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TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations of Lao PDR in their numerical order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.
2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 2011. This report is available from www.apgml.org.

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

1. *Criterion* 1.1 is **Partly Met** - Lao DPR completed and published its first NRA entitled *Report on National Money Laundering and Terrorist Financing Risk Assessment of the Lao PDR* on 27 December 2018.

The NRA was developed by the *National Committee for Anti-Money Laundering and Terror Financing Risk* who operate as a National Coordination Committee (NCC). The President of the committee is a Vice Minister of Public Security and the membership comprises the Deputy Head of the Supreme Public Prosecutors Office, The Vice Governor of the Bank of Lao PDR, the Vice Minister of Finance, the Vice Minister of the Government Inspection Authority and the Vice Minister of the Ministry of Industry and Commerce. The NCC was established by Article 53 Management Body of AML/CFT Law on Anti Money Laundering and Counter Financing of Terrorism No50/NA in July 2014. The NRA was developed using the World Bank methodology to undertake an analysis of threat, vulnerabilities and sectoral risk. Article 20 of the Law on AML/CFT requires reporting entities, using the NRA as a basis, to undertake their own assessments of the risks presented by their customers and the services provided to them. Sector risk assessmsnt have not been undertaken for Financial Settlement Tools Agency, Trust Companies and Financing Companies. [For Lao PDR - to what extent were the private sector consulted in the development of the NRA,

1. Lao PDR also reviewed TF risk based mainly based on qualitative analysis. The analysis collated information from departments involved in countering terrorism, including AMLIO, Ministry of Public Security, Department of Administration Development, and the Ministry of Home Affairs, identifying sources and channels of terrorist financing, and identifying the TF threats faced by Lao PDR. The analysis also assessed regulatory and legal vulnerabilities to prevent and respond to TF.
2. *Criterion 1.2 is***Met**. The *National Committee for Anti-Money Laundering and Terror Financing Risk* formed eight working groups which comprise a membership from 13 relevant Ministries together with the Bank of Lao PDR and the State Audit Organization. Each working group, supported by technical staff were assigned a specific responsibility such as an assessment of predicate crime, sector risk assessments, and to review legal frameworks to identify vulnerabilities and terrorist financing. The NRA is a product of collaboration by the workgroups.
3. *Criterion 1.3 is* **Mostly Met*.*** Alongside the NRA Lao PDR developed an action plan for activities to be undertaken during 2019-2021 to mitigate the identified risk. The action plan identified six ‘sources of risk’ comprising the absence of an AML/CFT policy and strategy, legislation deficiencies, investigation and prosecution capability, supervisory deficiencies and the need for domestic and international co-operation mechanisms. The action plan demonstrates an acknowledgement of weakness with a plan to mitigate risk. The action plan is subject to periodic review.

[For Lao PDR: To Lao PDR: can you clarify whether the risk assessment itself subject to review as part of the action plan? It is clear that Lao PDR will continue to review the implementation of the existing action plan against the risk assessment, but it is not clear that the risk assessment itself will be reviewed regularly and, if so, when. Has the work undertaken identified any new or emerging risk?]

1. *Criterion 1.4*  is **Mostly Met*.***The NRA was made available to government departments and the financial and non-financial institutions via the AMLIO website. . In addition the AMLIO undertook a series of workshops to inform competent authorities and reporting entities of the findings of the NRA. [For Lao PDR - confirmation is required that the NRA was distributed specifically to industry association bodies and to DNFBPs]. The results of the NRA were also shared with the public via social media, newspaper, radio and television to increase awareness of ML and TF risk throughout the community.
2. *Criterion 1.5* is **Partly Met.** In response to the *action plan* resources have been deployed into three target areas. These areas comprise strengthening and enhancing the legal frameworks in Lao PDR; improving capability and capacity to investigate and prosecute ML and TF; and the development of a risk based supervisory model to target the supervision of sectors presenting risk as informed by the NRA. The identification and focus on these areas reflects a risk based approach is being adopted. [For Lao PDR - Note: more information will be required on resource and budgetary response to the identified risks]
3. *Criterion 1.6* is **not applicable.**Lao PDRdoes not exempt FIs nor DNFBPs from any of the activities outlined in the 40 Recommendations.
4. *Criterion 1.7* is **Not Met/Partly Met**. Lao PDRhas not issued notices requiring financial institutions to take certain actions or avoid certain activity in relation to identified high risks. The Bank of the Lao PDR requires some reporting entities (banks, the Securities Commission Office and the Department of State Owned Enterprises and Insurance Management to undertake their own risk assessment of their customs and their products to ensure risk mitigation occurs.

[For Secretariat: Analysis to be cross-checked/cross-referenced with R19]

1. *Criterion 1.8* is **Partly Met*.*** Article 20 of theLaw on Anti Money Laundering and Countering Financing of Terrorism No50NA July 2014 requires that risk based management principles be applied to customers. In January 2016 the Chairman of the NCCissued a directive which requires reporting entities to identify, understand and respond to their AML/CFT risks. In response to this process reporting entities are expected to adopt risk control mechanisms, measures, and procedures, and to allocate AML resources based on the risk assessment results. Financial institutions are permitted to adopt simplified CDD and other risk control measures for low-risk customers. Simplified measures can be taken, except for customers matching a number of high-risk scenarios.
2. *Criterion 1.9 is* **Not Met.**In February 2020 the *Decree on Entrust and Responsibilities in Implementing the Activities of AML/CFT No127/Gov* outlined the measures for the supervision and administration of the Law on AML/CFT. AMLIO is the Supervisor of financial institutions and DNFBPs with the exception of casinos. Lao PDR has drafted a Decree to supervise casino and gambling operatins however this has not been enacted. The Lao PDR Securities Commission Office is the Supervisor of the securities sector. It is a function of the Supervisor to ensure compliance with the Law on AML/CFT across their respective sectors. [note for Secretariat: this will need further discussion onsite at the the supervisory responsibilities are not clear]

[For Secretariat: to cross-check/cross-reference with R 26 and R28]

1. *Criterion 1.10* is **Partly Met.** FIs and DNFBPs (with the exception of Casinos and Gambling Operations) are required to assess the risk status of customers, and their customers financial relationships and other aspects to determine risk level. FIs and DNFBPs are also required to assess and manage risk associated with financial products, existing or new methods of payment and new technology associated with servicing or conducting business. Reporting entities are required to perform on-going monitoring and management of risk and mitigation must occur with risk is identified.

[For Lao PDR - confirmation is required that all REs are required to document their respective risk assessments, this is assumed however reference to statute is required] [For Lao PDR As per 1.7 confirmation will be required that product risk assessments are undertaken along with assessments of delivery channels]

1. *Criterion 1.11* is **Partly Met**. According to the Article 17 of the *Agreement on Know Your Customer and Customer Due Dilligence3 No01/NCC 15 January 2016* reporting entities are required to establish a standardized policy, including controls and procedures, on risk management of ML/TF, which is required to be approved by a nominated senior manager or the AML Compliance Officer. In that same agreement at Article 25 and 26 REs are required to establish a risk assessment mechanism, in accordance with the risk-based approach to conduct regular analysis on their internal and external risk of ML/TF and to assess the effectiveness of their risk prevention and control mechanisms. These requirements are for the purpose of identifying areas with vulnerabilities and weaknesses and take targeted risk mitigation measures. As mentioned under c.1.8 above, REs are required to allocate their AML resources based on the risk assessment results and to exercise enhanced measures on areas with high ML/TF risk.
2. *Criterion 1.12* is **Mostly Met**. As referred at c.1.9-11, ifan RE identifies low risk, consistent with the NRA, simplified measures can be taken. Simplified measures are not permitted whenever there is a suspicion of ML/TF. If suspicion exists the RE is required to undertake enhanced measures, including re-identification of customers and suspicious transaction reporting.

Weighting and Conclusion

1. Lao PDR only completed its first NRA in December 2018. This assessment has identified vulnerabilities and risks from which Lao PDR has implemented an action plan. Supervisory defeciencies were identified as a risk as are Casinos. Financial institutions are permitted, to adopt simplified customer due diligence and other risk control measures for low-risk customers.

