million) (USD 25,000) or up to the value of the funds or property which was the subject of ML – and a legal person – a fine from KHR 100,000,000 (one hundred million) (USD 25,000) to KHR 500,000,000 (five hundred million) (USD 125,000) – while *relatively* high in Cambodian terms, are not considered to be sufficiently dissuasive in *absolute* terms, given the lucrative and transnational nature of ML. The assessment team heard from some LEAs (such as ACU) that the lack of dissuasive penalties available

in ML cases is linked to the lack of ML investigations undertaken by judicial police. Increasing the sanctions applicable to ML offences may encourage LEAs to pursue ML rather than solely focusing on the predicate offences and confiscation.

142. The following two case studies simultaneously illustrate the capacity of the ACU to successfully investigate corruption and trace and confiscate the proceeds of crime, while at the same time not pursuing possible ML charges.

#### Case study 2: Moek Dara Case

In January 2012, the Moek Dara Case was tried in the court of first instance. This case had three accused, Moek Dara, former secretary-general of the NACD and director of department of combating drugs at Battambang Province; Chea Leng, former chief of the Anti-Money Laundering Section of the Anti-Drug Office and Morn Doeun, former deputy chief of the research office of Anti-Drug Office. From 2007 to 2011, the three offenders, in their professional capacity, modified official reports to embezzle substances for themselves and to skim cash. They were accused of 38 offences, none of which related to ML. ACU investigated the offences and sent the case to the court. The three offenders were found guilty of bribery, instigation and criminal organization. Two offenders were convicted to life imprisonment and one to 25 years in prison.

#### Case study 3: Cheam Sangvar Case

A company deposited USD 100,000 in a bank account belonging to the competent ministry that guaranteed its operations. Eventually the company no longer sought this guarantee, and agreed to the same with the competent ministry. However, it was discovered that Cheam Sangvar, former inspector general of that ministry in 2008, had already withdrawn the deposit. Cheam Sangvar refused to return the deposit, and the ministry brought the case to ACU in 2014. ACU investigated the case and found the following offences: embezzlement committed by a public official, illicit enrichment (in the asset and liability declaration his assets increased by USD 500,000 from 2011 to 2013 without any reasonable explanation related to his lawful income) and failure to declare an asset and liability (52 Damleung<sup>40</sup> and 23 Kg of gold). No investigation related with ML was conducted. The final verdict was issued in July 2016 and Cheam Sangvar was sentenced to seven years in prison.

#### *Extent to which other criminal justice measures are applied where conviction is not possible*

143. Given the complete lack of ML investigations, it cannot be concluded that other criminal justice measures were applied when a conviction on ML was not possible. It appears the ML was not part of the LEAs' considerations in investigating predicate offences. There is no indication that the choice to pursue other measures was made with the intention of disrupting ML.

144. Cambodia has achieved a **low level of effectiveness** for Immediate Outcome 7.

<sup>40</sup> Cambodian gold scale.

### *Immediate Outcome 8 (Confiscation)*

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

145. Although authorities indicated during the on-site that confiscation is a priority, Cambodia does not have any articulated national policy for pursuing the proceeds of crime, so there is no national strategy relating to an asset confiscation/recovery regime.

146. While some confiscation of criminal assets – in particular the instrumentalities of crime relating to drug trafficking, illegal logging and corruption – has occurred in practice, LEAs such as ACU and GCNP do not have confiscation policies/strategies in place to counter ML, despite the fact that Cambodia acknowledges significant ML threats from fraud/scams; drug trafficking; corruption and bribery; human trafficking and cross-border goods and cash smuggling. It is not clear that confiscation is considered by LEAs when investigating predicate offences. Prosecutors also do not have a clear policy to pursue the proceeds of crime and property of equivalent value and there is no specialised team in the Prosecutor’s Office dealing with confiscation. As noted under IO.7, no ML investigation strategy has until now been adopted.

147. Cambodia therefore is encouraged to develop and adopt clear policies and strategies at the national and operational levels to pursue confiscation, including repatriation, sharing and restitution of criminal proceeds, instrumentalities, and property of equivalent value, in particular for areas identified to be high risk, such as cross-border goods and cash smuggling. This should be done either as part of the consolidated AML strategy recommended under IO.7, or in parallel with it.

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

148. Cambodia has a sound legal framework for tracing, freezing, and conviction-based confiscation. In practice, however, only relatively small amounts of assets have been frozen and confiscated, considering the amount of criminal proceeds being generated. From the information provided in the NRA, and as outlined below, it appears LEAs are focusing on the instrumentalities of crime (e.g. cars, motorbikes) rather than the (much more valuable) proceeds. In addition, while in theory LEAs can take non-conviction based confiscation action, this has not occurred in practice.

**Table 13: Confiscation (in US dollars)**

	<b>Movable assets</b>	<b>Immovable assets</b>	<b>Money</b>
<b>Drug trafficking</b> (2009 - 2015)	203 cars 2085 motorbikes	6 pieces of farmland 4 pieces of land 11 houses	≈ US\$506,229
<b>Corruption</b> (2011 - 2015)	Total amount of assets ≈ USD 2,408,772		
<b>Illegal Logging MA</b> (2007 - 2015)	995 m <sup>3</sup> of round timber; 4705 m <sup>3</sup> of sawn/processed wood; 113 m <sup>3</sup> of rosewood; 11 644 pepper roles; 2481 small poles; 209 wood columns; 18855 kg of charcoal; 1178 batch of firewood; 322 kg of rattan; 20 kg of sandalwood; 1184 kg of pok thnong; 554 kg of fruit of samrong tree; 322	0	0

	Movable assets	Immovable assets	Money
	kg of rattan fruit and 6 thnong stems. 1068 automobiles; 21 tractors; 3 excavators; 127 saw machines and 74 carts		

3

149. Table 13 shows the value of confiscated assets, which appears to be lower than the proceeds expected from the main asset-generating activities identified by Cambodia in the NRA.<sup>41</sup> Further, on the basis of information provided to the assessment team during the on-site regarding ML threats, and discussed in the risk and context analysis above, the scale of confiscation is remarkably low for predicate offences such as illegal logging drug trafficking and corruption.

150. No assets were confiscated in relation to fraud/scams and human trafficking, despite 1,092 cases of human trafficking reported until 2015. There were no instances of confiscation in relation to cross-border goods smuggling and cross-border cash smuggling, despite 27,794 cases of cross-border smuggling offences from 2012 to 2014, 40 cases of cross-border cash smuggling in 2014, 57 cases of the same offence in 2015 and 62 cases in 2016 (see further discussion below).

151. In light of the above, additional, targeted proceeds of crime confiscation training should be provided to all LEAs with judicial police powers (including GDCE), prosecutors and judiciary. Further, relevant authorities should maintain and monitor statistics relating to confiscation of proceeds of crime to better assess the effectiveness of asset forfeiture efforts in Cambodia and to identify the areas where confiscation is not being effectively pursued.

152. Legal regulations or guidelines to manage asset forfeiture are not sufficiently clear to ensure effective implementation. As noted in the analysis of R.4 in the TC annex, the Criminal Code and the Law on Counter Terrorism set out a basic mechanism for asset management, which includes provisions for authorities to sell or destroy the confiscated objects. This mechanism only applies when the confiscation or forfeiture is definitive. There are no provisions to sell, take custody or control of property during the restraint phase.

153. National Assembly Members and Senators benefit from exemptions for asset forfeiture. Further, where consent is granted by the National Assembly/Senate or National Assembly/Senate Permanent Commission, immunity can be taken. This exemption may be impacting on the level of confiscation.

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

154. Cambodia has implemented a declaration system for incoming and outgoing cross-border transportation of currency and bearer negotiable instruments (BNIs). All persons making a physical cross-border transportation of currency or BNIs with a value equalling or exceeding USD 10,000) are required to declare it. In case of false declaration, GDCE is empowered to require all declarants to provide more relevant information. Customs officers are recognized by law as judicial police, thereby having the power to request further information as necessary and initiate investigations.

<sup>41</sup> While no data on estimated proceeds was provided to the evaluation team, in its NRA, Cambodia has provided an estimate of the proceeds of crime for cases of fraud/scam to be US\$1,000,000 per case at the higher end of the proceeds range.

155. MEF and GDCE have issued regulations on operation of container scanning at Sihanoukville Port, Bavet Port, Poipet Port and dry ports, to support physical inspection of goods and transportation means.

156. GDCE applies some techniques to control cross-border movements of goods, such as scanning machines, searching bags, inspections and intelligence. CCTV cameras have also been installed at the airport for screening any passengers. GDCE conducts random checks to detect any breach on the declaration system and has its own database information. These regulations and techniques allow GDCE to detect falsely/not declared or disclosed cross-border movements of currency and bearer negotiable instruments.

157. In 2014 GDCE detected 40 cases of undeclared cash in a total amount of USD 1,189,590. In 2015, GDCE detected 57 cases of undeclared cash in a total amount of USD 1,395,571 and there was also a case related to a false declaration of USD 139,844. In 2016, GDCE detected 62 cases of undeclared cash in a total amount of USD 1,316,888. GDCE has therefore demonstrated its ability to detect undeclared/falsely declared movements of cash/BNIs, which is a strength, and all these cases were reported to CAFIU.

158. However, of all the inquiries conducted by the GDCE, no suspicion of ML was reportedly raised (including regarding the source of funds). Furthermore, all the information relating to these cases was submitted to CAFIU but no non-conviction based confiscation action was taken. Despite having a judicial police function that allows GDCE to initiate preliminary ML investigations (see analysis of IO.7), it seems that there is a lack of awareness of their ability to detect whether cases relate to proceeds of a crime. All the offenders paid the applicable fine – 10% of the undeclared amount – and no assets were confiscated.

159. A lack of resources and/or clear policy on the process to be followed once a case of a non-declaration or false declaration is detected may also be contributing to a lack of confiscation. In any case, the approach being taken on this issue seriously reduces the effectiveness of Cambodia's confiscation efforts.

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

160. Overall the confiscation results are not consistent with the NRA report and ML risks in Cambodia. Despite some confiscation in relation to drug trafficking and corruption, Cambodia does not demonstrate many of the characteristics of an effective system for confiscating proceeds and instrumentalities of crime. No information was provided to indicate that high risk areas are targeted. There is no indication that confiscation is employed strategically to address ML/TF risks. Finally the value of confiscation is not in line with the estimated proceeds of the main asset-generating activities identified by Cambodia in the NRA.

161. Cambodia has achieved a **low level of effectiveness** for Immediate Outcome 8.

## CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

### *Key Findings and Recommended Actions*

#### **Key Findings**

##### *TF offence (Immediate Outcome 9)*

- Cambodia has a strong legal framework to combat TF and has allocated substantial resources to combating terrorism and its financing.
- There have been no prosecutions or convictions for TF activity in Cambodia, which is not inconsistent with the medium low TF risk profile. Historically, however, Cambodia has demonstrated its ability to identify and investigate potential and actual cases of terrorism and TF and to cooperate domestically and internationally in the course of an investigation.
- The investigation of TF is integrated with, and used to support, Cambodia's counter-terrorism (CT) strategies and investigations. However, Cambodia does not have any TF-specific investigative processes or procedures and CAFIU does not have a clearly defined role in the CT infrastructure.
- Sanctions applying to natural persons who commit the TF offence (10 – 20 years imprisonment) are likely to be effective, proportionate and dissuasive. The sanctions available for legal entities that commit TF offences, while higher than sanctions generally applying to legal persons for serious offences in Cambodia, are not sufficiently punitive in absolute terms to be dissuasive, particularly in light of the transnational nature of TF offences.
- Cambodia places a strong emphasis on preventing terrorist and TF activity before it occurs, including through its policy of harmonisation and efforts to prevent radicalisation. Cambodia also utilises international cooperation to disrupt terrorist and TF activity where prosecution and conviction in Cambodia is impractical.

##### *TF preventive measures and financial sanctions (Immediate Outcome 10)*

- Cambodia has a reasonable legal framework to deprive terrorists, terrorist organisations and terrorist financiers of assets and instrumentalities related to TF activities. Cambodia is legally able to freeze the assets of individuals and entities on the Al Qaida, Taliban, ISIL (Da'esh) UN lists without delay under a 2014 standing court order issued under the 2014 Sub-decree on the Freezing of Property of Designated Terrorists and Organizations. The assessment team is of the view that the Court order does apply to ISIL despite the fact that it is not specifically mentioned in the Court order, as the Court extends to entities listed under successor resolutions. This court order however is applicable only to REs, rather than to all natural and legal persons within Cambodia. In addition, and contrary to Article 4 of the Sub-decree, MOJ is not publishing the listing or delisting of designated terrorists or organisations pursuant to UNSCR 1267 and successor resolutions on its publicly available website, though CAFIU is doing so.
- Cambodia can, through its domestic designation mechanism, designate individuals and entities as terrorists under UNSCR 1373 if the need arises. This has not yet occurred.



- No assets have been frozen in connection with TFS, which is consistent with Cambodia's medium low TF risk profile.
- Changes to the UN Sanctions Lists are disseminated by MFA-IC to regulators and then on to the banking, MFI, securities and insurance sectors, but not to other FIs or DNFBPs. Awareness of obligations relating to TFS against terrorism varies across REs, and some MVTs providers, NGOs and DNFBPs remain unaware of their obligations relating to the UN Sanctions Lists.
- Cambodia has a large NGO/NPO sector overseen by MOI, for domestic NGOs, and MFA-IC for foreign NGOs. No review has been conducted of the TF risks and vulnerabilities within the NPO sector, and no outreach has been delivered to the sector on the threat of terrorist abuse since the enactment of the 2015 Law on Associations and NGOs. However, the competent authorities believe, and the assessment team agrees, Cambodia's TF risk is medium low and there have not been any recent indicators of TF activity in the NPO sector.

#### *Proliferation Financing (Immediate Outcome 11)*

- Cambodia does not have a legislative basis for, nor has it taken steps to implement, TFS relating to combating proliferation. The authorities do not systematically disseminate UN notices on PF to FIs or DNFBPs.
- Cambodia has a diplomatic relationship with DPRK and has a long standing close relationship at a political level. There have also been cases of Cambodia's former shopping registry flags of convenience scheme being used by DPRK front companies. Despite this, authorities and private sector entities who met with the assessment team were unaware of any DPRK presence in Cambodia's financial or DNFBP sectors.
- FIs with international presence and networks conduct screening of customers, including those listed under relevant UNSCRs, from a global compliance perspective, but DNFBPs and other FIs do not have knowledge of UNSCRs on proliferation and do not have mechanisms to identify assets and prevent financial transactions related to proliferation.
- There is no evidence which demonstrates that authorities have a mechanism to monitor and ensure compliance, provide guidance and feedback and impose any sanctions on breaches relating to PF. The competent authorities do not have adequate skills or resources to address the PF risks.

#### **Recommended Actions**

##### *TF offence (Immediate Outcome 9)*

- The National Counter-Terrorism Planning Book should be amended to include specific processes and procedures for identifying and investigating TF. The Planning Book should also clearly delineate the role of CAFIU in the CT framework.
- When analysing STRs, CAFIU should be proactive in trying to detect TF; CAFIU should not rely solely on REs to detect potential TF cases.

- Cambodia should legislate to significantly increase the fines for legal entities that commit a TF offence under the Law on Counter Terrorism or AML/CFT Amendment Law.

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

- Cambodia should issue a new/revised standing court order under the Sub-decree requiring all REs, natural persons and legal persons to freeze all property of persons or entities whose name is listed in the Al Qaida, Taliban, and ISIL (Da'esh) lists, and on the subsequent lists designated by the UN, and to report to the General Prosecutor after having frozen any properties.
- Cambodia should also either ensure that MOJ publishes changes to the lists of UN-designated entities, and/or amend the Sub-decree to authorise CAFIU to publish such changes on its website. In any case, Cambodia should establish a clear and prompt mechanism for communicating changes to the sanctions lists to all REs, especially the more vulnerable sectors.
- The assessment team notes Cambodia is currently conducting an exercise to establish which registered domestic NPOs remain active. Once this is complete, Cambodia should conduct a review of the sector's TF risks, and then deliver outreach to, and exercise risk-sensitive oversight of, any NPOs vulnerable to TF.

*Proliferation Financing (Immediate Outcome 11)*

- Cambodian authorities should introduce legal instruments to implement TFS against proliferation, including a framework to monitor compliance and apply sanctions.
- Authorities should conduct awareness raising activities with the general public and the private sector to inform them of their obligations relating to TFS against proliferation.
- The skills and resources of competent authorities should be strengthened to address PF risks and implement TFS against proliferation.
- Authorities should enhance their understanding of the vulnerable sectors for PF and the risk of UN sanctions evasions.

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

***Immediate Outcome 9 (TF investigation and prosecution)***<sup>42</sup>

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

163. Cambodian authorities demonstrate a good understanding of TF risk in Cambodia. Cambodia's National Counter-Terrorism Planning Book sets out possible terrorist threats to Cambodia, which include international terrorists targeting Cambodian and foreign interests in Cambodia, particularly through financing. Since the 2007 MER, the risks of terrorism and TF in

<sup>42</sup> The assessment methodology for Immediate Outcome 9 was revised by the FATF in February 2017 (i.e. after the on-site visit), to broaden the reference to types of TF activity to include 'other assets' in addition to funds. The revised version has been taken into account in the recommendations presented in this report.

Cambodia have decreased because the groups of concern at that time are now inactive or have transitioned to political parties. To date, there have been no terrorist attacks in Cambodia and very limited terrorist and TF activity. There is also a strong legal and institutional framework in place to combat terrorism and TF.

164. There have been no prosecutions or convictions for TF activity in Cambodia, which is not inconsistent with Cambodia's medium low TF risk profile. Nevertheless, Cambodia's commitment to combating terrorism is evidenced by the substantial allocation of resources and interagency coordination structures for CT work, as outlined below.

#### *TF identification and investigation*

165. Three agencies in Cambodia share responsibility for identifying and investigating terrorism and TF:

- *National Counter-Terrorism Committee (NCTC)* – The NCTC is the lead counter-terrorism agency in Cambodia, responsible for commanding all forces involved in combatting terrorism. The NCTC is not a law enforcement agency; it is a coordination body with broad responsibilities for CT strategy, intelligence gathering and analysis, agency coordination and international cooperation. The President of the NCTC is the Prime Minister. The NCTC is supported by a Secretariat (SNCTC), which has five departments, over 250 staff and over 600 Counter-Terrorism Special Forces officers. The responsibilities of these agencies are set out in Cambodia's National Counter-Terrorism Planning Book:

i. Department of Administration and Finance (DAF)

The DAF is responsible for developing the SNCTC's overarching CT plan; strengthening national capability; collecting and compiling information; training and organising the Special Forces; national and international cooperation; and reporting to the UN.

ii. Department of Information technology (DIT)

The DIT is responsible for installing IT equipment and developing programs to improve analysis capabilities, data storage, speed and efficiency and ensure secrecy; and for education and dissemination of national policy and information to raise public awareness and further engage the public in preventing and combating terrorism effectively.

iii. Department of Intelligence and Investigation (DII)

The DII is Cambodia's national security intelligence body and the authority for assessing threats to security. The DII conducts regular meetings of all intelligence agencies to exchange, share and analyse intelligence and information and develop intelligence reports. DII is also responsible for conducting investigations of terrorist incidents and providing evidence and witnesses to LEAs; coordinating all agencies and forces during a terrorist incident; providing professional negotiators in a hostage situation; and managing the national blacklist.<sup>43</sup>

iv. Department of Infrastructure Protection (DIP)

The DIP is responsible for assessing infrastructure vulnerabilities and capability gaps; developing detailed protection and response plans for any possible terrorist incident;

<sup>43</sup> The blacklist is a domestic list maintained by Cambodian authorities that includes terrorists and other persons of interest, which is mostly used for immigration screening purposes.

organising and leading exercises to ensure that all agencies cooperate smoothly and effectively; and preparing public information campaigns to raise awareness to counter-terrorism.

v. Special Department (SD)

The SD is responsible for forming, training, managing and commanding the national Counter-Terrorism Special Forces (CTSFS); managing and commanding the National Headquarters of Counter-Terrorism Special Forces; developing intelligence and negotiation capabilities for the CTSFS; and developing plans for emergency forces from various agencies to form a joint force to respond to large scale crises.

The CTSFS provide the Government with a range of specialist capabilities to respond to terrorist incidents.

Officers of the SNCTC are not judicial police. While they collect and analyse intelligence and coordinate investigations and responses to terrorist incidents, they do not have powers to arrest suspects or bring cases to court.

- *Counter Terrorism and Transnational Crime Department, GCNP* – this Department has 10 staff in Phnom Penh and specialised officers in all 25 provinces. (The responsibilities of this Department are set out below.)
- *Counter Terrorism Unit, Royal Gendarmerie* – this is a specialised unit within Cambodia’s military police. The officers within this unit are judicial police and have a presence in Phnom Penh and across the country.

The Counter Terrorism Department of the GCNP and the Counter Terrorism Unit of the Royal Gendarmerie share the following responsibilities:

- providing first response to a terrorist incident, including isolating and containing the incident site
- evacuating people from the incident site, as necessary
- assisting with information and intelligence collection
- assisting in providing specialist negotiators, and
- assisting the SNCTC Director DII in the investigation of the incident.

The municipal or provincial Commissioner of Police will be the Incident Commander with direct tactical-level command and control of all municipal or provincial forces and operations. The Director DII will determine whether the GCNP or Royal Gendarmerie will assume responsibility for evidence collection and witnesses for the prosecution of suspects.

166. The identification of terrorism and TF cases in Cambodia occurs through a variety of means, including:

- collection and analysis of intelligence by SNCTC DII;
- domestic operations and undercover investigations;
- detection by REs of attempted transactions involving designated persons; and
- referral by foreign law enforcement or intelligence agencies.

167. In the past, Cambodia has effectively identified instances of potential and actual TF activity primarily through non-financial information, in particular through intelligence gathered by SNCTC DII and through close cooperation and information sharing with foreign counterparts. However, as

demonstrated by case study 4 (below), Cambodia has identified potential cases of TF through financial information as well. TF is one of CAFIU's high priority criteria for STR analysis. However, CAFIU relies on REs to mark STRs as potential TF cases and does not proactively try to identify TF. To date, there have been no STRs submitted to CAFIU that have been marked as potential TF cases. Nor has CAFIU detected any potential instances of TF in its analysis. However, analysis of STRs has been very limited (as outlined under IO.6). CAFIU should adopt a proactive approach to identifying TF when analysing STRs and not only rely on REs to detect potential TF cases.

168. The investigation of a terrorist incident is the primary responsibility of the SNCTC DII, working in close consultation with the GCNP, the Royal Gendarmerie and other relevant agencies. The National Counter-Terrorism Planning Book sets out in detail the responsibilities of different agencies during the investigation of a terrorist incident. The DII will have overall leadership in investigating a terrorist incident and will provide evidence and witnesses to LEAs. The GCNP and the Royal Gendarmerie will assist the DII in investigating the incident and at some point during the investigation, as agreed between the Director DII and the relevant Deputy Commissioner of Police and/or Gendarmerie, the GCNP or Gendarmerie will assume responsibility for the investigation and prosecution of suspects.

169. The National Counter-Terrorism Planning Book, which is a document that outlines overarching responsibilities, coordination arrangements and procedures to prepare for, prevent or, if they occur, manage acts of terrorism and their consequences, does not explicitly contain any reference to investigation of TF and therefore does not specify which agency/ies is or are responsible for TF investigation. However, Cambodia advised the assessment team that, in practice, the same agencies that share responsibility for investigating terrorist incidents are responsible for investigating TF and TF would always be investigated as part of a broader terrorism investigation. Case studies that were presented to the assessment team on a confidential basis, and cannot be shared publicly, support this statement. These case studies also demonstrate that Cambodia has conducted stand-alone TF investigations.

170. Relevant Cambodian agencies have received extensive training from domestic agencies, donors (US and Australia) and international organisations (World Bank and UNODC) on counter-terrorism and CFT. Domestic CFT training has included courses on basic financial investigation (2011), investigative techniques and money laundering (2012), and intermediate investigation techniques (2013). Agencies have also participated in training courses abroad, including in relation to TF investigation (2015) and implementation of FATF standards to combat TF. In total, from 2010 to 2016, there were 162 domestic CT and CFT related training courses with 1682 participants and 135 counter-terrorism and CFT related training courses abroad in which 370 Cambodian officials participated.

171. Consistent with its risk profile, there has been minimal terrorism and TF activity detected in Cambodia and Cambodia has only conducted a limited number of terrorism and TF investigations. However, a number of case studies shared with the assessment team, some shared on a confidential basis, demonstrate Cambodia's ability to identify and investigate potential and actual cases of TF and to cooperate both domestically and internationally in the course of an investigation, for example, see case study 4, below.<sup>44</sup>

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<sup>44</sup> A separate 2002/2003 case related to Riduan Isamuddin, known by the name Hambali, who was a member of Al Qaida and Jamaah Islamiyah, and a designated person on the UN 1267/1989 Sanctions List. He hid in Cambodia and was funded by a teacher at an Islamic school on the outskirts of Phnom Penh. This case demonstrated Cambodia's

**Case study 4: Identifying potential cases of TF**

In 2009, a person in Cambodia attempted to transfer money from a bank in Sihanoukville to a person named Muhammad Saeed in Pakistan. The name matched a designated person on the UN 1267/1989 Sanctions List – Hafiz Muhammad Saeed, the co-founder of Lashkar-e-Taiba, the Pakistani group responsible for the 2008 Mumbai attacks. The bank froze the transaction and generated an STR, which was provided to the GCNP. The GCNP cooperated with the SNCTC to conduct a joint investigation in this matter. Cambodia also cooperated with foreign embassies to clarify the identity of the recipient. The case proved to be a false positive, but illustrated Cambodia's ability to detect potential TF.

*TF investigation integrated with - and supportive of - national strategies*

172. Cambodia's CT strategies are based on a number of key themes, one of which is 'the prevention of terrorist organisations infiltrating Cambodia, including in the form of ideology, finances, and related activities, and the maintenance of effective law enforcement capabilities to act decisively to apprehend any terrorists found in Cambodia'. The Cambodian National Counter Terrorism Strategy explicitly states: 'Terrorist financing investigation and protection mechanisms shall be extended for contributing to fighting against and prevention of terrorism'. As such, the prevention of TF is an important aspect of Cambodia's national CT strategies and investigation of TF is formally integrated with and used to support CT investigations. As noted above, Cambodia's National Counter-Terrorism Planning Book, does not include any processes or procedures relating to TF investigation. However, Cambodia advised that as a matter of practice it would always investigate TF as part of a terrorism investigation and that agencies have used financial intelligence as part of a terrorism investigation previously, for example, in the Hambali case, where 'follow the money' techniques were employed to trace the movements of the suspects.

173. The Planning Book also does not outline a role for CAFIU in the CT infrastructure, despite the significant role it could potentially play in identifying TF and analysing financial intelligence in TF cases. It is recommended that the Planning Book be updated to include specific processes and procedures for identifying and investigating TF, specify an agency/ies that is/are responsible for TF investigation and delineate a role for CAFIU in the CT framework.

*Effectiveness, proportionality and dissuasiveness of sanctions*

174. As there have not, to date, been any TF prosecutions or convictions in Cambodia, no sanctions have been imposed on natural or legal persons. The sanctions of 10-20 years imprisonment available under Cambodian law for natural persons convicted of TF are likely to be effective, proportionate and dissuasive. However, the maximum fine of KHR 40,000,000 (forty million) (USD 10,000) available for legal entities, while higher than fines imposed on legal persons for other serious offences in Cambodia, is not sufficiently punitive to be dissuasive. It is noted that the maximum fine for the ML offence, while also considered to be too low, is substantially higher: KHR 100,000,000 (one hundred million) (USD 25,000) to KHR 500,000,000 (five hundred million) (USD 125,000).

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

175. In line with the nature of Cambodia's TF risk, Cambodia places a strong emphasis on preventing terrorist or TF activity before it occurs. Thus, investigations may not advance to the stage

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ability to identify a terrorist financier and utilise that information in a broader investigation. In the intervening years, TF risks in Cambodia have reduced, and domestic coordination on TF has improved.

where a TF charge is practicable. A key aspect of Cambodia's preventative approach to terrorism is the policy of harmonisation (no discrimination on the grounds of race or religious belief) employed by the Cambodian Government, which aims to prevent confrontation between races and religions and extremist trends. According to the NRA, this policy has allowed for the full integration of all ethnic and religious minority groups in Cambodian society. Another theme on which Cambodia's CT strategy is based on poverty alleviation. Cambodia attempts to prevent terrorist activity by stimulating economic growth, enhancing peoples' living conditions and building strong communities.

176. Cambodia appears to be adequately cooperating with foreign counterparts to disrupt terrorist and TF activity. Cambodia utilises intelligence received from foreign counterparts to investigate and closely monitor potential terrorist/TF suspects and their activity. Through confidential case studies shared with the assessment team, Cambodia demonstrated that in circumstances where it is impractical for them to launch a terrorism or TF prosecution due to insufficient evidence, they are willing to cooperate internationally to share relevant intelligence and information with foreign jurisdictions that have a better chance of securing a successful prosecution.

177. Cambodia also actively tries to prevent radicalisation of minority groups and believes that problems within an ethnic or religious community are best dealt with by influential people from within that community. The SNCTC has conducted community outreach activities and education programs to raise awareness, prevent radicalisation and engage the community in preventing and combating terrorist activity.

178. Cambodia has a **substantial 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*

179. Cambodia has a reasonable legal framework to deprive terrorists, terrorist organisations and terrorist financiers of assets and instrumentalities related to TF activities. Cambodian authorities have taken some action to prevent terrorists from raising, moving and using funds. Cambodia also has systems in place, such as the circulation of updates received from the UN, to prompt some REs to monitor their databases and meet their obligations. However, not all REs have received notifications of updates to the UN Sanctions Lists.

180. Cambodia is legally able to freeze the assets of individuals and entities on the Al Qaida, Taliban, ISIL (Da'esh) UN List without delay. The 2014 standing court order issued under the Sub-decree requires REs to freeze all property of persons whose name is listed in the Al Qaida and Taliban lists, and subsequent lists designated by UNSCR 1267, and to report to the General Prosecutor after having frozen any properties. The standing court order however applies only to REs, rather than to all natural and legal persons within Cambodia. Cambodia can, through its domestic designation mechanism, designate individuals and entities as terrorists under UNSCR 1373, if the need arises. However, this has not occurred in practice, which is not inconsistent with Cambodia's medium low TF risk profile.

181. No terrorist-related funds or economic resources have been frozen under the relevant UNSCRs, which again does not seem unreasonable given Cambodia's medium low risk TF profile.

182. Changes to the UN Sanction Lists are disseminated from MFA-IC to MOJ and regulators, e.g. CAFIU and NBC, and then on to the banking, MFI and insurance sectors, but not to other FIs or

DNFBPs<sup>45</sup> (such as lawyers and accountants). MFA-IC stated it disseminates UN Sanctions Lists within 48 hours to the relevant agencies, however evidence provided by Cambodia appears to demonstrate a three day turnaround by MFA-IC. MFA-IC has never disseminated these lists to foreign NGOs under its remit. No written guidelines on timeframe for dissemination of the lists were issued to the relevant agencies.

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183. NBC advised that once it receives a list update notification from MFA-IC it prepares a cover letter and sends the notification to FIs. This takes approximately five working days once the information has been received from MFA-IC.

184. CAFIU's website provides links to the UN Sanctions Committee 1267/1989/2253 and UN Sanctions Committee 1988 websites. Furthermore, CAFIU has implemented a Sanctions List Monitor, meaning that whenever there is a change to the UN lists, an email notification is supposed to be sent to all REs with a compliance officer (such as banks, specialised banks, MFIs). However, in practice it is not evident that all REs receive these alerts. For example, some specialised banks and MFIs which met with the assessment team during the on-site were unsure if they received these emails.

185. Contrary to what is set out in Article 4 of the Sub-decree, MOJ is not publishing the listing or delisting of designated terrorists or organisations pursuant to UNSCR 1267 and successor resolutions on its publicly available website (see analysis of R.6 in the TC annex).

186. CAFIU has sent nine communication letters to notify certain REs of the standing court order:
- i. a letter to the Director General and Director of all Banking and Financial Institutions (B12-014-021 S/N);
  - ii. a letter to the Director of General Department of Financial Industry of Ministry of Economy and Finance (B12-014-023 LS);
  - iii. a letter to the Directors of all casinos (B12-014-024 S/N);
  - iv. a letter to the Director General and Director of all Insurance companies (B12-014-024 S/N);
  - v. a letter to the Director General and Director of all Real Estate Evaluator and/or Real Estate Service Companies (B12-014-024 S/N);
  - vi. a letter to the Director General of Securities and Exchange Commission of Cambodia (B12-014-025 LS);
  - vii. a letter for the Director General or Director of: (i) Securities Underwriters; (ii) Securities Dealers; (iii) Securities Brokers; (iv) Investment Advisors; (v) Operator of Securities Market, Operator of Clearing and Settlement Facility and Operator of Securities Depository; (vi) Securities Registrar, Transfer Agent and paying Agent; (vii) Cash Settlement Agent (B12-014-026 S/N);
  - viii. a letter to the Director General of Directorate General Supervision of National Bank of Cambodia;
  - ix. a letter to the Director of Money Changers (B12-014-028 S/N).

187. In addition to the steps taken by CAFIU, the NBC, the Real Estate Department of MEF and the Casino Management Division of MEF are also sending the lists they receive from MFA-IC to the REs

<sup>45</sup> The distribution of the relevant UNSCRs lists to the securities firms only started in 2017.



under their supervision (banks; real estate agents and developers; casinos). NBC disseminates the lists to all FIs, except money changers. MEF<sup>46</sup> noted that it disseminates the notifications as soon as possible and NBC advised that it prepares a letter to inform FIs and distributes these on average five working days after receiving the notification; however Cambodia did not provide any evidence to support these timeframes.

188. The larger banks in Cambodia have implemented policies to screen customers against UN Sanctions Lists through the use of commercial databases. However, some MVTS providers and DNFBPs remain unaware of the UN Sanctions Lists and are not implementing their obligations relating to TFS against terrorism. This impairs the proper implementation of the TFS regime and increases TF risk.

189. Some casino operators have not received the lists from the competent authorities and are not subscribers to a commercial database to receive this information from elsewhere.

190. In conclusion, in practice Cambodia has various mechanisms to disseminate and communicate changes in the relevant UN Sanctions Lists to REs, but these mechanisms are not all in strict accordance with the Sub-Decree, which requires the lists to be published on the MOJ website. Furthermore, not all REs are aware of the sanctions lists and some do not receive notifications of list updates without delay. Cambodia should establish a clear and prompt mechanism for communicating changes to the sanctions lists to all REs, especially to the more vulnerable sectors.

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

191. Cambodia has a large NGO/NPO sector overseen by the MOI, for domestic NGOs, and MFA-IC for foreign NGOs. *The Law on Associations and NGOs* was promulgated in August 2015 and imposes some measures required under the FATF standards. No review has been conducted of the TF risks and vulnerabilities within the NPO sector, although the NRA found Cambodia's overall risk of TF to be medium-low. The competent authorities in the NGO sector believe the risk to the sector is low.

192. The feedback from some stakeholders on the *Law on Associations and NGOs* is that the new requirements impose onerous requirements on reporting financial information. For example, in addition to annual reports on activities and financial status, organisations must report to MEF on any financial support received within 30 days of receipt of the funds. Organisations must report all project work through a copy of project document work plan and financing agreement with donors within 30 days from the date of the agreement. There also appears to be some opposition to the law based on an impression that the law, which goes beyond the FATF requirements in its scope, places restrictions on gathering and assembly<sup>47</sup>. This response to the law may affect compliance and therefore effective implementation.

193. In terms of the international movement of funds through the NGO sector, the competent authorities' perception is that Cambodia is primarily a recipient, not a sending country. MFA-IC advised that no funds are being sent abroad by NGOs, however neither MFA-IC nor MOI have statistics, or any estimation, of the capital inflows and outflows in the NGO sector. To the extent that this perception of Cambodia as a recipient only jurisdiction is accurate, this means that the TF risks posed by Cambodia's NGO sector to the wider international community (through the diversion of

<sup>46</sup> MEF started to send email updates relating to the relevant UNSCRs lists to casinos, real estate and insurance firms in early 2017.

<sup>47</sup> <http://www.icnl.org/research/monitor/cambodia.html>, <http://www.loc.gov/law/foreign-news/article/cambodia-law-ngos-passed/>, <http://thediplomat.com/2015/07/does-cambodia-really-need-a-new-ngo-law/>

charitable funds to support terrorist activities/organisations) are minimal. It also suggests that the primary TF risks posed by the NGO sector – to the extent that they exist – relate to the inflow of funds which are then used to support terrorist activity. The example of the Hambali case in the analysis of IO.9 above, albeit 15 years old, involves this type of risk. With the reduction of terrorism in Cambodia, the risk of TF posed by the inflow of funds into NPOs in Cambodia is also reduced.

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194. While MFA-IC and MOI inform NGOs of their legal obligations during the registration process, no monitoring activities have been conducted on TF risks to and vulnerabilities of NGOs (domestic or foreign) and no guidance has been issued to the sector regarding CFT measures and trends. Furthermore, there has been no outreach or AML/CFT awareness training for NGOs in Cambodia since enactment of the 2015 Law on Associations and NGOs.

195. All 452 foreign NGOs are registered and 70-80% are sending annual financial and activity reports to MFA-IC. There are 4,957 domestic NGOs/associations registered by MOI but only 15-20% are sending annual financial and activity reports to MOI. Cambodia is currently updating its database of domestic NGOs to determine which entities are active. Inactive NGOs may contribute to the low level of reporting. NGOs are also REs for the purposes of the AML/CFT Law, although this has not yet been enforced in practice, but the three NGOs with which the assessment team met during the on-site were not aware of their obligations as REs.

196. Presently Cambodia is updating its mechanism to monitor the compliance of the NGO sector, including the establishment of a compliance monitoring committee. A number of technical meetings between MFA-IC and MOI have been held to review the monitoring process of the NGO sector.

197. Once the current exercise to establish which registered domestic NGOs remain active is complete, Cambodia should conduct a formal review of the sector's TF risks, and then deliver outreach to and exercise risk-sensitive oversight of the NPOs which may be more vulnerable to TF.

#### *Deprivation of TF assets and instrumentalities*

198. There is a reasonable legal framework in place (including the Criminal Code, Criminal Procedure Code, AML/CFT Law, AML/CFT Amendment Law and Law on Counter Terrorism) to deprive terrorists, terrorist organisations and terrorist financiers of assets and instrumentalities related to TF activities.

199. As noted in the analysis of IO.9, there have been limited investigations on TF. However, it should be noted that for other crimes which Cambodia actively investigates, criminals have not effectively been deprived of the proceeds of their crimes.<sup>48</sup>

#### *Consistency of measures with overall TF risk profile*

200. As noted previously, Cambodia rated its TF risk as medium low in the NRA. There are reasonable legislative frameworks and systems in place to prevent TF and to freeze the assets of terrorists, bearing in mind the risks. Cambodia also has systems in place, such as the circulation of UN Sanctions List updates, to ensure that some REs are able to monitor their customer databases and meet their TFS obligations. However there are some REs that had not received any list updates.

201. Overall the above measures are not entirely consistent with Cambodia's TF risk profile.

<sup>48</sup> With the exception of the 2002/2003 Hambali case, described in a footnote in IO.9.

202. Cambodia has a **moderate level of effectiveness** for Immediate Outcome 10.

***Immediate Outcome 11 (PF financial sanctions)***

*Implementation of targeted financial sanctions related to proliferation financing without delay*

203. Cambodia does not have a legislative basis for, nor has it taken steps to implement, TFS relating to combating proliferation. Reference has been made by Cambodia in its technical compliance and effectiveness responses to Article 4 of the Sub-Decree on Freezing of Property of Designated Terrorists and Organizations being applicable, however this Sub-Decree does not relate to proliferation, only to terrorism.

204. As outlined in the analysis of IO.1 and R.2, Cambodia has not established co-operation or co-ordination mechanisms or clear policies and activities to combat PF.

205. In the absence of a clear legal framework or co-ordination mechanism, the authorities do not systematically disseminate UN notices on PF to FIs or DNFBCPs. CAFIU issued a notice in 2010, in reference to the FATF public statement, for banks and other FIs to pay special attention to transactions with FIs and companies from Iran and DPRK and to report these transactions, if any, to CAFIU, however this notice did not refer to the implementation without delay of TFS against proliferation. There have been no assets identified or frozen in relation to the relevant UNSCRs.

206. While assessment of PF risk is not required under the FATF Standards, it is noted that Cambodia has not assessed its risk of PF and this contributes to the low level of understanding of PF risk in the country. Cambodia has a diplomatic relationship with DPRK, with a DPRK embassy present in Phnom Penh, and the two jurisdictions are reported to share a long standing and close relationship at a political level. There have been cases of Cambodia's former shipping registry's flags of convenience scheme being used by DPRK front companies. Despite these apparent connections, authorities are not aware of any DPRK participation in the financial sector or DNFBCPs and private sector representatives who met with the assessment team all noted they do not have, and in many instances, would not accept, customers from DPRK. Authorities should enhance their understanding of the vulnerable sectors for PF and the risk of UN sanctions evasions.

207. In relation to Cambodia's former shipping registry, Cambodia's Ministry of Transport took over the management of the shipping registry following the Cambodian Government's decision to cancel the former registry management contract in August 2015. In August 2016 the Cambodian Government advised the International Maritime Organisation that it had decided to close down Cambodia's flagged ship registration and that all registration certificates of remaining Cambodian flagged ships expired at the end of August 2016. The Ministry of Transport advised the assessment team that it has no access to the records of the former shipping registry; it does not know the country of origin of deregistered ships; and is not aware of the size or yearly turnover of Cambodia's former shipping registry. This is concerning given the evidence that the registry was abused by front companies. It is possible that there are ongoing implications of abuse which may have occurred prior to August 2016.

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

208. Despite the lack of any legislative basis and of communication by the authorities on PF, commercial banks, securities firms and insurance companies generally conduct screening of customers' names against commercial databases at the point of on boarding and as and when the UN list is updated. However, there were no reported incidents of a positive match where funds or other

assets of designated persons and entities were identified, nor financial transactions related to proliferation prevented by these REs. There is no data to support and validate the extent to which the funds and other assets of designated persons and entities are identified and financial transactions are prevented.

209. DNFBBPs and some FIs do not have internal policies and procedures that require the identification of funds or other assets of designated persons and entities and to prevent financial transactions related to proliferation.

*FIs' and DNFBBPs' understanding of and compliance with obligations*

210. The commercial banks, securities firms and insurance companies have some knowledge of the relevant UNSCRs, mainly through their connection with parent companies, international networks or through alerts from commercial databases to which they subscribe. However, since there are no relevant legal obligations in Cambodia, their understanding is largely related to global compliance, rather than the UNSCRs requirements.

211. There is a lack of knowledge and understanding of the UNSCRs on proliferation by DNFBBPs and some FIs, and insufficient understanding of the risk of PF in their sectors.

*Competent authorities ensuring and monitoring compliance*

212. There is no evidence to indicate that the authorities have a mechanism to monitor and ensure compliance, provide guidance and feedback and impose any sanctions on breaches relating to PF. The competent authorities do not have adequate skills, knowledge and resources to address the PF risks.