**Recommendation 1 is rated partially compliant.** Recommendation 2 - National Cooperation and Coordination

1. In the second round, Lao PDR was rated non-compliant on National Coordination (formerly R.31). The rating reflected the absences of high level policy co-ordination and direction, and a lack of effective operational co-ordination to progress AML/CFT requirements including the AML Decree 55 mandate.
2. *Criterion 2.1* is **Met.**In October 2016 the Prime Minister of Lao directed the establishment of the NCC to lead and implement AML/CFT strategies and policies. The NCC commissioned the NRA, which has informed the development of the afore mentioned AML/CFT ‘action plan’ (see Rec 1.3) to drive the development of strategy, guiding principles, policies, and law reforms. From this action plan has emerged a Decree on Entrust and Responsibilities in Implementing the Activities of AML/CFT No 127/Gov dated February 2020 which formalises the roles and responsibilities of the various Ministries and the reporting entities in response to risk.
3. *Criterion 2.2 is* **Met.**The NCC is the authority responsible for the development of AML/CFT policy and the implementation of that policy across Ministries and agencies with AML/CFT roles and responsibilities. The NCC also has the role of evaluating the performance of the AML/CTF regime, advising the Government on legislative reform and administering relevant AML/CFT legislation*.*
4. *Criterion 2.3* is **Partly Met.**The NCC which is chaired by the Vice-Prime Minister comprises representation from 10 Ministries which include financial regulatory authorities, LEAs, judiciary foreign affairs departments, and other industry competent authorities. The AMLIO performs the role of secretariat for the NCC. The NCC meets quarterly and is responsible for assessing the national ML/TF risk, developing national AML strategies, guiding principles and policies. The work of the NCC is regulated by the Decree on Implementing and Operations of National Coordination Committee on Anti-Money Laundering and Countering-Financing Terrorism No.350/PM dated 14 October 2016. [For Lao PDR: Are there any directives or mechanisms providing authority or a directing that each member Ministry exchange information with other Ministries to develop policy or undertake operational activities?]
5. In 2016 the NCC established the AML/CFT Working Group, which has a membership of senior officials from 35 relevant departments across Ministries with AML investigation and prosecution responsibility. The Working Group meets every three months and provides a forum for cooperation and coordination of policy development and operational activities across Lao DPR. At an operational level ‘Focal Groups’ have been established which meet monthly to co-ordinate law-enforcement activities across Lao PDR.
6. *Criterion 2.4* is **Not Met.** Lao PDR has not established a working group to develop a legal framework to ensure co-ordination mechanisms are implemented to combat PF[[1]](#footnote-1). This legislation is being drafted to assign roles and responsibilities to various Ministries to ensure compliance and implementation of the relevant UN sanctions.
7. Criterion 2.5 is **Mostly Met.** Lao PDR has developed a plan on the development of data sharing system. AMLIO has entered into MOUs with 15 competent authorities to facilitate the exchange of information and it is also stipulated in the Law on Criminal Procedure that competent authorities must collaborate with each other to detect and prevent crime.

[For Lao PDR: Is there are general privacy principle that protects private information?].

Weighting and Conclusion

1. National co-operation and co-ordination continues to mature in Lao PDR and formal mechanisms are being established.

**Recommendation 2 is rated partially compliant**Recommendation 3 - Money laundering offence

1. In its previous MER, Lao was rated partially compliant for Rs.1 and 2 (ML offence). The main shortcomings were the absence of a comprehensive ML offence, a lack of criminal liability for legal person, and other technical shortcomings with the Vienna and Palermo Conventions.
2. *Criterion 3.1 is* **met.**The required physical and material elements from the Palermo and Vienna conventions are covered in the Penal Code (Article 130) and the AML/CFT Law (Article 6). The Palermo convention adopts a broad concept of money laundering, which contains two kinds of money laundering, concealment (Article 6(1)(a)) and possession (Article 6(1)(b)(i)). Article 130 of the Penal Code, amended in 2017, satisfies the requirements of the Palermo convention.
3. *Criterion 3.2 is* **mostly met/partly met****.**follows the all-crime approach. Article 8(1) of AML/CFT Law defines predicate offences in broad terms as “all criminal offences which are the causes of money laundering including offences committed outside the territory of Lao PDR that incurs proceeds”. To make it clear, the article lists almost all the designated categories of offences, with the exception of counterfeiting and piracy of products. [For Lao PDR: if the meaning of “trading in illegal properties” in Article 8(1) **differs** from “counterfeiting and piracy of products”, where in Article 8(1) is “counterfeiting and piracy of products” covered?]
4. *Criterion 3.3 is* **not applicable.**This criterion is not applicable, because Lao follows an all-crime approach in Article 8 of the AML Law.
5. *Criterion 3.4 is* **mostly met/partly met.**The Penal Code covers “the offender’s property” (Article 52 PC) and “items obtained from an intentional offence”, items connected to major offences and crimes and items used in the commission or preparation of an offence subject to good faith principle (Article 53 PC). The Execution of Court’s Sentence (clause 3.6) clearly extends the scope of confiscation to “objects derived from the offence intentionally committed”. [For Lao PDR: what is the status of the Execution of Court’s Sentence manual in your law, does it have the force of law?] [For Lao PDR: what is the definition “funds or other properties of a natural person, legal person or organization” in article 130 of the Penal Code? And also, does the law include property that represents the direct and indirect proceeds of crime?]
6. *Criterion 3.5 is* **not met**.In Lao PDR, the conviction of a predicate offence is required to prosecute a ML offence and prove that property is the proceeds of crime.
7. *Criterion 3.6 is* **mostly met**.The Penal Code, in Articles 8 and 9, covers conduct committed by Lao PDR citizens and residents inside and outside Lao’s territory, conduct inside Lao PDR’s territory, and offences against Lao by foreigners abroad. However, the definition of ML (article 4 Law on AML/CFT) and the ML offence (PC article 130), do not appear to encompass conduct constituting predicate offences committed outside of Lao PDR territory. In other words, if we strictly explain the current Penal Code, we might arrive at this conclusion: if a foreigner commits predicate offences abroad, which are not against Lao PDR, but commits ML in the territory of Lao PDR, there is no clear legal basis to prosecute the ML offence.
8. *Criterion 3.7 is* **not met.**The concern of this criterion is whether self-money laundering is criminalized in Lao PDR. Traditionally, the jurisprudence in many civil law systems takes self-money laundering as the continuous and inevitable conduct of the predicate offence and then self-money laundering should not be criminalized independently. The issue is whether the predicate offender could be prosecuted concurrently with both predicate and ML offences if the offender also commits ML for himself/herself. The Penal Code uses the word “any person” and doesn’t emphasize “commit ML for others” (Article 130). From this stipulation, there seems to be no barrier to prosecuting self-money laundering in Lao PDR.

[For Lao PDR: Please explain whether the predicate offender could be prosecuted concurrently with both predicate and ML offences if the offender also commits ML for himself/herself. It would be very helpful if Lao PDR could provide several cases.]

1. *Criterion 3.8 is* **met.** It seems that the stipulation “as expressed externally through the behavior that constitutes the offence” (Article 12, Penal Code) [For Lao PDR: please provide a clearer translation of this article] is very close to the objective factual circumstance. The Law on Criminal Procedure in Article 44 also emphasizes a general principle “examine and evaluate the evidence comprehensively based on thorough and objective consideration with confidence”. Lao PDR confirmed the assessor’s understanding that factual circumstance is used in criminal litigation as a general principle. It is concluded that the subjective component (as defined in article 12 of the Penal Code) of an ML offence can be inferred from objective factual circumstances. (same with Criterion 5.5)
2. *Criterion 3.9* *is* **mostly met*.***The fines range from 300,000,000 to 500,000,000 Kip for money laundered below 1 billion Kip in addition to imprisonment for three to seven years and asset confiscation, and 500,000,000 to 700,000,000 Kip for an offence of laundering over 1 billion Kip in addition to imprisonment for seven to ten years and asset confiscation. There are also higher penalties for the more serious offences (organized crimes, habitual offences). The Penal Code has three categories of offences, minor offences, major offences, and crimes (Article 13). The assessor notices that ML is categorized as a major offence. While the major offences are punished by re-education, imprisonment from three months to ten years, the starting sentence of ML offences is three years, relatively longer than that of many other major offences. The second level of sentence for ML is seven to ten years. In the Penal Code, only some offences are prescribed more than ten years, mainly drug offences and those seriously infringing national security. The penalties are proportionate with reasonable levels and dissuasive from the holistic view of the Penal Code. The only and minor shortcoming is the monetary penalties. The fines range from 30% to 50% for money laundered below 1 billion Kip, but the fines have upper limits for bigger amount of money laundered and more serious offences (organized crimes, habitual offense).
3. *Criterion 3.10 is* **mostly met.** Article 89 of Penal Code provides that fines can be imposed on legal persons without prejudice of criminal liability of the natural person. Article 90 of Penal Code provide that the fines for legal person is double as prescribed in natural person. There are also other penalties special for legal person, such as revoking license, restrictions on business activities (Articles 91-94). The shortcomings in Criterion 3.9 may affect this Criterion, because the fines for natural person is the basis to impose fines on legal person. The sanctions for legal persons seem (largely) proportionate and dissuasive.
4. *Criterion 3.11 is* **met.**Firstly, as with many civil law countries, Lao PDR has a system-wide stipulation to criminalise offences in different stages. It is a general principle that not only the commission of an offence but also the attempt (Article 23) or preparation (Article 22) to commit an offence is criminalised under Lao PDR’s Penal Code. Secondly, Lao PDR’s Penal Code also has a comprehensive stipulation to criminalise co-offenders, as in many civil law systems. The “participation in” (Article 26, PC) comprehensively covers all the co-offenders, the mastermind (planner, organizer, instructor, Article 27, PC), implementer (who commits the offence directly, Article 28, PC), inciter (persuading, encouraging, Article 29, PC) and other assistants in the offence (accomplice, Article 30, PC). The AML/CTF Law further clarifies the co-offenders in nearly the same language with FATF standard, including conspiracy (“planning”), aiding and abetting (“aiding, encouraging”), facilitating (“facilitating”)and counselling the commission (“giving advices”) (Article 6). In the assessor’s view, even without the clarification in AML/CTF Law, those ancillary offences will also properly be criminalised in Lao PDR. In conclusion, the assessor believes that all the ancillary offences listed are properly criminalized in Lao.

*Weighting and Conclusion*

1. After the previous MER, Lao PDR has made great efforts to pass the Penal Code and AML Law to improve its criminal system regarding ML. Many of these improvements are considered substantial. The laws have established the core basis for a comprehensive ML offence and the criminal liability of legal persons. There remain only minor shortcomings.
2. **Recommendation 3 is rated largely compliant/partially compliant.**

Recommendation 4 - Confiscation and provisional measures

1. Lao PDR was rated partially compliant for the former R.3 in the 2011 MER. The identified limitations included the scope of qualifying forfeiture offences associated with ML, the absence of a TF offence, inconsistent legal definitions of ‘property’ and limitations with freezing property; and an absence of statistics on confiscation performance.
2. *Criterion 4.1 is* **mostly met**. Article 41 of the Law on AML and CFT No 50/NA dated 21 July 2014 provides the legal framework for the confiscation of funds that are derived directly or indirectly from crime; property of corresponding value related to criminal activities, or property that has been converted (Article 8(2) Law on AML and CFT) having previously been acquired in the commission of major offences, [To Lao PDR: can you clarify what “connected to the offence” means in article 53 with regards to major offences and whether conversion would specifically be covered? – **For Lao PDR: Examples are required to explain the distinction between Art 53 paragraph 1 and paragraph 2. It is understood what paragraph 1 means, but property that is “asscoaciated to an offence” is required to be defined in more detail**] which includes money laundering (Article 130 Penal Code, Article 8(1) Law on AML and CFT.) and terror financing (Article 131 Penal Code).
3. Funds are defined in Article 8(5) of the Law on AML and CFT as tangible and intangible funds or properties, movable or immovable assests and all financial documents or bearer negotiable instruments of all forms either in electronic or digital format and certificates of ownership, or benfits from such funds or properties. Major offences are defined at Article 13 of the Penal Code and include offences that are punished by re-education without deprivation of liberty (a sanction undertaken by an offender at his or her employment pursuant to which the offender must remit five – twenty percent of their salary to the state subject to the sentence, re-education must not exceed one year - see Article 47 Penal Code) and offences punishable by 3 months imprisonment to ten years and fines.
4. Article 41 also extends to ‘instruments’ used, or intended to be used in the commission of a crime(Article 3 Instruction on Application of Provisional Measures on Properties Relating to ML or TF No 08/NCC dated 30 March 2016). Confiscation measures can extend to property owned by third parties who although not directly involved in offending had knowledge that their property was intended to be used in the commission of qualifying criminal activity or if the confiscation is deemed necessary for safeguarding society (Article 53(3) Penal Code and paragraph 3.6 of Annex 11 of the Manual on Criminal Procedures in Lao PDR). Provisional measures of seizure and freezing of property is authorised pursuant to Article 108 of the Law on Criminal Procedure which enables the investigating authorities or a public prosecutor to authorise the seizure of assets for the purpose of confiscation consideration [For Lao PDR can you confirm that Article 53 - Law on Criminal Proceedure is the article that authorises a Head of a Investigation Organisation to issue an order to freeze and seize property that could become the subject of confiscation?] Article 128 allows for the seizure of property prior to a prosecution resolution to ensure the payment of compensation to victims, payment of fines or confiscation to the State as appropriate. [For Lao PDR – it would be useful to develop a simply process flow diagram (process chart) which steps out how these provisions apply to the provisional measures and confiscation of property laundered, instruments of crime, proceeds used in the financing of terrorism and for confiscation of property of corresponding value].
5. *Criterion 4.2 is* **partly met.** Competent authorities (the investigating organisation or public prosecutor) have the legal authority to, identify, trace, or[For Lao PDR: The start of article 108 of the Law on Crminal Procedure suggests that a power exists to identify, trace and evaluate by implication that the process has been undertaken (In the case of having verified the categories of assets, quantity, and the location of the assets which are relevant to the offenses), please clarify the specific powers to do so or indicate whether it is covered by the broad investigative powers in article 53 .] [For Lao PDR: Article 166 clause 7 cannot be located, please clarify this reference is correct and identify the text in the law] freeze property that could be, or is subject to confiscation, and to seize such property as required (Article 43 and 121- 128 Law on Criminal Procedure and Article 3 Instruction on Application of Provisional Measures on Properties Relating to Money Laundering or Terrorist Financing No8/NCC 30 March 2016.). The NCC Chairman issued an Instruction 30 March 2016 relating to the Application of Provisional Measures on Principles Relating to Money Laundering or Terrorist Financing which requires competent authorities to issue without notice orders to seize or freeze property pending the resolution of a criminal proceeding, when appropriate.
6. **[For Lao PDR: This is an instruction from the NCC. Does this instruction have the force of a law of general application under Article 4 of the Law on Making Legislation No 19/NA? If not, please identify the Article in law that authorises the ability in proceedure to issue ex-parte (without notice) orders]** ~~[For Lao PDR: can you clarify whether this can occur ex parte or if to do so is inconsistent with fundamental principles of domestic law. See Footnote 14 to c.4.2(b).] The Head of an Investigation Organisation [For Lao PDR - define head of investigation organisation?]~~ **[For Lao PDR: What level within a Ministry would this delegation normally sit, DDG (Deputy Director General)?]** ~~can issue an Order to seize property to ensure compensation to a rightful owner or victim, to ensure payment of fines or other fees [For Lao PDR would this extend to an equivalent value confiscation order? Article 107 – Law on Criminal Procedure?]~~

**[For Lao PDR: This may be a translation issue as Art 41 AML/CFT refers to confiscation of property of corresponding value and Art 3 of the NCC Instruction of Provisional Measures on Properties relating to ML/TF refers to corresponding value. Please confirm whether or not Lao PDR has specific legislation on confiscation on the properties of equivalent value. Note this sentence has been deleted as it has been relocated to 4.1]**~~or, forfeit to the State.~~

1. Provisional measures can be applied to withhold, seize or freeze property and transactions believed to be associated with ML or TF through the issuance of an instruction from the Head of of an Investigation Authority to an AML/CFT reporting entity ~~[To Lao PDR: can you clarify the legal basis for competent authorities to apply preventatitve measures (is this based on article 38 of the Law on AML/CFT)? Can you also clarify the effect of the Instruction on the Application of Preventative Measures Relating to ML/TF on competent authorities and reporting entities/postal enterprises/concerned parties.~~ **[For Lao PDR: Is there is an obligation to act without instruction where evidence of property/transactions/customers being linked to ML or TF under article 2 Instruction on the Application of Preventative Measures Relating to ML/TF?].** Provisional measures apply for 30 days during which time the investigative authorities are required to prepare and serve a formal Order which remains effective until the resolution of the prosecution (Article 2-4 Instruction on Application of Provisional Measures on Properties Relating to Money laundering or Terror Financing No08/NCC 30 March 2016).

[For Lao PDR Where in legislation is there an ability for the Court/competent authority to examine, and, when required, prevent or void actions/arrangements that prejudice their ability to freeze or seize or to recover property that is subject to confiscation under certain circumstances. These circumstances would extend to arrangements where property has been transferred or dealt with in any way, for the intended purpose of defeating a confiscation process? **This question has not been answered fully. Please refer to criteria 4.2(c). Article 4 (Identification and Monitoring of Properties) of the Instruction No 08/NCC dated 30 March 2020 outlines that orders should be strictly implemented and it prohibits any activity by natural or legal persons who attempt to void the implementation of the order to seize or freeze. I seek the provision where the court can reverse any legal process that may have been undertaken to void an ability to freeze, seize or confiscate.]**

1. For investigation measures, see R.31.
2. Criterion 4.3 is **partly metC**. The rights of bona fide third parties are protected in Lao PDR law where it is identified that a third party has an interest in any property that could be subject to confiscation. [For Lao PDR the Criminal proceeedure manual (part 8) Annex 11 3.6 refers to remarks: Objects not subject to be confiscated. Can a reference to the law behind this comment be provided] This occurs through an ability to sever interest in property **[For Lao PDR: Please confirm that the appeal letter must be filed within 7 days ? or confirm that the Prosecutor must consider the appeal within 7 days?]** and through the rights of an owner or interested party to appeal the seizure or placement of a provisional measure over property. This appeal must be filed to the Office of the Peoples Prosecutor along with supporting evidence of the grounds for appeal within 7 working days of the seizure (Article 6 Appeal on Seized or Frozen Property – Instruction on Application of Provisional Measures on Properties Relating to Money Laundering or Terrorist Financing No08/NCC 30 March 2016). **[For Lao PDR - confirm that the appeal letter must be filed within 7 days (or 30 days) ? and confirm the time frame during which the Prosecutor must consider the appeal]** Subject to an outcome a third party may seek a judicial review of any decision made by the Peoples Prosecutor (Article 67 Criminal Procedure Law No 37NA 14 November 2017).

[For Lao PDR - where exists the requirement that the Prosecutor must advise/notify any known third party of their litigation rights so they can participate in the proceedings at which confiscation may be determined? Where is the appeal process outlined in procedural law?] **[For Lao PDR: If the Investigation Organisation suspects that there is a third party who may have an interest in the property (who does not know about the seizure/freezing/confiscation proceedings) is there a requirement that the Prosecutor advise that third party that the property is pending confiscation ? and if they have valid grounds they are entitied to seek relief?]**

1. In the event that all of an offender’s property becomes subject to seizure or confiscation the Court must exclude property that is necessary for the livelihood of the offender and their family such as a house of residence, livestock for one who is a farmer along with property and objects that are used daily by the offender and his dependants (Article 52 Penal Code 15 May 2017).