213. Cambodia has a **low level of effectiveness** for Immediate Outcome 11.

## CHAPTER 5. PREVENTIVE MEASURES

### *Key Findings and Recommended Actions*

#### **Key Findings**

- The understanding of ML/TF risks and AML/CFT obligations varies across different institutions within the financial sector. Commercial banks, securities firms and insurance companies have a more advanced understanding, due to their exposure to global group-wide policies and international obligations, as compared to the specialised banks, MFIs, money remittance operators, money changers and financial leasing companies.
- There are inadequate risk mitigation measures undertaken by mobile payment service providers at the agent level. Insufficient regulatory attention is placed on remittance operators, in particular mobile payment service providers, which have broad customer coverage nationwide, operating through nearly 10,000 agents.
- Commercial banks, insurance companies and securities firms generally have AML/CFT policies and procedures in place and have implemented risk mitigation measures commensurate with their risks. These measures include procedures to conduct CDD and record-keeping requirements, including in applying enhanced due diligence on high risk customers, ongoing monitoring mechanisms and have contributed to the STRs submitted to CAFIU (except for the securities sector).
- The CDD processes in MFIs and financial leasing sectors focus on credit assessment and generally these sectors, including money changers, do not have adequate monitoring systems. CDD information is obtained through the credit assessment process and when disbursing loans (for MFIs and leasing), rather than through a distinct CDD process for AML/CFT purposes. These institutions generally do not conduct sanctions screening when on-boarding customers or as part of ongoing monitoring; do not have ML/TF risk profiling for customers and do not have procedures to handle PEPs, targeted financial sanctions or high risk jurisdictions.
- Limited interaction between the supervisors and DNFBPs, particularly real estate agencies, small casinos, dealers in precious metals and stones, lawyers, stand-alone accounting and auditing firms, has resulted in a low understanding of ML/TF risks and AML/CFT obligations among these entities. Implementation of CDD, including the collection of beneficial ownership information, is low. There has been no on-site supervision of DNFBPs or sector-specific AML/CFT guidance issued to govern widely different sectors. The CDD threshold for casinos is set at USD 10,000, which is higher than the FATF standards.
- Some high risk sectors such as the casino and real estate sectors do not have a specific law governing them. In the absence of on-site supervision, it is not clear to what extent CDD and record-keeping requirements, enhanced due diligence, reporting of STRs and other controls are being applied. Both CAFIU and MEF have plans to increase engagements and conduct on-site supervision on these sectors.
- The banking sector contributes over 95% of STRs received by CAFIU. The level of reporting by other sectors is very low or non-existent. This does not match the risk profile of some sectors, such as the remittance, casino and real estate sectors.

**Recommended Actions**

- Authorities should update the AML/CFT Law or Prakas to reflect and incorporate new requirements in accordance to the revised FATF Standards (2012) and revised methodology (2013), including the following:
  - Amend the definition of PEPs to include domestic PEPs and individuals with prominent functions in international organisations, their family members and close associates.
  - Require REs to determine whether the beneficial owner is a PEP.
  - Reduce the CDD threshold for casinos from USD 10,000 to be in line with the threshold in the FATF standards, which is equal to or above USD/EUR 3,000.
  - Require FIs to identify and verify the identity of the relevant natural person who holds the position of senior managing official, where no natural person is identified as having ultimate controlling ownership, interest or exercising control of the legal person or arrangement through other means.
  - Where the REs reasonably believe that performing CDD will tip-off the customer, to permit REs not to pursue the CDD process, and instead REs should be required to lodge an STR.
  - Increase the penalty for illegal MVTS to be proportionate and dissuasive, such as having a criminal penalty (instead of only a civil penalty), and a maximum penalty significantly higher than the current at 100,000 Riels (USD 24) per day under the Prakas on Third Party Processors.
- Authorities should enhance engagement with smaller FIs and DNFBPs, particularly sectors identified as higher risk, such as casinos, real estate and money remittance, including close supervision, sector-specific regulations and/or guidance.
- The sectoral supervisors and CAFIU should establish a platform for regular engagement with industry associations and self-regulatory bodies, particularly with high risk sectors such as casinos, real estate and money remittance, to keep the industry abreast of the latest ML/TF developments, risks, and trends and AML/CFT obligations.

214. 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.

**Background and Context**

215. Cambodia's financial sector is dominated by the banking sector, which covers about 90% of financial sector assets. The securities and insurance sectors within Cambodia are still developing and the CSX commenced trading in 2012. Other small financial service providers in Cambodia include leasing companies, a credit bureau, third party processors who provide money remittance services, money changes, pawnshops and the Cambodia Post, which provides limited remittance services.

216. The DNFBP sector in Cambodia includes real estate agents and developers, DPMS, lawyers, notaries, accountants, auditors, investment advisors, asset managers, and casinos. NGOs are also captured under the AML/CFT Law, however supervision of NGOs for AML/CFT purposes is not occurring in practice.

217. Please refer to Chapter 1 for a more detailed overview of the financial sector and DNFBPs in Cambodia.

#### Immediate Outcome 4 (Preventive Measures)

##### *Understanding of ML/TF risks and AML/CFT obligations*

###### *Financial Sectors*

218. The banking sector comprises commercial banks, specialised banks, MFIs, and financial leasing companies. According to the authorities, and on the basis of the assessment team's meetings with a cross-section of REs, understanding of ML/TF risks and AML/CFT obligations varies across different institutions within the banking sector. Commercial banks have undertaken risk assessments which have been reviewed by authorities. However, the quality of these entity-level risk assessments may require improvement, with authorities noting that some of the banks' initial risk assessments required amendment as they contained deficiencies, such as limited scope and depth of analysis by the banking institutions, lack of understanding of their ML/TF risks and failure to assess the variety of products offered by banks and MFIs. The authorities also noted that in some instances, banks with similar profiles had different conclusions with regard to their risks. Feedback from both CAFIU and banking institutions which met with the assessment team was that the guidelines and mandatory risk assessment helped banks to identify, assess and understand the risks that institutions face, including customer risk, transaction risk, products/services/delivery channel risk, geographic and location risk

219. Representatives from the commercial banks with whom the team met generally demonstrated a good understanding of their ML/TF risks, especially those from foreign-owned banks. The foreign-owned banks often align their AML/CFT policy with their global group-wide policy, are aware of their environment and obligations both domestically and internationally, use sophisticated analytical tools to support ongoing monitoring and screening and conduct structured AML/CFT training for staff. Cambodia's larger domestic banks also understand their risks and AML/CFT obligations, have well-developed policies and procedures in place but improvements in certain operational practices, such as system-driven ongoing monitoring, are needed.

220. Specialised banks in Cambodia offer either one form of, or part of, basic banking activities, namely they provide lending, accept deposits or provide a means of payment. One of Cambodia's specialised banks which offers nationwide remittance services demonstrated an understanding of its basic ML/TF risks and AML/CFT obligations but the lack of sectoral risk assessment and sector-specific standards and guidelines could have the effect of downplaying the actual level of risks in the remittance sector.

221. MFIs are classified into three categories, namely MDIs, licensed MFIs and registered microfinance operators. MDIs offer lending, accept deposits and provide local payment transfer, whilst licensed MFIs are only allowed to provide lending but not accept deposits and registered MFIs (credit operators) offer only micro loans to low income individuals in rural areas. Representatives from MDIs met by the team demonstrated a good awareness of ML/TF risks in their institution, and obligations imposed on them. However, the licensed MFIs have limited understanding of their ML/TF risks and obligations, and focus more on identifying credit or fraud-related risks. A similar focus and no understanding of AML/CFT obligations were observed from the financial leasing sector representatives met by the assessment team. This could be due to limited interactions with the supervisory authorities. CAFIU has conducted only four supervisory examinations on MFIs since 2014. Results from those examinations do not provide a sufficient representation of the sector to

yield meaningful statistics on the level of understanding and knowledge of the MFI sector about their ML/TF risks and AML/CFT obligations.

222. Out of the 10 securities firms operating in Cambodia, six are part of international or domestic banking groups. The SECC noted that these firms' knowledge of ML/TF risks and AML/CFT obligations is more advanced as they adopt group-wide policy and controls, whilst the knowledge of ML/TF risks and obligations within stand-alone securities firms may be limited to the compliance officer. Further, senior management commitment to AML/CFT obligations in local stand-alone firms needs to be improved. As highlighted by Cambodia in its NRA, only securities firms which are subsidiaries of commercial banks have AML/CFT policies in place. The securities sector's ML/TF risks are heightened by the availability of non-face-to-face customer on-boarding, reliance on third parties to conduct CDD, i.e. commercial banks which are cash settlement agents, and limited availability of beneficial ownership information for foreign investors.

223. Out of the 19 licensed insurance companies, only five are life insurers (of which four are part of international groups). The representatives of life insurance companies that met the assessment team were able to provide a thorough explanation of their ML/TF risks and AML/CFT obligations. Apart from policies and controls adopted from their foreign parent companies, the requirement for the insurance companies to conduct self-assessments of ML/TF risks contributed to their good grasp of their ML/TF risks. MEF noted that life insurance companies have a better understanding of their ML/TF risks and obligations compared to general insurers. However, this observation is of limited value as the MEF only commenced AML examinations in October 2016.

224. Money remittance services are provided by banks, third party processors (TPPs) and the Cambodian Post. TPPs effectively operate these services on behalf of banks. As at June 2016, there were nine TPPs, three of which are international money remittance operators that have adopted their global group's AML/CFT policies. The other six TPPs only provide domestic transactions but with wide coverage of nearly 10,000 agents nationwide. As highlighted in Cambodia's NRA, concerns remain over the adequacy of the agents' understanding of ML/TF risks and AML/CFT obligations. Given the agents' limited understanding, there is also a high possibility of customers structuring their transactions to circumvent the CDD process. The NRA noted that only a small percentage of customers have accounts with the TPPs because the majority of the transactions are non-account (over the counter transactions, i.e. cash to cash, where customers could transact below the CDD threshold of USD 1,000 by providing only a telephone number). In addition to the TPPs, the Cambodian Post provides domestic transfers and international remittance. The Cambodian Post has no knowledge of its ML/TF risks and AML/CFT obligations. However, since the volume and amount of transactions through the Cambodia Post is small (in 2015, total amount transacted for domestic and international transfers was USD 1,603,385 and for first half of 2016, USD 835,238), this may not have a material impact on the overall ML risk. Nevertheless, it could still pose as a source of TF risk.

225. The representative from the money changing sector who met with the assessment team had limited understanding of ML/TF risks and AML/CFT obligations. The NRA noted that no money changers have appointed an AML/CFT compliance officer. CAFIU could not provide insights on the sector's general understanding of its ML/TF risks and obligations as no supervisory examinations have occurred. Cambodia advised the volume traded by money changes is estimated to be about USD 10,000,000 (10 million) per day.



*DNFBPs*

226. There has been limited interaction between supervisors and DNFBPs in Cambodia. As a result, overall there is a low understanding of ML/TF risks and AML/CFT obligations in these sectors, particularly real estate agencies, small casinos, dealers in precious metals and stones, lawyers, stand-alone accounting and auditing firms. Implementation of CDD obligations, including the collection of beneficial ownership information, is low.

227. The NRA acknowledges the limited awareness and knowledge of AML/CFT obligations by the regulator and operators of casinos, which the assessment team agrees with, based on the interviews conducted. However, Cambodia's largest casino has demonstrated a good understanding of ML/TF risks and has put in place policies and procedures to comply with AML/CFT obligations. Nevertheless, the largest casino only represents 44% of the turnover of the sector, which means overall understanding of ML/TF risks and obligations in the sector is low.

228. Similarly, there is limited capacity of the regulator and real estate operators to understand and impose AML/CFT obligations. The NRA reported that one of the common ML techniques in Cambodia is through real estate transactions, which have increased in volume recently, and large transactions were commonly settled in cash directly between buyers and sellers. However, the representatives from real estate agents and developers with which the team met did not agree that the ML/TF risks in the sector are high.

*Application of CDD and record-keeping requirements**Financial Sector*

229. Generally, commercial banks, insurance companies and securities firms have AML/CFT policies and procedures in place and have implemented risk mitigation measures, with those having foreign parents being more advanced. In line with the medium risk rating identified in the NRA, banks demonstrated that they have measures in place to comply with CDD and record-keeping requirements, including applying enhanced due diligence on high risk customers, and have comprehensive ongoing monitoring mechanisms. Banks have submitted the vast majority of STRs to CAFIU. Insurance and securities firms have generally put in place measures commensurate with their low risk rating identified in the NRA, albeit some small companies and firms that need to increase the commitment shown by senior management and ensure their AML/CFT policies and procedures are comprehensive. The effectiveness of the commercial banks', insurance companies' and securities firms' risk mitigation measures is being assessed by their respective supervisors, which has a positive impact on the RES' application of such measures. For example, CAFIU has regular interactions with, and conducts on-site examinations of, commercial banks. SECC conducts annual examinations of its licensees and assesses implementation of AML/CFT measures routinely. MEF relies on self-assessment by its licensees and is planning to commence on-site supervision that includes an assessment of AML/CFT measures.

230. However, some institutions such as MFIs, leasing companies, money changers, money remittances (except for TPPs which are international remittance operators), which have had limited interaction with their supervisors, appear not to have implemented adequate risk mitigating measures. Cambodia has not assigned a risk rating for MFIs but its NRA indicates that most MFIs have very low vulnerabilities to ML/TF risks due to the nature of their operations. Based on the assessment team's interviews with MFI representatives and according to the NRA, most MFIs generally do not have adequate monitoring systems, CDD information collection is done as part of a credit assessment and when disbursing loans rather than for AML/CFT purposes, they have no

sanctions screening during customer on-boarding or as part of ongoing monitoring, and no ML/TF risk profiling for customers.

231. The NRA identified money changers as medium low risk. However it is noted that no money changers have appointed a compliance officer, and that they generally focus on operations which generate profit rather than on compliance which incurs expense.

232. Leasing is identified as low risk in the NRA. As the sector is still at the initial stage of development, the focus of the regulator and operators is on sector development. From meetings with representatives from the sector, it appears that leasing companies' CDD processes are focused on credit assessment and they generally do not have procedures to handle PEPs, targeted financial sanctions or high risk jurisdictions.

233. The NRA identified the remittance sector as medium risk. While money remittance operators have generally implemented risk mitigating measures, mobile payment service providers need to improve implementation of risk mitigating measures at the agent level.

#### *DNFBPs*

234. There has been no on-site supervision of DNFBPs by CAFIU as supervisor. As noted above, awareness of AML/CFT obligations is low across DNFBPs. Hence, most do not have risk management and internal control systems in place. The NRA rated the casino and real estate sectors as medium high risk, which is the highest rating allocated by Cambodia. In the absence of on-site supervision, it is not clear to what extent CDD and record-keeping requirements, enhanced due diligence, reporting of STRs and other controls are being applied. In addition, there is no law governing these two sectors and the CDD threshold for casinos is set at USD 10,000, which is above the FATF standards. CAFIU and MEF plan to increase engagement with, and conduct on-site supervision of, these sectors.

#### *Application of CDD and record-keeping requirements*

##### *Financial Sector*

235. Based on the inspections of commercial banks' compliance with CDD and record-keeping requirements, CAFIU indicated that the most common finding was that the CDD process often lacked supporting documentation. However, CAFIU did not provide any statistics on the issues identified during on-site examinations. No information on compliance with CDD and record-keeping requirements for other FIs was available, as CAFIU has not conducted any on-site examinations of other sectors.

236. The commercial banks are aware of CDD and record-keeping requirements and have put in place policies and procedures that mitigate their ML/TF risks. The banks which met with the assessment team indicated that they collect CDD information and documents as part of their customer on-boarding process, including screening against a blacklist database, and would reject a customer if CDD is incomplete and would consider reporting an STR to CAFIU. The banks indicated that they risk profile their customers, which is then used to determine the level of ongoing monitoring and whether management approval is needed to accept the customers. The banks said that they have not encountered any major challenges in identifying BO information, and have not encountered usage of bearer shares for legal persons.

237. It is unclear to what extent MFIs comply with CDD requirements as this is done as part of a credit assessment and when disbursing loans. There is no sanctions screening of customers

conducted at the point of on-boarding or as part of ongoing monitoring and no ML/TF risk profiling for customers. Records are kept up to 10 years, both manually and electronically. It is noted that MFIs have low ML/TF risks, but an absence of comprehensive AML/CFT controls creates ML/TF vulnerabilities.

238. MDIs appear to have similar CDD and record-keeping policies and procedures as the commercial banks that are commensurate with their ML/TF risks. This includes obtaining and sighting identification documents, screening against sanctions databases and PEPs lists, applying enhanced due diligence for high risk customers, and keeping records manually and electronically for 10 years. MDI representatives who met with assessors indicated that for money transfers without accounts, customers' telephone numbers are obtained for amount below USD 1,000 and customers' IDs are obtained for amounts of USD 1,000 and above. For money transfers from accounts to cash, MDIs require the ID of the recipient.

239. As noted above, with little knowledge of general AML/CFT obligations, the money changer that met the assessment team indicated that it only asks for ID for transactions above USD 10,000, keeps manual records for only six months and ongoing monitoring of repeat customers is only performed by reviewing CCTV recordings. The measures applied by money changers are not adequate given the medium low level of risk posed by the sector.

240. The TPP that met with the assessment team is an international money remittance provider and adopts the commercial bank's (the agent) compliance program. One of the largest TPPs, which has upgraded to a specialised bank, indicated that it asks for telephone numbers of customers for transactions below USD 1,000 and asks for ID for transaction of USD 1,000 and above. The representatives indicated that they monitor customers' transactions through their system, detecting activity such as cumulative transactions in a day, and keep records for seven years. However, despite being the largest TPP, and more recently a specialised bank since 2011, this entity has not been audited by CAFIU for AML/CFT purposes and the NBC only audited it (for prudential purposes) for the first time in October 2016.

241. The financial leasing sector has a lax application of CDD requirements as it focuses solely on credit assessment. The NRA indicated that ML risk varies according to the nature of the financial leasing product, and enhanced CDD is applied for higher risk lease products such as mobile phones and agricultural products. However, the assessment team was not able to verify the extent of this in practice. Representatives from the sector indicated that records are kept for around 10 years.

242. Securities firms that met with the assessment team generally indicated that they have policies and procedures on CDD and record-keeping requirements. The SECC indicated the licensees face challenges in identifying foreign beneficial owners (BOs) and the licensees indicated a challenge in obtaining source of wealth information, which is also noted in the NRA as a source of vulnerability for the securities sector. According to the NRA, some securities firms assume that because the deposit for a securities trading account goes through the CSA (commercial banks), the customer does not pose any ML/TF risks, hence no information is collected on the source of funds. Some firms that accept non-face-to-face foreign customers rely on ID certified by notaries public and CDD by the SECC, but it is unclear whether non-face-to-face on-boarding can only be applied to low risk customers or to all customers regardless of risk.

243. Insurance companies generally comply with CDD and record-keeping requirements, in line with their risks. To a large extent, clients are obtained through referrals i.e. from bank assurance partners. Despite low vulnerabilities to ML/TF, due to the low surrender value, no investment-linked

life insurance products and no single premium payments, insurance companies have comprehensive systems for monitoring their customers. However, the Prakas 2010 puts no obligation on insurance companies to identify the BO of beneficiaries, and in practice, insurance companies indicated that they have no explicit policy to identify BO of beneficiaries.

#### *DNFBPs*

244. No information was provided regarding the overall compliance level of DNFBPs with CDD and record-keeping requirements. CAFIU has not conducted any on-site inspections of DNFBPs.

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245. For the real estate sector, MEF indicated that it has conducted examinations for both prudential and AML/CFT compliance and has observed that the real estate sector may not fully understand its AML/CFT obligations, including CDD and STR reporting requirements. Representatives from the sector with whom the assessment team met were adamant that they have no suspicious customers and emphasised that all real estate transactions are done through banks, which is contrary to reports of a high volume of cash transactions within the industry. The assessment team is concerned that the industry's views, processes and practices are not aligned to the ML/TF risks prevalent in the sector.

246. In relation to the casino sector, MEF noted that while the largest casino, which accounts for 44% of the turnover in the sector, understands its AML/CFT requirements, micro casinos do not. The largest casino has implemented CDD and record-keeping policies to mitigate its ML/TF risks, in line with the requirements of the AML/CFT Law and the Prakas on AML and CFT relating to all REs not regulated by the NBC (Prakas 2010). Although the Prakas 2010 applies a threshold of USD 10,000 for CDD when cashing out gambling wins, the largest casino indicated that it conducts CDD for all VIPs customers and for transactions that exceed USD 5,000. Its threshold for CDD used to be USD 3,000 (which is the international standard) but was changed recently following a review and assessment of its business. It is unclear whether all transactions are tracked, however, ongoing monitoring is done through surveillance to detect structuring. For transactions through junket operators, representatives for casinos indicated that they do not track the individual player contributions within a junket group.

247. Lawyers, small auditing firms, and DPMS appear not to fully understand CDD and record-keeping requirements. The DPMS representative who met with the assessment team noted that transactions are most commonly conducted in cash, they do not always ask for a new customer's name or other ID information and they only keep records for two months. This lack of CDD poses a significant risk given the size of these cash transactions.

#### *Application of EDD measures*

##### *Financial Sector*

248. CAFIU indicated that the commercial banks are identifying foreign and domestic PEPs and conducting screening against UN and/or US Treasury Office of Foreign Assets Control (OFAC) lists. Approvals for correspondent banking relationships of commercial banks and new products are done by the NBC and CAFIU examines correspondent banking relationships during on-site inspections, including spot checks of transactions. NBC has sometimes invited CAFIU to assess the risk mitigation factors proposed for new products. There is a long-standing diplomatic relationship between Cambodia and the DPRK and the banking sector has a low exposure to the DPRK. The assessment team noted that most REs that met with the team had a general risk-aversion towards accepting PEPs

as customers, contrary to the FATF standards, which allow PEPs as customers if a proper risk assessment is conducted and enhanced controls are applied. Some REs indicated they have a small number of PEPs as customers, however, most stated they do not have any PEP customers. This raises a concern about whether PEPs are being properly identified by REs. One bank indicated that it classifies all domestic PEPs as high risk and another had a policy of rejecting foreign PEPs from high-risk jurisdictions. Given the high risk of corruption in Cambodia, there may be an increased risk of PEPs in Cambodia using proxies for their financial transactions

249. The definition of PEPs under the AML/CFT Law does not include persons entrusted with prominent public functions in Cambodia (domestic PEPs) or persons who have been entrusted with a prominent function by an international organisation, their family members or close associates. Given the medium high risk of corruption identified in the NRA, this has an impact of reducing the effectiveness of AML/CFT controls by the REs. However, representatives from commercial banks indicated that they conduct screening and carry out enhanced due diligence (EDD) for both domestic and foreign PEPs. They also appear to have correspondent banking relationships with reputable banks. For high risk jurisdictions, one of the commercial banks cited that it has fewer than five accounts held by DPRK nationals, but the rest claimed that they do not have customers from DPRK and the vast majority noted they would not accept new customers from DPRK.

250. MFIs met by the assessment team stated that they do not have procedures in place to identify and manage PEPs, but highlighted that they believe they have no exposure to PEPs as their customer base is confined to low income groups. It was highlighted by CAFIU that some MFIs do in fact have exposure to domestic PEPs and have systems in place to identify the PEPs. MFIs also noted that they have never received any UN Sanctions List from CAFIU or NBC, but explained that they do not have foreign customers and they are not aware of any exposure to high risk jurisdictions. However, it was highlighted by CAFIU and NBC that they sent letters and alerts to MFIs with regard to the UN Sanctions List. The MDI that met with the assessment team noted it has an internal blacklist database which is regularly updated. It is not clear to what extent this includes domestic and foreign PEPs, and UN sanctioned entities and individuals. The financial leasing company that met with the assessment team did not have procedures to handle PEPs, targeted financial sanctions or high risk jurisdictions.

251. SECC indicated that securities firms are identifying both foreign and domestic PEPs, and conduct screening against UN Sanctions Lists and/or OFAC lists. The representatives of securities firms confirmed they subscribe to commercial databases, share an internal database with their banking group, and receive UN Sanctions List information from SECC.

252. Insurance companies have similar processes, which they adopt from their foreign parents. MEF indicated that there is no exposure to high risk jurisdictions in the insurance sector.

253. The money changer representative stated they would not be able to identify foreign PEPs, likely due to a lack of an internal or commercial database. The TPP/specialised bank that met with the assessment team noted they subscribe to a commercial database so would be able to identify PEPs. They also screen their customers against UN, OFAC and Thai sanctions lists, and claimed they prohibit transactions with DPRK.

#### *DNFBPs*

254. No information was provided by regulators or supervisors on whether DNFBPs have risk management systems or how they apply EDD or specific measures for PEPs; new technologies; wire transfers rules; targeted financial sanctions relating to TF; or higher risk countries identified by the FATF. Some of the DNFBP regulators appear to have limited knowledge of these requirements.

255. Real estate agents and developers, small casinos, DPMS, lawyers, small accounting and auditing firms and NGOs generally lack understanding of their obligations in relation to PEPs.

256. In meetings with DNFBPs, only accounting firms with an international presence and the largest casino had a well-established AML/CFT policy and risk management system in place to mitigate ML and TF risks, including the application of EDD measures.

#### *Reporting obligations and tipping off*

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257. The STRs submitted by various REs are recorded in Table 8 in the analysis for IO.6.

258. The banking sector contributes over 95% of STRs received by CAFIU. The level of reporting by other sectors is very low or non-existent. This does not match the risk profile of some sectors, such as the casino, real estate and remittance sectors.

259. The number of STRs submitted by the banking sector has increased significantly in 2015 and 2016 compared to previous years. CAFIU noted that this is due to enhanced awareness by commercial banks and also that the overall quality of STRs had increased in recent years. CAFIU indicated that it provides feedback on the quality of reporting to REs, typically to advise REs to clarify the description in the grounds for suspicion. However, REs generally claimed to have not received feedback from CAFIU and some REs indicated they had submitted more STRs than shown in the statistics provided by CAFIU.

260. The representatives from commercial banks and insurance companies indicated that STRs are normally submitted on failure to complete CDD, suspected fraud, large transactions and/or high frequency transactions which are not in line with customer profile, and in instances of business email compromise. The largest casino indicated STRs have been submitted on counterfeit notes, fake IDs, no gaming activities conducted and customers betting against each other. The money changer representative claimed they did not have any obligation to report suspicious transactions to CAFIU. The largest TPP claimed to have submitted 10 STRs on average per month, but this is not reflected in the statistics provided by CAFIU. This could be due to the TPP having misunderstood its reporting obligation or CAFIU not having captured all STRs submitted manually in its statistics.

261. Prevention of tipping off is generally part of larger FIs' internal policies. For example, MDIs and insurance companies indicated that they have internal policies that prohibit staff from communicating submission of STRs to customers, provide regular training on tipping off prohibition and impose disciplinary action for breaches. STRs are normally sent manually to CAFIU from these institutions (insurance companies do not have access to the electronic system).

#### *Internal controls and legal/regulatory requirements impeding implementation*

262. Generally, commercial banks, insurance companies, securities firms, TPPs with global presence, including the largest TPP and largest casino, have internal controls in place. As highlighted earlier, some small FIs and majority of DNFBPs lack a comprehensive understanding of their AML/CFT obligations.

263. Based on the on-site meetings with private sector representatives, REs who met with the assessment team believed that there are no regulatory requirements that would impede their AML/CFT obligations. LEAs are able to access all information held by REs, under a court order (warrant), for the purpose of investigating ML/TF or relevant predicate offences. CAFIU can access information held by FIs and DNFBPs for the purpose of performing its functions, including assessing

AML/CFT compliance. Other supervisory authorities are able to access all information held by its supervised entities in order to assess AML/CFT compliance.

264. Cambodia has a **low level of effectiveness** for Immediate Outcome 4.



## CHAPTER 6. SUPERVISION

### *Key Findings and Recommended Actions*

#### **Key Findings**

- CAFIU has primary responsibility for AML/CFT supervision in Cambodia. AML supervision has focused on banks and deposit taking MFIs, with few supervisory activities conducted on other FIs and no supervision of DNFBPs conducted as at the time of the on-site. This is problematic given the inherent risk of some DNFBPs and the vulnerabilities stemming from a lack of supervision. As noted in the analysis in Immediate Outcome 4, DNFBPs generally have a low level of awareness of their AML/CFT obligations.
- Most FIs and DNFBPs in Cambodia are required to be licensed by competent authorities. While competent authorities have set up standard operation procedures to check and assess license applications, fit and proper requirements are not thorough for some DNFBPs and for money changers.
- While all supervisors were involved in the NRA process, supervisors have a mixed understanding of ML/TF risk. CAFIU has a reasonably good understanding of the ML/TF risks of the banking sector, however improvements are needed to understand the nature of banking business, and the ML/TF risks of mobile money remitters and the postal service, in particular with respect to TF risk. NBC, SECC and the Financial Industry Department of MEF displayed a good understanding of ML/TF risk, while the Real Estate Trading Division and Casino Management Division of MEF need to improve their understanding of ML/TF risks in the sectors under their remit (and the country level ML/TF risks) and apply a risk-based approach to supervision.
- Risk-based AML/CFT supervision is only applied to the banking sector. CAFIU developed its on-site AML/CFT examination plan based on banks' self-assessments of risk and CTRs and STRs volumes in the last two years. With the exception of banks' self-assessments of risk, no AML/CFT off-site supervision has been conducted.
- No sanctions have been imposed on REs for breaches of AML/CFT obligations, however, CAFIU has identified deficiencies during on-site inspections and required the FI to submit a remedial plan to rectify the deficiencies.
- CAFIU has delivered 36 awareness raising workshops since 2013, however the majority of these were to FIs, with DNFBPs receiving minimal outreach and guidance. Further awareness raising is required for DNFBPs in order to improve their understanding of ML/TF risk and their AML/CFT obligations.

#### **Recommended Actions**

- Substantially more supervisory activity is required to adequately supervise REs in Cambodia. The Compliance and Cooperation Department of CAFIU needs to significantly increase its staffing to ensure adequate coverage of the REs under its remit.



- Cambodia should enhance controls to prevent criminals and their associates from holding prominent positions in money changer businesses, registered MFIs and DNFBBs.
- CAFIU should continue to work with prudential supervisors to better understand sectoral ML/TF risk and to conduct joint supervision on the basis of risk, focusing resources on sectors that pose a higher level of ML/TF risk. The assessment team encourages CAFIU to commence supervision of higher risk DNFBBs (such as the casino and real estate sectors) as a matter of priority.
- Supervisors should make greater use of off-site supervisory tools to ensure more REs are subject to regular compliance monitoring and to maximise the use of limited resources. Additionally, further on-site supervision is required to adequately assess implementation.
- Further outreach is required to improve DNFBBs' understanding of, and compliance with, their obligations. This should be conducted in conjunction with general/prudential supervisors, SRBs and industry associations in order to enhance sectoral understanding and attendance.

265. 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 and R.34 and 35.

### *Immediate Outcome 3 (Supervision)*

266. CAFIU has primary responsibility for AML/CFT supervision in Cambodia, with SECC and MEF also conducting some AML/CFT supervision. There are only six staff members in CAFIU's Compliance and Cooperation Department. As a result of the human resource constraints, supervision is focused on banks and deposit taking MFIs. Few supervisory activities have been conducted by CAFIU on other FIs and no supervision of DNFBBs has occurred. However, in the securities and insurance sectors, SECC and the Financial Industry Department of MEF have included an AML/CFT component in their prudential on-site supervision since 2015 (securities) and October 2016 (insurance).

267. There are formal and informal mechanisms for engagement between CAFIU and prudential supervisors. CAFIU and the General Directorate of Banking Supervision of the NBC have signed a MOU to establish a cooperation framework to prevent detect and suppress ML/TF activities in the banking sector and share information relating to AML/CFT.

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

268. While Cambodia has some fit and proper controls in place to reduce the likelihood of criminals and associations from entering the market, measures are lacking in some DNFBBs and the money changer sector. This reduces the effectiveness of the licensing and registration system given the risks posed by some of these sectors (in particular, the casino sector).

### *Financial Sectors*

269. All FIs in Cambodia are required to be either licensed or registered by a competent authority (NBC and MEF). Banks, some MFIs, financial leasing, securities brokerage firms, insurance companies and money remittance services are required to be licensed, while some MFIs (rural credit operators) and money changers are required to be registered. The licensing regulations require fit and proper

tests be applied to directors, shareholders and managers of the applicant for all licensed FIs and registered MFIs. Money changer businesses are not however subject to such checks when registering with NBC.

270. Licensing authorities have standard operating procedures to check and assess license and registration applications. The fit and proper tests include evaluating shareholders' (from 5% up) and management's personal details, education and experience. Applicants must submit a 'certificate of no criminal record' with their license application. Registered MFIs and money changer businesses are not required to submit a 'certificate of no criminal record' with their registration applications and shareholders, managers and directors are not subject to the same level of scrutiny as licensed FIs.

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271. NBC noted that while it rejects many license applications as they are incomplete or lack the required supporting documents (particularly MFIs), there has only been one instance where an applicant could not provide the certificate during the licensing process, which resulted in NBC not granting the license.

#### *DNFBPs*

272. Casinos and other gambling institutions and real estate agents and developers are required to be licensed by MEF.

273. In relation to casinos, MEF noted that there have been no instances of a license not being granted, or being withdrawn, on the basis of concerns about criminals or their associates being involved, however licence applications (approximately two per year) have been rejected due to the 'certificate of no criminal record' not being provided.

274. Only the licensee's criminal clearance record is required by MEF in the casino licensing process, meaning that checks of the criminal records of directors, shareholders and managers of the applicant are not conducted. This is a significant gap in the licensing process, noting the medium-high ML risk rating of the casino sector. Furthermore, there is no limit to the number of casino licences which can be granted to a company as the government is seeking to enhance the economy in the border regions where the majority of casinos are located.

275. In relation to real estate agents and developers, the licensing process is set out in the Prakas on Professional Certificate and Licensing to Values and Estate Agents 2007. This Prakas outlines standards for certified professional including criminal records, good character, education and experience. MEF noted that there have been no licensing applications rejected.

276. The authority for licensing and supervising DPMS has been transferred from NBC to the MOC, however some DPMS were unaware of this change. Sales figures are still required to be reported monthly to NBC. There is no licensing process for DPMS.

277. Professions (lawyers and notaries, accountants and auditors) are required to be registered as members of self-regulatory bodies (SRBs). Lawyers must be members of the Bar Association of the Kingdom of Cambodia (BAKC), and accountants and auditors have to be members of Kampuchea Institute of Certified Public Accountants and Auditors (KICPAA). The Law on the Bar sets out eligibility for the Bar, and BAKC requires criminal record, education and experience checks to be undertaken prior to admission. KICPAA has governing regulations and a code of ethics, and requires prospective members to submit a 'certificate of no criminal record' from MOJ and a 'letter of good standing' from their employer.

### *Supervisors' understanding and identification of ML/TF risks*

278. Cambodia's NRA exercise involved all AML/CFT supervisors and in general the exercise enhanced supervisors' understanding of the ML/TF risks within their regulated sectors. Some supervisors (e.g. Real Estate Trading Division of MEF) however stated they did not agree with findings, which illustrates that authorities do not have a shared perception of the ML/TF risks in various sectors.

279. Cambodia intends to revise its NRA every five years, which will support supervisors' identification and understanding of ML/TF risks.

280. CAFIU coordinated the NRA but its actual input into the process was limited. It has a reasonably good understanding of ML/TF risks within the banking sector, demonstrated through the issuance of guidelines on conducting ML/TF risk assessments to the banking sector and one-on-one support and guidance given to these entities to fine-tune their risk assessments.

281. CAFIU's understanding of ML/TF risks within other sectors is not as strong. Improvements are needed to understand the nature of business and ML/TF risks of mobile money remittance and the postal service, in particular with respect to TF risk. CAFIU had a limited understanding of DNFBPs' ML/TF risks prior to the NRA process and it improved somewhat through this process. However, in order for CAFIU to fully comprehend the sectoral risks, it needs to improve its knowledge of the businesses of DNFBPs, in particular of business activities within the casino and real estate sectors.

**Table 14: Number of REs producing ML/TF risk assessments in 2015**

Entity Type	
Commercial Bank	38
Specialised Bank	9
Deposit taking MFI	7
Licensed MFI	28
<b>Total</b>	<b>82</b>

282. NBC displayed a comprehensive understanding of ML/TF risk, and of the benefits of FIs under its remit improving their understanding of risk in order to pay closer attention to high risk transactions. NBC shares prudential supervisory information received from FIs with CAFIU every month, however this material has not included any information relating to ML/TF risk, other than the information relevant to entity-level risk assessments which can be drawn from prudential inspection reports.

283. SECC and the Financial Industry Department of MEF (insurance regulator) have a good understanding of the risks in the securities and the insurance sectors respectively. The insurance regulator noted that while the ML/TF risk in the insurance sector is low, immediate action is needed to commence supervision. Insurance companies have conducted risk assessments according to their own risk management policies and submitted their assessment results to MEF for reference.

284. The Real Estate Trading Division and Casino Management Division of MEF displayed limited understanding of ML/TF risks, with neither regulator believing their sectors posed a medium-high risk, as identified in Cambodia's NRA. The Casino Management Division noted its input into the NRA process was limited and the Real Estate Trading Division noted that its information did not always fit neatly into the standardised NRA template. Neither Division has conducted ML/TF supervision, which may be a factor in their current understanding of ML/TF risk.

### *Risk-based supervision of compliance with AML/CFT requirements*

#### *Financial Sectors*

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285. Risk-based supervision is only applied to the banking sector. However, CAFIU is developing a risk-based AML/CFT examination plan from 2017. Risk-based supervision in the banking sector has been based on banks' self-assessments of risk (including aspects of customer risk, transaction risk, products, services and delivery channel risk as well as geographical and location risk) and on CTRs and STRs volumes over the last two years.<sup>49</sup> Due to human resource constraints, only 15 on-site AML/CFT examinations of commercial banks and deposit taking MFIs were conducted from 2014 to December 2016. Eleven of these inspections were conducted jointly with NBC in conjunction with the bank's prudential inspection, with NBC focusing on prudential issues and CAFIU on AML/CFT. NBC provides CAFIU with its annual inspection plan and CAFIU chooses which inspections to join based on risk factors.

286. In the securities and insurance sectors, SECC and the Financial Industry Department of MEF have included an AML/CFT component in their prudential on-site supervision. SECC included AML/CFT into its inspection remit in 2015 and inspects all 10 securities firms each year. The life insurance industry in Cambodia has only been in operation for three years. In October 2016, MEF commenced examining AML/CFT compliance alongside prudential supervision in on-site inspections of insurance firms. As at the time of the on-site, only one insurance company's compliance with AML/CFT requirements had been assessed and the inspection report was being finalised by MEF.

287. CAFIU has conducted limited off-site supervision, including:

- reviewing and providing feedback on self-risk assessments in the banking and MFI sectors (82 in 2015),
- reviewing remedial action reports received from banks and MFIs in response to on-site examinations (four in 2016),
- reviewing compliance reports provided by some banks and MDIs as part of on-site examinations (four in 2016), and
- reviewing internal audit reports provided during on-site examinations or sent directly to CAFIU (seven in 2016).

288. CAFIU does not require REs to provide information periodically for AML/CFT off-site monitoring, even though this is required under both the Prakas 2008 and the Prakas 2010 (e.g. AML/CFT internal audit reports are required to be submitted annually). CAFIU explained this is because of its limited human resources and lack of capacity to conduct additional off-site supervision. CAFIU also noted that its compliance staff check the appropriateness of RE's internal audit reports

<sup>49</sup> CAFIU's 2017 risk based supervision plan has included intelligence information as a factor impacting the selection of REs for on-site inspections.

during on-site examinations. CAFIU would increase its efficiency and effectiveness if it made more use of off-site supervision tools.

289. In 2016, CAFIU developed an examination manual which is comprehensive in scope and will support its conduct of on-site and off-site examinations in the future. The manual includes guidance on pre-on-site examination preparation, conducting the on-site examination and post on-site examination. According to the manual, on-site examinations check whether FIs have the following elements implemented in practice: board and/or management oversight on AML/CFT, AML/CFT policies and procedures, a compliance officer at the management level, AML/CFT internal controls, CDD measures, STR and CTR reporting systems, a record-keeping system and a staff awareness and training program.

**Table 15: AML/CFT On-site Examinations by CAFIU**

Entity Type	2014		2015		DEC 2016	
	CAFIU	CAFIU/NBC	CAFIU	CAFIU/NBC	CAFIU	CAFIU/NBC
Commercial Bank	-	6	-	2	-	3
Specialised Bank	-	-	-	-	-	-
Deposit taking MFI	1	-	2	-	1	-
Licensed MFI	-	-	-	-	-	-
Total	1	6	2	2	1	3
<b>Yearly Total</b>	<b>7</b>		<b>4</b>		<b>4</b>	

**Table 16: General/Prudential On-site Examinations with an AML/CFT component by Supervisors**

Entity type		2015	NOV 2016
Insurance Company		-	1
Securities Firm		10	10

290. According to the findings in the NRA, supervisors recognised the supervision of payment service providers and payment system operators needs to be enhanced due to the change in the business environment. Supervisors are cooperating to develop a joint supervision framework in securities, insurance and payment service sectors.

#### *DNFBPs*

291. AML/CFT supervision of DNFBPs has not yet commenced, which is problematic given the inherent risk of some DNFBPs and the vulnerabilities stemming from a lack of supervision. This is particularly concerning as the casino and real estate sectors were assessed to be medium high risk (the highest rating assigned to a sector) in the NRA. Supervisors have identified that supervisory action needs to commence in these sectors and the assessment team encourages Cambodia to do so as a matter of priority. Cambodia intends to commence joint supervision between CAFIU and the prudential supervisors in mid-2017 or 2018.

*Remedial actions and effective, proportionate, and dissuasive sanctions*

292. There are several types of sanctions supervisors can impose, including: (1) a warning, (2) a reprimand, (3) the prohibition or limitation to conduct any transactions for a period of time as indicated by the supervisory authorities, (4) the revocation of the business license, (5) the proposal to a demotion of relevant officials or directors of the RE, (6) a fine (in money), (7) an order to a temporary freezing on means and proceeds of ML and TF, and (8) a complaint to the court while there is serious violation of the provisions of the present law and other relevant regulations that leads to the damage of public interest and national security. The sanctions available to supervisors are not likely to be dissuasive unless applied at the highest end of the available range (see analysis of R.35 in the TC annex).

293. In practice, neither CAFIU nor other supervisors have imposed any sanctions on REs for breaches of AML/CFT obligations, but CAFIU has identified deficiencies during on-site inspections and required the bank or deposit taking MFI to submit a remedial plan within three months in response to the examination findings and recommendations.

**Table 17: Number of Recommendations from Inspection Reports given by CAFIU to Banks and MFIs**

	2013	2014	2015	NOV 2016
Commercial Bank	-	17	16	31
Specialised Bank	-	-	-	-
Deposit Taking MFI	-	5	18	9
MFI	-	-	-	-

294. According to an example report provided by CAFIU, the RE promptly implemented the corrective action set out in the recommendations in the on-site report. However, some recommendations in the report, such as “RE must comply with the Cambodia law and regulations on the reporting and confidentiality of information”, read as if the RE had violated the AML/CFT regulations and sanctions should be applied. CAFIU should review the adequacy of the remedial actions contained in its on-site reports.

*Impact of supervisory actions/criminal proceedings on compliance*

295. As noted above, following on-site examinations CAFIU has recommended FIs take corrective measures to improve compliance. The most common recommendations relate to the board or management implementing their AML/CFT responsibilities, reviewing and amending AML/CFT policies and procedures, appointing a compliance officer, enhancing the detection and submission of CTR/STRs, conducting internal audits on AML/CFT and providing regular staff training on AML/CFT.

296. CAFIU noted that REs which receive such recommendations in their examination reports regularly update CAFIU of their progress in addressing the identified deficiencies. While this is acknowledged and is a positive development, the low number of inspections conducted and the limited sectors currently subject to AML/CFT supervision mean that the impact of supervisory actions on compliance is minimal.

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

297. CAFIU has held a number of workshops to promote FIs' AML/CFT understanding, however there has been little outreach to or interaction with DFNBP sectors. The below table sets out the awareness raising workshops held by CAFIU between 2013 and December 2016.

**Table 18: AML/CFT awareness raising workshops from 2013 to 2016**

	2013	2014	2015	2016
Number of programs organised for FIs	16	7	4	3
Number of programs organised for casino sector	-	-	4	1
Number of programs organised for real estate sector	-	-	-	1

298. As noted above, CAFIU issued its 'Guidelines on Undertaking Money Laundering and Terrorist Financing Risks Assessment for Banking and Financial Institutions' in 2015 to assist banking and other FIs to identify their ML/TF risks, and required all banks and licensed MFIs to develop ML/TF risk assessments and submit them to CAFIU for review. CAFIU met with each bank individually to provide feedback on its risk assessment and highlight areas for improvements. CAFIU noted that all banks had to make changes to their original assessments and that their edited assessments were of a much higher quality.

299. Awareness raising to DNFBNPs and smaller FIs is required in order to enhance these sectors' understanding of ML/TF risk and their AML/CFT obligations.

300. Cambodia has a **low level of effectiveness** for Immediate Outcome 3.

### *Key Findings and Recommended Actions*

#### **Key Findings**

- Relevant competent authorities have not yet identified, assessed or understood the vulnerabilities and the extent to which legal persons created in Cambodia or foreign trusts operating in Cambodia can be or are being misused for ML/TF.
- There are no mechanisms in place to mitigate the risks posed by bearer shares, bearer share warrants, nominee shares or nominee directors. However, in practice the risk posed by bearer shares and bearer share warrants appears to be low, as there are reportedly none in the Cambodian market at present.
- Information on the creation and types of legal persons is widely available in both Khmer and English. The vast majority of legal persons in Cambodia are registered in the online business register. Basic information held in the register is publicly available online and competent authorities can gain timely access to shareholder information held by MOC. However, there are some concerns regarding the accuracy and currency of this information.
- The best source of beneficial ownership information is the information collected by REs pursuant to their CDD obligations. However, many DNFBPs and some non-bank FIs fail to comply with their obligations (see analysis of IO. 4) and there are some deficiencies in the CDD obligations themselves (see analysis of R.10 and R.22). Competent authorities have adequate powers to gain access to this information. However, they have very rarely sought to gain access so it is difficult to determine whether reliable and accurate beneficial ownership information can be obtained in a timely manner.
- While trusts cannot be created under Cambodian law, there is no explicit prohibition on foreign trusts operating in Cambodia. There are no mitigating measures in place to prevent the misuse of foreign trusts for ML/TF purposes. There are no requirements for trustees of foreign trusts operating in Cambodia to disclose their status to FIs or DNFBPs when forming a business relationship or carrying out an occasional transaction above the threshold.
- The sanctions available under Cambodian law for failure to comply with information requirements are not likely to be dissuasive and obligations on legal persons and REs are rarely enforced, as such the sanctions system cannot be said to be operating effectively.

#### **Recommended Actions**

- Cambodia should undertake a comprehensive ML/TF risk assessment of all types of legal persons and legal arrangements (both foreign trusts operating in Cambodia and domestic trusts to be introduced under a general trusts law currently under consideration) and develop and implement a strategy to effectively mitigate those risks.
- In order to prevent the misuse of legal persons and arrangements, Cambodia should legislate to:
  - prohibit bearer shares and bearer share warrants or introduce mechanisms to ensure they are not misused for ML/TF.
  - introduce mechanisms to ensure that nominee directors and nominee shareholders are



- not misused for ML/TF (or explicitly prohibit nominees, if that is Cambodia's intention).
- provide MOC with powers to monitor compliance by legal persons with their obligations to update information held in the business register and file annual declarations, including powers to conduct offsite monitoring, on-site inspections and order the production of information or documents.
- increase the sanctions available for failure to comply with information requirements.
- MOC should monitor and enforce compliance by legal persons with their obligations to update information held in the business register and file annual declarations by applying sanctions to legal persons who fail to comply. Sanctions for non-compliance should be increased so as to be dissuasive.
- Supervisors should monitor and enforce compliance by REs, including NGOs, with the requirement to identify the ultimate beneficial owner in accordance with their CDD obligations, noting that current CDD obligations in Cambodia are not sufficient to meet the FATF standards on beneficial ownership and also require amendment.

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

### *Immediate Outcome 5 (Legal Persons and Arrangements)*

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

302. Information on the different types of legal persons (other than associations and NGOs) in Cambodia is contained in the Law on Commercial Enterprises. The processes for creation of those legal persons are set out in the law on Commercial Enterprises and the Law on Commercial Rules and Register. These laws are available online in both Khmer and English.<sup>50</sup> Summarised information may also be found on the Cambodian Council for Development website.<sup>51</sup> Information on the types and processes for creation of associations and NGOs in Cambodia is contained in the Law on Associations and NGOs. This law is also available online in both Khmer and English.<sup>52</sup> There are currently no types of legal arrangements that can be established under Cambodian law.<sup>53</sup>

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

303. Cambodia has not demonstrated an understanding of the vulnerabilities and extent to which legal persons and arrangements in Cambodia can be, or are being misused for ML/TF. The ML/TF

<sup>50</sup> <https://www.businessregistration.moc.gov.kh/laws-and-regulations/> (Khmer and English versions)

<http://www.cambodiainvestment.gov.kh/laws-regulation.html> (English versions)

<sup>51</sup> <http://www.cambodiainvestment.gov.kh/investors-information/company.html>

<sup>52</sup> <https://cambodia.ohchr.org/en/news/ohchr-issues-its-analysis-lango;>

<http://ccc-cambodia.org/index.php/membership-organization/membership/74>

<sup>53</sup> Cambodia provided the evaluation team with information regarding arrangements that can be established under Cambodian law, known as financial trusts. These are arrangements whereby a development partner (NGO) enters into an agreement with the Cambodian Government to entrust funds to a specified bank or MFI for the purposes of developing the banking and microfinance sector. The Government then enters into an agreement with the bank or MFI, which outlines the terms and conditions for the use of the funds. Three to five senior managers or shareholders of the bank or MFI are appointed as 'trustees'. However, these trustees do not have oversight or control of the funds, which become part of the subordinated debt of the bank or MFI. Financial trusts do not have a separate legal personality from the bank or MFI. The beneficiaries of these arrangements are the Cambodian people who receive low interest loans from the banks and MFIs. While these arrangements are referred to as 'trusts' in name, they are not trusts in nature and the evaluation team has not considered them as part of its analysis of IO5 or Recommendation 25.

risks associated with different types of legal persons were not considered in Cambodia's recent NRA and neither were the specific TF risks or vulnerabilities within the NPO sector. No separate assessment of these risks has been conducted. The particular risks associated with permitting legal persons to issue bearer shares and bearer share warrants and of allowing legal persons to have nominee shareholders and nominee directors are not well understood by relevant competent authorities. When asked, however, CAFIU were able to advise the number of STRs received that related to legal persons (see table 19 below). The statistics show that the number of STRs related to legal persons has increased significantly year to year since 2013.

**Table 19 – Number of STRs related to legal persons received by CAFIU**

Year	Number of STRs related to legal persons
2013	6
2014	45
2015	106
2016	170

304. While trusts meeting the FATF definition may not be established under Cambodian law, there is no explicit prohibition in Cambodian law that prevents foreign trusts from being created in Cambodia under another jurisdiction's law, or trusts established abroad from operating in Cambodia (including opening and operating a bank account – although this cannot be done in the name of the trust). The ML/TF risks associated with foreign trusts operating in Cambodia have not been identified or assessed and are not understood. Cambodian authorities are not aware of foreign trusts operating in Cambodia and do not acknowledge that foreign trusts could pose ML/TF risks. Cambodia did assess the ML/TF risks posed by financial trusts as part of their NRA and found the risk to be medium low.<sup>54</sup> However, as explained above, financial trusts have not been considered as part of the analysis of IO.5. To date, CAFIU has not received any STRs relating to legal arrangements.

305. Cambodia intends to introduce a general trusts law in 2017 in order to encourage foreign investment into the country. While relevant competent authorities demonstrated awareness that there would be increased ML/TF risks associated with the introduction of trusts, a formal assessment of the risks has not been conducted.

#### *Mitigating measures to prevent the misuse of legal persons and arrangements*

306. The main measures implemented to increase transparency of legal persons in Cambodia are the public availability of basic information contained in MOC's Business Registration website and the access for competent authorities to beneficial ownership information collected by REs.

307. The Online Business Register focuses on legal ownership and includes basic information on all types of legal persons created in Cambodia, including companies, partnerships and foreign businesses. The vast majority of legal persons in Cambodia are registered in the online register, with the exception of any merchant whose profits are exempted from taxation (e.g. street merchants) (Article 12, Law on Commercial Rules and Register). Information contained in the register is verified by the Registrar and basic information on legal persons is publicly available through the Business Registration website (see analysis of R.24). . . . Lists of shareholder names are not publicly available; however, competent authorities can gain access to this information through a written request to MOC.

<sup>54</sup> While financial trusts were given a medium low risk rating in the NRA, MEF (the financial trust regulator) recognises that the ML/TF risk posed by financial trusts is, in fact, low. This is acknowledged in the NRA as well.

308. An issue of some concern is the accuracy and currency of the information contained in the online register. The Online Business Register was only introduced in 2015, which means that, at the time of the on-site, information contained in the register was no more than two years old. There are also legal obligations on legal persons to update the information in the online register whenever it changes (within 15 days of the resolution date) and to file annual declarations. However, MOC does not have monitoring powers and there is little evidence of these obligations being enforced. MOC reports that over 50% of legal persons fail to file their annual declaration by the due date but no sanctions have been applied. Ultimately, MOC reports, the vast majority of legal persons do file their annual report, just not in a timely manner. While some fines have been imposed on legal persons for failure to update information in the online register, these failures were only discovered after the companies updated their information or filed an annual report and it was discovered that the update was not made within the 15 day timeframe.

309. GDT has a separate tax registration system, through which basic information on legal persons is also collected. The identity of the Chairman or company owner is verified by GDT upon registration. However, if the Chairman or owner is foreign and lives abroad, they are able to send a representative, which reduces the effectiveness of this verification mechanism. Legal persons are required to inform the GDT of any changes made to their registration information within 15 days. Unlike MOC, GDT has powers under the Law on Taxation to compel the production of documents and to conduct investigations (Articles 99 and 100). However, there have been few fines imposed for failure to notify the GDT of changes to registration. A more significant number of fines have been imposed for failure to register (see Table 20 below).

310. Legal persons are permitted to issue bearer shares and bearer share warrants in Cambodia and there are no measures in place to ensure they are not misused for ML/TF.<sup>55</sup> However, the ML/TF risk posed by bearer shares and bearer share warrants in Cambodia is low. MOC advised that there are currently no bearer shares in existence in the Cambodian market. Legal persons are required under the Law on Commercial Enterprises (Article 228) to notify the Office of the Registrar of any securities issued to the public. The information provided includes the name of each shareholder, the number of shares held by each shareholder, the class of share (if any) and the shareholder resolution. In addition, companies are required to amend their articles of incorporation when they create a new class of shares (Article 238) and file the amendments with the MOC within 15 days of the meeting at which the amendment was approved. As such, MOC are confident that they would be aware if shares had been issued in bearer form. There is currently, however, no system in place that allows MOC to search through the types of shares issued by companies to determine how many shares have been issued and of which types, except if they search through each company individually.<sup>56</sup>

311. There is no explicit prohibition in Cambodian law on legal persons having nominee shares or nominee directors and no measures have been implemented to ensure that they are not misused for ML/TF. MOC advised that nominee shares and nominee directors are not permitted under the Cambodian legal framework because legal persons are required to register the names of their directors and shareholders and if they provided the name of a nominee shareholder or director this would be considered false or misleading information. MOC is not aware of any nominee shares or nominee directors in existence in Cambodia and advised that if they were discovered, they would be liable for making a false or misleading report under the Law on Commercial Rules and Register (Article 42 new). As there have been no prior examples of this, Cambodia was unable to demonstrate the accuracy of this statement to the assessment team.

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<sup>55</sup> Cambodia is considering amending the Law on Commercial Enterprises to prohibit bearer shares and bearer share warrants.

<sup>56</sup> MOC are intending to enhance their Online Business Registration system so that it is possible to search for types of shares and numbers of each type.

312. There are currently no mitigating measures in place to prevent the misuse of foreign trusts for ML/TF purposes aside from the CDD obligations imposed on REs, which require the collection of beneficial ownership information.

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

313. Competent authorities are easily able to access basic information on all types of legal persons in a timely manner because, excluding shareholder information, basic information is publicly available online through the MOC's Business Registration website. However, the lack of compliance monitoring and limited enforcement of obligations to update information and file annual declarations mean the currency and accuracy of the information held in the register is questionable. Cambodia only transitioned to an online register in December 2015, meaning it had only been in place for one year at the time of the on-site. MOC is confident that the online registration system will lead to improved monitoring and enforcement of information requirements in the future.

314. Information collected by MOC regarding shareholders is not publicly available and MOC does not have any specific information sharing arrangements with competent authorities. However, competent authorities are able to gain access to shareholder information within 3-5 working days by means of a letter of request to MOC, or by using their powers under relevant legislation. ACU advised that they were able to gain access to information held by MOC within one week, which was useful for the purposes of their investigation. MOC ensures this information is kept up to date by requiring companies to notify the Office of the Registrar of any securities issued to the public (Law on Commercial Enterprises, Article 228).

315. GDT signed an MOU with CAFIU in 2016 for the purpose of combating ML, TF and tax evasion, which provides for the sharing of information upon request. To date, no requests have been made under this MOU. However, the MOU contains provisions that allow information to be shared orally or by email or fax in emergencies and require each agency to designate a responsible officer to ensure the quick and efficient exchange of information. GDT does not have information sharing arrangements with other competent authorities. However, LEAs would be able to use their powers to access relevant information held by GDT.

316. REs, including TCSPs, are obliged to collect beneficial ownership information as part of the CDD process. The level of compliance amongst banks with their CDD obligations is high, however, the quality of the beneficial ownership information held by banks is unknown. Competent authorities have adequate powers to gain access to this information in a timely manner. However, competent authorities have very rarely sought to gain access to beneficial ownership information. There are some deficiencies in the CDD obligations imposed on REs (see analysis of R.10 and R.22). Further, the failure by a majority of DNFBPs, which in Cambodia includes NGOs, and some non-bank FIs to comply with their CDD obligations (see analysis of IO.4 and IO.10) may hinder the ability of competent authorities to access adequate, accurate and current beneficial ownership information from these REs. NGOs with which the assessment team met during the on-site were not even aware of their status as REs or their CDD obligations.

Competent authorities can also use their powers to gain access to beneficial ownership information held by companies themselves (see analysis of R.31). Companies are required under the Law on Commercial Enterprises to maintain a securities register (Article 109) and to prepare a list of shareholders before every meeting, which contains the number of shares held by each shareholder (Article 211). They are not, however, specifically required to obtain and hold beneficial ownership information beyond the immediate shareholder.

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

317. As outlined above, there are currently no types of domestic legal arrangements that can be established under Cambodian law, but foreign trusts may operate in Cambodia.

318. While no Cambodian competent authority reported ever seeking basic or beneficial ownership information on foreign trusts, competent authorities could use their powers to access basic and beneficial ownership information on legal arrangements that is held by REs pursuant to their CDD obligations (see R.25 in the TC Annex for more detail). However, as with legal persons, deficiencies in CDD obligations (see analysis of R.10 and R.22) and the failure by a majority of DNFBPs and some non-bank FIs to comply with their CDD obligations (see Chapter 5 for more detail) may hinder the ability of competent authorities to access adequate, accurate and current basic and beneficial ownership information on legal arrangements from these REs.

319. Competent authorities could also gain access to basic and beneficial ownership information about foreign trusts operating in Cambodia through international cooperation mechanisms, as described in Chapter 8. However, access may not be timely and in some instances jurisdictions may not cooperate. To date, Cambodia has never made a request for international cooperation to identify or exchange basic or beneficial ownership information.

*Effectiveness, proportionality and dissuasiveness of sanctions*

320. A variety of sanctions are available under the Law on Commercial Enterprises and the Law on Commercial Rules and Register for legal persons that fail to comply with their registration, information update and annual declaration requirements (as described under R.24). The fines, however, are not of a sufficient magnitude that they are likely to be dissuasive.<sup>57</sup>

321. Over the last 12 months, MOC has applied only 37 sanctions to legal persons who have failed to update information in the online register before the due date. The fines imposed (KHR 500,000 = USD 125) are not sufficiently punitive so as to be dissuasive and are only applied after the legal person does update their information.

322. MOC has not applied any other sanctions to legal persons who fail to comply with their obligations. This is the case even though MOC reports that more than 50% of legal persons fail to submit their annual declaration by the due date. MOC is confident that the online registration system will improve detection of non-compliance and more sanctions will be imposed in the future.

323. The Law on Associations and NGOs includes sanctions for failure to register with MOI (domestic associations and NGOs) or MFA-IC (foreign associations and NGOs) (as described under R.24). These sanctions, which include the associations and NGOs being shut down and potential expulsion of foreign persons working for unregistered foreign associations and NGOs are more likely to be dissuasive. However, to date, no sanctions have been imposed on foreign associations and NGOs because according to MFA-IC all foreign associations and NGOs are registered. Likewise, no sanctions have been imposed on domestic associations and NGOs because MOI is still in the process of reviewing the domestic association and NGO sector to determine which associations and NGOs are still active.<sup>58</sup>

324. The Law on Taxation also includes sanctions for failure to register with GDT or notify GDT of any changes to registration information (as described under R.24). As shown in the table below, while GDT have imposed a reasonable number of fines for failure to register over the last 24 months, very

<sup>57</sup> MOC advised the evaluation team that they have applied to the Minister to have the applicable penalties increased.

<sup>58</sup> Once this review is complete, MOI is intending to take a more active role in monitoring and enforcing information update requirements.

few fines have been imposed for failure to notify GDT of changes to registration information. In addition, the fines that have been imposed have been significantly lower than those that are available under the Law on Taxation. This is because GDT has never charged anyone with a criminal violation of the Law on Taxation, only negligent or careless failure to comply with registration and information requirements. These lower penalties that have been applied are not sufficiently punitive so as to be dissuasive.

**Table 20: Penalties imposed by GDT for failure to comply with information requirements**

<i>Year</i>	<i>Offence Committed</i>	<i>Number of Enterprises</i>	<i>Penalty<sup>59</sup></i>
2013	Failure to register and failure to notify	361	KHR 145,430,092 (USD 35,834)
2014	Failure to register and failure to notify	384	KHR 713,738,775 (USD 175,990)
2015	Failure to register	326	KHR 985,377,420 (USD 241,311)
	Failure to notify	6	KHR 12,010,200 (USD 2,959)
2016	Failure to register	286	KHR 903,458,344 (USD 222,670)
	Failure to notify	20	KHR 41,260,600 (USD10,169)
<i>Total:</i>		1383	KHR 2,801,275,431 (USD 690,163)

325. There are also sanctions available to supervisors under the AML/CFT Law for REs, including NGOs that fail to comply with their CDD obligations. The sanctions available to supervisors are not likely to be dissuasive unless applied at the highest end of the available range (see analysis of R.35 in the TC annex). In practice, no such sanctions have been applied to REs.

326. Cambodia has a **low level of effectiveness** for Immediate Outcome 5.

<sup>59</sup> USD estimations are approximate as at June 2017.

### Key Findings and Recommended Actions

#### Key Findings

- Overall, Cambodia is responsive to incoming international requests for cooperation, as permitted by limited capacity and resources, but its use of outgoing international cooperation is limited and does not match its ML risk profile.
- Cambodia has a reasonable legal framework for international cooperation. However, in the absence of a general MLA law (currently in draft), there is no domestic legal framework for the provision and receipt of MLA outside of the ASEAN MLA Treaty and special laws relating to drugs, corruption and terrorism.
- Cambodia is responsive to incoming requests for international cooperation and has provided MLA and extradition to a range of jurisdictions, even in instances where there is no relevant treaty or law in place, on the basis of ratified international conventions and the principle of reciprocity. However, the Central Authority is significantly under-resourced and technical skills in international cooperation require improvement. In addition, there is no process for prioritisation and execution of international cooperation requests (for example, on the basis of risk or other factors) and no case management system to monitor progress of requests. A comprehensive database to maintain statistics on MLA and extradition is also lacking.
- Other than CAFIU, competent authorities do not have any guidelines on the time it should take to respond to requests for formal or informal cooperation. As such, the response timeframes are *ad hoc* and unpredictable. The extradition process is dependent on the Court to make decisions regarding the execution of requests, which may cause delays.
- Cambodia's use of formal international cooperation is more limited than its provision of assistance. The lack of international cooperation requests relating to ML is inconsistent with Cambodia's risk profile given the transnational nature of Cambodia's main proceeds-generating crimes. The limited use of international cooperation, in the context of ML, appears to be the product of a limited awareness of formal channels of international cooperation; the absence of mechanisms amongst Cambodian authorities to select, prioritise and make requests for assistance; and the lack of a proactive approach to combating ML and pursuing criminal assets within Cambodia. Cambodia has not yet repatriated confiscated assets to a foreign jurisdiction.
- In relation to informal cooperation, Cambodian competent authorities, including CAFIU, GCNP, ACU, GDCE, NBC and SECC, are responsive to requests for international cooperation received from foreign counterparts and have generally provided timely assistance of satisfactory quality. However, competent authorities (with the exception of SECC) make substantially fewer requests for international cooperation than they receive, which is inconsistent with Cambodia's risk profile.
- Cambodia has never made or received a request for international cooperation to identify or exchange basic or beneficial ownership information. Cambodia is in principle able to cooperate with foreign competent authorities through a formal MLA request or under existing MOUs or other informal cooperation arrangements. However, deficiencies in relation to transparency of beneficial ownership identified in the analysis of IO.5 may, in practice, impede the ability of competent authorities to provide formal or information cooperation in this area.

**Recommended Actions**

- The draft MLA law should be finalised and passed in order to provide a broad legal basis for MLA. Cambodia should also continue to negotiate additional MLA and extradition treaties with priority countries, as such treaties allow for more efficient provision of assistance between parties.
- Human resources in the Central Authority should be significantly increased, to at least 10 permanent staff members, to manage the Central Authority's workload of incoming requests and increase the number of outgoing requests. Training and capacity building on making and processing requests for international cooperation should be provided.
- Training should also be provided to prosecutors and judges on the circumstances in which requests for MLA and extradition should be made and the method for making requests, in order to increase Cambodia's use of formal channels of international cooperation.
- Cambodia should develop a clear process for prioritisation and execution of MLA and extradition requests, introduce a case management system to monitor progress of MLA and extradition requests, and develop and maintain a database of statistics on MLA and extradition.
- CAFIU should conclude MOUs with the broadest possible range of foreign FIUs to ensure that its ability to provide timely international cooperation is not hindered by the requirement for an MOU between the parties. CAFIU should prioritise concluding MOUs on the basis of risk, giving priority to higher risk situations, for example, where the lack of MOU does hinder the timely provision of cooperation or the country is a transit or destination country for transnational crime.
- Competent authorities should adopt a more proactive approach and better utilise existing arrangements to seek informal international cooperation and not only to respond to requests from foreign counterparts.
- Cambodia should establish mechanisms to ensure that if a foreign request for beneficial ownership information is received, it is able to provide this information in a timely manner.

327. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The Recommendations relevant for the assessment of effectiveness under this section are R.36-40.

***Immediate Outcome 2 (International Cooperation)******Providing constructive and timely MLA and extradition***

328. Cambodia has a Central Authority within MOJ to facilitate MLA and extradition and is generally responsive to incoming requests for formal cooperation, as resources permit. However, the Central Authority is significantly under-resourced, with only one permanent staff member and two temporary staff members. The current workload is managed by distributing requests to other MOJ staff outside of the Central Authority who have experience in MLA and extradition. Each request is assigned to a dedicated case officer.

329. Cambodia does not have a process for prioritisation of international cooperation requests. Requests are generally executed in the order in which they are received unless the Minister for Justice deems that they are urgent. The lack of prioritisation means that Cambodia does not take into account ML or TF risk when considering requests.



330. The Central Authority does not have a case management system and has to refer to hard copy records in order to determine statistics. MOJ underwent a restructure in 2014 and the Central Authority has acknowledged that it may not have access to all records of past international cooperation. As such, it is difficult to obtain accurate data regarding past cooperation. Currently, requests are being recorded manually in a logbook and monthly and annual reports are being provided to management.

#### *MLA requests received*

331. Cambodia can provide MLA to another country on the basis of special laws relating to drugs, corruption and terrorism, the ASEAN MLA Treaty, the principle of reciprocity or ratified international conventions to which both countries are parties. Cambodia has drafted a general MLA law. However, this law had not been passed at the time of the on-site.

332. Cambodia is very responsive to requests for MLA and rarely refuses requests even in instances where there is no relevant law or treaty in place. In the four years between 2013 and 2016, Cambodia received 133 MLA requests from 35 different countries; one of these requests related to ML and none related to TF. Cambodia was unable to advise the assessment team exactly how many requests related to ML predicate crimes. However, annual reports shared with the assessment team reveal that a large number of the requests related to fraud and drug trafficking, which are two of Cambodia's most significant ML threats. Requests also commonly related to counterfeiting currency, murder and sexual exploitation, in particular sexual exploitation of children. There was one request relating to terrorism. Of the 133 requests received, only one was refused on the basis that the country requested to conduct its own independent investigation in Cambodia and this is not constitutionally permissible (Cambodia is able to conduct joint investigations but a foreign jurisdiction cannot conduct their own investigation in Cambodia). The number of requests outstanding is not known to the assessment team, however, Cambodia did advise that the single request relating to ML has not yet been concluded.

333. MLA requests may be made directly to the Central Authority or transmitted via diplomatic channels. There is no policy or guidance on the time it should take for the Central Authority to execute MLA requests. The timeframe is dependent on the nature and quality of the request and, as such, response times are ad hoc and unpredictable. While Cambodia does not have a process for prioritisation, if an MLA request is marked as urgent by the Minister for Justice, it may be fast-tracked. There are no specific grounds on which the Minister can or must mark a request as 'urgent', it is a matter for the Minister's discretion. It is not a regular occurrence and it is determined on a case by case basis.

334. Only limited feedback was received from foreign jurisdictions regarding the time taken to process incoming requests and the quality of the information provided by authorities. However, feedback received from one jurisdiction was that the response duration for MLA requests has ranged between 105 and 150 days. Feedback from another jurisdiction with regard to the only request it has made to Cambodia was that it received a satisfactory response within a reasonable timeframe. Although feedback was limited, the willingness of other jurisdictions to continue lodging requests, and lack of any specific criticisms, are positively noted by the assessment team.

335. While there are provisions in the Law on Anti-Corruption and the ASEAN MLA Treaty regarding the repatriation of confiscated assets to foreign requesting jurisdictions, there is no mechanism in place for this and Cambodia has not yet repatriated confiscated assets to a foreign jurisdiction.

*Extradition requests received*

336. With respect to extradition, Cambodia cooperates on the basis of several regimes including bilateral extradition treaties; ratified international conventions to which both countries are parties; and, where there is no international convention or treaty in place, the Code of Criminal Procedure (CCP). Extradition requests are transmitted via diplomatic channels or, in limited circumstances, directly to the Central Authority.

337. In the four years between 2013 and 2016, Cambodia received six extradition requests, three of which were granted, one of which was refused on the basis that Cambodia does not extradite Khmer nationals and one is still before the Courts.<sup>60</sup> None of these requests related to ML or TF. Cambodia was unable to advise the assessment team of exactly how many requests related to ML predicate offences, however, at least two requests related to fraud. Where Cambodia refuses to extradite a Khmer national, Cambodia will only prosecute that person if the foreign jurisdiction specifically requests Cambodia to do so.

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338. The timeframe for execution of extradition requests is largely dependent on the Court, as it is the Investigation Chamber that decides whether a request should be granted or refused. Cambodia does not have any examples of expediting requests for extradition and advised that generally it is a lengthy process due to the number of steps involved.

339. As with MLA, feedback received from foreign jurisdictions on Cambodia's cooperation in extradition was limited. One jurisdiction advised that since 2006 it had requested the extradition of five individuals, with only one application still pending. Another jurisdiction reported that from 2012-2015 it made 10 extradition requests, four of which were accepted, with an average response duration of 90 days.

*Seeking timely legal assistance to pursue domestic ML, associated predicate and TF cases with transnational elements*

340. Cambodia has to a lesser extent sought international cooperation from foreign jurisdictions. In the four years between 2013 and 2016, Cambodia made 15 MLA requests and two extradition requests. There have been no requests relating to ML or TF and Cambodia was unable to advise the assessment team exactly how many MLA requests related to ML predicate offences. However, annual reports shared with the assessment team reveal that Cambodia did make requests relating to environmental crime, counterfeiting currency, drug trafficking and sexual exploitation. One of the two extradition requests related to kidnapping.

341. The limited number of outgoing requests relating to ML is inconsistent with Cambodia's ML risk profile, given that Cambodia's main proceeds-generating crimes are largely transnational in nature (drug trafficking, human trafficking, forestry and wildlife offences and cross-border smuggling of goods and cash). In the context of ML, the limited use of international cooperation appears to be a product of a limited awareness of formal channels of international cooperation; the absence of mechanisms amongst Cambodian authorities to select, prioritise and make requests for assistance; and the lack of a proactive approach to combating ML and pursuing criminal assets within Cambodia, as outlined in the analysis of IO.7 (Chapter 3 above). Cambodia has identified a need for training of prosecutors and judges in Phnom Penh and in the provinces on international cooperation in order to increase the use of MLA and extradition by Cambodia.

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<sup>60</sup> Information on the sixth request was not available by the time the report was finalised.

*Seeking and providing other forms of international cooperation for AML/CFT purposes*

342. In broad terms, the situation in relation to informal cooperation is similar to formal cooperation: Cambodian competent authorities are responsive to incoming requests for international cooperation and have generally provided timely assistance of satisfactory quality, however, insufficient proactive use has been made of informal cooperation by Cambodian authorities. The use of informal cooperation is not consistent with Cambodia's ML risk profile, in light of the transnational nature of Cambodia's main proceeds-generating crimes.

343. **CAFIU:** CAFIU generally provides timely and satisfactory responses to requests for international cooperation to which it is able to respond. CAFIU is a member of the Egmont Group of FIUs and also has 15 bilateral MOUs with foreign counterparts.<sup>61</sup> In accordance with the AML/CFT Law, CAFIU requires an MOU in order to cooperate with a foreign jurisdiction, even where that jurisdiction is also a member of Egmont. Of the 41 requests for international cooperation received by CAFIU between January 2012 and November 2016, 25 were fulfilled and 16 were rejected on the grounds that Cambodia did not have an MOU with the requesting party (see Table 21 below). However, in these circumstances it is standard procedure for CAFIU (as set out in their 'Workflow of Response to Requests' document) to respond by proposing that a MOU is negotiated at the same time as rejecting the request. CAFIU is able to execute an MOU relatively quickly using the Egmont Group MOU template. The average timeframe for executing an MOU is less than one month. However, some MOUs have been executed in just a few days.

**Table 21: CAFIU International information sharing statistics**

Description	2012	2013	2014	2015	Nov-16	Total
International requests received	1	5	6	14	15	41
International requests rejected	0	1	1	7	7	16

344. CAFIU has a standard procedure and template for responding to requests from foreign FIUs. According to the standard procedure, where CAFIU has an MOU with the requesting party, the timeframe for response should range between five and 19 days. In practice, the timeframe for response depends on the nature of the request and whether CAFIU needs to seek further information from other agencies. On average, according to CAFIU, it takes two weeks to fulfil a request. Feedback from foreign jurisdictions was limited and mixed. Feedback from one jurisdiction was that it had made 10 requests, all of which had been fulfilled, with an average response time of two months. Another jurisdiction reported that CAFIU had been prompt in responding to requests and had provided information that was useful for intelligence and investigation support.

345. The assistance that CAFIU has provided has primarily been information and financial intelligence sharing. CAFIU utilises the Egmont Secure Web for international cooperation purposes but also receives requests and transmits information by other means including secure email and fax. CAFIU has also provided other forms of international cooperation for broad AML/CFT purposes, including experience sharing with other countries in the region, such as Indonesia, Lao PDR and DPRK.

346. CAFIU has not made any requests to foreign FIUs for information. According to CAFIU, this is the result of time pressures and a lack of knowledge of how to make international cooperation requests. Nonetheless, the lack of outgoing requests is inconsistent with Cambodia's risk profile, given the transnational nature of Cambodia's main proceeds-generating crimes. CAFIU has, however,

<sup>61</sup> Since the on-site, the number of MOUs that CAFIU has with its foreign counterparts has increased to 19.

received some forms of international cooperation, including study visits and on-the-job training in foreign jurisdictions, including Australia and Malaysia.

347. **ACU:** There are no legal barriers to ACU cooperating internationally. ACU is able to cooperate without a formal agreement in place and, on the basis of information provided to the assessment team during the on-site, does so regularly. ACU also has MOUs with Thailand and Lao PDR regarding information and experience sharing and cooperates internationally under the multilateral South East Asian Parties Against Corruption (SEAPAC) MOU. ACU has provided cooperation to a number of foreign jurisdictions (including Indonesia, Singapore, and China) in relation to ML predicate offences by conducting investigations, sharing intelligence and detecting fugitives. ACU has also received international cooperation from a number of foreign jurisdictions (including Singapore, Hong Kong and South Korea) in relation to ML predicate offences, in the form of investigations, intelligence sharing and document certification. ACU has cooperated closely with foreign counterparts on a number of occasions and appears to enjoy good cooperation on law enforcement issues, but is yet to experience successful cooperation specifically in relation to ML cases. . ACU generally responds to requests for international cooperation in a timely manner. The average time it takes for ACU to respond to a request for assistance is approximately one month. However, in some cases assistance is provided much quicker (as short as two days) and in other, more complex cases it can take a lot longer (up to 3 months).

348. **GCNP:** GCNP has MOUs with four foreign jurisdictions: Hong Kong, Australia, South Korea and the UK. GCNP can also provide police-to-police cooperation to foreign jurisdictions without an MOU in place. Cambodia is a member of ASEANAPOL and INTERPOL and GCNP uses I-24/7, INTERPOL's global police communications system, to communicate and cooperate with foreign law enforcement officers. Most incoming requests through INTERPOL relate to fraud. However, GCNP has received and responded to 14 requests received through INTERPOL for international cooperation in foreign cases involving ML. In fact, the majority of requests for financial intelligence or information made by GCNP to CAFIU are in response to requests for international cooperation from foreign police agencies.

#### Case study 5: Police to Police International Cooperation (INTERPOL)

In May 2015, GCNP received a request for information from a foreign jurisdiction (Country A) through INTERPOL. The request related to a company registered in Country A that was involved in ML and had a bank account in Country A to receive criminal proceeds. In 2014, one of the directors of the company had remitted funds to the bank account in Country A through the branch of a foreign bank in Phnom Penh.

Country A asked GCNP to advise whether any police report was lodged in relation to the transfer and to provide the details of any investigation. They also asked whether the company or its directors featured in any of Cambodia's databases or investigations.

GCNP cooperated with CAFIU, MOC and the General Department of Immigration to collect relevant information, including the transaction history of one of the company directors, the registration information of a Cambodian company for which this person was also a director, as well as identification and travel details of this director. The relevant information was provided to Country A through INTERPOL.

**Case study 6: Police to Police International Cooperation (Union Bank Case)**

In July 2016, two banks in Cambodia (Canadia Bank Plc. and RHB IndoChina Bank Ltd) received large funds transfers from the Union Bank of India. The two banks were suspicious of these transfers so they decided not to credit the funds into the accounts. Instead, they undertook EDD and sought clarification from their correspondent banks with respect to the transfers. The correspondent banks confirmed that the transfers were fraudulent and requested the two banks to return the funds. After receiving this information, the banks returned the funds and lodged STRs with CAFIU.

RPG received two requests for information from foreign counterparts regarding this case, which they forwarded to CAFIU on 22 July 2016 and 5 August 2016, respectively. CAFIU promptly requested further information on the suspects from the banks' compliance officers and responded to RPG in 4 August 2016 and 18 August 2016.<sup>62</sup>

349. GCNP also receives requests through foreign liaison officers stationed in Cambodia and through foreign embassies.

**Case study 7: Police to Police International Cooperation (foreign embassy)**

In September 2016, a foreign jurisdiction issued a letter through their embassy in Bangkok to GCNP requesting them to locate a number of persons suspected to be involved in ML offences. GCNP conducted an investigation and in December 2016, GCNP responded to the request through the foreign embassy in Bangkok. GCNP provided the foreign jurisdiction with details of their investigation into the three suspects, including their transaction history and dates of entry into Cambodia. This cooperation led to a suspect being arrested and significant drugs and assets being seized.<sup>63</sup>

350. The GCNP cooperates closely with the Australian Federal Police (AFP) under an MOU on combating transnational crime and developing police cooperation. As per the MOU, GCNP and AFP jointly undertake preventative and suppressive measures against transnational crime. An AFP officer posted in Phnom Penh provides guidance and support to the GCNP's Transnational Crime Unit for those joint operations. GCNP does not itself have liaison officers in foreign countries but can use foreign embassies to assist with cooperation. A police officer is posted in each embassy and can assist with coordination. The GCNP also has pre-agreed contact points with their foreign counterparts.

351. The types of international cooperation that GCNP has provided have included: locating suspects; collecting evidence; taking fingerprints and facial recognition. The timeframe for responding to a request depends on the nature of the request. For example, if the request is for information, GCNP will take action straight away but if it is a request to arrest a suspect, it will take longer. Usually a response will take at least 3-4 days. Feedback from foreign jurisdictions was limited. However, one jurisdiction indicated that GCNP has responded well and in a timely manner to the three requests that it had made between 2012 and 2015.

352. GCNP has made 12 requests to foreign jurisdictions for international cooperation in the period 2013 to 2016 (relating to predicate offences, not ML). These include:

<sup>62</sup> In April 2017, RPG launched an investigation into the case and has been cooperating with foreign counterparts, including to interrogate suspects.

<sup>63</sup> In March 2017, a suspect was arrested in the foreign jurisdiction and charged with drug related offences. Police also seized 3kg of heroin, a large amount of cash, a vehicle and other materials. Cambodia is providing ongoing cooperation in the ML investigation, including intelligence sharing and assistance to identify property located in Cambodia. Cambodia has also agreed to conduct a joint investigation with police from the foreign jurisdiction in Cambodia.

- 2013: two requests involving arrest warrants.
- 2014: two requests involving murder offences.
- 2015: three requests involving illegal drug processing offences, offence related to issuing cheques without funds and violence offences.
- 2016: five requests involving the breach of trust offence and fugitive offence and the offence involved in attempted toppling of the government and two offences related to unpaid duty for tradable equipment.

353. **GDCE:** GDCE has MOUs with Thailand, Vietnam and Lao PDR, which relate to the supervision and control of goods; combating smuggling, commercial fraud, illegal cross-border transportation of goods; and upholding intellectual property rights and customs legislation. An MOU is not essential in order for GDCE to cooperate with foreign counterparts. In the absence of an MOU, GDCE will consider the nature and purpose of a request and may provide assistance on the basis of the principal of reciprocity. GDCE has close working relationships with its neighbouring countries and GDCE officers at the border have regular meetings with their foreign counterparts to share information. GDCE is also a member of the World Customs Organisation and shares information through the Regional Intelligence Liaison Office. GDCE has not received any ML or TF related requests.

354. Feedback from foreign jurisdictions regarding GDCE'S cooperation was very limited. However, one jurisdiction reported that it made a request to GDCE to verify documents believed to have originated in Cambodia for an ongoing investigation. The response was received promptly and the information provided was satisfactory.

355. GDCE has not made any requests to its foreign counterparts for international cooperation. However, GDCE regularly receives spontaneous intelligence from foreign counterparts and also receives a lot of technical assistance from Japan, China and South Korea.

356. **GDT:** GDT has not made or received any requests for international cooperation. GDT has negotiated double tax agreements with Singapore and China. However, these have not yet been ratified by the Parliament and, as such, are not in force. There are no other instruments in place to facilitate international cooperation between GDT and foreign counterparts.

357. **SNCTC:** SNCTC does not have any formal cooperation arrangements with foreign counterparts. However, in accordance with the Resolution on the establishment of the SNCTC, SNCTC cooperates regularly with foreign jurisdictions to share information and intelligence related to terrorism and TF. SNCTC has both provided and received intelligence from foreign counterparts and has also cooperated with foreign counterparts to identify and locate potential suspects (see, for example, case study 4 in Chapter 4) and to trace and freeze funds related to TF. Where launching a terrorism or TF prosecution in Cambodia is impractical due to insufficient evidence, SNCTC has demonstrated that it is willing to cooperate internationally to share relevant information with foreign jurisdictions that have a better chance of securing a successful prosecution and conviction.

358. **Supervisors: CAFIU,** as a supervisor, has had limited cooperation with foreign counterparts. CAFIU does not have any agreements with foreign supervisors. CAFIU conducted one on-site inspection of a bank jointly with Bank Negara Malaysia in 2011. CAFIU has also shared experience in relation to examination with Bank Negara Malaysia.

359. **NBC** has 15 MOUs with foreign counterparts and can also share information with foreign counterparts under the Prakas on Home-Host Relations Related to Information Sharing. NBC has received seven requests for international cooperation related to information sharing and joint on-site inspections, all of which have been fulfilled. On average, it takes NBC 1-2 months to respond to a request. Feedback received from one foreign jurisdiction was that the response from NBC was timely and generally satisfactory.

360. NBC conducted on-site inspections of Malaysian banks' branches jointly with Bank Negara Malaysia in 2011 (three banks), 2013 (one bank) and 2014 (two banks). NBC has also shared supervision experiences, including in relation to supervising MFIs; supervising banks and FIs; regulations; and licensing, with foreign counterparts in Myanmar and Lao PDR.

361. NBC has made a number of requests to foreign counterparts regarding prudential supervision and multiple requests for training and capacity building. In 2015-16, NBC made 64 requests to foreign counterparts, mostly in relation to capacity building of prudential supervisors. NBC has sent staff to participate in various training programs provided by international organisations and foreign counterparts, including on-the-job training programs of up to six months in foreign jurisdictions.

362. SECC is party to the multilateral MOU on cooperation and development of capital markets in the Mekong sub-region, along with Thailand, Vietnam, Lao PDR and Myanmar. SECC also has a bilateral MOU with Thailand and is currently negotiating one with Vietnam. These MOUs have not yet been used to exchange information but have been used for training purposes. SECC could exchange basic information with a foreign counterpart without a MOU in place but a MOU is required for SECC to assist with investigations. To date, SECC has not received any requests for cooperation from foreign counterparts and has not made any spontaneous disclosures.

363. SECC has informally requested information once from Hong Kong and once from Malaysia in relation to a fraud case involving an unlicensed business. SECC has a close working relationship with Securities Commission Malaysia and SECC staff have received on-the-job training in Malaysia as well as Thailand.

364. MEF has not made or received any requests for international cooperation relating to the entities that it supervises (insurance, real estate, casinos). There are no formal instruments in place to facilitate international cooperation between MEF and foreign counterparts. However, in practice, MEF could cooperate through diplomatic channels and foreign embassies located in Cambodia.

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

365. Foreign jurisdictions are able to access basic information about legal persons operating in Cambodia through the MOC's online business registration system. Cambodia has never made or received a request for international cooperation to identify or exchange basic or beneficial ownership information. Should a request be received, Cambodia would be able to cooperate through a formal MLA request or under existing MOUs or other arrangements between Cambodian and foreign competent authorities. However, deficiencies identified in Chapter 7 may, in practice, impede the ability of the competent authorities to provide timely MLA or other forms of international cooperation in this area. MOC does not itself have any cooperation arrangements with foreign counterparts, which could affect the timeliness of cooperation.

366. Cambodia has a **moderate level of effectiveness** for Immediate Outcome 2.

## TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis of the level of compliance of Cambodia with the FATF 40 Recommendations in numerical order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report (MER).

2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 2007. This report is available from [www.apgml.org](http://www.apgml.org).

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

3. This is a new Recommendation, which was not assessed in the 2007 MER.

4. *Criterion 1.1* - Cambodia formally adopted its first National AML/CFT Risk Assessment (NRA) on 29 November 2016, immediately before on-site evaluation visit. The NRA includes high-level preliminary findings of risk rankings for overall ML and TF risks and key threats at the sectoral level. Additionally, the NRA identifies the weaknesses across the public and private sectors and recommendations to mitigate those weaknesses. The NRA does not however fully identify and assess the ML/TF risks for Cambodia. The lack of a wide range of data and absence of other assessments of ML/TF undermines the reasonableness and consistency of the NRA. However, notwithstanding these issues, the assessment team broadly agrees with the authorities on the main ML/TF risks faced by Cambodia.

5. *Criterion 1.2* - The National Coordination Committee (NCC), the apex body for AML/CFT which is chaired by the Governor of the National Bank of Cambodia, conducted the NRA as set out Strategy-2 of the National AML/CFT Strategies. As a part of implementation of Strategy-2, Cambodia formed a nine Expert Working Groups (EWGs) in 2014 for the NRA exercise consisting of relevant sectoral experts. On behalf of the NCC, CAFIU provided support to all EWGs and coordinated the overall NRA process.

6. *Criterion 1.3* - Cambodia has just completed its first NRA and has indicated that it will update its ML/TF risk assessment every five years. It is not clear whether an initial review period of five years is sufficient in light of the weaknesses in Cambodia's first NRA, and its ML/TF risk landscape

7. *Criterion 1.4* - On completion of the NRA in October 2016, Cambodia held a seminar for all relevant competent authorities and self-regulatory bodies involved in the NRA process to share the outcomes of the NRA. Additionally, Cambodia has already provided some feedback on the results of the NRA to a limited number of private sector stakeholders. The NRA (or a public version thereof) has not however yet been provided to financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs), though Cambodia intends to hold further seminars/workshops on the outcomes of the NRA for all relevant competent authorities and self-regulatory bodies, FIs and DNFBPs.