[For Lao PDR: Please clarify how this provision applies, are the courts forced to exclude certain property, if wealth is kept in a domicile or in farm animals, or is this a discretionary power that allows for the provision of legitimate living expenses?] **[For Lao PDR: are there examples where the Court has made a determination about what is necessary to exclude for the livelihood of the offender and his family, and what is not necessary ?]**

1. *Criterion 4.4 is* **partly met.** Article 7 of the Instruction on Application of Provisional Measures on Properties Relating to Money Laundering or Terrorist Financing No.08/NCC March 2016 requires authorities to store and manage property seized to ensure the value of property is maintained (Article 7). The Order on the Registration of Property Sentenced by the Court to Confiscate to the State No 7/PM issued by the Prime minister in April 2017 outlines a disposal process which includes the estabalishment of a Fund for Drug Control and Prevention to recieve 70% of the proceeds from the sale of confiscatied crime to fund drug crime prevention initatives along with other disposal initatives. Where a criminal judgement imposes a civil compensation payment (reparation to a victim) and a fine together with the confiscation of property the priorty of payment is to the civil compensation (victim) then the fine and the remainder forfeited to the benefit of the state (Article 39 Law on Judgement Enforcement No 04NA 25 July 2008).

[For Lao PDR - the MEQ refers to relevant regulations to ensure value of property is maintained, what are these regulations and can you please provide copies of them? What measures are routinely implemented to ensure this occurs for example do the regulations require that property is insured, valued at the time of seizure, do authorities have internal policy and procedures associated with Trust Accounts to hold funds or manage vehicles] **[For Lao PDR: Please provide the policy for maintaining and insurance as it relates to a vehicle, boat or house. The information provided remains limited.].**

1. In the event that property is not managed in accordance to the regulations or is dealt with in a way that reduces value and causes loss, the state is required to compensate any affected party, and, in turn, those expenses can be recovered from the individuals who mismanaged and violated the regulations.

Weighting and Conclusion

1. **Recommendation 4 is rated partially compliant.**

Recommendation 5 - Terrorist financing offence

1. Lao PDR was rated non-compliant for SR.II in the 2011 MER, as there was no law criminalising TF in line with the TF Convention. Lao PDR revised its Penal Code to include the TF offence, enacted on 15 May 2017.
2. *Criterion 5.1 is* **partly met.** The Penal Code and AML/CFT Law criminalise TF on the basis of Article 2 of the TF Convention. As defined by Article 131 of the Penal Code, TF is any intentional act, both direct or indirect that provides or collects funds or properties for terrorism (whether the terrorist act is carried out or not). Article 14 defines ‘intentional acts’ as acts which are undertaken with full knowledge of the offender. Article 7 of the AML/CFT law does not explicitly set out the text of Article 2(1)(b) of the convention (any other act intended to cause serious bodily injury or death) as the TF offence only relates to the offences listed in Article 7. These offences include acts that affect life, health and freedom. The Penal Code extends the TF offence to include attempt, participation, organisation and direction, and the contribution to the commission of the offence by a group (Articles 22-30).
3. Article 2(1) of the TF Convention requires each state party criminalize all conducts in international conventions listed in Annex A. Article 7(8) of the AML/CFT Law references the treaties annexed to the Convention, all of which Lao PDR are party to (assessor to confirm this). However, international treaties, even ratified by the legislation, could not be implemented automatically as law in Lao PDR. On the contrary, any international treaty can be enforced as domestic law only after the legislation transposes the treaty into domestic law through the legislative process. In this sense, the Lao PDR does not criminalize all conducts listed in Annex A.
4. Criterion 5.2 is **met.** The Penal Code, in Article 131, provides a comprehensive definition of TF. The TF offence covers any person who intentionally supplies funds to terrorism, or terrorist, or terrorism act.
5. Criterion 5.2bis is **mostly met**. Article 7 of the AML/CFT law does not expressly cover the financing the travel of individuals to another State for the purpose of perpetrating, planning, preparing, or participating in, terrorist acts or providing or receiving terrorist training. However, under Article 7(6), it is an offence to ‘participate, or attempt to participate in the organisation, teaching and training of individuals’ and could extend to travel of individuals to another state for the purpose of providing or receiving training. Further, Article 7 applies to all natural and legal persons within or outside the territory of Lao PDR, making it an offence to participate in terrorist acts, or provide or receive training internationally. In addition, Article 22 criminalises the preparation of an offence, including the means, materials and the creation of conditions or other factors in order to commit an intentional offence.
6. Lao explains that both “travel” and “receiving terrorist training” could be legally explained as a behaviour to “participate” in terrorism stipulated in clause 6 of Article 7. As a judicial technique, this explanation is acceptable and in line with common legal inference. But the shortcoming is also clear that such explanation is not mandatory or just a legal possibility.
7. Criterion 5.3 is **met**. Article 131 of Penal Code extend funds and properties to both legitimate or illegitimate sources.
8. Criterion 5.4 is **met.** Article 131 of the Penal Code does not require that the funds or other assets be linked to a specific terrorist act as it applies to terrorism and terrorists, even in the absence of a link to a specific terrorist act(s). Article 131 criminalises TF whether “the funds or properties are used in action or not”. The law does not specifically require that the funds or properties were used to carry out or attempt a terrorist act(s).
9. Criterion 5.5 is **met.** There are no provisions in Lao PDR law that explicitly provide that the intent and knowledge required to prove that the TF offence be inferred from objective factual circumstances. However, Article 12 of the Penal Code provides that an offence contains an objective component, namely characteristics of the behaviour that has caused, or is evidence of an intention to cause, damage to a social relationship that is regulated by the Penal Law. Article 14 defines ‘intentional acts’ as acts which are undertaken with full knowledge of the offender. Article 44 of the Law on the Criminal Procedure also provides that the evidence be examined and evaluated ‘comprehensively based on thorough and objective consideration with confidence’.
10. Criterion 5.6 is **partly met.** Under Article 131 of the Penal Code, any persons convicted of TF for a value of less than 1 billion Kip (USD 108,000) shall be sentenced to five to eight years prison, and fined between 5 million and 800 million Kip (USD 540 to USD 86,400), and assets shall be confiscated. Persons convicted of TF for a value of 1 billion Kip or more shall be sentenced to eight to 12 years prison and fined between 800 million Kip to 1 billion Kip (USD 86,400 to USD 108,000), and assets shall be confiscated. Where TF is committed as part of an organisation, or on a regular basis, a person shall be sentenced from 15-20 years prison and shall be fined between 800 million Kip to 1 billion Kip (USD 86,400 to USD 108,000), and assets confiscated. Sanctions for TF are higher than that of ML. In comparison to other jurisdictions, a prison sentence of five to eight years is at the lower end of the scale, with fines of less than USD 10,000 not considered dissuasive. Sanctions imposed for TF valued at 1 billion Kip or more are considered proportionate and dissuasive in comparison with other jurisdictions.
11. The assessor notices that the prescribed sanctions are higher for TF than for ML, which is in line with our common sense that TF often introduces heavier danger in nature than ML does to the society and then is necessary to be imposed heavier sanctions. As illustrated in Criterion 3.9, the sentence for ML is proportionate and dissuasive from the holistic view of the Penal Code, and then we can arrive that the sentence for TF is similar. However, the monetary penalties for TF also have minor shortcomings. The fines for TF range from 50% to 80% for money laundered below 1 billion Kip, but the fines have upper limits for bigger amount of money laundered and more serious offences (organized crimes, habitual offense).
12. Criterion 5.7 is **partly/mostly met.** Articles 88 to 96 of the Penal Code provide comprehensive penalties over legal persons and allow for parallel criminal, civil and administrative proceedings. Article 89 of the Penal Code provides that the criminal liability of natural persons is not affected by the liability of the legal person. Similarly, the shortcomings in Criterion 5.6 may also affect this Criterion, because the fines for natural person is the basis to impose fines on legal person. The administrative sanctions for legal persons seem (largely) proportionate and dissuasive.
13. Criterion 5.8 is ***met.*** Article 23 and 131 of the Penal Code make it an offence for any person to attempt to commit a TF offence, and Article 7 (5) of the AML/CFT Law make it an offence to ‘aid an act’ of terrorism. Article 26 of the Penal Code criminalises the intentional participation in an offence by two or more persons, including as an accomplice. Article 27 criminalises the planning and organisation of the offence, including those who gave instructions to commit the offence.
14. Criterion 5.9 is **met.** The TF offence is designated as a ML predicate offence in Article 8 of the AML/CTF Law.
15. Criterion 5.10 is **met.**Articles 8 and 9 of the Penal Code and Article 7 of the AML/CFT Law provide that TF offences apply both within, and outside of the territory of the Lao PDR.