8. *Criterion 1.5* - Given the NRA was only adopted one week before the on-site evaluation visit, Cambodia has not yet applied a broad risk-based approach to the allocation of resources allocation based on the results of the NRA. Cambodia has however taken some steps to apply a risk-based approach to allocating resources and implementing measures in the financial sector, but this has been based more on prudential risks than ML/TF risks. Cambodia is aware of the need to review its allocation of resources (and the NRA itself makes some recommendations to this effect for higher risk areas), and the NCC has been charged with ensuring that the design of AML/CFT policies and allocation of resources are risk-based. Some of the specialised units in



GCNP, Anti-Drug Department and GDCE, do go some way towards addressing at least some of the most significant ML risks, but implementation levels are low.

9. *Criterion 1.6* - Cambodia has not exempted any particular activity, any particular FIs or DNFBPs from undertaking CDD measures due to proven low risk.

10. *Criterion 1.7* - FIs and DNFBPs are required to conduct enhanced CDD for all categories of higher risk customers (Article 20 of the Prakas on AML/CFT 2008 and Article 17 of the Prakas on AML/CFT 2010), and have been required to complete entity level risk assessments. However, Cambodia has only recently identified its higher areas of risk through the NRA process and has not therefore provided any information to reporting entities about these higher risks.

11. *Criterion 1.8* - Article 16.4 of Prakas on AML/CFT 2008 allows some form of simplified CDD measures for remittances/wire transfers below USD 1,000. This simplified measure was not based on an assessment of risk. However, Cambodia has indicated it is seeking to enhance financial inclusion as a policy objective, which is also consistent with its recent ML/TF risk assessment.

12. *Criterion 1.9* - FIs/DNFBPs are supervised for compliance with the requirements of criteria 1.10 to 1.12, as described in R.26 and R.28. CAFIU has reviewed the risk assessment documents of banks and MFIs, required under the 2014 Guideline on Risk Assessment for Banks and Financial Institutions, twice. However, monitoring of AML/CFT compliance has not fully extended to reporting entities other than banks, MFIs and securities.

13. *Criterion 1.10* - The Guideline on Risk Assessment for Banks and Financial Institutions, issued by CAFIU in August 2014, requires FIs to assess their risks every two years. The Guideline also requires FIs to document their identified risks and share them with the competent authorities and also instructs them to consider putting in place appropriate risk mitigation measures. However the legal status and enforceability of the Guideline is unclear and it is not clear which reporting entities are covered within the term of "financial institutions". Further, no specific guidance on risk assessments exists for DNFBPs.

14. *Criterion 1.11* - Article 34 of the Prakas on AML/CFT 2008 and Article 31 of the Prakas on AML/CFT 2010 require all reporting entities to establish policies, controls and procedures, which are approved by senior management, to monitor the implementation of those controls, and to take enhanced measures to manage and mitigate the higher ML/TF risk scenarios.

15. *Criterion 1.12* - Cambodia does not explicitly allow FIs or DNFBPs to take simplified measures in circumstances where lower risks are identified. However, it does permit some form of simplified CDD measures through Article 16.4 of Prakas on AML/CFT 2008 for remittances/wire transfers below USD 1,000; this was not however based on recent assessment of ML/TF risks.

### *Weighting and Conclusion*

16. There are moderate shortcomings in compliance with Recommendation 1. Cambodia has very recently completed its first NRA, which is a significant and positive development. The NRA generally identifies areas of higher risk, but there are some important gaps in the process of developing and identifying threats/vulnerabilities/risks. In addition, the results of the NRA have not yet been widely circulated to stakeholders. Similarly, while a review will be undertaken in due course, the allocation of resources is not risk-based and existing supervisory and risk mitigation measures do not cover all reporting entities, including in higher risk sectors. **Recommendation 1 is rated partially compliant.**

**Recommendation 2 – National Cooperation and Coordination**

17. In the 2007 MER, Cambodia was rated partly compliant with former R.31. The key deficiencies were that there was no mechanism for ensuring cooperation at an operational level and only a limited mechanism for AML/CFT policy coordination. Recommendation 2 of the revised standards contains new requirements that were not assessed under the 2004 Methodology.

18. *Criterion 2.1* - With the approval of the NCC, Cambodia introduced its first set of National AML/CFT Strategies in 2013, without the support of an assessment of ML/TF risk and vulnerability, and they include the following seven key strategies:

- 1) Functionality of National AML/CFT Coordination Committee
- 2) Money Laundering and the Financing of Terrorism Threat Assessment
- 3) Building Capacity of CAFIU
- 4) Harmonization of Law and Establishment of Certain Regulatory Procedures
- 5) Strengthening Domestic Cooperation
- 6) Strengthening International Cooperation
- 7) Raising the AML/CFT Awareness of all Reporting Entities

19. Cambodia reviewed this document in 2014. These strategies address some basic risks – in particular, systemic vulnerabilities – facing Cambodia. Even though the National AML/CFT Strategies were developed prior to the completion of Cambodia’s first NRA, the outcomes of the NRA appear to be reflected in the National AML/CFT Strategies to some extent. However, the strategies do not include consideration of Cambodia’s supervisory framework, nor do they fully address the risks, threats and vulnerability recently identified in the NRA. The planned development of a National AML/CFT Strategy 2018 – 2022 will provide an opportunity for Cambodia to fully implement the NRA through a comprehensive risk-based policy framework to combat ML/TF.

20. *Criterion 2.2* - Cambodia established the NCC in 2012, with the Deputy Prime Minister acting as a standing chair. The other members are the Governor of the NBC, representatives from the NCTC, MOI, MEF, MoJ, Council of Ministers, MFA and the SG of CAFIU. In April 2016, the Governor of the NBC took over the role of Chair of the NCC. The terms of reference reflect the responsibility of the NCC for national AML/CFT policies.

21. *Criterion 2.3* - The NCC provides the mechanism for policy makers, CAFIU, LEAs, supervisors and other relevant competent authorities to cooperate and coordinate domestically at the policy level. At the operational level, however, there is no coordination mechanism to execute the decisions of the NCC or for broader operational level coordination on AML/CFT issues between relevant agencies. However, CAFIU has signed MOUs with the NBC, Police, ACU and GDCE to create mechanisms for expedited cooperation at the operational level, on a one to one basis, as the AML/CFT Law 2007 only allows information sharing through MoUs.

22. *Criterion 2.4* - Cambodia has established a National Authority for the Prohibition of Chemical, Nuclear, Biological and Radiological Weapons. However, this authority’s mandate does not extend to combating the *financing* of proliferation of weapons of mass destruction.

**Weighting and Conclusion**

23. Cambodia has taken some important steps to improve national cooperation and coordination in recent years, but is yet to develop a national AML/CFT policy informed by ML/TF risks. There are some significant gaps in national co-operation and national co-ordination, in particular at the operational level and in relation to proliferation financing.

**Recommendation 2 is rated partially compliant.**

### **Recommendation 3 – Money laundering offence**

24. In the 2007 MER, Cambodia was rated non-compliant with former R.1 and R.2. TF, counterfeiting of products and piracy were not criminalised; the range of predicate offences for ML was limited to drug related offences; and it was not clear that the offence extended to conduct occurring overseas and to self-laundering. Cambodia took steps to address its deficiencies under the AML/CFT Amendment Law and the 2014 ME Progress Report found that compliance with former R.1 was at a level essentially equivalent to largely compliant. The ME Progress Report did not re-assess compliance with former R.2, which dealt with sanctions for ML.

25. *Criterion 3.1* - ML is criminalised under Article 29-new 1 of the AML/CFT Amendment Law. All the physical and material elements of the ML offence are contained in Article 3 of the AML/CFT Amendment Law, in line with the requirements of the Vienna and Palermo Conventions.

26. *Criterion 3.2* - The ML offence is applicable to all proceeds-generating predicate offences. 'Predicate offence' is defined broadly in Article 3(e) of the AML/CFT Amendment Law to include 'any felony or misdemeanour, even if committed abroad, as a result of which proceeds have been generated.' The definition of 'predicate offence' also specifically includes the 21 'designated categories of offences' as defined by the FATF Recommendations.

27. *Criterion 3.3* - is not applicable, as Cambodia does not use a threshold approach or a combined approach. Rather, underlying predicate offences for ML are determined by reference to all offences.

28. *Criterion 3.4* - Article 3(b) of the AML/CFT Amendment Law defines the proceeds of an offence to include any property derived from or obtained, directly or indirectly, through the commission of any predicate offence. Further, Article 3(c) defines 'property' broadly to include assets of every kind whether movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets.

29. *Criterion 3.5* - The AML/CFT Amendment Law (Articles 3 and 29-new 1) do not specifically require conviction of a predicate offence before property is treated as proceeds of crime. However, it is not clear that conviction is not necessary in proving property to be the proceeds of crime. Cambodia requires evidence of the existence of the predicate offence and that the property is obtained by way of commission of that predicate offence.

30. *Criterion 3.6* - Article 3(e) of the AML/CFT Amendment Law defines a predicate offence to include any felony or misdemeanour, even if it is committed abroad. However, the provision is limited by the condition that the offence must also be criminalised in the country where it was committed, unless there is a special agreement that states otherwise.

31. *Criterion 3.7* - The AML/CFT Amendment Law allows prosecution of self-launderers. Article 3(a)(iv) extends the ML offence to any form of participation in, and attempts to commit, aiding and forcing somebody to commit any of the acts defined as ML.

32. *Criterion 3.8* - While it is not explicit in Cambodian law that intent and knowledge can be inferred from objective factual circumstances, the Cambodian legal regime does not impose any limit to demonstrate the intentional element of the ML offence. In fact, under Article 321 of the Criminal Procedure Code, all evidence is admissible in criminal cases unless a law provides it otherwise. Article 4 of the Criminal Code includes 'carelessness, negligence, inattentiveness or failure to respect certain obligations' as forming the intention to commit an offence.

33. *Criterion 3.9* - According to Article 29(1) of the AML/CFT Amendment Law, ML by an individual is punishable by imprisonment from two to five years and a fine from KHR 40,000,000 (forty million) (approximately USD 10,000) up to KHR 100,000,000 (one hundred million) (USD 25,000) or up to the value of the funds or property which was the subject of money laundering. In comparison with sanctions for predicate offences, these criminal sanctions appear to be high. For example, illicit cultivation of narcotic plants for the purpose of distribution, production and trade attracts a penalty of two to five years' imprisonment and a fine from KHR 4,000,000 (four million) (USD 960) to KHR 10,000,000 (ten million) (USD 2,400). Similarly, extortion and fraud are both punishable by imprisonment from two years to five years and a fine from KHR 4,000,000 (four million) to KHR 10,000,000 (ten million). These penalties are a fraction relative to those penalty imposed on a person convicted of ML. However, in absolute terms the fines imposed for ML do not appear to be sufficiently dissuasive to deter launderers. KHR 100,000,000 (one hundred million) is approximately USD 25,000. Given the lucrative and transnational nature of ML, this amount is unlikely to be dissuasive.

34. *Criterion 3.10* - Under Article 29(1) of the AML/CFT Amendment Law, legal entities may be declared criminally responsible for ML offences under conditions stipulated in Article 42 of the Criminal Code and are subject to fines from KHR 100,000,000 (one hundred million) (USD 25,000) to KHR 500,000,000 (five hundred million) (USD 125,000). Legal entities may also be subject to any one or more additional penalties (Article 29(6) of the AML/CFT Amendment Law), which include, amongst other things, dissolution, placement under court surveillance and prohibition against operating one or more activities. The criminal liability of natural persons is not affected by the liability of legal person: both liabilities are actionable (Article 42 of the Criminal Code). Although the maximum fine for ML, KHR 500,000,000 (five hundred million) or approximately USD 125,000, is one of the highest in Cambodia, these sanctions are not at the level where they would deter entities (in particular, international entities) from engaging in lucrative ML activities, as such they are not dissuasive.

35. *Criterion 3.11* - There is a wide range of ancillary offences contained in Criminal Code (Articles 25, 26, 27, 28, 29, 407, 453), and are applicable in the context of the ML offence.

#### *Weighting and Conclusion*

36. Cambodia has criminalised ML in line with the requirements of the Vienna and Palermo Conventions. There are minor shortcomings regarding the dissuasiveness of sanctions. **Recommendation 3 is rated largely compliant.**

#### ***Recommendation 4 – Confiscation and provisional measures***

37. In the 2007 MER, Cambodia was rated non-compliant with former R.3. The report found that the seizure and confiscation provisions were very limited in scope. There were limited tracing and identification powers, very limited use in practice of seizure and confiscation provisions and no protection of third party rights. Cambodia's 2014 follow-up report noted progress made with the adoption in 2007 of the AML/CFT Law and the new provisions concerning confiscation in the AML/CFT Amendment Law in 2013. These were found to bring Cambodia mostly in compliance with R.3.

38. *Criterion 4.1* - Article 30 New-2 of the AML/CFT Amendment Law and Article 408 of the Criminal Code provide broad powers for the confiscation, upon conviction for ML or a predicate offence or TF, of property laundered, proceeds, instrumentalities and property of corresponding value. Article 30 New-2 extends the power to order confiscation in circumstances where a ML/TF case is established but a conviction is not possible as the perpetrator is unknown, cannot be found or is deceased, and sufficient evidence exists to adduce that the property constitutes proceeds of a predicate offence.

39. *Criterion 4.2 - (a)* There are some powers available to competent authorities that enable them to identify and trace property that is subject to confiscation. The Criminal Procedure Code provides for the competent authorities to take investigative measures, such as research and examination (Article 90), searches (Article 91), sealing of exhibits and confiscation (Article 92). CAFIU uses tools for operational/tactical analysis purposes, which allows them to search and match data or transactions, discover and visualize the links between persons, companies, accounts. However, CAFIU is performing the operational analysis based mostly on its own information.

40. *(b)* The competent authorities can carry out provisional measures, to prevent any dealing, transfer or disposal of property subject to confiscation. Indeed, Article 30 New-1 and New-2 of the AML/CFT Amendment Law and Article 62 of Criminal Code provide provisional measures for freezing and seizure to prevent any dealing, transfer or disposal of property subject to confiscation. Further, Article 3 of the *Sub-decree on Freezing of Property of Designated Terrorists and Organizations 2014*, articles 79 to 82 of the Law on Counter Terrorism provides mechanisms and procedures for freezing property and funds of terrorists and organizations. *Ex-parte* or without notice applications are not considered to be against fundamental principles of Cambodia law, however there is no clear provision that such measures can be applied.

41. *(c)* Cambodia has legislative measures to prevent prejudice to the country's ability to freeze and seize property that is subject to confiscation. Under Article 30 New-1 of the AML/CFT Amendment Law, the designated member of the National Coordination Committee on Anti-Money Laundering and Combating of Terrorism shall freeze property and take appropriate provisional measures, before applying for court order, for keeping property that is the subject of confiscation. Further, this article states that upon becoming aware of the existence of any property related to or suspected to be involved with the ML offence or the proceeds of a predicate offence, the law enforcement authorities must seize that property without delay and as soon as practicable, and apply to the courts to freeze such property. In addition, Article 12 (5) of the AML/CFT Law allows the FIU to suspend a transaction, on the grounds of suspicion of ML or TF, for 48 hours.

42. *(d)* The Criminal Procedure Code and the AML/CFT Law provide for the competent authorities to take any appropriate investigative measures. The Criminal Procedure Code allows the investigation judge (Articles 51 to 54 and 121 to 251), the investigation chamber (Articles 55 and 257 to 286), the judicial police officer (Article 84) and the court (Articles 339, 452, etc.) to take any appropriate investigative measures such as: arrest of offenders (Article 87), research and examination (Article 90), searches (Article 91), sealing of exhibits and confiscation (Article 92), interrogation (Article 93), scientific or technical examination (Article 95), to place any person specified by the introductory submission under judicial investigation (Article 126), travel to sites (Article 130), rogatory letters (Article 131) and seizure (Article 160). Further, Article 12 (4) of the AML/CFT Law states that a reporting entity (RE) that has made a report to the FIU, as well as any other entity that holds information related to the transaction or customer involved in the report, shall give the FIU or a law enforcement agency that is carrying out an investigation arising from, or relating to the information contained in the report, any further information that it has about the transaction or attempted transaction or the parties to the transaction if requested to do so by the FIU or the law enforcement agency.

43. *Criterion 4.3 - Bona fide* third parties are entitled to restitution of the property seized (Article 30 New-3 and New-4 of the AML/CFT Amendment Law and Article 179 of the Criminal Code) and may challenge the frozen, seizure or confiscation order through a request to the Court.

44. *Criterion 4.4* - Cambodia's laws (Article 178 of the Criminal Code 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 the confiscated objects. This mechanism only applies when the confiscation or forfeiture is definitive. There are no provisions to sell, take custody or control of property during the restraint phase.

### *Weighting and Conclusion*

45. Cambodia has legislative measures for the confiscation, seizure and freezing of property, which provide protection to bona fide third parties. Minor shortcomings include: (i) measures to allow applications to be made ex parte or without prior notice (ii) an appropriate system dedicated to the managing and, when necessary, disposing of property frozen, seized or confiscated. **Recommendation 4 is rated largely compliant.**

### *Recommendation 5 – Terrorist financing offence<sup>64</sup>*

46. In the 2007 MER, Cambodia was rated non-compliant with SR.II as the AML Law defined but failed to criminalise the financing of terrorism. There have been significant legislative developments since 2007 and Cambodia was found to be mostly in compliance with former SR.II in the 2013 follow-up report.

47. *Criterion 5.1* - Article 76 of the Law on Counter Terrorism and Article 29 New-7 of the AML/CFT Amendment Law criminalise TF on the basis of the TF Convention. The intentional provision or collection of property, or making it available, directly or indirectly, is an offence if it is intended to be used, or is used, wholly or partly to carry out an act which is an offence under any of the treaties listed in the annex of the TF Convention. These two legislative provisions, Article 5 of the Law on Counter Terrorism and Article 28 of the Criminal Code, together with provisions of the Criminal Code, cover all elements of Article 2 of the TF Convention.

48. *Criterion 5.2* - Article 76 of the Law on Counter Terrorism makes it an offence to provide or collect property, intending or knowing that it is to be used wholly or partly in order to carry out a terrorist act. Article 29 New-7 of the AML/CFT Amendment Law makes it an offence to intentionally provide or collect, or make any property, resources or services available, directly or indirectly, for the benefit of an individual terrorist or a terrorist organisation. No link to a specific terrorist act or acts is required (see Criterion 5.4 below).

49. *Criterion 5.2bis* - Cambodia does not specifically criminalise financing the travel of individuals to a State other than their State of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training. However, under Article 29 New-7 of the AML/CFT Amendment Law, it is an offence to finance a person who commits an offence under the Law on Counter Terrorism or a corresponding offence under a law of a foreign State. This offence could extend to the financing of an individual's travel to a foreign State for the purposes of perpetrating or participating in a terrorist act. Further, under Article 78 of the Law on Counter Terrorism it is an offence to intentionally take part in the training of persons for terrorist purposes. The interaction of this provision with Article 29 New-7 would make it an offence to finance an individual who intentionally provides or receives terrorist training and this offence could include financing their travel to a foreign state for that purpose. As Cambodia does not criminalise planning or preparation of a terrorist act, the offence in Article 29 New-7 would not extend to financing an individual's travel to a foreign State for those purposes.

<sup>64</sup> The assessment methodology for R.5 was revised by the FATF in February 2017 (i.e. after the on-site visit), to broaden the reference to types of TF activity to include 'other assets' in addition to funds. The revised version will be taken into account during the follow-up process.

50. *Criterion 5.3* - Cambodia's TF offences apply to the provision and collection of 'property'. The definition of 'property' in Article 3 of the Law on Counter Terrorism is consistent with the definition of 'funds' in Article 1 of the TF Convention. It covers assets and economic resources of every kind, whether tangible or intangible, movable or immovable, however acquired; and legal documents and instruments in any form evidencing title to, or interest in, such assets. As such, the TF offence in the Law on Counter Terrorism extends to property from both legitimate and illegitimate sources. The definition of 'property' in Article New-3 of the AML/CFT Amendment Law covers assets of every kind, whether movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets. Unlike the definition in the Law on Counter Terrorism, it does not cover property 'however acquired'. It is, therefore, not explicit that the TF offence in Article 29 New-7 of the AML/CFT Amendment Law extends to property from both legitimate and illegitimate sources. However, there is nothing in the Law that limits the application of the offence to property from an illegitimate source. Neither definition of 'property' extends to interests, dividends or other income on or value accruing from or generated from the property, and any other assets which may potentially be used to obtain funds, goods or services, as required by the extension of Recommendation 5 to apply to 'other assets' as well as funds.

51. *Criterion 5.4* - Both Article 76 of the Law on Counter Terrorism and Article 29 New-7 of the AML/CFT Amendment Law specify that an act constitutes an offence even if the property was not used to commit the offence. Neither law specifically requires that the property was used to attempt a terrorist act(s) or that it be linked to a specific terrorist act(s).

52. *Criterion 5.5* - While it is not explicit in Cambodian law that intent and knowledge can be inferred from objective factual circumstances, the Cambodian legal regime does not impose any limit to demonstrate the intentional element of the TF offence. In fact, Article 321 of the Criminal Procedure Code provides that in criminal cases, all evidence is admissible. Further, Article 4 (Intention to Commit an Offence) of the Criminal Code includes 'carelessness, negligence, inattentiveness or failure to respect certain obligations' as forming the intention to commit an offence. It is possible to conclude from this that the intent and knowledge required to prove the TF offence can be inferred from objective factual circumstances.

53. *Criterion 5.6* - Both the TF offence in the Law on Counter Terrorism and the TF offence in the AML/CFT Amendment Law are punishable by imprisonment from 10-20 years for natural persons. The length of the minimum imprisonment term is likely to be dissuasive.

54. *Criterion 5.7* - Legal entities in Cambodia may be found criminally responsible for the TF offences contained in the Law on Counter Terrorism (Article 7) and the AML/CFT Amendment Law (Article 29 New-7). Under both laws, the legal entity shall be subject to a fine from KHR 20,000,000 (20 million) to KHR 40,000,000 (40 million) (USD 5,000 to USD 10,000). In addition, a range of other penalties may also be applied, for example, dissolution, judicial or other supervision and prohibition of specified activities (Article 7, Law on Counter Terrorism and Article 29 New-6, AML/CFT Amendment Law). The criminal liability of natural persons is not affected by the liability of the legal person (Article 7, Law on Counter Terrorism and Article 42, Criminal Code). By comparison to sanctions for predicate offences, these criminal sanctions appear to be high. However, in absolute terms, the fines of under USD 10,000 are not punitive enough to deter financiers of terrorism. Terrorism is increasingly a global phenomenon with TF demonstrating a remarkably transnational character. As such, the deterrence value of the monetary penalty must be judged on an international scale.

55. *Criterion 5.8* - (a) Under Article 4 of the Law on Counter Terrorism, a person who attempts to commit an offence under that law is guilty of that offence. Thus, a person who attempts to commit the offence contained in Article 76 of that law is guilty of that offence. While

the AML/CFT Amendment Law does not specifically criminalise attempt to commit the TF offence, Article 27 of the Criminal Code provides that attempt to commit a felony is punishable.

56. (b) Under Article 6 of the Law on Counter Terrorism, an accomplice is defined as a person who renders their deliberate assistance or support and thereby facilitates an attempt to commit or the commission of an offence under that Law. According to Article 6, an accomplice shall be punished the same way as a perpetrator. The AML/CFT Amendment Law does not specifically criminalise participation as an accomplice in a TF offence or attempted TF offence. However, Article 29 of the Criminal Code defines accomplice as a person who intentionally facilitates the attempt or realisation of a felony or a misdemeanour by providing his/her help or assistance and provides that an accomplice shall receive the same punishment as a perpetrator.

57. (c) Under Article 5 of the Law on Counter Terrorism, a person who organises, orders or incites another person to commit or attempt to commit an offence under that law is considered an instigator. An instigator is guilty of an offence regardless of whether the offence was or was not committed or attempted. The AML/CFT Amendment Law does not specifically criminalise organising or directing others to commit a TF offence or attempted TF offence. However, under 28 of the Criminal Code, an instigator is defined as a person who encourages the commission of a felony or misdemeanour by giving an instruction or order, or by means of a gift, promise, threat, incitement, lure or abuse of his/her authority or power. Article 28 provides that an instigator shall receive the same punishment as a perpetrator, however, only if the felony is carried out or attempted.

58. (d) Contribution to the commission of one or more TF offence(s) or attempted offence(s), by a group of persons acting with a common purpose is not specifically criminalised in Cambodian law. However, under Article 453 of the Criminal Code, conspiracy is defined as a scheme set up between several persons to commit a criminal attempt. Conspiracy is an offence punishable by 5-10 years imprisonment.

59. *Criterion 5.9* - 'Predicate offence' is defined in Article 3-New of the AML/CFT Amendment Law and the list of predicate offences includes terrorist financing.

60. *Criterion 5.10* - Cambodia's TF offences do not require the person alleged to have committed the TF offence to be in the same country as the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur. The Law on Counter Terrorism applies to TF offences committed both within and, in specified circumstances, outside Cambodia (Article 10). The AML/CFT Amendment Law does not specify that it applies to TF offences committed outside Cambodia. However, Article 22 of the Criminal Code provides that in a criminal case, the Cambodian law is applicable to any offence committed outside the territory of the Kingdom of Cambodia, if it is qualified as an infringement against the safety of the Kingdom of Cambodia.

### *Weighting and Conclusion*

61. Cambodia has a strong legal framework to combat TF. There are minor shortcomings regarding the dissuasiveness of sanctions and TF offences by a group of persons acting with a common purpose. **Recommendation 5 is rated largely compliant.**

### ***Recommendation 6 – Targeted financial sanctions related to terrorism and terrorist financing***

62. In the 2007 MER, Cambodia was rated non-compliant with former SR.III. There was no mechanism in place to give effect to UNSCR 1267 and 1373, no procedure for reviewing foreign countries' lists and no mechanism for communicating actions to the financial sector. Cambodia's 2014 follow-up report concluded that, with the adoption of the AML/CFT



Amendment Law in 2013 and the Sub-decree on the Freezing of Property of Designated Terrorists and Organizations in 2014 (“the Sub-decree”), Cambodia was largely compliant with (former) SR.III.

63. *Criterion 6.1 - (a)* Under Article 6 of the Sub-decree, the Ministry of Foreign Affairs and International Cooperation (MFA-IC) is the competent authority to propose designations to the relevant committees.

64. *(b)* MFA-IC is responsible under Article 6 of the Sub-decree for initiating proposals for designations of persons and entities, after receiving notice from MOJ. However, no specific mechanism is in place to proactively identify targets for proposal.

65. *(c)* Cambodian legislation does not establish an evidentiary standard of proof of “reasonable grounds” or “reasonable basis” when MFA-IC decides to make a proposal for designation under the relevant UNSCRs (such as 1267, 1989, 2253 and 1988). Article 9 of Sub-decree, which applies a standard of “reasonable grounds”, is applicable only for designations made under UNSCR 1373.

66. *(d)* The Sub-decree does not contain an explicit provision referencing the requirement to use the UN procedure or standard form when proposing a designation. However, Cambodia has in place procedures and standards for listing as adopted by the relevant UN committee, and indicated that MFA-IC would use the relevant UN procedures and standard forms when proposing a designation pursuant to UNSCRs 1267/1989 and 1988 sanctions regimes.

67. *(e)* The Sub-decree does not set out any procedure or mechanism for providing certain information and details on the proposed name, when proposing it to the relevant committees. However, Cambodia noted that if MFA-IC were to initiate a designation proposal, it would provide as much relevant information as possible on the proposed name.

68. *Criterion 6.2 - (a)* Under Article 9 of the Sub-decree, MOJ may order the General Prosecutor of the Appeal Court or the Prosecutor of the First Instance Court to identify and assess persons to be listed or delisted that meet the specific criteria for designation, as set forth in UNSCR 1373. This action (listing or de-listing) can take place after receiving third party request through MFA-IC or based on information held by Cambodia. *(b)* Cambodia has a mechanism under Article 9 of the Sub-decree for identifying targets for designation, based on the designation criteria set out in UNSCR 1373. Cambodia applies an evidentiary standard of proof of “reasonable grounds” when deciding whether to make a designation (Article 9 of the Sub-decree). The decision to make a designation is not conditional upon the existence of a criminal proceeding. *(c)* Cambodia has not provided any evidence that it shall make a prompt determination, when receiving a request, of whether the proposed designee meets the criteria for designation in UNSCR 1373. There is no mention of an expedient timeframe for the court’s decision to list or de-list based on a third party request in Article 9 of the Sub-decree. *(d)* Cambodia has not provided any evidence of the basis for making requests of other countries, and the kind of information provided when request are made, to give effect to the actions initiated under the freezing mechanisms.

69. *Criterion 6.3 -* According to Articles 6 and 9 of the Sub-decree, MFA-IC and the MOJ are the competent authorities for proposals. Under Article 9, the MOJ may order the General Prosecutor of the Court of Appeal or the Prosecutor of the Court of First Instance to identify and assess the persons and entities based on reasonable grounds to suspect or believe to meet the criteria for designation establish in UNSCR 1373. There is no such mechanism in Article 6 of the same legislation, which means that MFA-IC does not have legal authority or any mechanism to identify persons and entities that, based on reasonable grounds, meet the criteria for designation establish in UNSCRs 1267, 1988 and 1989. While it there is no mention of the

proposal for designation requiring prior notice to the designated persons involved, it is not explicit that competent authorities can proceed *ex parte* against persons/entities identified for designation.

70. *Criterion 6.4* - For UNSCRs 1267/1989/2253 and 1988 sanctions regimes, Article 4 of the Sub-decree provides that upon a UN designation, MOJ shall immediately disseminate listing or de-listing of designated terrorists or organisations to the Court to issue freezing or unfreezing order respectively, without delay and shall publish them on the publicly available MOJ website. It should be mentioned that the MOJ website does not work, although in practice this problem is overcome by the fact that CAFIU publishes the UN Sanctions Lists on its website.

71. In May 2014 the General Prosecutor of Appeal Court issued a standing court order requiring all reporting entities to freeze all property of persons whose name is listed in the Al Qaida and Taliban lists and subsequent lists designated under UNSCR 1267. Additionally it requires all reporting entities to report to the General Prosecutor after having frozen the properties in order to take further legal action. This standing court order negates the requirement to apply to the Court to issue a freezing or unfreezing order upon changes to the UN Sanctions Committee lists. The Court order however is only applicable to “reporting entities” (as set out in Article 4 of the AML/CFT Law) and not to all natural and legal persons within Cambodia.

72. According to Cambodia, it takes a couple of days for MFA-IC to forward, to MOJ and CAFIU, the listing or de-listing of any terrorist, or organisation pursuant to UNSCR 1267 and successor resolutions, as subject to financial sanctions or other restriction. Once received, CAFIU as per Article 3 of the Sub-decree shall disseminate, without delay, the listing or de-listing of terrorists or organizations to reporting entities subject to the AML/CFT Law, by publishing the list on the publicly available CAFIU website. CAFIU’s website provides direct links to the UNSCRs 1267/1989/2253 and 1988 sanctions regimes. Reporting entities and other persons or entities holding targeted properties and funds shall freeze such properties and funds, without delay, after receiving Court order.

73. For the UNSCR 1373 sanctions regime, Article 9 of the Sub-decree states that when any person is listed, the Court will issue an order to freeze the properties and funds without delay. However, Cambodia did not provide any evidence that the process for freezing under UNSCR 1373 occurs ‘without delay’.

74. *Criterion 6.5 - (a)* Under Article 4 of the Sub-decree, after receiving a court order reporting entities and other persons or entities holding targeted properties and funds are required to freeze such properties and funds without delay. Under Article 9 of the same legislation, after receiving a third party request through MFA-IC, or based on information held by Cambodia, MOJ may order the General Prosecutor of the Appeal Court or the Prosecutor of the First Instance Court to identify and assess persons to be listed or delisted. When any person is listed, a court will issue an order to freeze the properties and funds ‘without delay’.

75. *(b)* In relation to sanctions under UNSCR 1267 and successor resolutions, Article 4 of the Sub-decree does not extend the obligation to freeze the assets of designated entities. While the term ‘person’ is not defined to be limited to natural persons, it has been used in addition to legal persons. Furthermore, Article 4 does not extend the obligation either to freeze the funds or properties of persons or entities that are acting on behalf of, or at the direction of, designated persons or entities. Regarding sanctions under UNSCR 1373, Article 9 of the Sub-decree does not extend the obligation to freeze the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities.

76. (c) Under Article 12 of the Sub-decree, there is a prohibition for Cambodian nationals or any person or entity within their jurisdiction to make frozen funds or properties available to or for the benefit of any entity owned or controlled, directly or indirectly by the designated persons or organizations. However, that prohibition does not extend to making funds available for the benefit of designated persons and entities and to persons and entities acting on behalf of, or at the direction of, designated persons or entities. Article 8 of the same legislation provides for an exception (basic or extraordinary expenses) to this prohibition and it is in accordance with the relevant UNSCRs.

77. (d) According to Article 4 of the Sub-decree, CAFIU, after receiving notice from the MFA-IC, shall, without delay, disseminate listing or de-listing of terrorists or organizations to reporting entities by publishing the list on the publicly available CAFIU website. With respect to sanctions under UNSCR 1373, Article 9 of the same legislation requires that after receiving notice from MOJ, MFA-IC shall, without delay, inform the competent authority of the third parties on the designation of persons and entities as designated persons and the freezing of properties and funds of designated persons. However, there is no mechanism to provide clear guidance to financial institutions and other persons or entities.

78. (e) Under Article 14 of the Sub-decree, reporting entities shall communicate to CAFIU any funds or properties frozen pursuant to the court order. CAFIU shall forward this information to MOJ. The same article also requires that any person or entity, other than reporting entities, shall communicate to their supervisory authorities about frozen properties and funds pursuant to the court order. Their respective supervisory authorities are required to forward this information to MOJ. However, the Sub-decree does not impose any obligation to report attempted transactions.

79. (f) Cambodia's legal system does not have any measures which protect the rights of *bona fide* third parties acting in good faith when implementing the obligations under Recommendation 6. The Sub-decree does not address the issue of protecting third parties acting in good faith when implementing obligations related to targeted financial sanctions.

80. *Criterion 6.6 - (a)* Cambodia does not have a procedure to submit de-listing requests to the relevant UN sanctions committee in the case of persons and entities designated pursuant to the UN sanctions regimes no longer meeting the criteria for designation. *(b)* According to Article 9 of Sub-decree, the de-listing shall be done when the Court has determined that reasonable grounds for listing are no longer met. However, there is no clear mechanism to unfreeze the funds or properties of persons or entities that no longer meet the criteria for designation.

81. (c) Under Article 11(a) of the Sub-decree, a person who was been determined to be a designated person can challenge the designation in court. Such a challenge can curtail the duration of the court order. (d) Article 7 of the Sub-decree provides that a person or organization aggrieved by a freezing order may submit a petition for removal from the UNSCR 1267 List to the relevant UN Sanctions Committee or the focal point or Office of the Ombudsperson of the UN for review of the decision. The legislation does not however establish any procedures to facilitate review by the 1988 Committee.

82. (e) According to Article 7 of the Sub-decree, a person or organization aggrieved by a freezing order may submit petition for removal from the UNSCR 1267 list to the relevant UN Sanctions Committee or the focal point or Office of the Ombudsperson of the UN for review of the decision. (f) However, there is no publicly known procedure to allow the unfreezing of assets or funds of persons or entities who successfully argue that they have been captured by mistaken identity Article 2 of the Sub-decree states that the Sub-decree is targeted to establishing mechanisms and procedures for freezing properties and funds of terrorists and

organizations according to the UNSCR 1267, and their successor resolutions. Nevertheless, there is no clear procedure to inform designated persons and entities that the Office of the Ombudsperson is available to accept de-listing petitions.

83. (g) Under Article 4 of the Sub-decree, MFA-IC shall, without delay, forward to MOJ and to the CAFIU the listing or delisting of any terrorist, or organization pursuant to UNSCR 1267 and successor resolutions, as subject to financial sanctions or other restriction. Upon UN notifying designation, MOJ shall immediately disseminate listing or de-listing of designated terrorists or organizations to court to issue freezing or unfreezing order respectively, without delay and shall publish them in the publicly available MOJ website. CAFIU shall, without delay, disseminate listing or de-listing of terrorists or organizations to REs subject to the AML/CFT Law, by publishing the list on the publicly available CAFIU website. Nevertheless, there is no clear mechanism in place to provide guidance to financial institutions and other persons or entities, which may by holding targeted funds or other assets, on their obligations to respect a de-listing or unfreezing action.

84. *Criterion 6.7* - Under Article 8 of the Sub-decree, access to frozen funds or other assets is authorised where it has been determined to be necessary, by the UN Sanctions Committee, for basic or extraordinary expenses. However, no such provision is made for freezing measures applied to persons and entities designated by a (supra-) national country pursuant to UNSCR 1373.

#### *Weighting and Conclusion*

85. Cambodia has a reasonable legislative framework to implement targeted financial sanctions related to terrorism and TF. However, minor shortcomings exist with respect to the scope of freezing measures under UNSCR 1373 and legal entities being covered by the freezing measures. Furthermore, the standing court order is only applicable to reporting entities and not all natural and legal persons within Cambodia. **Recommendation 6 is rated largely compliant.**

#### ***Recommendation 7 – Targeted financial sanctions related to proliferation***

86. Recommendation 7 is a new requirement added to the FATF Recommendations in 2012 and so was not assessed in Cambodia's 2007 ME.

87. *Criterion 7.1* - Cambodia does not implement targeted financial sanctions without delay to comply with the UNSCRs that relate to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing (proliferation financing or PF).

88. *Criterion 7.2* - There is no provision that establishes the legal authority and identifies the competent authorities responsible for implementing and enforcing targeted financial sanctions related to PF. There are no measures in place to meet the requirements set out in 7.2(a) - (f).

89. *Criterion 7.3* - Cambodia has yet to formulate the necessary legislative provision for purposes of imposing freezing obligations on persons and entities including financial institutions and DNFBPs and to provide for appropriate enforcement actions in the event of non-compliance with the freezing obligations. Since there are no legal obligations imposed to freeze funds and other assets of designated persons and entities, Cambodia has not adopted measures for monitoring and ensuring compliance by financial institutions and DNFBPs with the freezing obligations.

90. *Criterion 7.4* - Cambodia has not developed and implemented any publicly known procedures to submit de-listing requests to the United Nations Security Council in the case of designated persons and entities that, in the view of Cambodia, do not, or no longer, meet the criteria for designation. (a) Cambodia has not developed and implemented any procedures enabling the designated persons and entities to petition a request for de-listing at the Focal Point for de-listing or informing the designated persons and entities to petition the Focal Point directly for de-listing. (b) There are no publicly known procedures to unfreeze the assets of persons and entities with the same or similar name as the designated persons and entities upon adequate verification. (c) There are no procedures authorising access to funds and other assets in circumstances where the conditions for exemptions under the relevant UNSCRs are met, as the funds or other assets of designated persons and entities are not frozen in the first place. (d) There are no mechanisms pertaining to communication of de-listed entities and acts of unfreezing to the financial sector and DNFBBs immediately after such actions. No guidance has been provided to financial institutions and DNFBBs on de-listing and unfreezing actions.

91. *Criterion 7.5* - The funds and other assets of designated persons and entities are not subject to freezing in Cambodia. Thus, the question whether any addition to the accounts frozen in the form of interest, other earnings or payments due under contracts, agreements or obligations that arose prior to the designation of the persons and entities could be permitted does not arise. Similarly, the question whether a designated person or entity could make any payment in respect of contracts, agreements or obligations that arose prior to the date on which accounts became subject to targeted financial sanctions does not arise since the funds or other assets are not required to be frozen.

#### *Weighting and Conclusion*

92. Cambodia has not put in place any specific measures for purposes of implementing targeted financial sanctions related to proliferation in order to comply with UNSCRs. **Recommendation 7 is rated non-compliant.**

#### ***Recommendation 8 – Non-profit organisations<sup>65</sup>***

93. In the 2007 MER, Cambodia was rated partially compliant with former SR.VIII. The report found that while there was some fragmented regulation of NPOs, Cambodia did not have an overarching legal framework governing NPOs, there was also no outreach to NPOs, and no formal channels for international cooperation.

94. *The Law on Associations and Non-governmental Organizations 2015* (Law on Associations and NGOs) was promulgated in August 2015, after feedback about the inadequacy of the previously fragmented regulatory framework for preventing abuse of NPOs.

95. The Department of Association and Political Affairs within the Ministry of the Interior is in the process of collecting information on the number of local associations and NGOs and associations active in Cambodia. At the end of this exercise the Ministry hopes to have publicly available information about NPOs, including the registration approval letter, statutes, purposes and objectives, identity of director, board of director members etc.

96. *Criterion 8.1* - (a) Cambodia has not identified which subset of organizations, within their NGO sector, fall within the FATF definition of NPO. Consequently, Cambodia has not identified the features and types of NPOs which, by virtue of their activities or characteristics, are likely to be at risk of TF abuse.

<sup>65</sup> This analysis applies the updated criteria for Recommendation 8 adopted by the FATF in October 2016.

97. (b) NPOs were not included in Cambodia's first NRA and while the competent authorities believe that the risk to the sector is low, Cambodia has not identified the nature of threats posed by terrorist entities to NPOs that are at risk as well as how or whether terrorist actors abuse those NPOs.

98. (c) As noted above, the Law on Associations and NGOs came into force in August 2015, following a review of the previous regulatory regime. While the review which preceded enactment of the legislation did not specifically address the subset of the NPO sector that may be abused for TF, the new Act contains a range of sanctions that may be applied to address identified risks (see analysis of c.8.4 below). As soon as Cambodia determines which subset of the NPO sector may be abused for TF support, it will be able to take proportionate and effective actions to address the risks identified. .

99. (d) Cambodia has not conducted a review of its NPO sector. However, under Articles 6 and 12 of the 2015 Law on Associations and NGOs, any foreign association or non-governmental organization or domestic associations or non-governmental organizations wishing to conduct activities in Cambodia is required to register. Under the registration system, relevant information (Articles 7, 10, 13 and 17 of the same Law) on the sector is readily available for examination/inspection by relevant authorities, although there is no information on the background of the funds. The information on associations and NGOs includes information on the purpose, activities of the association or NGO and operation accounts in national banks. Furthermore, Cambodia indicated that the MOI does investigate domestic NGOs if activity and financial reports indicate there are abnormal cash flows.

100. *Criterion 8.2 - (a)* Cambodia's intention to promote transparency, integrity and public confidence in the NPO sector is evident in its NGO registration and reporting regime with the MOI under the Law on Associations and NGOs. However, Cambodia does not have clear policies to promote transparency, integrity, and public confidence in the administration and management of all NPOs.

101. (b) Cambodia conducted a number of workshops for associations and NGOs with support from AUSTRAC in 2014, but has not conducted outreach or other educational programmes to the NPO sector concerning TF issues since enactment of the Law on Associations and NGOs. MOI is in the process of collecting information about associations and NGOs, with a view to conducting outreach in the near future.

102. (c) The competent authorities have not worked with the NPO sector to develop best practices to address TF risk and vulnerabilities and thus protect them from TF abuse. However, MFA-IC and MOI inform associations and NGOs of their legal obligations during the registration process.

103. (d) Cambodia does not actively encourage NPOs to conduct transactions via regulated financial channels, wherever feasible. However, the competent authorities' perception is that Cambodia is primarily a recipient, not a sending country. If that is accurate, in terms of capital inflows, Articles 10, 13 and 17 of Law on Associations and NGOs require all domestic and foreign NGOs to disclose their operation's bank accounts, thus allowing the competent authorities to monitor those funds.

104. *Criterion 8.3 -* The mandatory registration requirements imposed by the Law on Associations and NGOs on all domestic and foreign NGOs include measures that allow for effective risk-based supervision and broadly address the current TF risks in Cambodia. However, as noted above Cambodia has not conducted a formal assessment of the TF risks in the NPO sector and does not take a risk-based approach to supervision.