*Weighting and Conclusion*

1. Lao PDR has made great efforts to fill the gap of criminalization of TF after the previous MER. In the sense from zero to one, the improvements are fundamental. Lao PDR has established the comprehensive legal framework to fight against TF with necessary details. Although there still leave some shortcomings, but they seem minor. It should also be emphasized that Lao have been aware of the shortcomings during the ME process, and expressed their strong willing to improve the law.
2. **Recommendation 5 is rated largely compliant/partially compliant.**

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

1. *Criterion 6.1* is **Partly Met/Mostly Met**
2. *Criterion 6.1(a) is* **Met**.Pursuant to the Order on the Withholding, Freezing or Seizure of Funds Relating to Terrorists or Financing of Terrorism (revised version) No.03/PM (11 February 2016) (Order No.3/PM), the Ministry of Foreign Affairs (MOFA) is the designated authority to propose persons or entities pursuant to the UN1267/1989 Committee and 1988 Commitee.
3. *Criterion 6.1(b) is* **Met**.Order No.03/PM requires the Ministry of Public Security to coordinate with the MOFA, the AMLIO and relevant ministries to consider proposing designations to the UN to the National Coordinating Committee for Anti-Money Laundering and Counter-Financing of Terrorism (NCC). Clause 3.5 of the Order No. 03/PM provides a mechanism for identifying targets for designation based on the designation criteria set out in the relevant United Nations Security Council resolutions (UNSCRs).

*4. Criterion 6.1(c) is Not Met/Partly Met -* Any proposed addition to, or removal from, the domestic list must be presented to the NCC for consideration. Clause 3.2 of Order No.03/PM specifies the evidentiary standard of “sufficient evidence” for the NCC to consider a proposed a designation. ‘Sufficient evidence’ is the criminal evidentiary standard in Lao PDR and requires a higher standard of proof than ‘reasonable grounds’. The definition of “sufficient evidence” is stipulated in Article 28 and consists of ‘physical, documentary and evidence from person’. Any proposal for designation is not conditional upon the existence of a criminal proceeding.

1. *Criterion 6.1(d) is* **Met**.Clause 3.5 of the Order No.03/PM provides procedures for designations and requests for listing and requires that the MOFA, in proposing names to the UNSCR Committee, use the standard forms for listing as adopted by the relevant Committee.
2. *Criterion 6.1 (e) is* **Met**.Order No.03/PM requires the MOPS, in consultation with MOFA, AMLIO and relevant ministries to seek evidence (on behaviour and/or activities) on the proposed designation. Clause 3.5.3 requires that the MOFA, in proposing names to the UNSCR Committee, to use the standard forms for listing as adopted by the relevant committee, including a detailed statement of case to support the designation. No proposals for UNSCR 1267 designation have been made to-date.
3. *Criterion 6.2* is **Partly Met/Mostly Met**
4. *Criterion 6.2(a) is* **Met.** The MOPS is the authorized competent authority responsible for the proposed listing or delisting potential persons or entities that meet the specific criteria for designation under UNSCR 1373. The Ministry of Public Security act as a key player in coordinating and considering with MOFA, AMLIO and associated agencies of the government in proposing to NCC the inclusion or removal from the domestic list of natural persons, legal entities or organization relating to terrorist or financing of terrorism for NCC’s consideration.
5. *Criterion 6.2(b) is* **Met.** Lao PDR has a mechanism under Order No. 03/PM for identifying targets for designation based on the designation criteria set out in UNSCR 1373. The MOPS is in charge of coordinating with MOFA, AMLIO, relevant ministries and organizations of the government in proposing to NCC, the additions to/removals from the domestic and foreign list of natural persons, legal entities or organizations relating to terrorists or financing of terrorism for the latter`s consideration and approval.
6. *Criterion 6.2(c) is* **Partly Met.**The MOPS is in charge of coordinating with the MOFA, the AMLIO, other relevant ministries and organizations in considering requests for designations of persons or entities by a foreign jurisdiction. Consideration of the proposed designation is based on evidence of behaviours and actions as specified in Article 3 (financing of terrorism) and Article 7 (acts of terrorism) of the AML/CFT Law. Any proposed designation must be presented to the NCC for consideration. Clause 3.2 of the Order No.03/PM specifies the evidentiary standard of “sufficient evidence” for the NCC to approve a designation. ‘Sufficient evidence’ is a criminal evidentiary standard which goes beyond the threshold for ‘reasonable grounds’. There is no stated requirement that a prompt determination be made. Once a determination is made, MOFA is responsible for providing a response to the requesting foreign jurisdiction. However, to date, there has been no request from foreign jurisdiction on any designation or delisting.
7. *Criterion 6.2(d) is* **Partly Met.**Clause 3.2 of Order No. 03/PM specifies the evidentiary standard of ‘sufficient evidence’ for the NCC to consider a proposed a designation. As discussed above, ‘sufficient evidence’ is a criminal evidentiary standard, which goes beyond the threshold for ‘reasonable grounds’. There is no stated requirement that a prompt determination be made. Clause 3.1 of Order No. 03/PM requires consideration of evidence of behaviours and actions as specified in Article 3 (financing of terrorism) and Article 7 (acts of terrorism) of the AML/CFT Law. The proposal for designation is not conditional upon the existence of a criminal proceeding.
8. *Criterion 6.2(e) is* **Partly Met/Mostly Met**.The MOPS is responsible for coordinating with the MOFA and AMLIO and other relevant ministries and organisations on proposals to foreign governments to add/remove designations supported by evidence of behaviours and actions as defined in Articles 3 and 7 of the Law on AML/CFT (Article 3.1 of the Order No.03/PM). It is not clear on what other information (i.e. identifying information) is required to be provided to the foreign jurisdiction. Lao PDR has not made a request to a foreign jurisdiction to give effect to freezing actions.

[Lao PDR: Please confirm that no request has been made by Lao PDR to a foreign jurisdiction with respect to freezing actions?]

1. *Criterion 6.3* *is***Partly Met/Mostly Met**
2. *Criterion 6.3(a) is* **Partly Met**.The MOPS is in charge of coordinating with MOFA, AMLIO and relevant ministries in proposing designations to the NCC. Article 11 of the Decree on Entrust and Responsibilities provides authority to MOPS to collect information from reporting entities and AMLIO. AMLIO has powers under the AML/CFT Law to collect information and coordinate domestically and internationally. It is unclear what powers MOFA has to collect or solicit information for the purposes of designation. It is unclear which agency is responsible for collecting or soliciting information to identify persons or entities that meet the criteria for designation.

[Lao PDR: Is any particular agency responsible for collecting or soliciting information to identify persons/entities for designation? Is it MOPS? Has Lao PDR proposed any designations to the NCC for listing, either domestically or UNSCR1267?]

1. *Criterion 6.3(b) is* **Met**.Clause 3.6.2 of Order No.3/PM provides that coordination and consideration of designations, and any decision by the NCC on designations be made ex parte and without prior notice to the individual, legal entity or organisation.
2. *Criterion 6.4 is* **Mostly Met.** Listings pursuant to UNSCR1267/1989 are automatically and immediately designated without NCC’s approval or consensus as indicated in the Order No.03/PM clause 3.3, which brings the freeze and prohibition obligations immediately into force. The MOFA is required to send the updated UNSCR list ‘immediately’ to MOPS and AMLIO (Clause 3.5.1 of the Order No.3/PM). The updated list is communicated by AMLIO and MOPS to the reporting entities via notice distribution and publication on AMLIO’s website (Clause 3.5.2 of the Order No.3/PM). Lao PDR advised that dissemination is done within a week. Reporting entities, postal enterprises and other relevant ministries are also required by Order No.03/PM to monitor the sanctions lists. Reporting entities must withhold funds or properties of designated persons or entities immediately and without prior notice, pursuant to Article 31 of the Agreement on KYC and CDD. The REs must report any withholding actions to MOPS, who will issue an order to freeze or seize the funds or properties.
3. Designations pursuant to UNSCR 1373 are coordinated by MOPs, and considered by MOPs, MOFA, AMLIO and other relevant ministries and sent to NCC for approval. Updates to the list will be communicated to reporting entities and postal enterprises by AMLIO and MOPS.

[Lao PDR: Can you explain the process for a proposed designation pursuant to 1373 (domestic list). I understand that the NCC considers and approves proposals for designation. At what point does this designation come into force? What is the process or time between NCC approval and it being added to the list and being in force? Does Lao PDR currently have anyone on a domestic list?]

*Criterion 6.5* *is* **Mostly Met.**

1. *Criterion 6.5(a) is* **Met.** All natural and legal persons are required to withhold, freeze or seize funds and property which are associated with terrorism or TF, including funds owned or controlled by designated persons/entities as specified in Clause 5 of the Order No.3/PM. The Order requires REs to withhold funds ‘immediately’ upon notification that a client is a designated person/entity and Article 31 of the Agreement on KYC and CDD requires REs to withhold and freeze funds immediately, and without prior notice.
2. *Criterion 6.5(b) is* **Met.** Clause 2 of the Order No.3/PM applies the freezing obligation to cover funds or properties owned or controlled by designated persons or entities in line with criterion 6.5(b). Funds and properties are defined in Article 8, Section 5 of the Law on AML/CFT.
3. An asset to be hold, freeze and seizure are indicated the Order on the Withholding, Freezing or Seizure of Funds Relating to Terrorists or Financing of Terrorism (revised version) (clause 2) and in the Law on AML/CFT Article 8 (clause 5).
4. *Criterion 6.5(c)* *is* **Met.** Article 50 of the AML/CFT Law includes a prohibition on all natural and legal persons and entities from conducting transactions or business operations with designations, and prohibits persons and entities from having dealings related to, or being involved in ML or TF, and giving any type of assistance in ML and TF. Article 52 of the AML/CFT law prohibits reporting entities from having business dealings or performing transactions with designated persons or entities.
5. *Criterion 6.5(d) is* **Partly Met/Mostly Met.** Clause 3.5 of Order No.3/PM requires that the MOFA provide updates to the list of designations immediately to the AMLIO and the MOPS. The AMLIO is required to notify reporting entities immediately of updated designation lists. The MOPS is required to notify the updated designations to the postal enterprises and other relevant sectors immediately, as well as disseminate the updated list via government websites regularly. The UN consolidated sanctions list and sanctions list 1267/1989 is published on the AMLIO website. Clause 5.1 of the of Order No.3/PM state RE’s obligations in taking action under freezing mechanisms. No guidance has been provided to reporting entities on their obligations to on their obligations in taking freezing/withholding action.
6. *Criterion 6.5(e) is* **Partly Met/Mostly Met.**Clause 5.1 of Order No.3/PM requires reporting entities to report immediately to MOPS and AMLIO once funds or property of designated persons or entities has been stopped or withheld, including when making transactions.