105. *Criterion 8.4 - (a)* There is no evidence to suggest that the competent authorities monitor the compliance of NPOs with the requirements of this Recommendation.

106. *(b)* MOI and MFA-IC have the ability to impose sanctions for non-compliance. Under Article 30 of Law on Associations and NGOs, MOI can apply a temporary suspension or removal from registration for a domestic NGO. According to Article 32 of Law on Associations and NGOs a fine can be imposed by MOI when a domestic NGO conducts activities without registration and when a domestic NGO was delisted or its activities were suspended but it continued to carry on activities in Cambodia. Additionally, Articles 33 and 35 allow MFA-IC, in certain circumstances, to terminate the validity of an MOU with a foreign NGO. Article 34 provides a penalty of expulsion against any foreigner working for a foreign NGO for committing certain offences regardless of other criminal penalties. However, with the exception of Article 34 in relation to foreign NGOs, no other sanctions are imposed for persons acting on behalf of an NGO.

107. In addition to requirements under the Law on Associations and NGOs, NGOs are considered to be reporting entities under the AML/CFT Law and, as such, must meet CDD and record-keeping requirements. There are sanctions in the AML/CFT Law for breaches of requirements though there are moderate shortcomings on this regard (see analysis of R.35 below).

108. *Criterion 8.5 - (a)* Cambodia provided evidence that it can ensure domestic cooperation, coordination and information-sharing amongst authorities or organisations that hold relevant information on domestic NGOs.

109. *(b)* There is some evidence from 2002-2004 to suggest that the competent authorities have investigative expertise and capability to examine those NPOs suspected of either being exploited by, or actively supporting, terrorist activity or terrorist organisations. The legal framework for combating TF, including powers of LEAs, has improved since Cambodia's last evaluation in 2007 (see analysis under R.5, R.30). However, there is no evidence to indicate that investigative expertise and capability specifically to address TF within the NPO sector has been maintained or developed further since then. .

110. *(c)* Under Article 25 of the Law on Associations and NGOs, the MOI and the MFA-IC can have access to the activity report and the annual financial report of NGOs (domestic and foreign respectively). Furthermore the registration process of domestic and foreign NGOs, provided for in Articles 10 and 17 of the same law, includes the requirement for NGOs to inform MOI or MFA-IC of changes in certain information's, such as a change of its bank account information; an amendment of its statute; a relocation of its office; a replacement of its president or executive director or a replacement of its country representative.

111. *(d)* There is a legislative mechanism to enable sharing of information, but no mechanisms have, in practice, been established to ensure that relevant information is promptly shared with competent authorities, in order to take preventive or investigative actions. While Article 26 of the AML/CFT Law states that certain entities entrusted with the prevention or control of TF shall establish their own permanent and senior-level mechanism, Cambodia has not provided details of any such mechanism as it relates to the NPO sector.

112. *Criterion 8.6 -* Cambodia has not formally identified a point of contact or procedures to respond to international requests for information regarding NPOs suspected of TF or other terrorist support. Cambodia notes that in practice MFA-IC performs the point of contact role.

*Weighting and Conclusion*

113. While the recent promulgation of the Law on Associations and NGOs is very welcome and some measures are in place, there are moderate shortcomings in the regulation and supervision of NPOs. Cambodia has not yet conducted a review of its NPO sector, there is no understanding of TF risks to the NPO sector, an outreach is planned but not yet initiated and competent authorities do not have guidelines or best practices in place for coordinated management of TF risks in NPOs. **Recommendation 8 is rated partially compliant.**

*Recommendation 9 – Financial institution secrecy laws*

114. Cambodia was rated partly compliant with former R.4. The 2007 MER found that Cambodia lacked the implementation of the provisions of the AML law lifting financial institution (FI) secrecy for AML /CFT purposes.

115. *Criterion 9.1 - Article 47 of the Law on Banking and Financial Institutions 1999* exempts the obligation of professional secrecy vis-à-vis the supervisory authority, auditors, provisional administrators, liquidators, or a court dealing with criminal proceedings. In addition, Article 6 of the AML/CFT Law provides that banking, or professional secrecy, shall not inhibit the implementation of the AML/CFT Law, specifically in providing information to the FIU and supervisory authorities or as required in connection with an ML or TF investigation ordered by or carried out under the supervision of a judicial authority. Article 13.2 of Prakas 2008 and Article 14.2 of Prakas 2010 require REs to ensure that if they rely on an introducing intermediary to undertake the CDD process on their behalf, the intermediary must have a system in place to provide access to identification documents, data or other information upon request and without delay (R.17).

116. In relation to correspondent banking, there is no requirement for the FIs to be satisfied that the respondent bank is able to provide relevant CDD information upon request to the correspondent bank (R.13). There are also shortcomings in relation to R.16, among others, there is no requirement to provide beneficiary information in cross-border wire transfers, no requirement to provide required and accurate originator information for batch file of several individual cross-border wire transfers, not necessary to include information on the originator's name, address, account number in the message accompanying a remittance wire transfer transaction of less than USD 1,000, etc. However, there is no evidence to show that the shortcomings under R.13 and R.16 are due to financial secrecy provisions. In practice, messages accompanying cross-border wire transfers follow the standard SWIFT messaging requirements, and samples given on domestic wire transfers also contain the necessary information.

*Weighting and Conclusion*

117. **Recommendation 9 is rated compliant.**

*Recommendation 10 – Customer due diligence*

118. Cambodia was rated non-compliant with former R.5. There were major gaps in the implementation of customer due diligence (CDD) measures, definitional issues with beneficial ownership and issues with KYC and third parties acting on behalf of a customer, amongst other deficiencies. Since the 2007 MER, Cambodia has issued the AML/CFT Law and the Prakas on AML/CFT (Prakas 2008) and Prakas on AML/CFT relating to All Reporting Entities Not Regulated by the National Bank of Cambodia 2010 (Prakas 2010), which set out various preventive measures.



119. *Criterion 10.1* - Article 7 of the AML/CFT Law prohibits REs from (a) opening or keeping anonymous or numbered accounts, or accounts in obviously fictitious names; or (b) issuing, keeping or accepting any other financial products unless the customer due diligence measures were taken in accordance with Article 8 of this Law.

120. *Criterion 10.2* - (a) Article 8.1(a) of the AML/CFT Law requires REs to undertake CDD measures, including the identification of their customers and the verification of their customers' identity, prior to establishing business relations, such as opening accounts, taking stocks, bonds or other securities into safe custody, granting safe-deposit facilities or engaging in any other business dealings. This is supported by Article 5.2 of Prakas 2008, Article 6.2 of Prakas 2010 and Article 4.1 of the Prakas on Code of Conduct of Securities Firms and Securities Representatives 2011.

121. (b) CDD measures shall be applied by REs prior to carrying out occasional or one-off transactions, including wire transfers that involve a sum in excess of amount as defined by the supervisory authority (Article 8.1(b) of the AML/CFT Law). The threshold is set at a sum in excess of USD 10,000 (or KHR 40 million or foreign currency equivalent) or wire transfers in excess of USD 1,000 (or KHR 4 million or foreign currency equivalent) (Article 5.2 of Prakas 2008 and 6.2 of Prakas 2010). There is however no explicit requirement for FIs to undertake CDD measures in situations where the transaction is carried out in several operations that appear to be linked.

122. (c) CDD measures for occasional transactions that are wire transfers are as provided under Article 8.1(b) of the AML/CFT Law. However, there are circumstances covered under Recommendation 16 and its Interpretive Note (refer to findings under R16) in which CDD may not fully apply. (d) CDD measures shall be applied if the RE has a suspicion of ML or TF irrespective of the sum involved in the transaction (Article 8.1(c) of the AML/CFT Law). (e) CDD measures shall also be applied if the RE has any doubts about the veracity or adequacy of previously obtained customer identification data (Article 8.1(d) of the AML/CFT Law).

123. *Criterion 10.3* - Article 8.2(a) of the AML/CFT Law requires the REs to identify the customer by obtaining, at the minimum, for natural persons, their name, birth date, and address, for natural persons and for legal persons, their name, articles of incorporation or registration, tax identification number, address, telephone number, as defined by the supervisory authority.

124. The AML/CFT Law requires that the KYC information is to be verified using reliable, independent source documents, data or information by using a national ID card, a passport or any other official photo ID document. Verification of customer's identity, as specified in the Law, is confined to using a national ID card, a passport or any other official photo ID document, which cannot be applied to legal persons and legal arrangements. However, the Prakas has wider requirements that would apply to legal persons where the REs should check with the Registry of Companies/Businesses on the authenticity of the information provided on the identity of the company/business and its directors, owners, shareholders and office bearers (Articles 7.4 and 8.4 of both Prakas 2008 and 2010, respectively).

125. However, there is no specific requirement for FIs to identify and verify customers that are legal arrangements. It should be noted that Cambodia does not have domestic trusts or any form of domestic legal arrangement but that foreign trusts can operate in Cambodia

126. Although Articles 10 and 11 of Prakas 2008 and Prakas 2010, respectively, require REs to establish whether the customer is acting on behalf of another person as trustee, nominee or agent, and to obtain evidence of the identity of the settler, trustee, nominee, authorised signatories, persons exercising effective control and the beneficiaries, neither Article fulfils all the requirements of c.10.3. The Articles do not require REs to identify the legal arrangements

(i.e. the name, or registration number), but only to ascertain whether customer is acting on behalf of another person as trustee, and only require REs to “obtain evidence”. These Articles do not explicitly mention using reliable, independent source documents, etc.

127. *Criterion 10.4* - In establishing a business relationship with a corporate customer, both Prakas 2008 and 2010 have the requirement for REs to require the company/business to furnish the original and make copies of at least the authorisation for any person to represent the company/business (Articles 7.1 and 8.1 of Prakas 2008 and 2010, respectively). There is however no explicit requirement for FIs to identify and verify the identity of that person.

128. *Criterion 10.5* - Article 8.2(b) of the AML/CFT Law requires the REs to identify the ultimate beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner such that the FI is satisfied that it knows the identity of the beneficial owner. Additionally, Article 5.3 of Prakas 2008 and Article 6.3 of Prakas 2010 require the REs to determine if the customer conducting business is acting on behalf of another person or beneficial owner. They should conduct CDD as stringent as the one imposed on individual customer when they suspect a transaction is conducted on behalf of a beneficial owner and not the customer who is conducting such transaction (Article 8 and 9 of Prakas 2008 and 2010, respectively). The CDD on individual customer as stated in Article 5.3 and 6.3 of Prakas 2008 and 2010 require the REs to identify the customer and verify the identity of the customer using reliable, independent source documents, data or information. “Beneficial owner” is defined in both Prakas 2008 and 2010 as the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement (Articles 8 and 9 of Prakas 2008 and 2010, respectively).

129. *Criterion 10.6* - Article 8.2(c) of the AML/CFT Law requires the REs to obtain information on the purpose and intended nature of the business relationship. There is however no explicit requirement for REs to understand the purpose and intended nature of the business relationship.

130. *Criterion 10.7 - (a)* Article 8.2(d) of the AML/CFT Law requires REs to conduct ongoing due diligence on the business relationship and scrutinise the transactions undertaken throughout the course of that relationship, to ensure that transactions being conducted are consistent with the REs’ knowledge of the customer, their business and risk profile including, where necessary, the source of funds.

131. *(b)* Article 5.3 and 6.3 of Prakas 2008 and 2010, respectively, require REs to conduct ongoing due diligence and scrutiny, to ensure the information provided is updated and relevant and ensure that the transactions being conducted are consistent with the REs’ knowledge of the customer, their business and risk profile, including, where necessary, the source of funds. However, there is no explicit mention that this requirement applies to “documents or data”, collected under the CDD process, and no specific mention that this requirement is particularly applied for “higher risk categories of customers”.

132. *Criterion 10.8* - For customers that are legal persons or legal arrangements, Article 8.2(b) of the AML/CFT Law requires the REs to take reasonable measures to understand the ownership and control structure of the customer. Similarly, Articles 7.6 and 8.6 of Prakas 2008 and 2010, respectively, require the REs to understand the ownership and control structure of corporate customers and determine the source of funds of the company/business. There is no explicit requirement for REs to understand the nature of the customer’s business. However, Articles 3.1 and 4.1 of Prakas 2008 and 2010, respectively, require REs, in creating the risk profile of a type of customer or an individual customer, REs should at least take into

consideration, among others, nature of the customer's business. Impliedly, this can be taken that nature of business needs to be understood for CDD purposes as well.

133. *Criterion 10.9* - For legal persons, Article 8.2(a) of the AML/CFT Law requires REs to identify the customer's name, articles of incorporation or registration, tax identification number, address, telephone number, and verify that customer's identity using reliable, independent source documents, data or information. Prakas 2008 and 2010 set out the requirements for REs when establishing a business relationship with a corporate customer. REs must require the customer (a company/business) to furnish the original and make copies of at least the following documents: (i) Memorandum/Article/Certificate of Incorporation/Partnership, (ii) Identification document of Directors/Shareholders/Partners, (iii) Board of Directors'/Directors' Resolution, (iv) Authorisation for any person to represent the company/business, (v) Authorisation or permit to conduct business. Both Prakas also require the REs to check with the Registry of Companies/Businesses on the authenticity of the information provided on the identity of the company/business and its directors, owners, shareholders and office bearers (Articles 7.4 and 8.4 of Prakas 2008 and 2010, respectively). The deficiency highlighted in c.10.3 with regard to CDD measures for legal arrangements, both in the Law and in the Prakas, is applicable to this sub-criterion.

134. *Criterion 10.10 - (a)* Article 8.2(b) of the AML/CFT Law requires the REs to identify the ultimate beneficial owner, and take reasonable measures to verify the identity of the beneficial owner such that the RE is satisfied that it knows who the beneficial owner is. For legal persons, the REs should take reasonable measures to understand the ownership and control structure of the customer. Analysis on c10.5 above is also applicable for this sub-criterion.

135. *(b)* There is no requirement for FIs to identify and take reasonable measures to verify, the identity of the natural person(s) (if any) exercising control of the legal person through other means, if there is doubt as to whether the person(s) with the controlling ownership interest is the beneficial owner(s) or where no natural person exerts control through ownership interests.

136. *(c)* There is also no requirement for FIs to identify and take reasonable measures to verify, the identity of the relevant natural person who holds the position of senior managing official, where no natural person is identified as having ultimate controlling ownership interest or exercising control of the legal person through other means. It is noted however that Article 8.3 of the AML/CFT Law states that a RE should not open an account when it is unable to identify the ultimate beneficial owner, which is defined as a natural person. This substantially mitigates the risks addressed by this criterion and, therefore, less weight is placed on this deficiency.

137. *Criterion 10.11* - General requirements for identification and verification of the identity of beneficial owner are in Article 8.2(b) of the AML/CFT Law. Both Prakas require the REs to take reasonable measures to understand the ownership and control structures and the relationship among the relevant parties in handling a trust or nominee account and obtain evidence of the identity of the settler, trustee, nominee, authorised signatories, persons exercising effective control and the beneficiaries, and that CDD requirements are completed for beneficial owners, when the trust or nominee account is established (Articles 10.2-10.3 and 11.2-11.3 of Prakas 2008 and 2010, respectively). There is no explicit requirement for FIs to identify and take reasonable measures to verify, the identity of the protector (if any), and the class of beneficiaries.

138. *Criterion 10.12 - (a)* Article 12 of the *Law on Insurance 2014* requires the insurance certificate to contain, among others, the full name and address of the insured and person or subject to be insured. Article 29 of the same Law requires that other than the necessary terms and conditions specified in the insurance contract, a life insurance policy should indicate, among

others, the full name, date of birth of the person to be entered the contract and the full name of the beneficiary. Under the same Law, “beneficiary” is defined as a third party of a life insurance contract that has the legal rights to receive the benefits from the life insurance contract.

139. (b) There is no direct requirement for FIs to identify the beneficiary that is designated by characteristics or by class or by other means where they should obtain sufficient information, concerning the beneficiary to satisfy the FI that it will be able to establish the identity of the beneficiary at the time of the payout. However, since the same Law on Insurance 2014 defines “beneficiary” as a third party of a life insurance contract that has the legal rights to receive the benefits from the life insurance contract, it appears to cover the beneficiary that is designated by characteristics or by class or by other means.

140. (c) There is no requirement for FIs to verify the identity of the beneficiary at the time of the payout.

141. *Criterion 10.13* - There is no requirement for FIs to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable, and to take enhanced measures. Such measures should include ways to identify and verify the identity of the beneficial owner of the beneficiary, at the time of payout, if the FI determines that a beneficiary who is a legal person or a legal arrangement presents a higher risk.

142. *Criterion 10.14* is not applicable since Cambodia does not permit delayed verification. Articles 8.1(a)-(b) of the AML/CFT Law require REs to take CDD measures, including the identification of their customers and the verification of their customers' identity: (a) prior to establishing business relations, or (b) prior to carrying out occasional or one-off transactions, including wire-transfers. There is no permission for delayed verification. Articles 8.2(a)-(b) of the same Law provides for the CDD measures that should be applied to the customer (natural or legal persons) and the ultimate beneficial owner (natural or legal persons or legal arrangements). As mentioned in c10.3, there is no direct requirement for CDD measures for legal arrangement, either in the Law or in the Prakas.

143. *Criterion 10.15* is not applicable since Cambodia does not permit delayed verification.

144. *Criterion 10.16* - Article 8.4 of the AML/CFT Law provides that the requirements set forth by Article 8 shall apply to all new customers as well as to existing customers on the basis of materiality and risk. Reporting entities shall conduct due diligence on such existing relationships retrospectively. This is supported by both Prakas 2008 and 2010.

145. *Criterion 10.17* - Article 20.1 of the Prakas 2008 requires banks and FIs to conduct enhanced CDD for all categories of higher risk customers, including those high-risk customers mentioned in articles 18 and 19 of the Prakas. Article 17.1 of the Prakas 2010 requires reporting entities to conduct enhanced CDD for all categories of higher risk customers, including politically exposed persons (PEPs). Enhanced CDD should include at least: (i) more detailed information from the customer, in particular, on the purpose of the business relationship and source of funds; (ii) independent research and sourcing of additional information about the customer; and (iii) approval by senior management.

146. *Criterion 10.18* is not applicable since Cambodia does not permit the application of simplified CDD measures.

147. *Criterion 10.19* - Where the RE is unable to comply with CDD measures provided under paragraphs 2 (a) to (c), Article 8 of the AML/CFT Law it is required not to open the account, commence business relations or perform the transaction, or in case of existing business

relations with the customer, it should terminate such business relations, unless instructed to the contrary by the FIU. In any such cases, the reporting entity should consider making a suspicious transaction report in relation to the customer.

148. *Criterion 10.20* - When FIs form a suspicion of ML or TF, and they reasonably believe that performing the CDD process will tip-off the customer, there is no provision that permits them not to pursue the CDD process, and instead be required to file a suspicious transaction report.

#### *Weighting and Conclusion*

149. There are minor shortcomings in meeting Recommendation 10. There is no direct requirement for REs to identify and verify the identity of third-parties acting on behalf of a customer, to understand the purpose and intended nature of their customer's business relationship or for FIs to ensure that documents or data, collected under the CDD process is kept up-to-date and relevant, particularly for higher risk categories of customers. There is no requirement for FIs to identify and take reasonable measures to verify, the identity of the natural person(s) (if any) exercising control of the legal person through other means, if there is doubt as to whether the person(s) with the controlling ownership interest is the beneficial owner(s) or where no natural person exerts control through ownership interests. There is no requirement for FIs to identify and take reasonable measures to verify, the identity of the relevant natural person who holds the position of senior managing official, where no natural person is identified as having ultimate controlling ownership interest or exercising control of the legal person or arrangement through other means. There is no requirement for REs to not pursue the CDD process, and instead lodge an STR if they feel the CDD process will 'tip-off' the customer. . There is no requirement for insurance companies to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable, and to take enhanced measures. **Recommendation 10 is rated largely compliant**

#### *Recommendation 11 - Record-keeping*

150. Cambodia was rated non-compliant with former R.10. The 2007 MER highlighted that it was unclear whether FIs have to keep record of business correspondence and have to ensure that relevant information is made available on a timely basis to competent authorities.

151. *Criterion 11.1* - Article 11 of the AML/CFT Law requires REs to maintain, at least for five years after the account has been closed or the business relations with the customer have ended, any records of transactions conducted by customers, including amounts and types of currency involved. Articles 22 and 19 of Prakas 2008 and Prakas 2010, respectively, require FIs to keep all records, documents and copies of documents involved in all forms of transactions for at least five years after the date of the transaction. There appears to be an inconsistency between the requirement in the Law, which starts "after the account has been closed or the business relations with the customer have ended" and the requirement in the Prakas, which starts "after the date of the transaction", as 'after the date of the transaction' does not necessarily mean the completion date. However, the requirement in the Law would sufficiently cover this shortcoming. It is not explicit that the requirement to keep records of transactions covers both domestic and international transactions.

152. *Criterion 11.2* - Article 11 of the AML/CFT Law requires the FIs to maintain, at least for five years after the account has been closed or the business relations with the customer have ended, any records of customer identification and records of transactions conducted by customers. Articles 22 and 19 of Prakas 2008 and Prakas 2010, respectively, require that FIs to keep all identification data, files, records, documents, business correspondence and copies of documents obtained on a customer, for at least five years after the accounts have been closed or

the business relations with the customer have ended. However, there is no requirement to retain the results of any analysis undertaken by the FI regarding their customer.

153. *Criterion 11.3* - Article 11 of the AML/CFT Law requires REs to maintain, and to hold at the disposal of the competent authorities, any records of customer identification and records of transactions conducted by customers. These records are to be held in a manner such that they are sufficient to permit the reconstruction of individual transactions, including the amounts and types of currency involved, if any, so as to provide, if appropriate, evidence for the prosecution of offence.

154. *Criterion 11.4* - Article 11 of the AML/CFT Law requires REs to maintain, and to hold at the disposal of the competent authorities, any records of customer identification and records of transactions conducted by customers. However, there is no explicit requirement to ensure that all CDD information and transaction records are available swiftly to domestic competent authorities upon appropriate authority.

#### *Weighting and Conclusion*

155. There are only minor shortcomings under Recommendation 11. It is not explicit that the requirement to keep records of transactions covers both domestic and international transactions, although this may be implied, and there is no requirement to retain the results of any analysis undertaken by the FI on their customers' account activity when internal investigations were conducted on unusual activities. **Recommendation 11 is rated largely compliant.**

#### *Recommendation 12 - Politically exposed persons*

156. Cambodia was rated non-compliant with former R.6 in the 2007 MER. Cambodia has since introduced relevant measures in the AML/CFT Law and the 2008 and 2010 Prakas.

157. *Criterion 12.1 - (a)* Article 3(1) of the AML/CFT Law defines PEPs as any individual who is, or has been, entrusted with prominent public functions in a foreign country, such as head of state or of government, senior politician, senior government official, judicial or military official, senior executive of state-owned corporation or important party official. Articles 17.1 and 16.1 of the Prakas 2008 and Prakas 2010, respectively, require the REs to check current and new customers to determine whether they are PEPs. This process should be part of the customer due diligence process, where sufficient information should be gathered from the customer, which includes further research and data gathering to determine the level of ML/TF risk. It is not explicit that FIs should put in place risk management systems and that there is a requirement to determine whether the beneficial owner is a PEP.

158. *(b)* Articles 17.3 and 16.3 of Prakas 2008 and 2010, respectively, require that the decisions to enter into, or continue business relationships, with PEPs should be made by senior management. This is in reference to persons in articles 17.1 and 16.1 of Prakas 2008 and 2010 respectively. However, since Articles 17.1 and 16.1 of both Prakas exclude the identification of whether a beneficial owner is a PEP, it follows that this requirement does not apply to beneficial owners of customers identified as PEPs.

159. *(c)* Articles 17.2 and 16.2 of both Prakas 2008 and 2010, respectively, require that once a PEP is identified, REs should take reasonable measures to establish the source of wealth and funds of such persons (in reference to persons in Articles 17.1 of Prakas 2008 and 16.1 of Prakas 2010). Since these articles exclude the identification of whether a beneficial owner is a PEP, it follows that this requirement does not apply to beneficial owners of customers identified as PEPs.

160. (d) Articles 17.4 and 16.4 of Prakas 2008 and 2010, respectively, require REs to develop a risk profile of each PEP. The risk profile is to be based on information collected from the customer and obtained through independent research so the RE understands the full nature of the business relationship and expected transaction activity. There should be ongoing monitoring of the relationship and activity against the risk profile and any concerns arising from the monitoring process should be reported to senior management and, if appropriate, reported to the FIU. There is no requirement for REs to conduct enhanced ongoing monitoring on that relationship.

161. *Criterion 12.2* - The definition of PEPs does not include persons entrusted with prominent public functions in Cambodia or persons who have been entrusted with a prominent function by an international organisation, their family members and close associates.

162. *Criterion 12.3* - The definition of PEPs in the Prakas 2008 and 2010 does not cover family members or close associates of all types of PEPs, regardless whether they are foreign PEPs, domestic PEPs or persons who have been entrusted with a prominent function by an international organisation.

163. *Criterion 12.4* - Similar deficiencies as highlighted in c.12.1 (with regard to the absence of requirement to determine whether the beneficial owner is a PEP) and c.12.2 (with regard to the exclusion of domestic PEPs and persons entrusted with a prominent function by an international organisation in the definition of a PEP) persist in c.12.4. In addition, there is no requirement for insurance companies to take reasonable measures to determine whether beneficiaries, or where required, the beneficial owner of the beneficiary are PEPs. It follows that there is no requirement for higher risk cases, enhanced CDD should be applied to include senior management approval and obtaining source of funds and wealth for such beneficiaries or beneficial owners of the beneficiary and that reporting entities should consider filing a suspicious transaction report (STR).

#### *Weighting and Conclusion*

164. There are moderate shortcomings under Recommendation 12. The definition of PEPs does not extend to domestic PEPs or to heads of international organisations, their family members and close associates. It is not explicit that REs should include PEPs in their risk management systems nor put in place ongoing customer monitoring of PEP's accounts. There is no also requirement to determine whether beneficial owner is a PEP. **Recommendation 12 is rated partially compliant.**

#### ***Recommendation 13 – Correspondent banking***

165. Cambodia was rated non-compliant with former R.7 in the 2007 MER. There was no requirement for FIs to comply with R.7.

166. *Criterion 13.1* - Article 15.2 of the 2008 Prakas requires banks and FIs entering a correspondent relationship to gather and assess information on the respondent institution's board of directors and management, business activities and products, subjected legislations, regulation and supervision, AML/CFT measures and controls, and annual reports. Article 15.3 of Prakas 2008 requires banks and FIs to establish, or continue, a correspondent banking relationship with a correspondent bank or an FI only if it is satisfied with the assessment of the information gathered. Article 15.5 of Prakas 2008 requires decision and approval to establish or continue a correspondent banking relationship to be made at the senior management level.

167. There is no direct requirement for FIs to fully understand the nature of the respondent's business, to determine the reputation of the institution and the quality of

supervision, including whether it has been subjected to a ML/TF investigation or regulatory action. There is also no requirement for the banks and FIs to clearly understand the respective AML/CFT responsibilities of each institution.

168. *Criterion 13.2 - (a)* Article 15.7 of Prakas 2008 requires that FIs should exercise enhanced due diligence with respect to correspondent banks, which allow direct use of the correspondent account by their customers to transact business on their own behalf, such as payable-through accounts. However, there is no requirement for the FIs to be satisfied that the respondent bank has performed CDD obligations on its customers that have direct access to the accounts of the correspondent bank.

169. *(b)* There is no requirement for the FIs to be satisfied that the respondent bank is able to provide relevant CDD information upon request to the correspondent bank

170. *Criterion 13.3 -* Article 15.6 of Prakas 2008 requires that FIs ensure their correspondent banking relationships do not include correspondent banks and FIs that have no physical presence and which are unaffiliated with a regulated financial group. This requirement does not fulfil the definition of “shell bank” as provided in the FATF Methodology, as it excludes banks that have a physical presence in some location but not in the jurisdiction in which they are incorporated and licensed. In addition, there is no requirement that the banks and FIs should satisfy themselves that respondent FIs do not permit their accounts to be used by shell banks.

#### *Weighting and Conclusion*

171. There are moderate shortcomings under Recommendation 13. There is no explicit requirement for the banks to understand and assess their respondent banks in terms of their nature of business, reputation, the quality of supervision, AML/CFT responsibilities, including in performing CDD obligations and in providing CDD information upon request, and prohibition against accounts being used by shell banks. **Recommendation 13 is rated partially compliant.**

#### *Recommendation 14 - Money or value transfer services*

172. Cambodia was rated non-compliant with former SR VI. The 2007 MER found that there was a large-scale unregulated informal money and value transfer services (MVTS) sector and that the AML/CFT requirements were too limited for banks.

173. *Criterion 14.1 -* MVTS providers are: (i) banks permanently established and licensed in Cambodia, which according to Article 5 of *the Law on Foreign Exchange 1997*, are the only authorized intermediaries allowed to provide foreign exchange operations. This includes purchases and sales of foreign exchange on the foreign exchange market, transfers, all kinds of international settlements and capital flows in foreign and domestic currency, between Cambodia and the rest of the world or between residents or non-residents; (ii) third party processors entrusted by the banks and licensed by the NBC; and (iii) companies authorized to provide postal services by the Ministry of Post and Telecommunication (postal MVT operators).

174. *Criterion 14.2 -* There is no explicit requirement imposed on authorities to take action to identify natural or legal persons that carry out MVTS without a licence or registration, however Article 41.4 of the Banking Act sets out that NBC’s duty includes imposing disciplinary sanctions against entities failing to comply with law and regulations. NBC advised it has a team which conducts on-site checks to ensure FIs are abiding by their licences, and a team which monitors news sources and social media to identify illegal operations. NBC has previously taken



action against unregistered money changers, however has never identified illegal MVTS operators and therefore no sanctions have been imposed on illegal MVTS operators to date.

175. *Criterion 14.3* - MVTS providers (banks and third-party processors) are subject to supervision by the NBC. They are REs under the AML/CFT Law and are subject to the AML/CFT requirements set out in the Law and Prakas on Third-party Processors. The postal services are not subject to monitoring for AML/CFT compliance.

176. *Criterion 14.4* - The first category of MVTS providers, which is the banks, can appoint agents, namely third party processors. Third party processors are required to be licensed by NBC under the Prakas on Third-Party Processors (Article 3(2) of the Prakas). The second category of MVTS providers, which is third party processors themselves, can also appoint agents. Under Article 13(3) of the Prakas on Third-Party Processors, these third party processors are required to provide NBC with a list of their agents, together with the name and address of where they provide their service. . The third category of MVTS providers, which is the Postal Service, uses their branches as agents.

177. *Criterion 14.5* - Article 10(2) of the Prakas on Third Party Processors requires the banks to ensure that the third party processors operate under its full control and supervision in matters in which it acts on its behalf in order to ensure its compliance with this Prakas and with all other legal requirements. This can be considered as the banks including them in their AML/CFT programmes and monitor them for compliance with these programmes. Article 13(2) of the Prakas on Third Party Processors also requires the third-party processors that appoint agents to ensure that the agents operate under its full control and supervision in matters in which it acts on its behalf. Article 18(1) of the Prakas on Third Party Processors require the third party processors and their agents to collect all relevant information imposed by relevant authority for currency reporting, record-keeping and suspicious transaction reporting as set out in the AML/CFT Law. However, there is no direct requirement for the third-party processors to include the authorised agents in their AML/CFT programmes and monitor their compliance with these programmes. There is no such requirement for postal services as well. Cambodia has not provided any Law or Prakas on the Postal Service to the assessment team.

### *Weighting and Conclusion*

178. There are minor shortcomings under Recommendation 14. The penalty for illegally operating an MVTS is not proportionate and dissuasive. Third-party processors are not required to include the authorised agents in their AML/CFT programmes and monitor them for compliance with these programmes. **Recommendation 14 is rated largely compliant.**

### *Recommendation 15 – New technologies*

179. Cambodia was rated non-compliant with former R.8 in the 2007 MER. There was no requirement in law or regulation for FIs to have policies in place or take such measures, as may be needed, to prevent the misuse of technological developments in ML or TF schemes.

180. *Criterion 15.1* - The scope of Cambodia's NRA covers vulnerabilities coming from new technologies. The NBC, jointly with CAFIU, assesses ML/TF risks that may arise from new products or business practices. In mitigating new payment methods risks, CAFIU and NBC have signed a MoU in November 2016 that provides CAFIU access to NBC transactions database.

181. Articles 34.3 and 31.3 of Prakas 2008 and Prakas 2010, respectively, require the Board of Directors and senior management of REs to be "aware of" ML/TF risks associated with their business products and services. This requirement appears to be less stringent than the requirement under c15.1 where FIs are required to "identify and assess" ML/TF risk. However,

the Prakas on Internal Control of Bank and Financial Institutions 2010 defines “new products / new activities” as new transaction, new service, new equity participation, new outsourcing decision, or whatever that would involve changes, among others, in IT developments, which if not appropriately performed could result in unidentified operational, legal compliance, or any type of risk for the institution. It further provides that such risks need to be assessed prior to taking on such new products and activities, and where necessary, appropriate measures taken to adequately process, control, monitor, manage, and where deemed necessary, mitigate the risks involved by such activities and products.

182. *Criterion 15.2 - (a)* In addition to the analysis under c15.1, Article 4 of the Prakas on Internal Control of Bank and Financial Institutions 2010 requires internal control policies to foresee the conditions under which new activities, new services or new financial participations can be undertaken. This preliminary risk assessment and evaluation process aims at ensuring the adequacy and capacity of, among others, the internal control systems prior to undertaking the new activities, services or financial participations.

183. (b) Articles 34 and 36 of Prakas 2008 and Article 31 of Prakas 2010 broadly cover risk assessment and mitigation.

#### *Weighting and Conclusion*

184. **Recommendation 15 is rated compliant**

#### ***Recommendation 16 - Wire transfers***

185. Cambodia was rated non-compliant with former SR VII. The wire transfer requirements for FIs were deficient and there were no measures in place to effectively monitor FIs' compliance with the relevant rules and regulations. The FATF requirements for R.16 have been updated compared to SR VII.

186. *Criterion 16.1 -* Article 8.1(b) of the AML/CFT Act requires reporting entities to identify and verify their customers when carrying out wire-transfers in excess of an amount defined by the supervisory authority. This amount is defined in Article 16.4 of Prakas 2008 to be USD 1,000. Article 8.1(b) of the AML/CFT Act further required the identification information accompanying wire transfers to contain the name and address of the originator, and where an account exists, the number of that account. In the absence of an account, a unique reference number shall be included. There is no requirement however to include the required beneficiary information in cross-border wire transfers. .

187. *Criterion 16.2 -* There is no requirement for FIs to ensure that the batch file of several individual cross-border wire transfers from a single originator for transmission to beneficiaries (that are bundled in a batch file) should contain required and accurate originator information. Nor is it a requirement to provide full beneficiary information that is traceable within the beneficiary country or the originator's account number or unique transaction reference number.

188. *Criterion 16.3 - (a)* Article 16.4 of Prakas 2008 states that it is not necessary to include information on the originator's name, address, account number, identification number or customer reference number and the details of the transaction in the message accompanying a remittance/wire transfer transaction of less than USD 1,000/KHR 4 Million or its equivalent in any other currencies.

189. (b) The deficiency as highlighted in c.16.1(a) with regard to no requirement to include the required beneficiary information applies to c.16.3(b).

190. *Criterion 16.4* - Article 16.3 of Prakas 2008 provides that FIs receiving a remittance/wire transfer message with incomplete originator information should conduct enhanced due diligence and may consider it as a factor of suspicion. Due to the deficiency in c.16.3, FIs would not have the required information to verify. In addition, Article 16.3 does not apply to outgoing cross-border wire transfers remittance (only incoming).

191. *Criterion 16.5* - Article 8.1(b) of the AML/CFT Act required the identification information accompanying wire transfers to contain the name and address of the originator, and where an account exists, the number of that account. In the absence of an account, a unique reference number shall be included

192. *Criterion 16.6* is not applicable. There is no requirement consistent with c.16.6.

193. *Criterion 16.7* - As highlighted in R11, Article 11 of the AML/CFT Law and Articles 22 and 19 of Prakas 2008 and Prakas 2010, respectively, are not explicit to require that the records on transactions covers both domestic and international transactions. However, this may be implied.

194. *Criterion 16.8* - There is no requirement for FIs not to allow the execution of the wire transfer if it does not comply with the requirements specified in c16.1-16.7.

195. *Criterion 16.9* - Articles 16.2 of Prakas 2008 requires FIs facilitating or acting as intermediary to a remittance/wire transfer transaction to ensure such originators information is retained with a remittance/wire transfer message. There is no requirement for the intermediary to ensure beneficiary information is retained in the message.

196. *Criterion 16.10* - There is no requirement that specifically applies when there is a technical limitation that prevents originator or beneficiary information accompanying a wire transfer through to a domestic transfer. Article 11 of the AML/CFT Law and Article 22 of Prakas 2008 require transaction records to be kept for five years after the account has been closed or the business relation with the customer has ended (Law) or after the date of the transaction (Prakas). However, neither is explicit to require that the records on transactions cover both domestic and international transactions (see c11.1) and there is no requirement to retain beneficiary information (see c16.9).

197. *Criterion 16.11* - There is no requirement for the intermediary FIs to take reasonable measures, which are consistent with straight-through processing, to identify cross-border wire transfers that lack the required originator or beneficiary information.

198. *Criterion 16.12* - There is no requirement for the intermediary FIs to have risk-based policies and procedures to determine whether to execute, reject or suspend a wire transfer lacking the required originator or beneficiary information and the appropriate follow-up action.

199. *Criterion 16.13* - There is no requirement for the beneficiary FIs to take reasonable measures, which may include post-event monitoring or real-time monitoring where feasible, to identify cross-border wire transfers that lack the required originator or beneficiary information.

200. *Criterion 16.14* - Article 8.1 of the AML/CFT Law and Article 5.2 of the Prakas 2008, require REs to take CDD measures, including customer identification and verification prior to establishing business relations or carrying out an occasional or one-off transaction, including wire-transfers that involve a sum in excess of USD 1,000 (KHR 4 million or foreign currency equivalent). Article 22 of the Prakas 1008 requests Banks and financial institutions to keep all records, documents and copies of documents involved in all forms of transactions for at least

five years after the date of the transaction. However, deficiency persists in maintaining this information in accordance with R11.

201. *Criterion 16.15* - There is no requirement for beneficiary FIs to have risk-based policies and procedures to determine whether to execute, reject or suspend a wire transfer lacking the required originator or beneficiary information and the appropriate follow-up action.

202. *Criterion 16.16* - There is no requirement for MVTs providers, or their agents, to comply with all the relevant requirements of R16 in the countries in which they operate.

203. *Criterion 16.17 - (a)* There is no requirement for the MVTs providers that control both the ordering and the beneficiary side of a wire transfer to take into account all information from both to determine whether a suspicious transaction report (STR) should be filed.

204. *(b)* There is no requirement to file a STR in any country affected by a suspicious wire transfer and make relevant transaction information available to the FIU.

205. *Criterion 16.18* - Although not specifically in the context of processing wire transfers, *Sub-decree on Freezing of Property of Designated Terrorists and Organizations 2014* provides the mechanism and obligation for the REs to freeze properties and funds of terrorists and organizations according to the UNSCR 1267 and 1373, and their successor resolutions). Article 12 of the Sub-Decree requires that no Cambodian national, nor any person nor entity in Cambodia, shall make available any frozen properties or funds, directly or indirectly, to or for the benefit of, any entity owned or controlled, directly or indirectly, by the designated persons or organizations.

#### *Weighting and Conclusion*

206. There are moderate shortcomings in meeting Recommendation 16. The requirements do not comprehensively cover the collection of beneficiary information, traceability of batch file transactions, EDD on outgoing cross-border wire transfers, and record-keeping requirements that satisfy R11. **Recommendation 16 is rated partially-compliant.**

#### ***Recommendation 17 – Reliance on third parties***

207. In the 2007 MER Cambodia was rated non-compliant with former Recommendation 9. There were no provisions in law or regulation which allowed FIs to rely on intermediaries or other third parties to perform some of the elements of the CDD process. Since the 2007 MER, Cambodia has issued Prakas 2008 for the financial sector and Prakas 2010 for other entities which aim to address these requirements.

208. *Criterion 17.1* - Article 13.2 of Prakas 2008 and Article 14.2 of Prakas 2010 require REs to ensure that if they rely on an introducing intermediary to undertake the CDD process on their behalf, the intermediary has put in place a system to provide the bank or FI with access to the identification documents, data or other information upon request and without delay. The introducing intermediary must be properly regulated and supervised for AML/CFT purposes by their respective supervisory authorities.

209. *Criterion 17.2* - REs are required to pay special attention, when establishing business relationships or engaging in transactions, to individuals, businesses, companies and other FIs that are based in countries with insufficient implementation of internationally accepted AML/CFT measures (Article 27 of Prakas 2008 and Article 24 of Prakas 2010). However, this requirement is in the context conducting customer due diligence for foreign-based customers. It is unclear whether these articles extend to reliance on third parties based overseas to

perform CDD measures. The Prakas' also do not specify whether and how REs are required to derive information on the level of risk posed by the country where the company is based or whether that country has sufficiently implemented internationally accepted AML/CFT measures.

210. *Criterion 17.3* - There are no provisions for financial institutions to rely on a third party that is part of the same financial group.

#### *Weighting and Conclusion*

211. Cambodia has set criteria that REs must meet to rely on an introducing intermediary to undertake the CDD process on their behalf. However, there are minor shortcomings regarding the regulation of FIs relying on third parties based overseas. **Recommendation 17 is rated largely compliant.**

#### **Recommendation 18 – Internal controls and foreign branches and subsidiaries**

212. Cambodia was rated as non-compliant with former Recommendation 15. The 2007 MER found no guarantee of the independence of the audit and compliance functions and a lack of implementation.

213. *Criterion 18.1* - Under Article 16 of the AML/CFT Law, REs are required to develop programs for the prevention of ML and TF. Such programs must include appropriate compliance arrangements, designation of compliance officers at management level, adequate screening procedures to ensure high standards when hiring employees, an ongoing employee training programme, and an internal audit function to check compliance and effectiveness. There is no requirement however for the audit function to be independent.

214. *Criterion 18.2* - Although laws and regulations applicable to banks and other FIs do not inhibit sharing customer information between parent banks or financial institutions and branches or subsidiaries, there is no explicit requirement for financial groups, as distinct from REs, to implement group-wide programs against ML/TF.

215. *Criterion 18.3* - Cambodia does not impose any specific requirements on its FIs to ensure that foreign branches and majority-owned subsidiaries comply with Cambodian AML/CFT measures, if the host country imposes less strict requirements. There is also no guidance on compliance if the host country of a Cambodian bank's foreign branch imposes stricter or inconsistent AML/CFT requirements as compared to Cambodian law.

#### *Weighting and Conclusion*

216. There are moderate shortcomings in meeting Recommendation 18. There is no obligation for financial groups to implement group-wide programs, including an information sharing mechanism. There is also no specific requirement to ensure that foreign branches and majority-owned subsidiaries comply with AML/CFT measures in Cambodia. **Recommendation 18 is rated partially compliant.**

#### **Recommendation 19 – Higher-risk countries**

217. Cambodia was rated non-compliant with former R.21. The 2007 MER found no requirement for FIs to examine transactions related to countries which insufficiently apply the FATF Recommendations. There was no law or regulation allowing Cambodia to apply counter-measures when a country did not or insufficiently applied the FATF Recommendations.

218. *Criterion 19.1* - Article 27 of the Prakas 2008 requires banks and financial institutions to conduct ongoing due diligence and make further detailed inquiries, with regards to business relationships and transactions with individuals, businesses, companies and financial institutions from countries which have insufficiently implemented the internationally accepted AML/CFT measures. There is no requirement for the enhanced due diligence to be proportionate to the risks nor an explicit reference to applying this measure to countries called for by the FATF.

219. *Criterion 19.2* - There is no evidence that Cambodia has a legal basis to apply countermeasures, other than enhanced CDD, on countries in circumstances where it is called upon to do so, or otherwise.

220. *Criterion 19.3* - While CAFIU issued a notification to REs on 17 November 2016 about countries of concern due to weak AML/CFT regimes, there do not appear to be measures in place to ensure FIs are advised of concerns about weaknesses in the AML/CFT systems of other countries on an ongoing basis. .

#### *Weighting and Conclusion*

221. There are moderate shortcomings in meeting Recommendation 19. Cambodia has no legal basis to apply countermeasures on countries when called upon to do so, and it is unclear what measures are in place to advise FIs of concerns regarding weaknesses in the AML/CFT systems of other countries. **Recommendation 19 is rated partially compliant.**

#### ***Recommendation 20 – Reporting of suspicious transaction***

222. Cambodia was rated non-compliant with former R.13 and SR IV. The 2007 MER noted that there were partial and confusing reporting requirements and no STR had ever been received. There was also no reporting requirement for TF prior to the AML/CFT Law (2007) which was not implemented at the time of the on-site visit. Since the 2007 MER, Cambodia has taken action to meet the requirements of Recommendation 20.

223. *Criterion 20.1* - Under Article 12.2 and 12.3 of the AML/CFT Law, if a RE suspects or has reasonable grounds to suspect that funds are the proceeds of an offence, or are related to the financing of terrorism, it is required to promptly report its suspicions to the FIU within 24 hours. Article 3(b) of the AML/CFT Amendment Law defines “proceeds of offence” as any property derived from or obtained, directly or indirectly, through the commission of any predicate offences, which include any felony or misdemeanour. “Predicate offence” means any felony or misdemeanour, even if committed abroad, as a result of which proceeds have been generated that may become the subject of money laundering. The AML/CFT Amendment Law further defines “predicate offence” to include all 21 FATF designated categories of offences and the definition of felony and misdemeanour, as provided for under the Criminal Code 2009, extensively covers all types of serious offences based on the severity of the penalty. The AML/CFT Law also aims to address the deficiencies highlighted in the 2007 MER through the requirement to report suspicious transactions related to TF independent of an unlawful activity.

224. Prakas 2008 and Prakas 2010 provide further detailed guidance on the reporting mechanism and examples of red flags/ triggers for reporting a suspicious transaction. Both Prakas’ include the necessary guidance and required reporting mechanism, namely submission by safe hand, secure mail or secure electronic transmission to the FIU

225. *Criterion 20.2* - Whilst there is no specific definition provided of the word “transaction”, Article 3(b) of the AML/CFT Amendment Law provides that “suspicious transaction” shall mean a transaction that involves funds suspected to be the proceeds of an offence, or funds related to the financing of terrorism. It does not explicitly provide for attempted transactions to be

considered for the purpose of reporting suspicious transactions. However, Article 12.4 of the AML/CFT Law requires a RE that has made a report to the FIU to provide any further information that it has about the transaction or attempted transaction if requested to do so by the FIU or the law enforcement agency, if an investigation has arisen from or relates to the information contained in the report. The requirement to report all suspicious transactions regardless of the amount of the transaction is implicitly covered in Article 12.2 of the AML/CFT Law.

#### *Weighting and Conclusion*

226. There are minor shortcomings in meeting Recommendation 20. There is no definition provided of the word “transaction” and therefore it is unclear if attempted transactions are included in suspicious transaction reporting requirements. **Recommendation 20 is rated largely compliant.**

#### *Recommendation 21 – Tipping-off and confidentiality*

227. Cambodia was rated partially compliant with former R.14. The 2007 MER noted that there was no protection against civil or criminal liabilities for reporting entities filing STRs.

228. *Criterion 21.1* - Protection against criminal and civil liability, and any professional sanction, is provided under Article 14 of the AML/CFT Law. However, it appears to be confined to the protection of persons, directors or employees of REs. It is not clear whether the same protection is accorded to the REs themselves. In addition, there is no explicit provision to support that the protection shall be made available even if the person filing the report did not know precisely what the underlying criminal activity was, and regardless of whether the illegal activity actually occurred.

229. *Criterion 21.2* - Article 15 of the AML/CFT Law states that in no circumstance shall persons required to submit STRs, or any other individual having knowledge thereof, communicate such information or reports to any natural or legal persons other than the FIU, except where so authorised by the FIU.

#### *Weighting and Conclusion*

230. There are minor shortcomings with regard to Recommendation 21. It is not clear whether the protection for submitting a STR is applicable to REs. There is no explicit provision that protection from criminal or civil liability is available even if the person filing the report did not know precisely what the underlying criminal activity was, and regardless of whether the illegal activity actually occurred. **Recommendation 21 is rated largely compliant.**

#### *Recommendation 22 – DNFBPs: Customer due diligence*

231. Cambodia was rated partially compliant with former R.12. The 2007 MER concluded that DNFBPs’ obligations under the AML laws were substantially in line with CDD, record-keeping, reporting of suspicious transaction and internal control and compliance requirements. However, there was an absence of proper guidance by appropriate authorities and ineffective implementation of the law. R.22 contains new requirements not assessed under the 2004 Methodology. Since 2007 a number of key pieces of AML/CFT legislation have been passed in Cambodia that impose obligations on DNFBPs (the AML/CFT Law 2007 and AML/CFT Amendment Law 2013). Additional obligations are imposed on dealers in precious metals and stones (DPMS) by Prakas 2008, and on all other categories of DNFBP by Prakas 2010.

232. *Criterion 22.1* - DNFBPs are required to undertake CDD measures as set out in Article 8 of the AML/CFT Law and under Articles 6 to 17 in Prakas 2010. DPMS are required to meet CDD standards set out in Prakas 2008. Cambodia has set a threshold of USD 10,000 for CDD measures required for occasional or one-off transactions for most DNFBPs sectors, including casinos. However, the FATF standards set a threshold for casinos of USD 3,000. The assessment team was not provided any valid reason for this. All DNFBPs are however required to conduct CDD if establishing an ongoing business relationship. The deficiencies identified in the analysis of R.10 above apply equally to DNFBPs (see, in particular, c.10.4, c.10.7b, c.10.8-10.11, and c.10.20).

233. *Criterion 22.2* - DNFBPs are required to keep all records, documents and copies of documents involved in all forms of transactions for at least five years after the date of the transaction. However, the minor deficiencies identified in the analysis under R.11 above apply to DNFBP obligations.

234. *Criterion 22.3* - PEP requirements only apply to foreign PEPs, and not to domestic PEPs, prominent persons in international organisation or family members and close associates of all types of PEPs (see analysis of R.12).

235. *Criterion 22.4* - Article 31 of the Prakas 2010 covers broadly covers risk assessment and mitigation, including for changes to and development of new products, services and technologies (as set out in R.15). However, there is no explicit requirement such that risk assessments are to be done prior launching the products, services and technologies.

236. *Criterion 22.5* - Articles 13.2 and 27 of the Prakas 2008 and Articles 14.2 and 24 of the Prakas 2010 extend the requirement as set out in R.17.1 and 17.2 to DNFBPs. However the relevant provisions do not address the risks of engaging with third parties located in higher-risk jurisdictions (see analysis of R.17.2).

#### *Weighting and Conclusion*

237. There are moderate shortcomings in meeting Recommendation 22, including gaps in the CDD requirements as identified under the analysis of R.10, R.12, R.15 and R.17. In addition, the CDD threshold for financial transactions in casinos is set at USD 10,000, which is above the FATF standard threshold of USD 3,000. **Recommendation 22 is rated partially compliant.**

#### ***Recommendation 23 – DNFBPs: Other measures***

238. Cambodia was rated NC with former R.16. The 2007 MER concluded that there were no mechanisms in place for DNFBPs to report STRs, no protection against civil or criminal liabilities for reporting STRs, and no reporting of STRs. R.23 contains new requirements that were not assessed under the 2004 Methodology.

239. *Criterion 23.1* - The minor deficiency in relation to attempted transactions identified in the analysis of R.20 above applies equally to DNFBPs.

240. (a) Both the AML/CFT Law and Prakas 2010 have a clear provision for lawyers, notaries, other independent legal professionals and accountants to submit STRs to CAFIU when conducting activities described in c.22.1(d) and where they suspect ML or TF.

241. (b) AML/CFT Law and article 29 of Prakas 2008 obliges DPMS to submit STRs. It is noted that the threshold for reporting of cash transactions – suspicious or otherwise – is set at USD 10,000, which is lower than the FATF threshold of USD 15,000 for STR reporting for DPMS.



242. (c) Both the AML/CFT Law and Prakas 2010 have a clear provision for Trust and company services providers are required to submit STRs to CAFIU when conducting activities described in c.22.1(e) and where they suspect ML or TF.

243. *Criterion 23.2* - As per R.18, there are provisions to establish internal controls in the AML/CFT Law, in Prakas 2008 for DPMS and in the Prakas 2010 for all other DNFBPs. The internal control requirements (c.18.3) do not explicitly apply to foreign branches and majority owned subsidiaries and there is no requirement for group-wide AML/CFT programs as set out in c.18.2.

244. *Criterion 23.3* - Article 27 of the Prakas 2008 and Article 24 of Prakas 2010 require DNFBPs to conduct ongoing due diligence and make further detailed inquiries, with regards to business relationships and transactions with individuals, businesses, companies and financial institutions from countries which have insufficiently implemented the internationally accepted AML/CFT measures. Similarly, CAFIU has issued notification dated 17/11/2016 about the countries of concern for weak AML/CFT regime. However, there is no requirement for the enhanced due diligence to be proportionate to the risks nor an explicit reference to applying this measure to countries called for by the FATF.

245. *Criterion 23.4* - The AML/CFT Law, Prakas 2008 and Prakas 2010 set out provisions for tipping-off and confidentiality requirements as set out in R.21, however the minor deficiencies identified under R.21 apply equally to DNFBPs.

#### *Weighting and Conclusion*

246. There are minor shortcomings in meeting the requirements of Recommendations 23, including STR reporting requirements relating to attempted transactions, a lack of instructions on-group wide AML/CFT programs for foreign branches and subsidiaries; and the requirements to implement FATF countermeasures are not clearly described in the instructions issued by CAFIU. **Recommendation 23 is rated largely compliant.**

#### ***Recommendation 24 – Transparency and beneficial ownership of legal persons***

247. Cambodia was rated partly compliant with former R.33 in the 2007 MER, which found that despite increasing foreign interest in Cambodian companies, there was a complete lack of information on foreign beneficial owners. Further, there was no enforcement of the obligations to update companies' information and information was often outdated. The FATF standard has changed substantially since the last evaluation and Cambodia has introduced an online business registration system.

248. *Criterion 24.1* - The following types of legal persons can be created in Cambodia: (a) limited companies – private limited companies (which include single member private limited companies), public limited companies; and (b) partnerships – general partnerships, limited partnerships. In addition, foreign businesses are considered legal persons in Cambodia and may conduct business in the following forms: (a) commercial representative office or commercial relations office; (b) branch; or (c) subsidiary. Commercial representative offices and branches are agents of their principals and do not have personality separate from their principals. Whereas, a subsidiary has legal personality separate from its principal from the date of its registration.

249. The different types, forms and basic features of legal persons in Cambodia are set out in the Law on Commercial Enterprises, as well as on the Council for the Development of Cambodia government website. The processes for creation of those legal persons are set out in the Law on Commercial Enterprises and the Law on Commercial Rules and Register. These laws

are publicly available. The process for registering a legal person, which requires recording basic information and some beneficial ownership information, and the process for obtaining basic information contained in the Commercial Register, is set out on MOC's Business Registration Website. Both are online processes. However, there is no publicly available information on the process for obtaining beneficial ownership information.

250. Associations and NGOs are also legal persons in Cambodia. The different types of associations and NGOs, which include: (a) domestic associations; (b) domestic NGOs; (c) foreign associations; and (d) foreign NGOs, are set out in the Law on Associations and NGOs. This law also sets out the processes for registration of NPOs, which involves recording basic information. However, there is no publically available information on the process for obtaining basic or beneficial ownership information on NPOs.

251. *Criterion 24.2* - Cambodia has not yet assessed the ML/TF risks associated with all types of legal person created in the country. The 2016 NRA did not assess the ML/TF risks associated with types of legal persons or the TF risks and vulnerabilities within the NPO sector.

252. *Criterion 24.3* - Under the Law on Commercial Rules and Register, merchants and companies are required to register in the Commercial Register maintained by the MOC. A merchant, according to the Law on Commercial Rules and Register, is a natural person or legal entity who practices a trade and whose trade is a regular practice. This Law sets out the information required for registration for both merchants (Articles 14 and 15) and companies (Articles 17 and 18). Article 3 of the Law on Commercial Enterprises further requires partnerships and companies to continuously maintain a registered office and a registered agent and to file the address of the registered office and name of the registered agent with the Registrar. Cambodia has an online business registration system and the website requires certain information, as described below, to be entered:

- for companies (including subsidiaries of foreign companies): the proposed name, business activities, share par value, number of employees, address and contacts information, directors information and share and shareholder information. Applicants seeking to create companies must also upload articles of incorporation amongst other identity and verification documents.
- for partnerships, this includes: the proposed name, business activities, number of employees, address and contacts information, partner and manager information.
- for foreign businesses (including commercial representative offices and branches): the proposed name, sub-type of foreign business, company number in original jurisdiction, country of incorporation, business objectives, number of employees (Cambodian and foreign), name and address of parent company, commercial registration number of parent company, date and country of registration of parent company, address and contacts information and directors information. Applicants seeking to register a foreign business must also upload evidence of incorporation, articles of incorporation and a certificate of good standing amongst other identity and verification documents.

253. Basic information that is publicly available online on the business registration website, includes:

- company name;
- legal form and status;
- registration number;
- incorporation date;
- business activities;
- registered office address;
- contact email and telephone number; and

- name and address of director / board of directors.

254. However, information regarding basic regulating powers is not required as part of the registration process, nor is it publicly available.

255. Under the Law on Associations and NGOs, domestic associations and NGOs are required to register with MOI (Articles 5-7). The following information is collected through the registration process: the name of the association or NGO; form (association or NGO); address of the central office; basic regulating powers; profiles of all founding members. Registration also grants 'legal entity' status upon domestic associations and NGOs (Article 9). Foreign associations and NGOs are required to register with MFA-IC by signing a memorandum of understanding and attaching a number of documents (Articles 12 and 13). MFA-IC uses registration to collect the following information from foreign associations or NGOs: the name of the association or NGO; legal form; address of the representative office in the Kingdom of Cambodia; proof of authorisation to operate in a foreign jurisdiction; and a biography of the person requested to be appointed as the representative. This information is not publically available.<sup>66</sup> Both domestic and foreign associations and NGOs are also required to inform MOI/MFA-IC and MEF in writing of all their open bank accounts in Cambodia (Article 10 and 17, respectively).

256. In addition to registering with MOC, MOI or MFA-IC, legal persons are required under the Law on Taxation and Prakas on Tax Registration to register with GDT within 15 days of beginning economic activity (Article 101 and Article 5, respectively). Applicants are required to register directly with the Tax Administration or via E-registration by filing an application form for tax registration, which includes the following details: company name; proof of incorporation; legal form and status; business address and business owner's information. Applicants must also attach original or certified copies of personal identification documents, business address verification documents and registration documents issued by relevant institutions or Ministries. The information collected by GDT is not publically available.

257. *Criterion 24.4* - The Law on Commercial Enterprises requires a company to prepare and maintain, at its registered office in the Kingdom of Cambodia, the company's by-laws and articles of incorporation (Article 109). The articles of incorporation must include: the name of the company; the company's registered office; the number of directors; the classes and maximum number of shares and the rights attached to each class; and the name and complete address of each shareholder. Articles of incorporation are uploaded to the online business registration system and must also be submitted to the Director of Companies for filing at the Ministry of Commerce (Article 96). A company is also required to maintain, at its registered office, a securities register (Article 109) and to prepare a list of shareholders before every meeting, which shows the number of shares held by each shareholder (Article 211). In addition, companies are required to enter share and shareholder details into the online business register.

258. Under the Law on Commercial Rules and Register (Articles 17-20), foreign companies are also required to file articles of incorporation upon registration, which include share and shareholder details. Foreign companies must also enter share and shareholder details into the online business register.

259. General partners in limited partnerships are required to keep a record at the principal place of business containing the names and addresses of each of the limited partners and any

<sup>66</sup> MFA-IC recently (after the on-site) published a list of foreign and international NPOs in Cambodia on their Ministry website. MOI is intending to publish information regarding domestic NPOs on their Ministry website following the conclusion of the current review they are conducting to determine which domestic NPOs are still active in Cambodia.

information concerning their contributions to the capital of the limited partnership (Article 69). There are no other requirements on partnerships to maintain other information.

260. *Criterion 24.5* - In accordance with the Law on Commercial Rules and Register, the information contained in the Business Register is verified by the Registrar upon registration on the basis of the certified documents provided by the applicant (Articles 25-26). If there are any doubts or concerns about the information provided, MOC conducts further verification with assistance from other relevant Government ministries or agencies. MOC has also conducted post-registration verification. If within one month of a business registration certificate being issued, it is found that a false declaration has been made, MOC will cancel the company's identification number (Article 26). MOC is currently working to link the online registration system with the online tax system and planning to integrate systems with the MOI General Department of Identification, so that identities may be more easily verified.

261. The Law on Commercial Rules and Register also requires merchants, companies and foreign companies to update the information contained in the Commercial Register, whenever it changes (Articles 15, 18 and 20). Such updates are submitted online through the MOC Business Registration website, which requires any changes to: company name, articles of incorporation, registered office address, director details, share capital, shareholder details and transfer of shares, to be filed within 15 days following a resolution date or a penalty of KHR 500,000 (approximately USD 125) can be imposed.

262. The Law on Associations and NGOs requires domestic and foreign associations and NGOs to inform MOI/MFA-IC and MEF in writing of any relocation of its office; replacement of its president, executive director, or country representative; or change of its bank account information, within 15 days of the change, attaching relevant modified documents (Articles 10 and 17 respectively). Under Article 30, if a domestic association or NGO fails to comply with its obligations under Article 10, MOI shall issue a warning notice, giving the NPO a maximum of 30 days to comply. In the case of non-compliance, MOI shall issue a second written warning, suspending the association's or NGO's activities for a maximum of 90 days. In the case of repeated non-compliance, MOI shall issue a written decision to remove the association or NGO from the register. Under Article 33, similar penalties shall be imposed by MFA-IC on foreign and international associations and NGOs that do not comply with their obligations under Article 17.

263. In accordance the Prakas on Tax Registration (Article 7), upon application for tax registration, GDT verifies the identity of the Chairman or company owner by requiring them to have their photograph and fingerprints taken in person. However, if the Chairman or owner is foreign and lives abroad, they are able to send a representative.

264. The Law on Taxation requires legal persons to inform GDT within 15 days of any change to the address, form, name or object of the business, the transfer or cessation of the business, the leadership or person in charge of tax matters (Article 101). According to the Prakas on Tax Registration (Article 8(2)), taxpayers shall submit an application to the Tax Administration to update their tax registration, attaching relevant updated documentation. Failure to notify GDT of a change in registration details is an offence and penalties between KHR 500,000 (USD 125) and KHR 2,000,000 (USD 500) can be imposed.

265. Article 114 of the Law on Commercial Enterprises imposes an obligation on companies to ensure that company books and records, which include the information specified under Criterion 24.4, are maintained in an accurate and properly preserved condition. In accordance with Article 295 of this Law, a company or natural person who violates this obligation may be prosecuted pursuant to Articles 43 and 44 of the Law on Commercial Rules and Register and penalties from one to five years imprisonment and a fine of KHR 1,000,000 (USD 250) to KHR

10,000,000 (USD 2,500) can be imposed. This obligation does not apply to foreign companies or partnerships.

266. As Cambodia does not require all of the information referred to in criteria 24.3 and 24.4 to be registered or maintained, it is not able to ensure that all of this information is accurate and updated on a timely basis.

267. *Criterion 24.6* - The Law on Commercial Rules and Register requires companies to include in their registration the names of members or third parties authorised to govern, control, manage and sign for the company and the date and place of birth of those persons (Article 17) and to update this information as it changes (Article 18). Cambodia also uses existing information to ensure that information on the beneficial ownership of a company or partnership can be determined, including information held by the company as required in criterion 24.3 and information obtained by FIs and DNFBPs, in accordance with their CDD requirements under the AML/CFT Law, the Prakas 2008 and the Prakas 2010.

268. Article 8(2) of AML/CFT Law requires REs to take CDD measures including identifying the ultimate beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner such that the FI is satisfied that it knows who the beneficial owner is. For legal persons, REs are also required to take reasonable measures to understand the ownership and control structure of the customer. Article 5 of the Prakas 2008 and Article 6 of the Prakas 2010, require banks and FIs and other reporting entities, as part of the CDD process, to determine whether the customer is conducting business on behalf of another person or beneficial owner. Article 8 of the Prakas 2008 and Article 9 of the Prakas 2010 provide that banks, FIs and other REs should conduct CDD as stringent as that imposed on the individual customer when they suspect that a transaction is conducted on behalf of a beneficial owner and not on behalf of the customer who is conducting the transaction. There are, however, some deficiencies in the beneficial ownership aspects of Cambodia's CDD obligations, as described under R.10.

269. NPOs are considered REs under the AML/CTF Law and Prakas 2010 and are, therefore, subject to the CDD obligations contained in those instruments.

270. *Criterion 24.7* - Article 8(2) of the AML/CFT Law requires REs, including NPOs, to take reasonable measures to verify the identity of the beneficial owner such that the FI is satisfied that it knows the identity of the beneficial owner. Article 8(2) also requires REs to conduct ongoing due diligence on the business relationship, which would assist in ensuring beneficial ownership information held by REs is up-to-date. Article 5 of the Prakas 2008 and Article 6 of the Prakas 2010, similarly require ongoing due diligence and scrutiny to be conducted to ensure the information is updated and relevant.

271. Companies are required to update the names of members or third parties authorised to govern, control, manage and sign for the company and the date and place of birth of those persons, whenever this information changes, under the Law on Commercial Rules and Register (Article 18). However, this requirement only applies to companies and not to other types of legal persons. This law also requires the registrar to carefully examine the identity of an applicant upon registration (Article 22) and verify the written declaration before issuing a certificate of registration, which assists in ensuring information is accurate, but only at the time of registration.

272. *Criterion 24.8* - Cambodia has not provided evidence that it uses either of the mechanisms outlined in Criterion 24.8 (a) and (b) to ensure companies cooperate with competent authorities. However, it is an offence under the AML/CFT Amendment Law to refuse to provide information to CAFIU and supervisory authorities on the basis of banking or professional secrecy (Article 29 New-2). In addition, the Chairman of the ACU is able to order

private sector agencies, including FIs, to cooperate with ACU officials in investigations (Article 29, Law on Anti-Corruption).

273. *Criterion 24.9* - REs, including NGOs, are required under Article 11 of the AML/CFT Law to maintain, for at least five years after the account has been closed or the business relations with the customer have ended, any records of customer identification, including beneficial ownership information collected in accordance with Article 8(2)(b). Article 62 of the Law on Commercial Enterprises requires the liquidator of a general partnership to keep the books and records of the general partnership (it is not clear whether this includes beneficial ownership information) for 10 years from the closing of the liquidation, or longer, if they are required as evidence in a proceeding. Article 113 of that Law requires companies to prepare and maintain adequate accounting records for a period of 10 years after the end of the financial year to which the records relate. Other than accounting records, there are no obligations placed on companies to maintain information or records for a set period of time. According to Cambodia, although there is no legislative requirement for the MOC to keep records after the company is de-registered, in practice the MOC keeps their records in the Commercial Register. However, in accordance with Article 269 of the Law on Commercial Enterprises, the MOC is not required to produce any document, other than a certificate and attached articles or dissolution plan, after 10 years from the date they are received.

274. *Criterion 24.10* - Most basic information held in the Commercial Register is publicly available online through the MOC Business Registry website. All information held by the MOC is accessible by competent authorities. However, an official letter of request is required in some instances. CAFIU is able to obtain timely access to the basic information held by GDT by virtue of the MOU between these two agencies, which provides for the sharing of information upon request. The MOU contains provisions that allow information to be shared orally or by email or fax in emergencies and require each agency to designate a responsible officer to ensure the quick and efficient exchange of information.

275. ACU has broad powers to gain access to information and documents under Article 27 of the Law on Anti-Corruption, in cases where corruption is suspected. CAFIU also has powers to gain access to information. It is an offence under the AML/CFT Amendment Law for any person to intentionally fail to provide information to CAFIU and the supervisory authorities on the basis of banking or professional secrecy (Article 29 New-2). Judicial police have powers to conduct searches and confiscate any exhibits under Articles 91 and 92 of the Code of Criminal Procedure (CCP) but no specific powers to compel the production of records in order to obtain timely access to beneficial ownership information held by relevant parties, except in drug or terrorism related cases (Article 85 Law on Drug Control and Article 88 Law on Counter Terrorism).

276. *Criterion 24.11* - Companies in Cambodia are able to issue bearer shares and bearer share warrants and there are no mechanisms in place to ensure they are not misused for ML or TF. However, as at the date of the on-site visit, there were no bearer shares or bearer share warrants in existence in the Cambodian market (companies are required under the Law on Commercial Enterprises (Article 228) to notify the Office of the Registrar of any securities issued to the public and no company had notified MOC that it had issued a bearer share).

277. *Criterion 24.12* - Legal persons in Cambodia are not explicitly prohibited from having nominee shares and nominee directors. There is a limited prohibition on the use of nominees contained in Article 3 of the Sub-decree on the Implementation of the Law on Investment. This Article prohibits individuals or legal entities controlled by Cambodian citizens from acting for, or representing, a foreign entity for the purpose of subverting the provisions of that Sub-decree. According to MOC, nominee shares and nominee directors are prohibited in Cambodia and a person who provided MOC with the name of a nominee would be liable for making a false or

misleading report under Article 42 new of the Law on Commercial Rules and Register. However, the law does not specify this and there are no prior examples of sanctions being applied. As such, the assessment team was not able to verify the accuracy of this statement. Further, the Sub-decree on the Implementation of the Law on Investment specifically anticipates the existence of nominees and applies a limited prohibition in that context. This fact, combined with the lack of prohibition in the Law on Commercial Enterprises, suggests that nominees are permitted outside of the limited prohibition contained in the Sub-decree. Cambodia does not apply any of the mechanisms specified in Criterion 24.12 to ensure that nominee shares and nominee directors are not misused.

278. *Criterion 24.13* - The Law on Commercial Enterprises contains sanctions for making or assisting in making false or misleading reports of a maximum of KHR 10,000,000 (10 million) (USD 2,500), or imprisonment for a term not exceeding six months, or both (Article 290). Due to the lucrative nature of ML activities, and the integral nature of misreporting in laundering, a fine of this magnitude is unlikely to be dissuasive. Under this Law, companies and natural persons are also liable for failing to comply with registration requirements (Article 294) and for violating provisions relating to company books and records (Article 295) and may be prosecuted pursuant to the Law on Commercial Rules and Register.<sup>67</sup>

279. The Law on Commercial Rules and Register contains sanctions for merchants and company directors who fail to register within the specified period (Article 40). However, these fines are not proportionate or dissuasive. Under Article 42 new, a merchant or company director who intentionally provides false information in order to achieve registration is liable to imprisonment from one to five years and a fine from KHR 1,000,000 (one million) to KHR 10,000,000 (10 million) (USD 250 – 2,500). Under the same article, a merchant or company director that fails to update their registration information within 15 days of the change occurring shall be fined from KHR 500,000 to KHR 1,000,000 (USD 125 – 250). These penalties are also unlikely to be dissuasive. In addition, the Inter-Ministerial Prakas on adjustment to public service fee of the annex table attached to Joint Prakas No. 985 on Public Service Fee of The Ministry of Commerce provides for fines of KHR 1,000,000 (USD 250) for failing to file an Annual Declaration by the due date. These fines are similarly unlikely to be dissuasive.

280. The Law on Taxation includes sanctions for legal persons who fail to register with GDT, fail to notify GDT of changes to registration information, or make or furnish fraudulent records, documents, reports or other information. The penalties range from KHR 5,000,000 (5 million) (USD 1,250) to KHR 10,000,000 (10 million) (USD 2,500) or imprisonment for 1 month to one year, or both (Article 136). In addition, additional tax of KHR 500,000 (USD 125), under the simplified or estimated regime system of taxation, or KHR 2,000,000 (2 million) (USD 500), under the real regime system of taxation or for government officials can be imposed (Article 133). These fines are similarly unlikely to be dissuasive.

281. The Law on Associations and NGOs requires competent authorities to take measures to immediately stop any domestic or foreign association or NGO from conducting activities without registration (Articles 32 and 34 respectively). Where a domestic association or NGO resists, MOI shall apply sanctions ranging from KHR 5,000,000 (5 million) (USD 1,250) to KHR 10,000,000 (10 million) (USD 2,500) (Article 32). For foreign NPOs, additional measures involving expulsion under the Law on Immigration may be undertaken against any foreign person working for a foreign association or NGO. These sanctions are more likely to be dissuasive.

282. There are also sanctions in the AML/CFT Law for breaches of CDD obligations (Article 28) though there are moderate shortcomings in this regard (see analysis of R.35 below).

<sup>67</sup> MOC has sought approval from the Minister to increase these penalties.

283. *Criterion 24.14* - Foreign competent authorities are able to access the vast majority of basic information held by the Commercial Register online via the MOC Business Registration website. Cambodia is able to provide international cooperation in relation to beneficial ownership information through MLA requests or under existing MOUs or other arrangements with foreign competent authorities, as described in R.37 and R.40. Cambodia has not, however, provided any evidence to suggest that it exchanges information on shareholders with other countries or that Cambodian competent authorities are able to use their investigative powers to obtain beneficial ownership information on behalf of foreign counterparts.

284. *Criterion 24.15* - Cambodia has not provided relevant evidence to suggest that it monitors the quality of assistance it receives from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad.

#### *Weighting and Conclusion*

285. Despite having a reasonable legal framework for the transparency in basic information related to legal persons, there are moderate shortcomings which include: limited availability of beneficial ownership information; no explicit prohibition of bearer shares, bearer share warrants, nominee shares and nominee directors and no mechanisms in place to mitigate their misuse; limited mechanisms for cooperation between Cambodian and foreign competent authorities and between Cambodian competent authorities and REs in relation to beneficial ownership information. Fines and penalties are also insufficient to be dissuasive. **Recommendation 24 is rated partially compliant.**

#### ***Recommendation 25 - Transparency and beneficial ownership of legal arrangements***

286. In the 2007 MER, former R.34 was found to not be applicable to Cambodia as the concept of trusts or similar legal arrangements did not exist under Cambodian law. The evaluation also found that no assets were held in Cambodia by way of such arrangements and there was no provision of trust-related services. It is still the case that no trusts or similar legal arrangements can be established under Cambodian law.<sup>68</sup> However, there is no explicit provision in Cambodian law to prevent people in Cambodia from creating trusts that are governed by the laws of a different country, or to prevent foreign trusts from operating in Cambodia.

287. Cambodia is currently drafting a Trust Law, which is expected to be enacted and promulgated in 2017. This Law will expand the Cambodian legal framework to recognise many forms of trust.

288. *Criterion 25.1* - Sub-criteria 25.1(a) and 25.1(b) are not applicable. Trusts cannot be established under Cambodian law. Therefore there are no trusts governed by Cambodian law.

289. *Sub-criterion 25.1(c)* - According to Articles 4 and 5 of the AML/CFT Law, lawyers, notaries, accountants, auditors, investment advisors and asset managers who act as trustees of express trusts (i.e. persons who might act as professional trustees) are REs for the purpose of that law. They are therefore required to conduct CDD on their customers, including identifying the ultimate beneficial owner and taking reasonable measures to verify their identity (Article 8).

<sup>68</sup> As outlined under IO5, Cambodia provided the evaluation team with information regarding an arrangement that can be established in Cambodia, known as a financial trust. While they are referred to as trusts in name, these arrangements are not trusts in nature and have not been considered as part of the analysis of R.25 or IO5.



Pursuant to Article 11, REs are required to maintain these customer identification records for at least five years after the business relationship ends.

290. In addition, under Articles 1 and 2 of the Prakas 2010, TCSPs as well as lawyers, notaries, accountants, auditors, investment advisors and asset managers who act as trustees for express trusts are REs for the purpose of that Prakas. They are therefore required to conduct CDD on their customers (Article 6.3) and the customers' beneficial owner (Article 9). Pursuant to Article 11 of the Prakas, REs are also required to obtain evidence of the identity of the settlor, trustee and beneficiaries. Under article 19 of the Prakas, REs are required to keep all identification records for at least five years after the business relationship ends. However, the deficiencies detailed under the analysis in R.10 and R.22 regarding beneficial ownership information collected under CDD requirements for customers that are legal arrangements are relevant here.

291. *Criterion 25.2* - Under Article 6.3 of the Prakas 2010 REs, including professional trustees, are required to conduct ongoing due diligence and scrutiny, to ensure CDD information is updated and relevant. However, this requirement does not apply to the information that is not collected as part of CDD and, in addition there are gaps in the information collected under CDD on beneficial ownership that have an impact on compliance with this criterion.

292. *Criterion 25.3* - There is no requirement for trustees to disclose their status to FIs and DNFBPs when forming a business relationship or carrying out the occasional transaction above the threshold.

293. *Criterion 25.4* - Trustees are not prevented by law or enforceable means from providing competent authorities with information relating to the trust, or from providing FIs and DNFBPs, upon request, with information on the beneficial ownership and the assets of the trust.

294. *Criterion 25.5* - Competent authorities have sufficient powers to obtain timely access to information held by trustees and REs. The Anti-Corruption Unit has broad powers to gain access to information and documents under Article 27 of the Law on Anti-Corruption, in cases where corruption is suspected. CAFIU also has powers under Article 21 of the AML/CFT Law to gain access to information held by REs. It is an offence under Article 29 New-2 of the AML/CFT Amendment Law to intentionally fail to provide information to CAFIU. Judicial police also have powers to conduct searches and confiscate exhibits under Articles 91 and 92 of the CCP.

295. While there are no specific obligations placed on trustees under Cambodian law, there are relevant obligations placed on REs under the AML/CFT Law and the Prakas 2008 and Prakas 2010, which extend to TCSPs who are acting as or arranging for another person to act as a trustee of an express trust. In accordance with Article 8 of this law, all REs are required to undertake CDD on all customers, which includes identifying the ultimate beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner.

296. Further, Article 10 of the Prakas 2008 and Article 11 of the Prakas 2010, require banks and FIs and all other REs to establish whether a customer is acting on behalf of another person as trustee; take reasonable measures to understand the ownership and control structures and relationship among the relevant parties to the trust; obtain evidence of the identity of the settlor, trustee and beneficiaries; ensure CDD requirements are completed for beneficial owners when the trust account is established; and obtain a written assurance from the trust that evidence of the identity of beneficiaries has been obtained, recorded and retained and that the trust is satisfied regarding the source of the funds.

297. *Criterion 25.6* - Cambodia is able to provide international cooperation in relation to trust-related information, including beneficial ownership information, through MLA requests or under existing MOUs or other arrangements with foreign competent authorities, as described under R.37 and R.40. There are, however, no registries or domestic authorities that hold basic information on foreign trusts. Further, Cambodia has not provided any evidence to suggest that competent authorities use their investigative powers to obtain beneficial ownership information on behalf of foreign counterparts.

298. Due to the lack of guidelines for competent authorities on the timeframes for provision of formal and informal international cooperation (as discussed in Chapter 8), it is not possible to state that there is, or would be, rapid provision of international cooperation in relation to trusts.

299. *Criterion 25.7* - There is no provision for legal liability and/or sanctions for trustees operating in Cambodia that fail to disclose their status as trustee to FIs and DNFBPs before forming a business relationship or engaging in a transaction above the applicable designated threshold.

300. *Criterion 25.8* - Under Article 29 New-2 of the AML/CFT Amendment Law, any person who intentionally fails to provide information to CAFIU and the supervisory authorities on the basis of banking or professional secrecy will be sentenced to imprisonment from six days to one month or subject to a fine from KHR 100,000 (USD 24.50) to KHR 1,000,000 (USD 250), or both. Legal entities may be declared as being criminally responsible and shall be subject to a fine from KHR 1,000,000 (USD 250) to KHR 2,000,000 (USD 500) and any one or more of the additional penalties for legal entities in Article 29 New-6. However, as discussed under R.35, these sanctions are not sufficiently punitive so as to be dissuasive.

#### *Weighting and Conclusion*

301. The concept of trusts or similar legal arrangements does not exist under Cambodian law. As such, aspects of R.25 are not applicable in the Cambodian context. However, R.25 places some requirements on all countries, irrespective of whether the country recognises trust law. Cambodia does not require trustees of foreign trusts to disclose their status to FIs or DNFBPs when forming a business relationship or carrying out an occasional transaction above the threshold. There is also no provision for legal liability and sanctions where trustees of foreign trusts fail to disclose their status when forming a business relationship or engaging in a transaction above the threshold. **Recommendation 25 is rated partially compliant.**

#### ***Recommendation 26 – Regulation and supervision of financial institutions***

302. In the 2007 MER Cambodia was rated non-compliant with the old R.23. While the AML Law gave some supervisory responsibilities to the FIU and required proper coordination between the sector supervisor (the NBC) and the FIU, AML supervision was based only on limited CDD requirements, .

303. *Criterion 26.1* - Article 22 of the AML/CFT Law designates CAFIU as the supervisory authority for AML/CFT, noting that it shall coordinate its supervision of compliance with other supervisory agencies (NBC, SECC and MEF).

304. *Criterion 26.2* - Banks, micro-finance institutions (MFIs), leasing companies, money or value transfer service providers and money or currency changing service providers are required to apply to the NBC for licenses (Article 14 of Law on Banking and Financial Institution, Article 5 of Law on Foreign Exchange, Article 33 of Law on Financial Lease, Article 2 of Prakas on Financial Leasing Business, Article 4 of Prakas on Licensing of Financial Lease Companies, Article 47 of Law on Insurance). Article 47 of Law on Insurance requires insurance

companies to be licensed by MEF. Article 31 of the Law on Issuance and Trading Non-Government Securities requires securities firms to be licenced by SECC.

305. Shell banks are not allowed to be licensed in Cambodia. Article 14 of the Law on Banking and Financial Institutions requires banks and FIs to qualify shareholders, have competent management, and demonstrate adequate human, technical and financial resources, in order to obtain a licence from the NBC.

306. *Criterion 26.3* - Article 18 of AML/CFT Law requires competent supervisory authorities to ensure that the management and shareholders of REs are 'fit and proper' so as to prevent criminals or their associates from holding, or being the beneficial owners of, a significant or controlling interest or management function in such entities. Nevertheless, the regulations setting out the 'fit and proper' measures that supervisors have to undertake during the licensing process are insufficient:

- a) the 'Fit and Proper' measures for banks and MFIs are required to be completed during the licensing process, (Article 4 of Prakas on Licensing of Commercial Banks, Article 5 of Prakas on Licensing of Rural Credit Specialized Banks and Article 5 of Prakas on Licensing of Microfinance Institutions). Article 18 of Law on Banking and Financial Institutions prescribes the qualification requirements for a member of a board of directors and management. However, there are no qualification requirements for those contributing capital and who hold more than five percent of the voting rights;
- b) with reference to Article 13 of Prakas on Licensing of Financial Lease Companies, legal entities that provide capital (capital contributors) must provide information to the NBC regarding their motives for investment, structure and whether the business has had been subject to court sanctions. In addition, Article 14 of the said Prakas sets the qualifications and requirements capital contributors and their directors and managers must meet. The 'fit and proper' person test is through self-declaration.
- c) According to Articles 4 to 6 of the Prakas on Licensing of General and Life Insurance Companies, capital contributors who hold more than 10% of the voting rights, designated managers and members of the decision-making body of the applicant have to declare whether they have been the subject of a judicial proceeding resulting in a penalty. In addition, only applications for licenses of branches or subsidiaries of foreign insurers are requested to provide criminal records of the management.
- d) Under Article 28.7 of Prakas on Licensing of Securities firms and Securities Representatives and Article 42 of the Sub-Decree on the implementation of the law on Issuance and Trading of Non-Government Securities, the applicant for a license of a securities firm and any of its directors, managers and controlling shareholders are required to have a good character, which means they should not have been sanctioned definitively of any felony or any misdemeanour. Nevertheless, the verification processes under the 'fit and proper' tests are not clearly stipulated.
- e) Article 6 of Prakas on Management and Monitoring on Financial Trust sets out the documents required for registration as a financial trust by the MEF, but it is not clear what the 'fit and proper' measures are.

307. *Criterion 26.4* - Cambodia did not provide any information to the assessment team on whether core principles institutions are subject to regulation and supervision in line with the core principles relevant to AML/CFT. The extent to which this is occurring could not be assessed.

308. *Criterion 26.5* - CAFIU has required all banks and micro-finance institutions in Cambodia to undertake their own risk assessment of their products and services. CAFIU has

used these risk assessments to develop a RBA framework for supervision of banks and MFIs. There is no framework or mechanism for risk-based supervision of other FIs.

309. *Criterion 26.6* - CAFIU has issued Guideline on Undertaking Money Laundering and Terrorist Financing Risks Assessment for Banking and Financial Institutions and requires these institutions to undertake their own risk assessment and update periodically, as necessary, at least every two years, or upon request by CAFIU. There is no provision requiring CAFIU to conduct or update its own assessment of the ML/TF risk profile of a financial institution or group periodically or when an event or development occurs.

#### *Weighting and Conclusion*

310. There are moderate shortcomings in meeting all the elements of Recommendation 26. Banks and FIs must be licensed to operate in Cambodia and designated authorities supervise these FIs compliance with the AML/CFT requirements. However, the verification processes undertaken under the 'fit and proper' tests are not clear and Cambodia is not taking a risk-based approach to supervision of all FIs. **Recommendation 26 is rated partially compliant.**

#### **Recommendation 27 – Powers of supervisors**

311. Cambodia was rated partially compliant with former R.29. The 2007 MER found that very little supervision had occurred at the time of the on-site to test the authority of the supervisor. Fines were very low for breaches of AML/CFT laws, especially when compared to bank profits and it was considered unlikely that they were a deterrent. There had been no disciplinary action for breach of AML /CFT laws and regulations to test the powers of the supervisors

312. *Criterion 27.1* - Paragraph 2 and 3 of Article 22 of the AML/CFT Law empowers CAFIU to supervise or monitor and ensure compliance by FIs with AML/CFT requirements.

313. *Criterion 27.2* - Paragraph 2 and 3 of Article 22 of AML/CFT Law gives CAFIU the authority to conduct inspections of FIs and coordinate its supervision of compliance with other supervisory agencies.

314. *Criterion 27.3* - According to Article 6 of AML/CFT Law, banking or professional secrecy shall not inhibit the implementation of the AML/CFT Law and may not be invoked as a ground for refusal to provide information to CAFIU and the FI's supervisory authority. CAFIU can obtain relevant information to support its monitoring function and compel production of information by REs.

315. *Criterion 27.4* - CAFIU has the authority to cooperate with other supervisory authorities to impose disciplinary and financial sanction against FIs, which fail to comply with AML/CFT requirements (Articles 22, 28 and 29 of the AML/CFT Law and Article 29 new 2 to Article 29 new 6 of the AML/CFT Amendment Law.). There is a range of sanctions available to impose, from warning letters to fines to revocation of licence. In addition, NBC and other sector supervisors have the power to impose their own sanction on non-compliance with prudential regulations. Although fines prescribed in the Law on Banking and Financial Institutions (Article 52 and 55) are higher than those in AML/CFT Law, it is not clear how these penalties apply to FIs which fail to comply with AML/CFT requirements. Fines range between KHR 100,000 and KHR 5 million (USD 24 to USD 1,200) in the AML/CFT Law. These fines would not be dissuasive in the context of a bank, stockbroker or an insurance company. Deficiencies noted in R35 apply.

*Weighting and Conclusion*

316. There are minor shortcomings in meeting Recommendation 27. While the powers of the supervisors are clearly stated in Cambodia's AML/CFT laws the sanctions imposed by supervisors may not be proportionate and dissuasive. **Recommendation 27 is rated largely compliant.**

*Recommendation 28 – Regulation and supervision of DNFBPs*

317. Cambodia was rated non-compliant with former R.24 in the 2007 MER. There was no supervision of casinos for AML/CFT purposes. The supervisory regime was very limited and concentrated on financial reporting for taxation purposes.