[Lao PDR: Clause 5.1 of the Order No.3/PM states *“Reporting entities must use preliminary measures to stop and withhold such funds and properties immediately when their client is found to be on the associated with terrorism or the financing of terrorism or* ***making*** *transactions that relate to funds defined in Section 2 of this Order…”.* Can you clarify if this is a translation error, is this meant to read “attempted”? Whilst similar, in English they mean separate things. Please provide clarification.]

1. *Criterion 6.5(f) is* **Partly Met.** Clause 5.1 of the Order provides that reporting entities shall not be liable for anything done or omitted to be done in good faith and without negligence when implementing freezing obligations. These protections do not apply to all natural and legal persons acting in good faith when implementing the obligations under Recommendation 6. Clause 6.1 of the Order No. 03/PM only returns funds and properties to a legitimate owner that were ‘illegally controlled’ or used by others to commit an act of terrorism or TF. This does not address the issue of protecting third parties acting in good faith when implementing obligations related to targeted financial sanctions.
2. *Criterion 6.6 is* **Partly Met/Mostly Met**
3. *Criterion 6.6(a) is* **Met.**The procedures to submit de-listing requests to the UN Sanctions Committee are outlined clause 3.5.4 of Order No.3/PM. AMLIO’s website includes a link to the Focal Point for De-Listing on the United Nations Security Council website.
4. *Criterion 6.6(b) is* **Met.**Clause 4 and 6 of the Order No.3/PM provide a mechanism to de-list and unfreeze funds or other assets of designated persons/entities that no longer meet the criteria for designation. The designated person/entity may apply to the Office of the People’s Prosecutor to appeal the listing, and in the event it is determined that the person/entity no longer meets the criteria for designation, the MOFA shall propose the removal from the list of the UN Security Council. Once the person/entity is removed from the list, the seizure of funds and other assets in the name of the person/entity are cancelled and returned.
5. *Criterion 6.6(c) is* **Partly Met/Mostly Met.**Clause 4 of Order No.3/PM provides designated persons or entities the opportunity to appeal their designation to thePeople’s Prosecutors Office. Any person affected by the listing of those associated with terrorists or the financing of terrorism may apply to the Office of People`s Prosecutor to appeal the listing. However, the process is not clear as to how a person would go about this.

[Lao PDR: Clause 4 of the Order No.3/PM provides that a person may apply to the Office of People’s Prosecutor to appeal the listing. Where does this person apply? If I was a person who wanted to appeal a designation, where would I go to find information on how to appeal?]

1. *Criterion 6.6(d) is* **Partly Met.** There are no procedures under Order No.3/PM to facilitate the review of designations by the Sanctions Committee pursuant to UNSCR 1988. However, the AMLIO website does provide a link to the UN Focal Point for delisting.
2. *Criterion 6.6(e) is* **Mostly Met.**The MOPS is required to notify designated persons and entities of the option to make a de-listing request directly to the United Nations Office of the Ombudsperson (Clause 4.3 of Order No.3/PM). The Order does not specify the procedures for informing designated persons and entities of the availability of the UN Office of the Ombudsperson to accept de-listing petition. However, the AMLIO website does provide a link to the UN Focal Point for delisting.
3. *Criterion 6.6(f) is* **Not Met.**There are no publicly known procedures to support unfreezing of funds for persons who are inadvertently affected by the freezing mechanism (i.e. a false positive). Clause 6.1 of the Order No. 03/PM only returns funds and properties to a legitimate owner that were ‘illegally controlled’ or used by others to commit an act of terrorism or TF. This does not address the issue of false positives. It is unclear how a person or entity would request unfreezing for a false name match.

[For Lao PDR: Refer to Vanuatu’s website for an example of publicly known procedures [Financial Intelligence Unit - UN Financial Sanctions (gov.vu)](https://fiu.gov.vu/un-financial-sanctions) – See Guidance Note to the Reporting Entities & the Public regarding the United Nations Financial Sanctions Act No. 6 of 2017 (the UNFS Act)]

1. *Criterion 6.6(g) is* **Partly Met/ Mostly Met.** Clause 3.6.4 of Order No.3/PM provides a mechanism for communicating listings and de-listings to reporting entities. AMLIO is required to notify reporting entities of any updates to the lists ‘immediately’. The MOPS is required to notify the postal enterprises, as well as other relevant sectors, and disseminate them through government websites ‘regularly’. No guidance has been provided to reporting entities on their obligations to respect a de-listing or unfreezing action.

[For Lao PDR: Has AMLIO produced any guidance for financial institutions, DNFBPs and other reporting entities regarding their obligations in relation to de-listing or unfreezing action? Guidance refers to helpful documents/instructions for reporting entities, sometimes in the form of a brochure or FAQ sheet, or on a website]

*Criterion 6.7 is* **Partly/Mostly Met*.***Clause 6.2 of the Order No.3/PM allows withheld, frozen or seized funds to be used “as necessary expenses to sustain a person`s livelihood” and “expenses for other legal obligations of the person, or a legal entity or an organization”. Even though this provision does not explicitly provide legal cover to permit access to funds for the other basic expenses detailed by UNSCR 1452, such as fees, expenses and service charges, Lao PDR confirmed that this provision is also applicable to access funds for any extraordinary expenses*.* Clause 6.4 of the Order allow for person/entity to apply to the OPP to use the funds and properties, and shall provide the UN Security Council (UNSC) all necessary documents and notices in order to seek UNSC`s permission via MOFA prior to the use of such funds and properties. 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*

1. There is law in place in relation to TFS on TF and Lao PDR adopt automatic designation for UN listing. There are also procedures on TFS implementation by RE as well as freezing of assets/ properties process to ensure implementation of TFS without delay.
2. **Recommendation 6 is rated partially compliant/largely compliant.**

Recommendation 7 – Targeted Financial sanctions related to proliferation

1. Targeted financial sanctions related to proliferation is a new requirement added to the FATF Recommendations in 2012 and so it was not assessed in the Lao PDR MER in 2011.
2. *Criterion 7.1* is **not met.** A draft decree (Draft Decree on Trade Management of Dual-Use Goods) and a draft order (Draft Order on Withholding, Freezing or Seizure of Funds Relating to Proliferation Financing) intend to address targeted financial sanctions related to proliferation but have not yet been enacted. Lao PDR has not implemented targeted financial sanctions related to proliferation to date.
3. *Criterion 7.2* is **not met.** Similar to C.7.1, Lao PDR is yet to implement targeted financial sanctions related to proliferation.
4. *Criterion 7.3* is **not met.** In the absence of prevailing legislative provisions relating to targeted financial sanctions on proliferation, Article 9 of the Agreement on Organization and Operations of the AMLIO does not appear to cover monitoring and sanctioning requirements of C.7.3.
5. *Criterion 7.4* is **not met.** Lao PDR 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 Lao PDR, do not, or no longer, meet the criteria for designation.
6. *Criterion 7.5* is **not met.** In the absence of freezing obligations for proliferation, there are no relevant measures in place to permit the addition of interest or other earnings due, or to make a payment due under a contract entered into prior to designation.

Weighting and Conclusion

1. Lao PDR has initiated formal action to draft a decree and an order to address requirements relating to targeted financial sanctions on proliferation. These provisions are still in the draft form and yet to be enacted.
2. **Recommendation 7 is rated non-compliant.**

[Lao PDR: This criterion will be updated in next draft to consider the recently enacted Order related to proliferation financing. Please provide a translated copy of this order.]

Recommandation 8 – Non-profit organisations

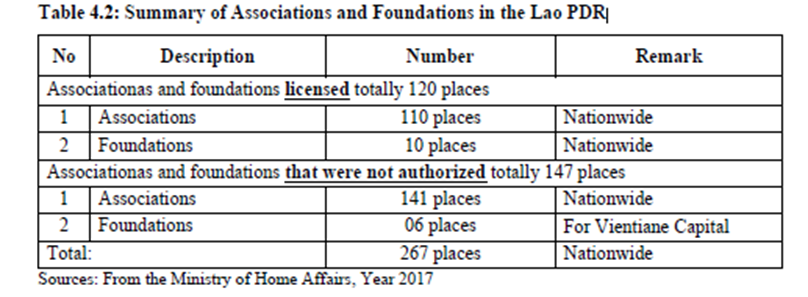
1. In its 2011 report, Lao PDR was rated partially compliant with the former SRVIII. The main deficiencies identified in the report were that 1) there was no outreach to the sector on AML/CFT; 2) registration requirements did not include obligations to record the details of the owner/controller of NPOs; 3) reporting obligations were unclear and did not extend beyond five years; 4) limited monitoring occurred due to staffing constraints; and 5) NPO regulations were new and therefore difficult to assess effectiveness.
2. NPOs in Lao PDR can be categorised into two types as follows:

* Foundation which is a non-profit seeking social organization registered as a legal entity with its own capital and assets working for public interest in cultural, educational, environmental, health, sports, scientific, charity, humanitarian and other purposes.
* Associations that are established and operate under this Decree refer to civil society organizations established on a voluntary basis, have regular operation, non-profit intention, provide mutual assistance, protect the legitimate rights and interests of the associations, members of associations or communities, and contribute to country’s socio-economic development.
* Foreign NPOs (International NGOs) are an international or foreign NPO with legal status, which desires to provide developmental assistance or humanitarian aid without the pursuit of profit.
* Details of the NPO are as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Type of NPO** | **Laws/regulation** | **Supervisor** | **Total (2017)** |
| Associations | Decree on Associations |  | 82 |
| Foundations | Decree on Foundations | MOFA | 33 |
| Foreign NPOs | Decree on INGOs | MOFA | 145 |

[Lao PDR: The statistics provided as Annex 22 and 23 are significantly lower in number than in 2017 in the table below. Is there a reason for this? Annex 22 lists a number of supervisors as “Governor and relevant department” could you please update this table with exactly which agency supervises these associations please.

Lao PDR: What agency is responsible for the registration/licensing of NPOs?]



1. *Criterion 8.1* is **not met/partly met.**
2. *Criterion 8.1(a) is* **not met.** The NRA includes a very limited assessment of the NPO sector operating in Lao PDR. Lao PDR has not identified which subset of NPOs fall within the FATF definition or used all relevant sources of information, in order to identify the features and types of NPOs likely to be at risk of TF abuse. Lao PDR is in the process of developing an NPO risk assessment for the purposes of risk-based approach to monitoring.
3. *Criterion 8.1(b)* is **not met.** Overall the NRA assessed the TF risk in Lao PDR to be low. Lao PDR has not identified the nature of threats posed by TF to at-risk NPOs, or how/whether terrorist actors abuse those NPOs.
4. *Criterion 8.1(c)* *is* **not met/partly met.** Whilst the NRA does provide a very limited risk assessment of the NPO sector, the risk assessment is not comprehensive and does not identify high-risk NPOs. Lao PDR has not reviewed the adequacy of measures, laws and regulations relating to NPOs in order to be able to take proportionate and effective actions to address the risks identified. The Decree on Associations was implemented in late 2017. Articles 60- 72 outline the rights and duties of managing agencies including examining regulations in relation to financial management, providing advice on implementation and participation in the formulation of policies and regulations in relation to association matters. Articles 39, 41 and 42 of the Foundations Decree also set out rights and duties of managing agencies such as to disseminate and advise on the implementation of policies, laws and regulations pertaining to foundations. Currently, AMLIO and MOHAs are working together for the amendment of sub-legislations in order to streamline AML/CFT supervision strategy and approach for the NPOs.

[For Lao PDR: Was a review of the measures, laws and/or regulations conducted when drafting/implementing the Decree on Associations? Given that there are multiple supervisors in place, the coordination of supervision in terms of number of reviews conducted and the specific supervisors for the foundations and associations need to be articulated clearly. ]

1. *Criterion 8.1(d) is* **not met.** Lao PDR has not yet conducted a periodic re-assessment of the NPO sector, however Lao PDR have indicated an assessment of risks in the sector is underway, to be completed in 2021.
2. *Criterion 8.2 is* **partly met.**
3. *Criterion 8.2(a) is* **met.**Lao PDR has clear policies to promote accountability, integrity and public confidence in the administration and management of NPO including strict requirements for the management of NPOs, as well as annual reporting. Article 37 of the AML/CFT Law requires that NPOs operate with transparency and openness, and maintain data on internal management and record-keeping for access by reporting entities. Article 18 of the Decree of Foundations and Article 30 of the Decree on Associations requires NPOs to file annual reports on their organisation and expenditures, as well as to strictly abide by laws pertaining to auditing. Both Decrees require that NPOs operate on the principles of transparency and openness.Foreign NPOs are required to be accountable for their activities according to Lao PDR law and regulations, share financial reports with Lao PDR authorities and undergo monitoring and evaluation by MOFA (Articles 18 and 26 of the Decree on INGOs, No 013PM).
4. *Criterion 8.2(b) is* **not met/partly met.** Whilst there is some outreach to the NPO sector, there does not appear to be any outreach or educational programmes to raise awareness among NPOs and the donor community about the potential vulnerabilities of NPOs to TF. In 2016, 2018 and 2019, the MOHA, in collaboration with other competent authorities, disseminated legislation on the social supervision organisation and the establishment of associations and foundations to government employees, associations and foundations. The MOHA conducted training for competent authorities on the establishment of associations and in 2019, on instructions on the implementation of the decrees on associations and foundations, including approval to receive funds, assets and experts from foreign jurisdictions.

[Lao PDR: Annex 28 provides an action plan on implementation with NPOs, and says an awareness workshop on AML/CFT was completed in 2020. Please provide details of this workshop: who conducted, who participated, what areas were covered, etc.]

1. *Criterion 8.2(c) is***not met/partly met*.*** Whilst the training conducted in 2019 may have involved some best practises on establishing NPOs and on receiving funds and assets, it is not clear whether any work has been done with NPOs to address TF risk and vulnerabilities to protect from TF abuse. In 2016, AMLIO did however send a notice to financial institutions listing red flag indicators relating to NPOs and NPO transactions.
2. *Criterion 8.2(d) is* **not met/partly met.** There is no specific requirement for NPOs to conduct transactions through regulated channels. The Decree on Foundations defines foundations as legal entities operating continuously with bank accounts (Article 3.1) and the Decree on Associations defines an association as having a proper bank account (Article 3.6). The Decree on INGOs makes no mention of foreign NPOs operating a bank account.
3. *Criterion 8.3 is* **not met/partly met.**The NPOs are supervised and monitored as the responsibilities of supervisory bodies was set out in the Decree on Foundations, Article 39-42 includes provisions relating to the inspection of CSOs under Article 45 and the Decree on Association, Article 59-60 and 74-75. In addition, the monitoring and inspections provision on CSOs operations are also set out in the Law on AML/CFT Article 36. However, there is no information on how risk based approach is being applied for the supervision of the NPOs by the respective supervisors...RBA has yet to be implemented for NPO sector but Lao PDR has recently developed an action plan for RBA implementation in 2020 and expected to be completed in end 2021.

How are onsite/offsite inspections prioritised?

How does a supervisor determine how often, or which NPO to inspect?]

1. *Criterion 8.4 is* **partly met.**
2. *Criterion 8.4(a) is* **not met/partly met.**The monitoring and inspection provision to ensure NPO operations comply with the requirements is stated in the Law on AML/CFT Article 36 and 37, as well as stated in the Decree on Foundations Article 38-42 and the Decree on Association, Article 59, 74 and 75. There is no evidence that risk based measures apply to NPOs at risk of TF abuse.
3. *Criterion 8.4(b) is* **partly met/mostly met.** The sanction provision for violations by NPOs or persons were stipulated in the Article 47, Decree on Foundations, and Article 47, Decree on Association, whereas available sanctions are in the form of warning, education measures, disciplinary measures, fines or legal proceedings according to the nature of the breach. In addition, Article 77 of the Decree on Associations also stipulated measures against associations and members of the associations in the form of warning, suspension, dissolution or prosecution according to the laws. However, some of the sanctions available may not be effective, proportionate and dissuasive in relation to the some of the serious offence for violation of AML/CFT Law. For example, sanctions in the form of warning for initial violations as provided in Article 3 of the Decision on Administrative Measures Violated Regulations and Law on Anti-Money Laundering and Counter-Financing of Terrorism which may not be proportionate or dissuasive. This covers key obligations such as compliance program, KYC procedures, CDD collection of detailed customers’ data and data collection on wire transfers. Furthermore, we observed that sanction in the form of education measures may not be proportionate in relation to the serious offence such as delayed STR submission and failure to maintain confidentiality of STR.