318. *Criterion 28.1* - The Circular on License Issuance of Casino Company requires casino operators to obtain a licence from the MEF prior to commencing operations in Cambodia. Article 18 of AML/CFT Law requires the MEF to undertake 'Fit and Proper' measures for those seeking a casino licence. This process is expected to preclude criminals or their associates from holding controlling interests and management functions. The Law also requires the MEF to investigate beneficial ownership to ensure any criminal owner is detected and prevented from obtaining a licence. As part of the licensing process, applicants must submit a police clearance certificate, both national and international. Casinos are defined as a RE and are subject to supervision by the MEF and CAFIU for compliance with AML/CFT requirements (Article 4 of AML/CFT Law). Casinos are inspected by the competent authorities (including the MEF's Department of Gambling Supervision and AML/CFT of the General Department of Financial Industry, the Office of Legal Gambling Management of the Department of Internal Security within the National Police of Cambodia and the MEF and Ministry of Interior's Joint Committee on Combating Illegal Gambling) on a quarterly basis to prevent illegal gambling and to ensure compliance with their licensing requirements but as at the time of the on-site, no AML/CFT supervision had occurred.

319. *Criterion 28.2* - CAFIU is designated to work with other supervisory authorities and SRBs for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements as provided in Article 22, paragraph 2 of the AML/CFT Law.

320. *Criterion 28.3* - Article 22 of AML/CFT Law requires DNFBPs to be subject to AML/CFT compliance monitoring but to date no DNFBP has been subject to AML/CFT supervision. Therefore, it cannot be demonstrated that there is a system for monitoring the compliance of DNFBPs with AML/CFT requirements.

321. *Criterion 28.4* - Article 18 of the AML/CFT Law requires DNFBP supervisors to undertake 'fit and proper' tests at market entry. Article 31 of the Law of the Bar stipulates the requirements to practice law by submitting qualifications, meeting nationality requirements and be free of any previous misdemeanours or court imposed sanctions. It is unclear how this process is administered.

322. Prakas No 1222 and No 142 set out the licensing requirements, including criminal record checks, for real estate agents to obtain a licence from MEF, with Ministerial approval required. Article 7 of the Law on the Organization and Conduct of the National Bank of Cambodia sets out that precious metal and stone dealers are subject to market entry requirement per their licencing with the NBC, however Cambodia notes that this authority has transferred to MoC. It is not clear what fit and proper tests accountants are subject to.

323. Regarding sanctions to deal with failure to comply with AML/CFT requirements, Article 22 and Article 28 of AML/CFT Law set out the disciplinary and financial sanctions CAFIU

and the supervisory authorities could impose to FIs failed who comply with AML/CFT requirements also can apply to DNFBPs. The same issues regarding the dissuasiveness of the amount of fines in R27 and R35 are relevant here.

324. *Criterion 28.5* - DNFBPs are not currently supervised for compliance with AML/CFT requirements, nor are there any specific requirements or policies relating to supervision of DNFBPs to be performed on a risk-sensitive basis.

#### *Weighting and Conclusion*

325. There are moderate shortcomings regarding supervision of DNFBPs for their AML/CFT requirements and the power of the supervisors to impose dissuasive and proportionate fines (see also R35). Market entry requirements vary between each category of DNFBP. DNFBPs are not currently supervised for AML/CFT compliance. **Recommendation 28 is rated partially compliant.**

#### **Recommendation 29 – Financial intelligence units**

326. Cambodia was rated non-compliant with former R.26. The 2007 MER noted there was no FIU in place. The Cambodian Financial Intelligence Unit (CAFIU) was established as a unit of the National Bank of Cambodia (NBC) later in 2007. R.29 contains new requirements that were not assessed under the 2004 Methodology.

327. *Criterion 29.1* - CAFIU is the competent central agency for receipt, analysis and dissemination of STRs and other information relevant to ML/TF and associated predicate offences, established within the NBC as per Article 3 (h) of the AML/CFT Law and the AML/CFT Amendment Law.

328. *Criterion 29.2* - All the REs, including DNFBPs as described in the Article 4 of the AML/CFT Law, are required to submit STRs to CAFIU. CAFIU is legally authorised to receive such reports per Article 3 of the AML/CFT Law. Similarly, the AML/CFT Law, the 2008 Prakas and the 2010 Prakas oblige all REs, including DNFBPs, to submit CTRs to CAFIU. The designated threshold of reporting CTR is USD 10,000 (KHR 40 million).

329. *Criterion 29.3* - Article 21(b) of the AML/CFT Law allows CAFIU to obtain and use additional information from REs as well as information held in commercial database for performing its analysis functions. The AML/CFT Law allows CAFIU, on a timely basis, to access financial, administrative and law enforcement information that is necessary to undertake its functions, including information collected and maintained by, or stored in, the databases of any public agency. Moreover, MOUs signed with the ACU, GCNP, GDCE, GDT, General Department of Immigration, General Department of Identification and General Department of Banking Supervision of the NBC provide explicit provisions for information exchange.

330. *Criterion 29.4* - CAFIU conducts some operational analysis though, as noted in the analysis of IO.6, it is currently very limited due to capacity issues. CAFIU can use tools for operational/tactical analysis purposes which allow it to search and match data or transactions, discover and visualise the links between persons, companies, accounts, and telephone numbers, and then transform this data into a report. CAFIU is however only performing operational analysis based mostly on its own information and only on a very limited basis. Therefore, CAFIU is usually unable to indicate which reports, in particular STRs, may relate to which predicate crimes. In addition, due to resource constraints, CAFIU does not currently conduct strategic analysis or any analysis on the basis of information provided by the other competent authorities to identify ML/TF related trends and patterns as required under c.29.4(b).

331. *Criterion 29.5* - The AML/CFT Law allows CAFIU to disseminate information and intelligence spontaneously to relevant law enforcement authorities. An MOU is required for disseminating to domestic or foreign competent authorities. Without an MOU CAFIU cannot disseminate information spontaneously to any domestic or foreign competent authorities. Thus CAFIU has signed MOUs with the ACU, GCNP, GDCE, GDT, General Department of Immigration, General Department of Identification and General Department of Banking Supervision of the NBC at the domestic level and 17 other jurisdictions at the international level.

332. Cambodia indicated that CAFIU has established a point of contact within each agency with which it has concluded an MOU. Exchange of information via the point of contact is in written form in a secured and protected manner. Recently, CAFIU is communicating with all of its foreign counterparts via Egmont Secure Web (ESW); for the domestic agencies, CAFIU usually uses a special messenger and the document(s) are sealed and marked as confidential. Additionally, RPG is also used as a means of disseminating information and results of its analysis. .

333. *Criterion 29.6* - Information transmission between CAFIU and REs uses encryption coding, decoding and privately held access keys for transmitting data. Access control is in place to prohibit remote access and to provide limited access to CAFIU's file server and database. The Information Security Policy of the NBC and CAFIU's Operating Manual govern control and security of CAFIU's electronic information. Article 23 of the AML/CFT Law obliges the FIU Board and CAFIU employees to only use information for FIU purposes. CAFIU has established procedures for vetting staff during the recruitment process and limit access to CAFIU premises through secure means. CAFIU is located within the NBC and physical security is maintained by trained personnel and biometric control. IT security of the CAFIU is governed by the IT Security Policy of NBC and access control measures are in place to its databases and servers.

334. *Criterion 29.7* - Article 20 of the AML/CFT Law requires the Prime Minister to *appoint the head of CAFIU as proposed by the NBC. Independence of CAFIU's budget and decision-making is required by Article 19 of the AML/CFT Law.* An independent Board as per Article 20(2) of the AML/CFT Law undertakes oversight of CAFIU. The head of this Board is appointed by the Prime Minister on recommendation of NBC, which consists of high-level government officials from different ministries/agencies. The AML/CFT Law (Articles 25 and 26) also empowers CAFIU to sign MOUs with its domestic and international counterparts. Although CAFIU is established under the control of NBC, its functions are explicitly separated from the core functions of NBC. CAFIU has its own budget (supported by NBC) and meets all its own expenses. However, Article 19 (1) clearly states that "the FIU (i.e. CAFIU) shall be established as a unit under control of the National Bank of Cambodia". Though, in practice CAFIU enjoys full autonomy in its day-to-day operations, such provisions in legislation have the potential to undermine the independence of CAFIU.

335. *Criterion 29.8* - CAFIU achieved Egmont Membership in June 2015.

#### *Weighting and Conclusion*

336. There are minor shortcomings under R. 29. These include the limited analysis functions undertaken by CAFIU, which do not cover strategic analysis to identify ML/TF related trends and patterns. CAFIU's ability to disseminate information, including spontaneously, is limited by the need for an MOU. In AML/CFT legislation, CAFIU is under the control of the NBC. It is unclear whether this has an impact on CAFIU's operational independence.  
**Recommendation 29 is rated largely compliant.**

**Recommendation 30 – Responsibilities of law enforcement and investigative authorities**

337. Cambodia was rated non-compliant with former R. 27. The 2007 MER noted concerns with the designation of an investigating agency, the conduct of parallel ML/TF investigations and the effectiveness of ML and TF investigations. Specific provisions only existed in relation to drug related ML investigations (Commissariat of National Police was not responsible for investigating other ML/TF predicate offences as defined by the FATF). R.30 contains new requirements not assessed under former R.27.

338. *Criterion 30.1* - Cambodian law allows a wide range of competent authorities to have responsibility for the management of ML investigations. There are several units within the GCNP with a mandate to investigate these offences, and the ACU also has a mandate to investigate ML.

339. While there is no problem in principle in having more than one LEA responsible for investigating ML/TF and associated predicate offences, the current division of responsibility for investigation of ML is unclear and is not ensuring that these offences are being properly investigated.

340. As outlined in the analysis of IO.7, differing views were expressed at differing times by Cambodian authorities regarding which agency or agencies is/are responsible for, rather than legally capable of, investigating ML. Cambodia indicated in its technical compliance and effectiveness responses and in its NRA that the Anti-Corruption Unit (ACU) had sole investigative responsibility for ML, other than ML associated with drugs or TF (which are the responsibility of the GCNP), on the basis that ML is deemed to be a corruption offence in the Law on Anti-Corruption. However, during the on-site visit it was clarified that, in principle, all public agencies with a judicial police function, such as ACU, GCNP, GDCE and the GDT, can initiate a preliminary investigation of ML under the Criminal Code. Once complete, a preliminary investigation would be handed over to the prosecutor to decide whether to proceed with the investigation and to determine the most appropriate investigative agency/ies.

341. There are some specialised units within GCNP tasked with ML investigations, namely the Counter-Terrorism and Transnational Crime Department and Anti-Drug Department. The Counter Terrorism and Transnational Crime Department of the GCNP is tasked with terrorism related investigations, including TF. Similarly, the Royal Gendarmerie, a wing of the armed forces division, also investigates terrorism issues in Cambodia, including TF. The issues of terrorism and financing of terrorism related with the international context are coordinated by the SNCTC. Despite not having specialised units to investigate ML/TF, other authorities have the powers to do so. ACU has identified a group of officers with expertise in ML/TF and intends, in the future, to establish a specialised bureau.

342. While there is no specific provision in legislation designating a particular, or primary, investigating agency for ML, Article 69 of the Law on Drug Control 2012 specifically allows the Anti-Drug Department of Cambodian National Police to investigate ML in relation to drug trafficking or drug offences.

343. In summary, while the legal situation as to which agencies can investigate ML was clarified during the on-site visit, the lack of a clear designation of which agencies are responsible for investigating ML, and in what circumstances, remains a deficiency (and a recommendation to address this issue is made in the analysis of IO.7 above). The fact that the Cambodian authorities had, in both their TC response and NRA, outlined a different understanding of the roles and responsibilities of the ACU and other agencies to the one which emerged during the on-site visit underscores the need for a better designation of responsibilities in this area. At the time of the on-site, the arrangements in place were not



ensuring that ML, and associated predicate offences, were being properly investigated within a national AML/CFT policy framework, or some other common understanding amongst agencies.

344. *Criterion 30.2* - There is no legislative provision for or prohibition against the conduct of parallel ML/TF investigations when a predicate crime is being investigated. Cambodia does not specifically provide for the referral of ML investigations to a particular agency and there is also no general directive requiring investigators to consider and investigate ML/TF associated with the predicate offence. In the context of predicate offences related to drugs, however, the Law on Drug Control grants the Anti-Drug Department investigative authority in relation to ML/TF issues in parallel.

345. *Criterion 30.3* - While the law provides general authority to initiate freezing and seizing of property as required, no responsibility has been placed on a particular competent authority to expeditiously identify and trace property that is, or may become subject to confiscation, or is suspected of being proceeds of crime. Article 30 New-1 of the amended AML/CFT Amendment Law provides authority to the NCC (a designated member of the NCC can order immediate freezing, then obtain a court order as soon as possible) and law enforcement agencies to freeze suspected and /or related proceeds of crime. Article 30 New-2 authorises the court to make decisions on confiscation, which is based upon conviction. Article 48 of the Law on Anti-Corruption; Articles 89 and 90 of Law on Drug Control and Articles 79, 80 and 81 of the Law on Counter Terrorism also empower the ACU, Anti-Drug Department and the NCTC respectively to trace, and initiate seizing and freezing of proceeds of crime.

346. *Criterion 30.4* - Article 30 New-1 of the AML/CFT Amendment Law provides the authority to designated members of the NCC on AML/CFT to freeze any proceeds or suspected proceeds of crime. Article 56-60 of the Law on Customs 2007 provide a wide range of investigative powers to the GDCE authority to conduct investigations on predicate crimes as well as to seize and freeze assets. Similarly, Article 92, 100, 113 and 114 of the Law on Taxation 1997 also provides tax authority to investigate, freeze or seize assets in relation to the tax offences. Section 8 of the Law on Issuance and Trading of Non-Government Securities provides limited investigative authority to the Cambodia Securities and Exchange Commission to investigate related predicate crimes.

347. *Criterion 30.5* - Articles 26, 27, 28, 29 and 48 of the Law on Anti-Corruption provide a wide range of legal provisions to identify, trace, and seizing and freezing of assets related to corruption. Additionally, Article 49 of the same Law, authorises the ACU to claim and return the proceeds of corruption from overseas.

### *Weighting and Conclusion*

348. There are minor shortcomings under Recommendation 30. Cambodia has a complex system of sharing powers to investigate ML/TF and predicate offences. Within this framework, a wide range of agencies can investigate ML and associated predicate offences, but further clarity is required as to the circumstances in which they should do so. There are very few instances of parallel investigations by the officers investigating predicate offences, and no systems for referral. **Recommendation 30 is rated largely compliant.**

### *Recommendation 31 – Powers of law enforcement and investigative authorities*

349. Cambodia was rated partly compliant with former R. 28. The 2007 MER found that specific provisions only existed in relation to drug-related ML and no evidence was found to demonstrate the effective implementation and use of the investigating powers by investigating and prosecuting authorities.

350. *Criterion 31.1* - Broadly, judicial police officers, as stated in Article 60 of CCP, have special powers to employ compulsory measures, including:

- searches of premises and persons (Article 91);
- taking of witness statements through interviews or interrogation (Articles 93 and 153); and
- seizing and obtaining evidence (Article 113).

351. However, there is no explicit power for judicial police to obtain and access records held by FIs, DNFBPs and other commercial entities. A police investigator, authorized by the investigative judge, only has access to bank records under Article 88 of the Law on Counter Terrorism while investigating TF offences. It is however possible for CAFIU to compel the production of records held by FIs, DNFBPs and other persons under Article 21(b) of the AML/CFT Law, and for investigators to request and receive such records from CAFIU under an MOU.

352. In addition to these powers for all judicial police, there are additional powers granted to certain authorities under special laws. ACU has special powers to employ compulsory measures in the Law on Anti-Corruption 2010. Article 27 of the Law on Anti-Corruption allows the ACU to obtain and access records held by FIs, DNFBPs and other commercial entities (whether a natural or legal person). ACU officers can also search persons and premises under the same provisions and Article 91 of the CCP. The ACU has the authority to take statements through interviews or interrogation under Article 153 and 93 of the CCP. Articles 27, 28 and 30 of the Law on Anti-Corruption and Article 113 of CCP allow the ACU to seize and obtain evidence to investigate ML and related predicate crimes.

353. Article 85 of the Law on Drug Control 2012 empowers investigators to access records held by financial institutions, including DNFBPs, and other commercial entities (whether a natural or legal person), and Articles 75 and 76 allow investigators to search persons and premises. Article 81 of the same Law (under the power of Article 113 of CCP) empowers investigators to seize and obtain evidence that is necessary for the investigation process. While there is no explicit power available to take statements through interview or interrogation, the officers investigating are likely to be judicial police with such powers set out in Article 153 and 93 of the CCP.

354. Article 58 of the Law on Customs equates sworn GDCE officials to judicial police officials and grants authority to such officials to use the compulsory measures available to the judicial police.

355. According to Article 10 of the Law on Issuance and Trading of Government Securities 2007, an officer of Securities Exchange Commission of Cambodia has the same authority as the judicial police and has authority to exercise the power conferred in the Article 91, 93 and 113 of CCP in investigating predicate offences.

356. *Criterion 31.2* - Investigative powers required by this criterion are not broadly granted to judicial police officers. They are specifically set out with respect to corruption, drug and terrorism related cases.

357. Article 27 of the Law on Anti-Corruption allows the ACU to use a limited range of investigative techniques includes assessing computer or electronic systems. However, Article 105 of the CCP prohibits any type of interception of communications or assessing of computer systems by judicial police without an order from an investigative judge under Article 172 of the Code of Criminal Procedures.

358. Articles 79 and 85 of the Law on Drug Control allow the competent investigative authority to employ controlled delivery and accessing computer and electronic systems while conducting an investigation related to drugs. Article 88 of the Law on Counter Terrorism allows the use of accessing computers, electronic systems, and other means of intercepting communication for terrorism related matters.

359. *Criterion 31.3* - Article 8.2 of the AML/CFT Law obliges reporting agencies to identify natural or legal persons that hold or control accounts (incl. beneficial ownership information). Article 21 of the same law allows CAFIU to access beneficial ownership information in a timely manner. Additionally CAFIU can share that information to the law enforcement agency under section 26 of AML/CFT Law. As discussed above the ACU, Anti-Drug Department, GDCE can examine and obtain bank records, which include beneficial ownership of the accounts. While the judicial police and SECC have no explicit power to obtain beneficial ownership information directly from financial institution and DNFBPs, they are able to access this information through MOUs with CAFIU.

360. The investigative agencies for ML/TF have a wide range powers to identify and trace proceeds of crime. ACU's legal framework and certain case examples provided GCNP demonstrate that LEAs have the ability to do so without prior to notification of suspects.

361. *Criterion 31.4* - Article 26 of the AML/CFT Law provides the legal basis for law enforcement authorities to ask for all relevant information from the FIU and Article 31 empowers competent authorities to exchange information held by the CAFIU.

362. CAFIU has signed MoUs on information exchange with GDCE, ACU, NBC and GCNP. The MOUs provide clear mechanisms for these law enforcement authorities to ask for all relevant information from CAFIU.

#### *Weighting and Conclusion*

363. Along with prosecutors, judicial police are investigators for ML/TF and associated predicate crimes. Cambodia provides investigators with a broad range of investigative powers. While there is no explicit power for judicial police to obtain records held by FIs, DNFBPs and other persons, MOUs with CAFIU allow law enforcement agencies to access such information through CAFIU. **Recommendation 31 is rated largely compliant.**

#### **Recommendation 32 – Cash Couriers**

364. Cambodia was rated non-compliant with former SR. IX in the 2007 MER. A declaration system was in place for cross-border currency transportation but there were no mechanisms in place to ascertain the origin or intended use of the currency and there were significant shortcomings in implementation. Recommendation 32 contains new requirements that were not assessed under SR.IX of the 2004 Methodology.

365. Cambodia has implemented a declaration system for incoming and outgoing cross-border transportation of currency and bearer negotiable instruments (BNIs) for all physical cross-border transportation, whether by travellers or through mail and cargos given by Article 13 of the Law on Foreign Exchange 1997 and Article 10 and Article 16 of the Law on Customs 2007.

366. *Criterion 32.1* - Article 13(1) of the Law on Foreign Exchange requires the import or export of any 'means of payment' equal to or exceeding USD 10,000, or equivalent, to be reported to the customs authorities (the GDCE) at the border crossing point. "Means of

payment” is defined in Article 2 of the Law on Foreign Exchange and includes payment instruments or securities in foreign currencies, raw precious metals and uncut precious stones.

367. The Chapter 2, section 1, Article 11(b) of the Law on Customs 2007, covers declaration procedures on import of goods (which include currency and BNIs) through mail and cargo. The written declaration procedures are in place in relation to the exportation of goods (including currency) in section 2, Article 16 of the Law on Customs and the Prakas on the Procedure of Exportation and Importation of Foreign Currency 1998 issued by Ministry of Economic and Finance.

368. *Criterion 32.2* - Articles 1 to 3 of the Prakas on the Procedure of Exportation and Importation of Foreign Currency 1998 require all persons physically transporting currency across Cambodia’s border, equal to or exceeding USD 10,000 in foreign exchange or the equivalent amount in domestic currency, to declare the amount in writing to a GDCE officer. The Prakas requirements cover both inbound and outbound passengers. Outbound passengers, including legal entities exporting currency, are required to hold a permit/license for exportation issued by the NBC. The licence or permit is to be supplied to the GDCE officer where currency exceeds USD 10,000. Neither the Law on Foreign Exchange nor the Law on Customs define ‘foreign currency’ or its coverage.

369. *Criterion 32.3* is not applicable, as Cambodia has implemented a declaration system.

370. *Criterion 32.4* - Article 57 of the Law on Customs allows GDCE officers to retrieve information from third parties involved in the import or export of foreign exchange from their premises or custody. In addition, GDCE’s *circular* No. 1882 dated 19 September 2014 empowers GDCE officers to request more information as to the origin and intended use of transported foreign currency and bearer negotiable instruments.

371. *Criterion 32.5* - Article 74(1) of the Law on Customs criminalises the violation of obligations in that law. Violations include “making, assenting to, or participating in a verbal declaration or written statement which is inaccurate, false, or deceptive”. Associated penalties are administrative fines of between one (1) time to three (3) times the duty and tax evaded, and to a judicial penalty of confiscation of the goods and of the conveyance and other things used to conceal smuggled goods, or imprisonment for one (1) month to one (1) year.

372. Article 73 of the Law on Customs also provides a legal basis to impose financial sanctions ranging from KHR 100,000 (approximately US\$25) to KHR 500,000 (approximately US\$125) in relation to failure to meet customs declaration requirements.

373. Article 22 of the Law on Foreign Exchange 1997 provides the financial penalty 10% of the amount involved.

374. These sanctions appear to be dissuasive and proportionate since they are linked to the value of the potential gain to be made.

375. *Criterion 32.6* - Article 13 of the Law on Foreign Exchange states that any declaration made by a traveller of import or export of means of payment equalling USD 10,000 in foreign or domestic currency shall be transmitted to the Central Bank (NBC) on a monthly basis. CAFIU has signed MOUs with the NBC and Customs on exchange of information. The Statistics Department of NBC preserves the cross-border declaration data received from Customs. However, currently under the bi-lateral framework with CAFIU, GDCE directly sends cross-border declaration information to CAFIU and notifies them about the suspicious cross-border transportation incidents on a monthly basis (see the analysis in IO.6). The GDCE only provides information on incidents when non-disclosures/ false disclosures have resulted in fines.

376. *Criterion 32.7* - CAFIU signed an MOU with GDCE in 2012, which covers overall information exchange related to ML/TF and cash couriers. GDCE's circular no 1882 instructs all the directors of GDCE, branches and offices, to pay close attention on ML/TF issues. Anukret (Sub-Decree) 64 governs the mechanisms of coordination among relevant competent authorities with respect to the detections and operations at the international gates, international borders, and seaports. Chapter 5 of this Anukret deals with the composition of police, civil aviation, customs and immigration authorities on land, sea and at the airport. Additionally, Chapter 6 deals with a very broad range of co-ordination mechanisms and division of responsibilities including the implementation issues related with the Recommendation 32.

377. *Criterion 32.8* - Article 56 of the Law on Customs allows GDCE officials to stop or restrain currency or BNIs in relation to false declarations or related to an offence. The provisions are broad and allow GDCE officials to investigate a case where suspicion of an offence under the Law of Customs may have occurred.

378. *Criterion 32.9* - Cambodia has signed bilateral arrangements with the Thailand, Lao PDR and Vietnamese customs authorities for cooperation and assistance in customs matters. Cambodia is also a contracting party to the International Convention on Customs Mutual Administration Assistance. These arrangements provide for the sharing of information on customs related matters. Under the bi-lateral framework with CAFIU, GDCE sends information related to cross-border declarations and reports suspicious detected cases directly to the CAFIU on a monthly basis. Article 51 of the Law on Customs obliges GDCE to keep all the records and information regardless its nature, for 10 (ten) years. Therefore, the cross-border declaration/false declaration/ suspicious detection data are preserved both with the GDCE and CAFIU. Additionally, both CAFIU and GDCE are able to provide a wide range of international cooperation under bilateral and multi-lateral framework. Further, CAFIU is able to retain and share data with foreign counterparts with prior permission from the GDCE as per Article 3 of their bilateral MOU.

379. *Criterion 32.10* - The cross-border declaration requirements do not impede trade payments between countries or limit the movement of capital. Article 5 of the Law on Foreign Exchange guarantees the free flow of capital and foreign or domestic currency through authorised intermediaries (banks) providing clearance is obtained from the NBC. Custom officers are required to safeguard information obtained in the course of their duties and abide within the Law on Customs per the Article 63 of the Law on Customs and per Chapter 5 of the Common Statute of Civil Service 1994.

380. *Criterion 32.11* - Article 3 of the AML/CFT Amendment Law has an expansive definition of the term 'property' and would include currency or BNIs. Therefore, penalties applicable to ML would extend to those laundering currency or BNIs. As per the analysis in Recommendation 3, the sanctions applicable may be proportionate but are unlikely to be dissuasive. The broad definition of 'property' also covers the transportation of currency or BNIs related to TF as it criminalises, in Article 29 new 7 of the AML/CFT Amendment Law, the intentional provision or collection of property, or making it available, directly or indirectly if it is intended to be used, or is used, wholly or partly to carry out an act which is an offence under any of the treaties listed in the annex of the International Convention for the Suppression of the Financing of Terrorism. As per the analysis in Recommendation 5, sanctions on natural person are proportionate and dissuasive, however the sanctions for legal entities are unlikely to dissuade.

381. Further, as per the analysis in Recommendation 4, Article 30(2) of the AML/CFT Amendment Law and Article 408 of the Criminal Code provide broad powers for the confiscation, upon conviction for ML or a predicate offence or TF, of property laundered, proceeds, instrumentalities and property of corresponding value.

382. The sanctions for false declaration (above paragraphs 399 - 402) appear to be dissuasive and proportionate. However, sanctions for ML/TF activities related with transportation of foreign currency BNI is proportionate but are unlikely to be dissuasive.

#### *Weighting and Conclusion*

383. There are minor shortcomings in meeting some of the elements of Recommendation 32. There are gaps in the coverage of both currency and BNIs: BNIs and currency are not required to be declared if sent through outbound mail. Cross-border declaration data, false declarations and identification data of suspected ML/TF cases can only be shared under the framework of a MOU or treaty; there is no scope of spontaneous sharing. The GDCE only provides information on incidents when non-disclosures/false disclosures have resulted in fines. There are no obligations on competent authorities in Cambodia to retain information on declarations. **Recommendation 32 is rated largely compliant.**

#### *Recommendation 33 – Statistics*

384. Cambodia was rated non-compliant with former Recommendation 32, which required maintenance of comprehensive statistics. The 2007 evaluation concluded the Cambodia had no framework to gather statistics and had not demonstrated a capacity to maintain statistics.

385. *Criterion 33.1 - (a)* Cambodia keeps statistics of STRs received (by type of institutions) and disseminated to LEAs. However, it is not clear that all records kept are accurate, especially those involving manual submission. The main deficiencies refer to the fact that Cambodia has not kept statistics to demonstrate that the LEAs have utilized financial intelligence from the FIU throughout all stages of their predicate and ML investigations.

386. *(b)* While there have only been three ML investigations, limited TF investigations and no ML or TF prosecutions, the GCNP has a database in which it records all cases investigated by the police, and which includes information on the type of offence, date of detention, detail of offenders and evidence. The ACU also maintains a physical register of cases that it investigates, including ML cases. Cambodia has collected some statistics on investigation, prosecution and conviction of relevant predicate offences, including human trafficking, drug offences and corruption. In addition, GDCE maintains both hard copy and electronic records of customs reports. GDCE has two separate databases in which electronic records are stored – one for customs fraud records and another for import/export customs declarations. These reports contain details of attempted smuggling and customs and excise duties applied. Further, while GDT have not conducted any investigations to date because their judicial police function is new and officers have only recently been trained, they do have a database in which they maintain records of penalties imposed for breach of legislative obligations, for example, failure to register. SNCTC also have a database in which they maintain information about terrorism related cases (including TF). Each case has a case worker that is responsible for keeping information updated.

387. *(c)* Cambodia has no statistics on property frozen, seized or confiscated in the context of ML/TF cases. Cambodia has collected some basic statistics on property confiscated in the context of relevant predicate offences, including drug offences, corruption and tax crimes. ACU maintain a physical record of property confiscated in corruption related cases. GDCE also maintains hard copy and electronic records of property confiscated in customs related cases. The administrative unit of the Phnom Penh Court of First Instance maintains an electronic record of final decisions by the court to confiscate assets. In addition, in 2015 MOJ established a committee, which is in charge of managing and supervising the records of confiscated assets of all courts.

388. (d) Since 2010, Cambodia has maintained records on mutual legal assistance requests made and received. These include the party that has made the request, or to whom Cambodia makes the request, the contents of the request and the persons involved. This information is recorded as titles of case records, and not in a statistically useful format. CAFIU has provided basic statistics on the number of instances where it has disseminated to foreign counterparts per year. However, due to the ad hoc nature of the record-keeping, some records may not be accurate. Cambodia does not collect comprehensive statistics on mutual legal assistance or other international requests

389. Further, the Central Authority does not have a case management system and has to refer to hard copy records in order to determine statistics. MOJ underwent a restructure in 2014 and the Central Authority has acknowledged that it may not have access to all records of past international cooperation. As such, it is difficult to obtain accurate data regarding past cooperation. Currently, requests are being recorded manually in a logbook and monthly and annual reports are being provided to management.

#### *Weighting and Conclusion*

390. There are moderate shortcomings in the statistics provided by Cambodia on matters relevant to the effectiveness and efficiency of its AML/CFT systems, in particular in relation to international cooperation property frozen, seized and confiscated. **Recommendation 33 is rated partially compliant.**

#### *Recommendation 34 – Guidance and feedback*

391. Cambodia was rated non-compliant with former R. 25. The 2007 MER found that in the absence of STRs and an FIU there was no framework in place to provide feedback. Further, the guidance to FIs was inadequate, and no guidance had been issued to DNFBPs with regard to their obligations under the AML/CFT Law.

392. *Criterion 34.1* - CAFIU is the key AML/CFT regulator and supervisor in Cambodia. Under Article 21(f) of the AML/CFT Law, CAFIU is required to provide feedback to reporting entities and other relevant agencies regarding the outcome of STRs or information provided to it under the Law. While Cambodia states that, in practice, CAFIU provides feedback on the receipt and quality of STRs, the triggers and mechanism for such feedback are unclear.

393. Between 2012 and 2015, CAFIU conducted eight workshops to raise further awareness on the new requirements in Law and Regulations and reporting obligations. The workshops were attended by a broad range of FIs and DNFBPs.

394. Guidance to FIs and DNFBPs on their AML/CFT obligations is limited. The Prakas 2008 contains detailed guidance (examples) to FIs regarding their STR obligations. The 2010 Prakas (covering NBFIs and DNFBPs) does not however include similar guidance to reporting entities. In August 2014 CAFIU issued a guideline to banks and MFIs on the conduct of risk assessments.

#### *Weighting and Conclusion*

395. CAFIU is required to provide guidance and feedback to reporting entities and other relevant agencies regarding the outcome of STRs or information provided to it under the AML/CFT Law. While a recurring feedback mechanism is not formally established, CAFIU has conducted workshops for FIs and DNFBPs to provide guidance and feedback in that format. Limited guidance has been issued to assist FIs and DNFBPs in complying with their AML/CFT obligations. **Recommendation 34 is rated partially compliant.**

**Recommendation 35 – Sanctions**

396. Cambodia was rated non-compliant with R.17 in its 2007 MER. At that time, Cambodia was found to have insufficient penal fines and lack of implementation of disciplinary and penal sanctions for FIs. Sanctions for DNFBPs were similar to those for FIs. Therefore, the concerns regarding insufficient fines and lack of implementation of sanctions extended to DNFBPs. In addition, the 2007 MER found that Cambodia did not have a functioning sanctioning regime in place for DNFBPs due to lack of supervision over the AML/CFT obligations of DNFBPs.

397. *Criterion 35.1* - There is a broad range of sanctions (administrative, civil and criminal) available against both natural and legal persons, although the monetary fines are unlikely to be dissuasive at the lower end. While monetary penalties at the higher end for certain Recommendations are substantial in Cambodia's domestic context, they are not sufficiently high to be dissuasive in a global sense. This is relevant given the transnational nature of TF and the ML. Nevertheless, the powers to restrict a licensee's operations could potentially prove just as dissuasive, if not more.

398. Sanctions for Recommendation 6 are set out in the Sub-decree on Freezing of Property of Designated Terrorists and Organizations. According to Article 15 of the Sub-decree, if any RE or other person fails to comply with the provisions of the Sub-decree the supervisory authorities shall cooperate with CAFIU to impose administrative measures: (1) warning, (2) reprimand, (3) prohibition or limitation to conduct any transactions for a period of time as indicated by the supervisory authorities, (4) revocation of the business license, or (5) pecuniary measures from KHR 20,000,000 (approx. USD 4,900) to KHR 200,000,000 (approx. USD 49,000). The risk of losing the licence to operate a business is likely to be punitive enough to be dissuasive. However, if a warning or a reprimand must be issued as a necessary first step, where the person or entity has never failed to comply before, then the sanction is unlikely to be proportionate or dissuasive. TFS violations can have a serious impact even on a one-off, rather than regular, basis. Further, while penalties at the higher end are substantial in Cambodia's domestic context, they are not sufficiently high to be dissuasive in a global sense, TF being a transnational phenomenon. Further, they may not prove dissuasive for large financial institutions breaching TFS requirements.

399. Sanctions for Recommendation 8 are set out in Chapter 3 of the Law on Associations and Non-Governmental Organizations. This Law provides administrative measures and penalties applied to associations or NGOs failing to comply with the Law. These include a written warning, temporary suspension of activities, removal from the register, or a fine from KHR 5,000,000 (approx. USD 1,225) to KHR 10,000,000 (approx. USD 2,450). Even at the upper limit the available fines are not dissuasive enough to deter TF activity with transnational links and impact. Further, if a warning, reprimand or temporary suspension order must be issued as a first step, where the person or entity has never failed to comply before, then the sanction is unlikely to be proportionate or dissuasive. TFS violations can have a serious impact even on a one-off, rather than regular, basis.

400. Sanctions for preventive measures and reporting (Recommendations 9 to 20, 22 and 23) are largely found in in the AML/CFT Law 2007, Prakas on AML/CFT 2010 and Prakas on AML/CFT 2008. If a financial institution or a DNFBP fails to comply with requirements set out under the AML/CFT Law 2007, CAFIU has the authority to cooperate with other supervisory authorities to impose disciplinary and financial sanctions against REs. The sanctions include imprisonment from six days to one year, fines from KHR 100,000 (approx. USD 24.5) to KHR 200,000,000 (approx. USD 49,000) and administrative sanctions, such as warning, reprimand, prohibition or limitation to conduct any transactions for a period of time, revocation of the business license and proposal to a demotion of relevant officials or directors. (Article 28 of the AML/CFT Law, Article 29 New 2 to Article 29 new 6 of the AML/CFT Amendment Law)



401. Furthermore, Article 52 of the Law on Banking and Financial Institution states that any covered entity (banks or financial institutions) failing to comply with the laws or regulations governing its activities will be subject to sanctions, including a fine not exceeding the minimum capital of the covered entity. If NBC cooperates with CAFIU to impose sanctions, the covered entity would be subjected to heavy penalties. However, there is no similar sanction rule applied to other REs not regulated under the Law on Banking and Financial Institution.

402. The risk of losing the licence to operate a business and, at the outer end of the range, the pecuniary sanctions may be punitive enough to be dissuasive.

403. For MVTS providers (Recommendation 14), there is a penalty of a fine at 50% of the amount involved (Article 25 of the Law on Foreign Exchange) for foreign exchange operations through unauthorized intermediaries. Illegal MVTS operators would be imposed a daily fine of KHR 100,000 (USD 24) by The NBC. These penalties do not seem proportionate or dissuasive. A daily fine would be practically difficult to apply to illegal MVTS operators. Further, the penalty in the Law on Foreign Exchange assumes that the illegality is limited to a transaction rather than the conduct of illegal operations more broadly.

404. In relation to Recommendation 21: Any person who contravenes the provisions to prohibit to disclose the fact of an STR or related information filed with the FIU will be sentenced to imprisonment from 1 month to 1 year, and/or will be subject to a fine from KHR 1,000,000 (approx. USD 245) up to KHR 5,000,000 (approx. USD 1,225). The REs may be declared as being criminally responsible and shall be subject to a fine from KHR 2,000,000 (approx. USD 490) to KHR 5,000,000 (approx. USD 1,225) and any one or more additional sanctions for legal entities (Article 29 New-4 and New-6 of the AML/CFT Amendment Law). The quantum of these fines, in the context of gains made from ML, would not appear to be dissuasive.

405. *Criterion 35.2* - Sanctions in Cambodia's AML/CFT regime apply to natural persons and legal entities. However, there are no specific penalties for directors and senior management of REs for conduct violating the AML/CFT Law, other than the ability of supervisory authorities to propose that an official or director be demoted (Article 28 of the AML/CFT Law).

### *Weighting and Conclusion*

406. There are moderate shortcomings regarding proportionate and dissuasive sanctions imposed to those failing to comply with the AML/CFT requirements of Recommendations 6 and 8 to 23. The quantum of the fines is unlikely to be dissuasive unless applied at the highest end of the available range, and sanctions are not all applicable to the directors and senior management of REs. **Recommendation 35 is rated partially compliant.**

### ***Recommendation 36 – International instruments***

407. In the 2007 MER, Cambodia was rated non-compliant with former R.35 and SR.I due to a lack of implementation of the Palermo Convention, the TF Convention, and UNSCRs 1267 and 1373. Since then, the standard was strengthened with the addition of the Merida Convention and the Cambodian legal framework has been enhanced through various laws.

408. *Criterion 36.1* - Cambodia is a party to all four conventions. Cambodia acceded to the Vienna Convention on 7 July 2005; ratified the Palermo Convention on 12 December 2005; acceded to the Merida Convention on 5 September 2007 and ratified the TF Convention on 12 December 2005.

409. *Criterion 36.2* - Cambodia has implemented the vast majority of relevant articles of the TF Convention by legislating the Law on Counter Terrorism and the AML/CFT Amendment Law.

There are minor gaps in terms of dissuasiveness of sanctions (as discussed under R.5) and in Cambodia's implementation of Article 18 with regard to money transmission agencies and cross-border transportation of cash and BNIs (as discussed under R.14 and R.32 respectively). Cambodia has also not provided any evidence that it affords persons the rights specified in Articles 9 and 17.

410. Cambodia has also largely implemented the relevant articles of the Merida Convention through the Law on Anti-Corruption, the Criminal Code and through bilateral and multilateral treaties. There are minor gaps in Cambodia's implementation with regard to cross-border transportation of cash and BNIs (as discussed under R.32) and freezing, seizure and confiscation (as discussed under R.4). There are also gaps in Cambodia's implementation of Articles relating to MLA, extradition and other forms of international cooperation (as discussed under R.37-40).

411. Cambodia has largely implemented the relevant articles of the Vienna Convention through the Law on Drug Control, the Criminal Code, the CCP and through bilateral and multilateral treaties. There are minor gaps in Cambodia's implementation of Articles relating to confiscation and extradition and there are no specific provisions in Cambodian law relating to the use of commercial carriers in the commission of drug-related offences or in relation to illicit traffic by sea.

412. Cambodia has largely implemented the relevant articles of the Palermo Convention through the Criminal Code, Criminal Procedure Code, Law on Anti-Corruption, AML/CFT Law, AML/CFT Amendment Law and through bilateral and multilateral treaties. However, there are minor shortcomings in Cambodia's implementation in relation to cross-border transportation of cash and BNIs (as discussed under R.32) and the dissuasiveness of sanctions for ML and corruption. There are also minor gaps in implementation of articles relating to confiscation, MLA and extradition (as discussed under R.4 and R.37-39). There is limited implementation of articles relating to protection of witnesses and assistance to and protection of victims and a lack of implementation of articles relating to joint investigations, measures to enhance cooperation, training and technical assistance and prevention.

### *Weighting and Conclusion*

413. While Cambodia is party to all the relevant international instruments, there are minor deficiencies relating to implementation of all Conventions. **Recommendation 36 is rated largely compliant.**

### *Recommendation 37 – Mutual legal assistance*

414. In the 2007 MER, Cambodia was rated partly compliant with former R.36 and non-compliant with SR.V. The evaluation found that there was no legal basis for providing MLA in ML cases, other than drug related ML cases, and no legal rules for dealing with MLA requests. There was also no legal basis for provision of MLA on TF. Since the last evaluation, there have been some changes to the Cambodian legal framework for MLA. The requirements of the new FATF standard are also more detailed.

415. *Criterion 37.1* - As a party to the ASEAN Mutual Legal Assistance in Criminal Matters Treaty, Cambodia is able to make or receive requests for assistance from parties under this treaty. The Law on Drug Control provides a legal basis for Cambodia to provide a wide range of MLA in relation to drug related ML cases (Article 114). Likewise, the Law on Anti-Corruption provides for a wide range of MLA for ML relating to corruption offences (Article 51). A similarly wide range of assistance is available in relation to TF cases under the Law on Counter Terrorism (Article 103). The types of assistance available under these instruments include: taking witness statements; serving court documents; executing searches; tracing tainted property; obtaining

information or evidence; freezing, seizing and confiscating tainted property. There are currently no domestic laws for dealing with MLA requests outside the ASEAN MLA framework, other than in relation to drug, corruption and terrorism related offences. While Cambodia has drafted a dedicated MLA law that applies to all offences, this law was not in force at the time of the mutual evaluation. Cambodia can also rely on ratified international treaties and conventions to provide MLA, as international law is a source of Cambodian law. Furthermore, Cambodia can provide MLA on the basis of the principle of reciprocity. Such assistance is provided on a case-by-case basis and there are no explicit limitations on the scope of assistance.

416. 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.' The various pieces of legislation setting out MLA with respect to drug, corruption and terrorism related offences do not require Cambodia to respond in a specific timeframe. Cambodia has advised that the timeframe is dependent on the nature of the request and feedback from other jurisdictions on Cambodia's response times was mixed. Therefore, it is not clear that Cambodia is able to provide mutual legal assistance 'rapidly'.

417. *Criterion 37.2* - In 2011, pursuant to a Ministerial Decision made by the Minister for Justice, Cambodia established the Central Authority within MOJ to facilitate MLA, transfer of prisoners and extradition. The roles and responsibilities of the Central Authority are set out in the Prakas on the Organisation and Functioning of the Bureau under the General Department of Prosecution and Criminal Affairs, issued in 2016. There is, however, no clear process for the timely prioritisation and execution of MLA requests. Requests are generally executed in the order in which they are received unless the Minister for Justice deems that they are urgent. Cambodia does not maintain a case management system to monitor progress on requests.

418. *Criterion 37.3* - The 2007 MER (para 525) concluded that the conditions for refusal contained in the ASEAN MLA Treaty and the Law on Counter Terrorism, which were not then in force, are not unreasonable or unduly restrictive. These instruments are now in force. Substantively similar conditions are contained in the Law on Drug Control. The Law on Anti-Corruption specifies that procedures for MLA shall be in agreement with the principles stated in treaties (Article 53). From a preliminary assessment of the draft MLA (not in force), the conditions there are limited and not unreasonable or unduly restrictive. MLA can only be refused on four grounds: 1. absence of dual criminality; 2. granting of the request would prejudice national sovereignty/security/other crucial public interests; 3. request relates to a political offence; 4. request relates to a military offence.

419. *Criterion 37.4* - According to the ASEAN MLA Treaty (Article 3), assistance shall not be refused solely on the ground of secrecy of banks and similar FIs or that the offence is also considered to involve fiscal matters. The Law on Anti-Corruption specifies that procedures for MLA shall be in agreement with the principles stated in treaties (Article 53). The fact that an offence also involves fiscal matters is not listed as a condition for refusal of assistance in the Law on Drug Control (Article 116) or the Law on Counter Terrorism (Article 105) and the latter specifically provides that an offence under that Law is not to be treated as a fiscal offence (Article 93). The Law on Drug Control (Article 117) and the Law on Counter Terrorism (Article 106) specify that MLA requests shall not be refused on the ground of bank secrecy. While these provisions, relate only to banks and not to other FIs or DNFBPs, Cambodia asserts that in practice it would not refuse an MLA request on the grounds of secrecy or confidentiality requirements of FIs or DNFBPs. Further, FIs and DNFBPs cannot refuse to provide information on the grounds of secrecy or confidentiality requirements because they would be served with a court order and it is an offence under the Criminal Code (Article 523) to fail to comply with a court order.

420. *Criterion 37.5* - The ASEAN Treaty (Article 9) requires that Requested Parties take all appropriate measures to maintain confidentiality of MLA requests and the information contained in them, subject to the Requested Party's domestic laws. The Law on Anti-Corruption specifies that procedures for MLA shall be in agreement with the principles stated in treaties (Article 53). There are no provisions in the Law on Counter Terrorism or the Law on Drug Control relating to the confidentiality of MLA requests. However, 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.

421. *Criterion 37.6* - The ASEAN MLA Treaty (Article 3) 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 Law on Drug Control (Article 114) and the Law on Counter Terrorism (Article 103) both require dual criminality in order to render MLA. The Law on Anti-Corruption allows MLA for "corruption offences" so presumes dual criminality. In all instances, this is regardless of whether coercive actions are required in responding to the MLA request.

422. *Criterion 37.7* - There are no provisions in the ASEAN MLA Treaty, 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. On the contrary, 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.

423. *Criterion 37.8 - (a)* The assistance available under the ASEAN MLA Treaty, Law on Drug Control (Article 114) and the Law on Counter Terrorism (Article 103) includes executing searches, taking witness statements, seizing and obtaining evidence and the provision of original or certified copies of relevant documents or records. There are no specific powers to compel the production of records in response to an MLA request. However, both the Law on Drug Control (Article 114) and the Law on Counter Terrorism (Article 103) provide that domestic procedures and processes for the investigation or prosecution of an offence against the laws of Cambodia may be used for the provision of assistance to the foreign state and both laws contain powers to compel the production of records during the investigation or prosecution of a domestic offence. The Law on Anti-Corruption provides a wide range of powers and investigative techniques in response to MLA requests (Article 51), including the power to "collect evidence/proof or answer/response through court means." There are no specific powers to compel production of documents or take witness statements in response to MLA requests. However, pursuant to its broad power to engage in international cooperation under Article 3 of the Sub-decree on the Organisation and Functioning of the Anti-Corruption Unit, ACU is able to utilise all of its powers in response to international cooperation requests, including the power to order persons and public and private organisations to cooperate with ACU in their investigations (Article 29). While Cambodia is able to provide MLA on the basis of ratified treaties, outside the ASEAN MLA Treaty, that have relevant provisions, there is no clear extension of powers to authorities seeking to respond to those requests.

424. *(b)* As outlined above, in accordance with the Law on Drug Control and the Law on Counter Terrorism, domestic procedures and processes for the investigation or prosecution of an offence against the laws of Cambodia may be used for the provision of assistance to a foreign state. As a result, the powers available under the Law on Drug Control to undertake surveillance, including accessing computer systems (Article 85) and employ controlled delivery

(Article 79) are available for use in response to MLA requests involving drug-related offences. Likewise, the powers available under the Law on Counter Terrorism to undertake surveillance, including monitoring phone lines and accessing computer systems (Article 88), are also available in the context of responding to an MLA request involving a terrorism offence. No other Cambodian legal instruments explicitly allow the use of such powers in response to a MLA request.

### *Weighting and Conclusion*

425. There are moderate shortcomings with respect to the scope and operation of Cambodia's MLA regime. There are not, at present, any domestic legal instruments that deal with MLA outside the ASEAN MLA framework, other than in relation to drug, corruption and terrorism related offences.<sup>69</sup> However, Cambodia is able to provide assistance on the basis of MLA provisions in ratified treaties. Cambodia requires dual criminality before MLA can be accessed, regardless of whether the request requires coercive measures, which is contrary to the requirements of Recommendation 37. There is also no requirement of expedient conduct or prioritisation of MLA requests and no case management system to monitor requests. **Recommendation 37 is rated partially compliant.**

### ***Recommendation 38 – Mutual legal assistance: freezing and confiscation***

426. In the 2007 MER Cambodia was rated non-compliant with former R.38. The report found no legal basis for provision of MLA in ML or TF cases (except for drug-related ML cases), limited scope of seizing and freezing measures under domestic law, no equal value confiscation in the context of MLA, no arrangements for coordinating seizure and confiscation with foreign authorities, no consideration given to an asset forfeiture fund and no consideration of sharing of assets with foreign law enforcement authorities.

427. *Criterion 38.1* - 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 (Article 7). However, this Treaty only applies to MLA provided among the Parties.

428. Cambodia has authority under the Law on Drug Control and the Law on Counter Terrorism to identify, freeze, seize and confiscate all the required types of property. Cambodia also has authority under the Law on Anti-Corruption to freeze and confiscate all the required types of property; identify laundered property, proceeds and instrumentalities used; and seize laundered property and proceeds. These laws only apply to ML related to drug or corruption offences and TF and do not specifically cover property of corresponding value. However, the Law on Drug Control and the Law on Counter Terrorism both provide that domestic procedures for investigation and prosecution of an offence may be used for provision of assistance to the foreign State and the AML/CFT Amendment Law authorises the court to order the confiscation of property of corresponding value in the event of a conviction for ML, a predicate offence or TF.

429. There is no specific requirement under the Law on Drug Control or the Law on Anti-Corruption that freezing and confiscation in response to MLA requests be expeditious. The Law on Counter Terrorism requires law enforcement authorities to seize any tainted property without delay and seek a freezing order in relation to that property as soon as practicable (Article 81). Further, the term 'property', which has a broad meaning under Recommendation 38 extending to assets of every kind, is not defined in the ASEAN MLA Treaty, or the Law on Drug Control.

<sup>69</sup> Cambodia has drafted a broadly applicable MLA law, which, if passed, will remedy this issue with respect to coverage.

430. Cambodia has drafted a specific MLA law, which, if passed, will provide coverage beyond offences relating to corruption, drugs and terrorism. Cambodia can also rely on ratified international treaties and conventions and on the principle of reciprocity as a basis for providing MLA and can enforce foreign court orders to seize and confiscate property on the basis of this principle as well.

431. *Criterion 38.2* - There is no explicit limitation in Cambodian law on extending MLA to non-conviction based proceedings. The ASEAN MLA Treaty and the Law on Anti-Corruption provide broad powers to engage in MLA and do not prohibit the extension of MLA in non-conviction based matters. For drug and TF related matters, the Law on Drug Control and the Law on Counter Terrorism authorise Cambodia to implement a final decision of a foreign State to confiscate property, which is broad enough to apply to non-conviction based matters. These laws also provide that domestic procedures for investigation and prosecution of an offence may be used for provision of assistance to the foreign State. The AML/CFT Amendment Law authorises non-conviction based confiscation in circumstances where the perpetrator is unavailable by reason of death, flight, absence, or the perpetrator is unknown. The interaction of these laws would allow Cambodia to provide MLA in non-conviction based matters in certain drug related ML cases or TF cases.

432. *Criterion 38.3* - Cambodia does not have any arrangements for coordinating seizure and confiscation actions with other countries. Cambodia has mechanisms for dealing with confiscated property in Article 178 of the Criminal Code, Article 51 of the Law on Anti-Corruption and Article 87 of the Law on Counter Terrorism. These provisions 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 frozen or seized property.

433. *Criterion 38.4* - The ASEAN MLA Treaty provides Cambodia with the ability to share confiscated property with other Parties to the Treaty. Article 49 of the Law on Anti-Corruption also provides that Cambodia shall cooperate with other countries who request to repatriate corruption proceeds that are kept in Cambodia. However, there are no other domestic or international instruments setting out arrangements to share confiscated property with other countries.

### *Weighting and Conclusion*

434. There are moderate shortcomings in the provision of legal basis for Cambodia to freeze and confiscate assets under MLA requests. There is relevant provision for Cambodia to identify, freeze, seize or confiscate laundered property, proceeds and instrumentalities in the ASEAN MLA Treaty, the Law on Drug Control and the Law on Counter Terrorism. The Law on Anti-Corruption is slightly more limited (as described under Criterion 38.1, above). However, at present, there is 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, Cambodia has not provided information to suggest that there are 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. **Recommendation 38 is rated partially compliant.**

### *Recommendation 39 – Extradition*

435. In the 2007 MER, Cambodia was rated non-compliant with former Recommendation 39. At that time ML and TF were not criminalised and therefore, there was no legal basis for extradition. The Cambodian legal framework has substantially changed since that time.

436. *Criterion 39.1* - Extradition is governed by international conventions and treaties ratified by the Kingdom of Cambodia. Where there is no such convention or treaty, the CCP applies, unless otherwise provided in a separate law (Article 567, CCP). Cambodia has entered into bilateral extradition treaties with a number of States, including Thailand, Vietnam, China, Korea and Lao PDR.<sup>70</sup>

437. ML and TF are both extraditable offences under Cambodia's extradition treaties with Thailand, China and Lao PDR, provided that under the law of the requesting state, the penalty of imprisonment amounts to a period of more than one year. ML and TF are also extraditable offences under Cambodia's extradition treaties with Korea and Vietnam, provided that under the law of the requesting state the offences are punishable by a period of at least two years imprisonment. In addition, both ML and TF are extraditable offences under the CCP provided that under the law of the requesting state, the punishment against the wanted person amounts to at least two years imprisonment or the person has been sentenced by the court of the requesting state to at least six-months imprisonment, regardless of the maximum length of imprisonment (Article 571). ML related to drug offences is an extraditable offence under the Law on Drug Control (Article 111). This law provides that extradition shall be managed in accordance with international conventions and treaties ratified by the Kingdom of Cambodia or, in the absence of such treaties and conventions, by the CCP (Article 112). TF is also an extraditable offence under the Law on Counter Terrorism (Article 94).

438. Cambodia does not have a case management system, nor is it clear whether extradition requests in relation to ML/TF can be executed without 'undue delay'. Cambodia advised that usually extradition is a lengthy process and limited feedback was received from other jurisdictions on timeframes.

439. Cambodia's extradition treaties specify that the Requested Party shall deal with requests for extradition pursuant to procedures provided by its own laws. There is a clear process for executing extradition requests set out in the CCP, including the factors to be considered in prioritising requests where requests from multiple countries in respect of the same person are received (Article 576). There is, however, no process for prioritising extradition requests on the basis of risk or urgency of threats posed.

440. The CCP imposes a number of conditions on the execution of extradition requests, for example: the requirement for dual criminality (Article 569); and the requirement for the offence to be punishable by at least two years imprisonment (Article 571). These conditions are not unduly restrictive. Likewise, the grounds for refusal in Cambodia's extradition treaties, and the Law on Counter Terrorism, for example: the offence is of a political nature; or the person's position may be prejudiced because of his or her race, religion, nationality, ethnic origin or political opinion, are consistent with international practice and are not unduly restrictive.

441. *Criterion 39.2* - In accordance with the Constitution of the Kingdom of Cambodia (Article 33) and the Law on Nationality (Article 2), Cambodia does not extradite Khmer citizens. Cambodia's five extradition treaties all provide that the parties have the right to refuse extradition of their own nationals. However, if extradition is refused on this basis, the Requested Party shall, at the request of the Requesting Party, submit the case to its competent authority for prosecution. The Law on Counter Terrorism similarly provides that where Cambodia refuses to extradite a person to a requesting State, Cambodia must refer the matter to the prosecuting authorities for prosecution (Article 99). This Law, however, only applies to TF offences. The CCP is silent on this issue. The Criminal Code provides that Cambodian Law applies to felonies and misdemeanours committed by Khmer citizens outside of the Kingdom of Cambodia. However, it does not provide that Cambodia will submit the case without undue

<sup>70</sup> Since the date of the on-site visit, Cambodia has also entered into a bilateral extradition treaty with Russia.

delay to its competent authorities for prosecution at the request of a country seeking extradition.

442. *Criterion 39.3* - In accordance with Cambodia's extradition treaties, the CCP (Article 569) and the Law on Counter Terrorism, dual criminality is required in extradition matters in Cambodia. However, all five extradition treaties and both laws specify that this requirement is deemed to be satisfied regardless of whether both countries place the offence within the same category of offence, or denominate the offence by the same terminology, provided that both countries criminalise the conduct underlying the offence (Article 569, CCP and Article 92, Law on Counter Terrorism).

443. *Criterion 39.4* - Cambodia's extradition treaties with Thailand, Vietnam, China and Lao PDR contain simplified extradition mechanisms for consenting persons who waive formal extradition proceedings. Cambodia's extradition treaties with Thailand, China, Lao PDR and Korea also allow direct transmission of requests for provisional arrests between appropriate authorities. The CCP allows requesting states, in cases of urgency, to request provisional arrest before submitting a formal extradition request. It does not, however, specify which authorities can make and receive these requests. The Law on Counter Terrorism provides for simplified extradition of consenting persons who waive formal extradition proceedings. However, this Law only applies in TF cases.

#### *Weighting and Conclusion*

444. There are minor shortcomings in Cambodia's ability to extradite ML/TF offences in the manner required by R.39. Cambodia has a strong legal framework for extradition, encompassing both domestic legislation and bilateral MOUs, which provide a broad legal basis for making and responding to requests. However, there is no legal imperative for Cambodia to execute requests without 'undue delay' or case management system in place to allow tracking of extradition requests. Cambodia has not provided information to suggest that expeditious turnaround of ML/TF extradition requests occur in practice. There is also limited provision in Cambodia's extradition treaties and the Law on Counter Terrorism for prosecution of Khmer citizens who cannot be extradited, as per the Constitution. In addition, there are limited simplified extradition mechanisms in place. **Recommendation 39 is rated largely compliant.**

#### *Recommendation 40 – Other forms of international cooperation*

445. Cambodia was rated partially compliant with former R.40 and SR.V, Cambodia could not provide any examples of international cooperation. The FIU had not been established and there was also an absence of arrangements for international cooperation for supervisors.

446. *Criterion 40.1* - Cambodian LEAs, CAFIU and supervisors (SECC and NBC) are able to cooperate with foreign counterparts through various arrangements, including MOUs, bilateral and multilateral agreements and by virtue of membership of various international organisations (such as Egmont, APG, World Customs Organisation, SEAPAC, ASEANAPOL and Interpol). Cambodia also makes and receives requests for international cooperation via diplomatic channels. Under its MOUs with Thailand and Indonesia, and its agreement with Russia, CAFIU is able to exchange information both spontaneously and upon request. In circumstances where CAFIU does not have an MOU, there is a pro-forma MOU that Cambodia can offer to another jurisdiction in order to conclude an MOU expeditiously. SECC is also able to provide spontaneous assistance under its MOU with the Securities and Exchange Commission of Thailand. However, there is no information to suggest that outside of these arrangements, Cambodian competent authorities are able to exchange of information spontaneously.



447. *Criterion 40.2 - (a)* CAFIU, ACU, SNCTC and NBC have a legislative basis for providing international cooperation (CAFIU: Article 25 of the AML/CFT Law; ACU: Article 13 of the Law on Anti-Corruption and Articles 3, 15 and 16 of the Sub-Decree on the Organisation and Functioning of the Anti-Corruption Unit; SNCTC: Prakas 2 of the Resolution on the Establishment of the Secretariat of National Counter Terrorism Committee; NBC: Prakas on Home-Host Relations Related to Information Sharing). CAFIU, ACU, GCNP, GDCE, SECC and NBC also have a lawful basis to cooperate internationally by virtue of their MOUs with foreign counterparts. Further, Cambodian competent authorities have a lawful basis to cooperate internationally under international conventions that have been ratified, including the Vienna Convention, Palermo Convention, TF Convention and the Merida Convention.

448. *(b)* The AML/CFT Law requires CAFIU to have a reciprocal arrangement with a foreign FIU in order to exchange information. However, there does not appear to be a restriction on other competent authorities using the most efficient means to cooperate.

449. *(c)* The GCNP uses I-24/7, Interpol's global police communications system, to communicate with foreign law enforcement officers. The GCNP also has pre-agreed contact points with their foreign counterparts. CAFIU is a member of the Egmont Group and uses Egmont Secure Web to transmit and execute requests for international cooperation. GDCE is a member of the World Customs Organisation and uses the Customs Enforcement Network to cooperate with other members. Requests for international cooperation are also transmitted securely via diplomatic channels.

450. *(d)* 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. Cambodia's other competent authorities have not provided any evidence of clear processes for the prioritisation and timely execution of requests.

451. *(e)* CAFIU, ACU and NBC have legislative obligations to maintain the confidentiality of information obtained (Article 23 of the AML/CFT Law, Articles 13 and 39 of the Law on Anti-Corruption and Article 5 of the Prakas on Home-Host Relations Related to Information Sharing, respectively). Likewise, Cambodia's MOUs impose confidentiality obligations on the parties. However, Cambodia has not provided any evidence of clear processes for safeguarding the information received.

452. *Criterion 40.3 -* CAFIU requires a reciprocal arrangement in order to exchange information with a foreign FIU (Article 25 of the AML/CFT Law). CAFIU utilises the Egmont template for MOUs, which allows MOUs to be concluded in a timely manner. Cambodian competent authorities have signed formal agreements with a range of foreign counterparts. CAFIU has 14 MOUs with foreign counterparts and a bilateral agreement with the Russian FIU.<sup>71</sup> The ACU has two MOUs with foreign counterparts. ACU is also able to cooperate internationally without a formal agreement in place. GCNP has a number of MOUs with foreign counterparts, including Hong Kong, Australia and South Korea. GDCE has MOUs with Lao PDR, Thailand and Vietnam. NBC has 15 MOUs with foreign counterparts and SECC has a bilateral MOU with Thailand and a multilateral MOU with Lao PDR, Thailand and Vietnam. Cambodia has also signed the multilateral SEAPAC MOU.

453. Competent authorities, other than ACU and GCNP, do require formal agreements in order to cooperate with counterparts internationally. They have negotiated agreements with a few foreign counterparts, however the range could be wider. While CAFIU has a mechanism,

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<sup>71</sup> Since the on-site, the number of MOUs that CAFIU has with its foreign counterparts has increased to 19.

through the Egmont template for MOUs, to ensure expeditious negotiation of MOUs as necessary, the same cannot be said of other competent authorities.

454. *Criterion 40.4* - Cambodia advised that on most occasions, upon request, Cambodian competent authorities provide feedback in a timely manner to competent authorities from whom Cambodia has received assistance on the use and usefulness of information obtained. However, not enough information has been provided on these issues and no clear policy or guideline is in place to ensure this occurs as a matter of course.

455. *Criterion 40.5* - Largely, Cambodia does not prohibit the provision or exchange of information or assistance. However, contrary to Sub-criterion 40.5(c), CAFIU's agreement with the Russian Federal Financial Monitoring Service provides that a request may be refused if judicial proceedings have already been initiated in the requested Party's State. Cambodian law does not place any other unreasonable or unduly restrictive conditions on the provision or exchange of information or assistance by competent authorities.

456. *Criterion 40.6* - The ACU has MOUs with its foreign counterparts in Thailand and Lao PDR, which contain specific provisions that restrict the use of information, assistance or documents, given in response to a request, to the purpose for which they were requested or provided, unless prior authorisation has been given by the requested competent authority to use or disclose the information, assistance or documents for another purpose. Similar controls and safeguards exist in CAFIU's MOUs with various countries, GDCE's MOUs with its foreign counterparts in Lao PDR, Vietnam and Thailand, NBC's MOUs with foreign counterparts and SECC's MOU with Thailand. Lastly, GCNP's MOUs contain provisions to restrict use for the purpose intended under the terms of the MOU.

457. *Criterion 40.7* - The ACU has MOUs with its foreign counterparts in Thailand and Lao PDR, which contain specific provisions that require both parties to maintain the confidentiality of the request, its contents and any information, assistance or documents provided or exchanged. Similar controls and safeguards exist in CAFIU's MOUs with various countries and GDCE's MOUs with its foreign counterparts in Lao PDR, Vietnam and Thailand. There are also confidentiality obligations in the AML/CFT Law (Article 23), the Law on Anti-Corruption (Articles 13 and 39) and the Prakas on Home-Host Relations Related to Information Sharing that apply to CAFIU, ACU and NBC respectively that would extend to information received from foreign counterparts. There are also general non-disclosure obligations that apply to all civil servants under the Law on the Common Statute of Civil Servants (Article 35). Aside from CAFIU, which can only exchange information with a foreign FIU if they have similar confidentiality requirements, it is not clear whether Cambodian competent authorities are able to refuse to provide information if the requesting competent authority cannot protect the information effectively.

458. *Criterion 40.8* - There are no explicit powers in Cambodian law for competent authorities 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. Nor are there any explicit prohibitions to prevent them from doing so. The ACU has broad powers to engage in international cooperation under Article 3 of the Sub-Decree on the Organisation and Functioning of the Anti-Corruption Unit, which authorises them to cooperate with local, regional and international organizations to fight against transnational corruption. Pursuant to these powers, ACU does conduct inquiries on behalf of foreign counterparts. Likewise, GCNP has demonstrated that it conducts inquiries on behalf of foreign counterparts as well.

*EXCHANGE OF INFORMATION BETWEEN FIUs*

459. *Criterion 40.9* - Article 25 of the AML/CFT Law allows CAFIU to provide its international counterparts with cooperation on ML/TF and associated predicate offences, irrespective of the nature of the counterpart FIU.

460. *Criterion 40.10* - CAFIU is receiving information from its foreign counterparts and providing feedback in a limited manner. It has only provided feedback describing the usefulness of information through the Egmont Secure Web (ESW) on two occasions.

461. *Criterion 40.11* - Article 21(b) of the AML/CFT Law allows CAFIU to obtain and access additional information from REs as well as information held in commercial database for performing its analysis functions. Article 21(c) of the AML/CFT Law allows CAFIU, on a timely basis, to access financial, administrative and law enforcement information that is necessary to undertake its functions, including information collected and maintained by, or stored in, the databases of any public agency. Moreover, MOUs signed with the ACU, GCNP, GDCE, GDT, General Department of Immigration, General Department of Identification and General Department of Banking Supervision of the NBC provide explicit provisions for information exchange on reciprocity basis.

*EXCHANGE OF INFORMATION BETWEEN FINANCIAL SUPERVISORS*

462. *Criterion 40.12* - As the financial supervisor, the NBC's legal basis for cooperation with foreign counterparts is through legal agreements or MOUs. In practice cooperation takes place through meetings and informal communication. The Prakas B7.015.154 on Home-Host relations related to Information Sharing 2015 establishes a framework for cooperation related to information sharing between authorities and regulators both locally and internationally.

463. *Criterion 40.13* - Cambodia has shared some MOUs signed between the NBC, SECC and respective foreign counterparts on information exchange concerning financial crimes included ML/TF. The MOUs place restrictions on information exchange on the basis of 'national laws'. However, there is no specific restriction imposed under the Banking Law and in practice, and NBC appears to be able to share any information with foreign counterparts,

464. *Criterion 40.14* - Information provided by Cambodia is that NBC's MOUs with its foreign counterparts allow it to share information related to suspected persons' name, date of birth, ID number, account number of CTR, account transaction date and company information. This is not sufficient to comply with the requirements of 40.14 (a), (b) or (c). No information was provided in relation to SECC, MEF and other supervisors.

465. *Criterion 40.15* - The Investigation Division of Legal Affairs Department of SECC is designated to cooperate with national and international institutions to conduct investigations on suspicious cases or offences in relation to securities (Article 6 of the Prakas on the Organization and Conduct of Legal affairs Department of Securities and Exchange Commission of Cambodia). However, there is no evidence that other Cambodian agencies are able to progress inquiries with foreign counterparts in order to facilitate effective group supervision. There is no information regarding powers and processes applicable when foreign agencies conduct investigations in Cambodia with the assistance of Cambodian agencies.

466. *Criterion 40.16* - There is a confidentiality clause in each MOU established by Cambodia for exchange of information between financial supervisors. Before the disclosure of information to the public or third party, the requesting financial supervisors must seek prior authorization from the requested financial supervisors.

*EXCHANGE OF INFORMATION BETWEEN LAW ENFORCEMENT AUTHORITIES*

467. *Criterion 40.17* - Law on Drug Control (Article 114), the Law on Counter Terrorism (Article 103) and Law on Anti-Corruption (Article 51) provide the legal basis for information exchange with foreign counterparts in order to trace and identify proceeds and instrumentalities of crime, however, the laws do not explicitly provide for information related to ML/TF issues.

468. *Criterion 40.18* - Law on Drug Control (Article 114) and the Law on Counter Terrorism (Article 103) include executing searches, taking witness statements, seizing and obtaining evidence and the provision of original or certified copies of relevant documents or records. There are no specific powers to compel the production of records. However, both the Law on Drug Control and the Law on Counter Terrorism provide that domestic procedures and processes for the investigation or prosecution of an offence against the laws of Cambodia may be used for the provision of assistance to a foreign state. The Law on Anti-Corruption provides a wide range of powers and investigative techniques (Article 51), including the power to “collect evidence/proof or answer/response through court means.” There is not a specific power to compel production of documents or take witness statements and the laws do not explicitly reference information related with ML/TF.

469. Cambodian National Police is a member of Interpol and provide assistances to foreign counterpart through this mechanism. The ACU, as a member of SEA-PAC also cooperates with its counterpart in relation to criminal acts, corruption including ML and proceeds of crime from corruption.

470. *Criterion 40.19* - Cambodian domestic legislation or regulations in relation to the international cooperation provision are very broad and general. Although there is no specific provision that allows its law enforcement authorities to be able to form joint investigative teams to conduct cooperative investigations. However, in terms of international cooperation, ACU as a member of South East Asia Parties against Corruption (since 11 September 2007) signed a Memorandum of Understanding, aiming to strengthen and improve the anti-corruption work, especially through the means of international cooperation.

*EXCHANGE OF INFORMATION BETWEEN NON-COUNTERPARTS*

471. *Criterion 40.20* - Cambodian domestic legislation or regulations in relation to the international cooperation provision are very broad and general. Although there is no specific provision that allows competent authorities to exchange information between non-counterparts. While the ACU has started to share and cooperate with all foreign countries both counterparts and non-counterparts.

*Weighting and Conclusion*

472. While Cambodian competent authorities have a wide range of mechanisms by which they can cooperate with foreign counterparts, moderate shortcomings exist. The mechanisms available 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 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	PC	<ul style="list-style-type: none"> <li>Cambodia's recently completed NRA identifies areas of higher risk, but there are some important gaps in the process of developing and identifying threats/vulnerabilities/risks.</li> <li>The results of the NRA have not yet been widely circulated to stakeholders.</li> <li>While a review will be undertaken in due course, the allocation of resources is not risk-based and existing supervisory and risk mitigation measures do not cover all reporting entities, including in higher risk sectors.</li> </ul>
2. National cooperation and coordination	PC	<ul style="list-style-type: none"> <li>Cambodia has taken some important steps to improve national cooperation and coordination in recent years, but is yet to develop a national AML/CFT policy informed by ML/TF risks.</li> <li>There are some significant gaps in national co-operation and national co-ordination, in particular at the operational level and in relation to proliferation financing.</li> </ul>
3. Money laundering offence	LC	<ul style="list-style-type: none"> <li>Cambodia has criminalised ML in line with the requirements of the Vienna and Palermo Conventions.</li> <li>There are minor shortcomings regarding the dissuasiveness of sanctions.</li> </ul>
4. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> <li>Minor shortcomings include: (i) measures to allow applications to be made ex parte or without prior notice (ii) an appropriate system dedicated to the managing and, when necessary, disposing of property frozen, seized or confiscated.</li> </ul>
5. Terrorist financing offence	LC	<ul style="list-style-type: none"> <li>There are minor shortcomings regarding the dissuasiveness of sanctions and TF offences by a group of persons acting with a common purpose.</li> </ul>
6. Targeted financial sanctions related to terrorism & TF	LC	<ul style="list-style-type: none"> <li>Minor shortcomings exist with respect to the scope of freezing measures under UNSCR 1373 and legal entities being covered by the freezing measures.</li> <li>The standing court order used by Cambodia to implement R.6 is only applicable to reporting entities and not all natural and legal persons within Cambodia.</li> </ul>
7. Targeted financial sanctions related to proliferation	NC	<ul style="list-style-type: none"> <li>Cambodia has not put in place any specific measures for purposes of implementing targeted financial sanctions related to PF in order to comply with the relevant UNSCRs.</li> </ul>
8. Non-profit organisations	PC	<ul style="list-style-type: none"> <li>There are significant shortcomings in the regulation and supervision of NPOs, and Cambodia has not yet conducted a review of its NPO sector.</li> </ul>
9. Financial institution secrecy laws	C	<ul style="list-style-type: none"> <li>The Recommendation is fully met.</li> </ul>
10. Customer due diligence	LC	<ul style="list-style-type: none"> <li>For insurance companies, there is no direct requirement to obtain sufficient information concerning the identity of the beneficiary of a policy that is designated by characteristics or by class or by other means, that would enable the FIs to establish and verify the identity of the beneficiary at the time of the payout. There is no</li> </ul>

### Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		requirement for insurance companies to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable, and to take enhanced measures.
11. Record-keeping	LC	<ul style="list-style-type: none"> <li>It is not explicit that the requirement to keep records of transactions covers both domestic and international transactions, although this may be implied, and there is no requirement to retain the results of any analysis undertaken by the FI on their customers' account activity when internal investigations were conducted on unusual activities.</li> </ul>
12. Politically exposed persons	PC	<ul style="list-style-type: none"> <li>The definition of PEPs does not extend to domestic PEPs or to heads of international organisations, their family members and close associates.</li> <li>It is not explicit that REs should include PEPs in their risk management systems nor put in place ongoing customer monitoring of PEP's accounts.</li> <li>There is no also requirement to determine whether beneficial owner is a PEP.</li> </ul>
13. Correspondent banking	PC	<ul style="list-style-type: none"> <li>There is no explicit requirement for the banks to understand the nature of the respondent's business, its reputation, the quality of supervision exercised over it, including whether it has been subject to a ML/TF investigation or regulatory action.</li> <li>There is no requirement for banks to understand the respective AML/CFT responsibilities of each institution.</li> <li>There is no requirement for banks to be satisfied that the respondent bank has performed CDD obligations on its customers that have direct access to the accounts of the correspondent bank and that the respondent bank is able to provide relevant CDD information upon request to the correspondent bank.</li> <li>There is no requirement that banks should satisfy themselves that respondent banks do not permit their accounts to be used by shell banks.</li> </ul>
14. Money or value transfer services	LC	<ul style="list-style-type: none"> <li>The penalty for illegally operating an MVTs is not proportionate and dissuasive.</li> <li>Third-party processors are not required to include the authorised agents in their AML/CFT programmes and monitor them for compliance with these programmes.</li> </ul>
15. New technologies	C	<ul style="list-style-type: none"> <li>The Recommendation is fully met.</li> </ul>
16. Wire transfers	PC	<ul style="list-style-type: none"> <li>There are no requirements for including beneficiary information when the outgoing transfer is above USD 1,000 nor to ensure originator information is accurate.</li> <li>The AML/CFT Laws and supporting Prakas do not require originator and beneficiary information to be included in batch files.</li> <li>Basic originator/beneficiary information is not required when the transaction is below USD 1,000.</li> <li>There is no requirement to conduct enhanced due diligence when beneficiary information is missing on incoming transfers nor requirements to not execute the transfer where information is missing.</li> </ul>

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> <li>The requirements for domestic transfers are incomplete or missing and there are shortcomings regarding the controls for straight-through processing, monitoring of transfers and identification of beneficiaries on incoming transactions.</li> </ul>
17. Reliance on third parties	LC	<ul style="list-style-type: none"> <li>There are minor shortcomings regarding the regulation of FIs relying on third parties based overseas.</li> </ul>
18. Internal controls and foreign branches and subsidiaries	PC	<ul style="list-style-type: none"> <li>There is no obligation for financial groups to implement group-wide programs, including an information sharing mechanism.</li> <li>There is also no specific requirement to ensure that foreign branches and majority-owned subsidiaries comply with AML/CFT measures in Cambodia.</li> </ul>
19. Higher-risk countries	PC	<ul style="list-style-type: none"> <li>Cambodia has no legal basis to apply countermeasures on countries when called upon to do so, and there are no measures in place to advise FIs of concerns regarding weaknesses in the AML/CFT systems of other countries.</li> </ul>
20. Reporting of suspicious transaction	LC	<ul style="list-style-type: none"> <li>There is no definition provided of the word “transaction” and therefore it is unclear if attempted transactions are included in a REs suspicious transaction reporting requirements.</li> </ul>
21. Tipping-off and confidentiality	LC	<ul style="list-style-type: none"> <li>It is not clear whether the protection for submitting a STR is applicable to REs.</li> <li>There is no explicit provision that protection from criminal or civil liability is available even if the person filing the report did not know precisely what the underlying criminal activity was, and regardless of whether the illegal activity actually occurred.</li> </ul>
22. DNFBPs: Customer due diligence	PC	<ul style="list-style-type: none"> <li>There are gaps in the CDD requirements as identified under the analysis of R.10, R.12 and R.17.</li> <li>The CDD threshold for financial transactions in casinos is set at USD 10,000, above the FATF standard threshold of USD 3,000.</li> </ul>
23. DNFBPs: Other measures	LC	<ul style="list-style-type: none"> <li>There is an absence of STR reporting requirements relating to attempted transactions.</li> <li>A lack of instructions on-group wide AML/CFT programs for foreign branches and subsidiaries.</li> <li>The requirements to implement FATF countermeasures are not clearly described in the instructions issued by CAFIU.</li> </ul>
24. Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> <li>There is a reasonable legal framework for the transparency in basic information related to legal persons.</li> <li>There is limited availability of beneficial ownership information.</li> <li>A lack of regulation around bearer shares, bearer share warrants, nominee shares and nominee directors.</li> <li>Limited mechanisms for cooperation between Cambodian and foreign competent authorities and between Cambodian competent authorities and reporting entities.</li> <li>Fines and penalties are insufficient to be dissuasive.</li> </ul>
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> <li>Cambodia does not require trustees of foreign trusts to disclose their status to FIs or DNFBPs when forming a business relationship or carrying out an occasional transaction above the threshold.</li> <li>There is no provision for legal liability and sanctions where</li> </ul>

### Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		trustees of foreign trusts fail to disclose their status when forming a business relationship or engaging in a transaction above the threshold.
26. Regulation and supervision of financial institutions	PC	<ul style="list-style-type: none"> <li>The verification processes undertaken under the 'fit and proper' tests are not clear.</li> <li>Cambodia is not taking a risk-based approach to supervision of all FIs.</li> </ul>
27. Powers of supervisors	LC	<ul style="list-style-type: none"> <li>While the powers of the supervisors are clearly stated in Cambodia's AML/CFT laws the sanctions imposed by supervisors may not be proportionate and dissuasive.</li> </ul>
28. Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> <li>Shortcomings in the supervision of DNFBPs for AML/CFT requirements.</li> <li>Shortcomings in the power of the supervisors to impose dissuasive and proportionate fines.</li> <li>Market entry requirements vary between each category of DNFBP.</li> <li>DNFBPs are not currently supervised for AML/CFT compliance.</li> </ul>
29. Financial intelligence units	LC	<ul style="list-style-type: none"> <li>Limited analysis functions undertaken by CAFIU, which do not cover strategic analysis to identify ML/TF related trends and patterns.</li> <li>CAFIU's ability to disseminate information, including spontaneously, is limited by the need for an MOU.</li> <li>Measures in place to ensure the confidentiality and security CAFIU's information, systems and intelligence products are unclear.</li> <li>In the AML/CFT legislation, CAFIU is under the control of the NBC. It is unclear whether this has an impact on CAFIU's operational independence.</li> </ul>
30. Responsibilities of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> <li>Cambodia has a complex system of sharing powers to investigate ML/TF and predicate offences.</li> <li>It is not clearly prescribed within the national AML/CFT framework which agencies are responsible for ensuring that ML offences are investigated properly.</li> <li>There are very few instances of parallel investigations by the officers investigating the predicate offence, or systems for referral.</li> <li>While there are powers to trace, freeze and seize property as required, there is no authority designated to expeditiously initiate such action in case of ML/TF.</li> </ul>
31. Powers of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> <li>While there is no explicit power for judicial police to obtain records held by FIs, DNFBPs and other persons, MOUs with CAFIU allow law enforcement agencies to access such information through CAFIU.</li> <li>It is also not clear how judicial police and other competent authorities apply measures to trace assets without prior notification to the owner.</li> </ul>
32. Cash couriers	LC	<ul style="list-style-type: none"> <li>There are gaps in the coverage of both currency and BNIs: BNIs and currency are not required to be declared if sent through outbound mail.</li> <li>Cross-border declaration data, false declarations and identification data of suspected ML/TF cases only be shared under the framework of MOU or treaty; there is no scope of spontaneous</li> </ul>



Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<p>sharing.</p> <ul style="list-style-type: none"> <li>• There is no direct mechanism to make cross-border declaration information available to the CAFIU.</li> <li>• No explicit coordination mechanism is seen with respect to the immigration authority. The coordination mechanism in place is one to one in nature.</li> <li>• There is no operational level coordination mechanism among CAFIU, GDCE and immigration.</li> <li>• There are no obligations on competent authorities in Cambodia to retain information on declarations.</li> </ul>
33. Statistics	PC	<ul style="list-style-type: none"> <li>• While basic, incomplete statistics were provided by Cambodia for STRs and mutual legal assistance, no meaningful statistics appear to be maintained by ML/TF investigations, prosecutions and convictions, and property frozen, seized and confiscated.</li> <li>• It is unclear whether statistics on the use of STRs and financial intelligence are accurate and/or available.</li> </ul>
34. Guidance and feedback	PC	<ul style="list-style-type: none"> <li>• While a recurring feedback mechanism is not formally established, CAFIU has conducted workshops for FIs and DNFBPs to provide guidance and feedback in that format.</li> <li>• Limited guidance has been issued to assist FIs and DNFBPs in complying with their AML/CFT obligations.</li> </ul>
35. Sanctions	PC	<ul style="list-style-type: none"> <li>• There are moderate shortcomings regarding proportionate and dissuasive sanctions imposed to those failing to comply with the AML/CFT requirements of Recommendations 6 and 8 to 23.</li> <li>• The quantum of the fines is unlikely to be dissuasive unless applied at the highest end of the available range.</li> <li>• Sanctions are not all applicable to the directors and senior management of REs.</li> </ul>
36. International instruments	LC	<ul style="list-style-type: none"> <li>• There are minor deficiencies relating to implementation of all Conventions.</li> </ul>
37. Mutual legal assistance	PC	<ul style="list-style-type: none"> <li>• There are not, at present, any domestic legal instruments that deal with MLA outside the ASEAN MLA framework, other than in relation to drug, corruption and terrorism related offences.</li> <li>• Cambodia is able to provide assistance on the basis of MLA provisions in ratified treaties.</li> <li>• Cambodia has drafted a broadly applicable MLA law, which, if passed, will remedy the issue with respect to coverage.</li> <li>• Cambodia requires dual criminality before MLA can be accessed, regardless of whether the request requires coercive measures.</li> <li>• There is also no requirement of expedient conduct or prioritisation of MLA requests and no case management system to monitor requests.</li> </ul>
38. Mutual legal assistance: freezing and confiscation	PC	<ul style="list-style-type: none"> <li>• There is 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 TF, corruption or drugs.</li> <li>• No information to suggest that there are 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</li> </ul>

### Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		countries outside ASEAN.
39. Extradition	LC	<ul style="list-style-type: none"> <li>• There is no legal imperative for Cambodia to execute requests without 'undue delay' or case management system in place to allow tracking of extradition requests.</li> <li>• No information to indicate that expeditious turnaround of ML/TF extradition requests occur in practice.</li> <li>• Limited provision in Cambodia's extradition treaties and the Law on Counter Terrorism for prosecution of Khmer citizens who cannot be extradited, as per the Constitution.</li> <li>• Limited simplified extradition mechanisms in place.</li> </ul>
40. Other forms of international cooperation	PC	<ul style="list-style-type: none"> <li>• The mechanisms available do not provide a basis for cooperation in all or most circumstances. In particular, there is patchy coverage relating to neighbouring jurisdictions and other jurisdictions that may expose Cambodia to ML/TF risk.</li> <li>• The kind of information that can be shared is not broad enough to meet the requirements of R.40.</li> <li>• There is no provision to support joint investigations across-borders or information exchange with non-counterparts.</li> <li>• Cambodia does not have a system for prioritisation of requests or safeguarding of the information involved.</li> <li>• It is not clear that competent authorities can conduct inquiries on behalf of foreign counterparts and exchange all information available to them domestically.</li> </ul>

*Glossary*

ACU	Anti-Corruption Unit
AFP	Australian Federal Police
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
APG	Asia/Pacific Group on Money Laundering
ASEAN	Association of Southeast Asian Nations
BACK	Bar Association of the Kingdom of Cambodia
BNI	Bearer Negotiable Instrument
BO	Beneficial Owner
CAFIU	Cambodia Financial Intelligence Unit
CCP	Code of Criminal Procedure
CDD	Customer Due Diligence
CFT	Countering the Financing of Terrorism
CSX	Cambodia Securities Exchange
CT	Counter-Terrorism
CTR	Cash Transaction Report
DNFBP	Designated Non-Financial Businesses and Profession
DPMS	Dealers in Precious Metals and Stones
DPRK	Democratic People's Republic of Korea
EDD	Enhanced Due Diligence
FATF	Financial Action Task Force
FATF Standards	FATF International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (2012, as updated from time to time)
FI	Financial Institution
FIU	Financial Intelligence Unit
GDCE	General Department of Customs and Excise
GDP	Gross Domestic Product
GDT	General Department of Taxation
GCNP	General Commissariat of National Police
ICRG	International Cooperation Review Group (of the FATF)
INTERPOL	International Criminal Police Organization
IO	Immediate Outcome
KHR	Cambodian (Khmer) Riel
KICPAA	Kampuchea Institute of Certified Public Accountants and Auditors
LEA	Law Enforcement Agency
MDI	Microfinance Deposit Taking Institution
MEF	Ministry of Economy and Finance
MER	Mutual Evaluation Report
Merida Convention	United Nations Convention Against Corruption 2002
MFA-IC	Ministry of Foreign Affairs and International Cooperation
MFI	Micro-Finance Institution
ML	Money Laundering
MLA	Mutual Legal Assistance
MOC	Ministry of Commerce

## GLOSSARY

MOI	Ministry of Interior
MOJ	Ministry of Justice
MOU	Memorandum of Understanding
MVTS	Money or Value Transfer Service
NACD	National Authority for Combating Drugs
NBC	National Bank of Cambodia
NCC	National Coordination Committee
NCTC	National Counter Terrorism Committee
NPO/NGO	Non-Profit Organisation/Non-Government Organisation
NRA	National Risk Assessment
OFAC	Office of Foreign Assets Control (of the US Treasury Department)
Palermo Convention	The United Nations Convention against Transnational Organized Crime 2000
PEP	Politically Exposed Person
PF	Proliferation Financing
PFS	Proliferation Financing Sanctions
RBA	Risk-Based Approach
RE	Reporting Entity
RPG	Review Panel Group
SEAPAC	South East Asian Parties Against Corruption
SECC	Securities and Exchange Commission of Cambodia
SNCTC	Secretariat to the National Counter Terrorism Committee
SRB	Self-Regulatory Body
STR	Suspicious Transaction Report
TC	Technical Compliance
TF	Terrorist Financing
TF Convention	United Nations International Convention for the Suppression of the Financing of Terrorism 1999
TFS	Targeted Financial Sanctions
TPP	Third Party Processor
TCSP/CSP	Trust and Company Service Provider
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
USD	United States Dollar
Vienna Convention	The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1998
WMD	Weapons of Mass Destruction





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## Anti-money laundering and counter-terrorist financing measures – Cambodia

### *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 Cambodia as at December 2016. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Cambodia's AML/CTF system, and provides recommendations on how the system could be strengthened.