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| --- | --- | --- | --- |
| **Article** | **Sanction type** | **Applicability** | **Offence** |
| Article 62 | Education Measures | Natural person, legal person or organization | * Delayed STR submission * Failure to maintain confidentiality of STR |
| Article 63 | Disciplinary measures | Officers | * Non-criminal |
| Article 64 | Fining measures | Natural person, legal person or organization | * Non-criminal * Violations of Article 50, 51 and 52 |
| Article 65 | 1. Warned in writing and recommended to exercise their rights and obligations;  2. Fined as per a separate regulation. | Reporting entities | * Violation of Article 18: Rights and Obligations of Reporting Entities |
|  | 1. Suspended from business operation or subject to management removal; 2. Have their business permits or licenses withdrawn; 3. Be criminally prosecuted in accordance with relevant laws fined 100,000,000kip (USD11,090) up to 2,000,000,000kip (USD22,180,000).” | Reporting entities | * Violation of Article 50 and 52 |
| **Article** | **Offence Type** | **Applicability** | **Sanctions** |
| 66 | Money Laundering | Natural persons | * <1,000,000,000Kip (<USD112,315): shall be deprived of freedom from 3-7 years, fined 300,000,000- 500,000,000 Kip (USD33,300 -USD855,500) with his/her properties to be confiscated. * >1,000,000,000 (>USD112,315) shall be deprived of freedom from 7-10 years, fined 500,000,000 Kip up to 700,000,000 Kip (USD33,300 –USD77,700), and with his/her properties to be confiscated. |
| 66 | Money Laundering | Organized group, habitual offense | * An offender shall be deprived of freedom from 10-12 years, * fined 800,000,000 Kip up to 1,000,000,000 Kip (USD 89,852 –USD112,315) and with his/her properties to be confiscated. * The act of preparation and attempt to commit an offence shall also be penalized. |
| 67 | Terrorist Financing | Natural persons | * <1,000,000,000Kip (<USD112,315): shall be deprived of freedom from 5-8 years, fined 500,000,000- 800,000,000 Kip (USD56,158 – USD89,852) with his/her properties to be confiscated. * >1,000,000,000 (>USD112,315) shall be deprived of freedom from 8-12 years, fined 800,000,000 Kip up to 1,000,000,000 Kip (USD 89,852 –USD112,315), and with his/her properties to be confiscated. |
| 67 | Terrorist Financing | Organized group, habitual offense | * An offender shall be deprived of freedom from 12-20 years, * fined 800,000,000 Kip up to 1,000,000,000 Kip (USD 89,852 –USD112,315) and with his/her properties to be confiscated. * The act of preparation and attempt to commit an offence shall also be penalized. |
| 69 | Organized criminal group and racketeering | Natural person | * Imprisonment of 3 to 6 years, * Fined 30,000,000 Kip up to 60,000,000 Kip (USD3,330– USD6,660) and with his/her properties to be confiscated. * The act of preparation and attempt to commit an offence shall also be penalized. |

[For Secretariat: This table will not be in the final document but is useful for determining scope for this draft.]

1. *Criterion 8.5 is* **partly met.**
2. *Criterion 8.5(a) is* **met.**Article 73 of the Decree of Association allows for coordination among federal and local level agencies to facilitate the monitoring, inspecting and assessing of activities of associations, and address issues in accordance with regulations. Article 43 of the Decree of Foundations allows for federal and local level agencies to coordinate prior to the approval of the establishment, merger, separation or dissolution of foundations, and these agencies to notify the status of foundation activities. The Decree on Foundations does not include a specific provision for cooperation and coordination among relevant agencies for the purposes of monitoring NPOs and sharing information. Article 37 of the AML/CFT law allows investigative authorities, reporting entities, AMLIO and other competent authorities’ access to NPO records and information.
3. *Criterion 8.5(b) is* **not met.** The Ministry of Public Security has power and responsibility to investigate TF offences as per Article 11 of the Decree of Entrust and Responsibilities in Implementing the Activities of AML/CFT. There is no specific mention of any agency tasked with the investigation of NPOs and there have not been any TF investigations on NPOs.
4. *Criterion 8.5(c) is* **met.**As stated above, Article 37 of the AML/CFT law allows investigative authorities, reporting entities, AMLIO and other competent authorities access to NPO records and information on customers, business relations and transactions.
5. *Criterion 8.5(d) is* **partly met*.***The Decree on Associations provides that where there is ‘negative phenomena’ related to associations, it is the duty of the authorised agency to consult with relevant sectors or higher authorities to address issues in accordance with the laws and regulations (Article 73). Article 86 of the Law on Criminal Procedure allows for any investigator that finds traces of any offences, that an investigation must be opened.
6. [For Lao PDR: The Decree on Associations refers to inspecting associations and addressing violations, is there a procedure or mechanism in the instance where there is suspicion of misuse of an NPO, that the inspecting authority or supervisor is required to refer the matter to the Ministry of Public Security (or other TF investigative agency/law enforcement authority) for investigation?]

[Lao PDR: Could you please provide a copy of the Guidelines for Implementation for Associations and for Foundations?]

1. *Criterion 8.6 is* **partly met/mostly met.** The AMLIO is the authority designated under Article 3 of the Agreement on Organization and Operations of the Anti-Money Laundering Intelligence Office, to respond to international requests for information relating to AML/CFT. However there is no specific reference to the handling of information requests relating to NPOs suspected of TF or other forms of terrorist support. Clause 2.2 of the AMLIO SOP detailed out the procedure on information request and exchange with foreign counterparts.

*Weighting and Conclusion*

1. Notwithstanding that the TF risk in Lao PDR is assessed as low risk based on NRA, there is no statistics to support in terms of type of NPOs that are prone to TF abuse and the nature of donations to certain entities or countries related to TF. While we acknowledged that there are dedicated supervisors for NPO, RBA has yet to be applied for monitoring of NPOs sector but we take note of the action plan for the RBA implementation which will only be completed in end 2021. In addition, while there is information maintained and reviewed by supervisors on the NPOs, there is lack of information or ongoing assessment to identify potential vulnerability and threat on terrorist financing activities in Lao PDR.
2. **Recommendation 8 is rated partly compliant/non-compliant.**

Recommendation 9 – Financial institution secrecy laws

1. Lao PDR was rated largely compliant with the former R.4 in its 2011 MER. Since then, Lao PDR has introduced a couple of legal provisions to ensure that financial institution secrecy laws would not inhibit the implementation of FATF Recommendations.
2. *Criterion 9.1* is **mostly met.** In terms of Article 32 on Confidentiality of the Law on AML/CFT, the management and staffs of the reporting entities will not be disciplined or prosecuted for disclosing customers’ secrets, if such action is done with good faith and in compliance with that law. Further, Clause 5 of Article 50 of the Law on AML/CFT prohibits natural and legal persons and organisations to conceal disuse, threaten, impede and obstruct functions of competent authorities. Articles 78, 80 and 81 of the Law on Insurance deal with disclosure of financial, confidential and business information in the insurance sector. Article 50 of the Law on Commercial Bank imposes confidentiality restrictions on present and past staff and authorized representatives of commercial banks. Confidential information can only be disclosed to the central bank, auditor and as provided for by the law and regulation.
3. However, in the absence of evidence of specific enabling legal provisions, it is not apparent whether reporting institutions could share CDD and other information among themselves as required by Recommendations 13 (correspondent banking), 16 (wire transfers) and 17 (reliance on third parties) [For Lao PDR: To Lao PDR, grateful if you could provide further such information if these powers are available.]. Although it has been stated in Article 81 of the Law on Insurance that the Ministry of Finance would arrange to disclose information to foreign financial supervisors, it is not clear whether all the other competent authorities are legally empowered to share information with their foreign counterparts.

Weighting and Conclusion

1. There is lack of clarity on the ability of competent authorities to share information domestically and internationally as well as the sharing of information between financial institutions.
2. **Recommendation 9 is rated largely compliant.**

Recommendation 10 – Customer due diligence

*Detailed CDD requirements*

1. Lao PDR was rated non-compliant for former Recommendation 5 in its 2011 MER. With the enactment of the Law on AML/CFT and introduction of the Agreement on KYC and CDD, Lao PDR has achieved significant progress with respect to CDD requirements for FIs. As specified in Article 1 of the Agreement, this Agreement issued by the Chairman of the National Committee for AML/CFT intends to expand on Articles 20, 21 and 22 of the Law on AML/CFT in order to strictly implement the work of AML/CFT at the reporting unit level to be efficient and effective. The Agreement can be considered as a “Legislation of Specific Application” laid out with the purpose for administrative supervision and is therefore an enforceable means. Article 33 of the Agreement on Violations for Offenders states that reporting units who do not carry out their duties in reporting as specified in the Agreement will face warning and fines as specified in Article 64 and 65 of the Law on AML/CFT.
2. Under the non-exhaustive definition contained in Clause 7 of Article 8 of the Law on AML/CFT, financial institutions mean commercial banks, micro-finance institutes, all forms of credit lending companies, pawnshops, leasing companies, money transfer service companies, currency exchange shops, insurance companies, securities companies, asset management companies, among others.
3. While acknowledging the progress made by Lao PDR on CDD requirements, the 2017 FUR identified major deficiencies on CDD with respect to verification timing and lack of requirement to cease transactions or business relationship in the event of failure to collect detailed data on beneficial ownership. However, the 2018 transitional FUR noted that verification timing was actually addressed in the definition of “verification” and found that former R.5 was at a level of largely compliant.
4. *Criterion 10.1* is **met.** Clause 3 of Article 52 of the Law on AML/CFT prohibits reporting entities from opening anonymous accounts whilst Article 27 of the Agreement on KYC and CDD forbids reporting units to open coded and anonymous accounts and accounts in false names.

*When CDD is required*

1. *Criterion 10.2* is **mostly met.** Article 22 of the Law on AML/CFT, Article 16 of the Agreement on KYC and CDD and Article 51 of the Law on Commercial Bank stipulate the instances when the customer due diligence should be conducted as required by the FATF (all sub-criteria of 10.2).
2. Case 1 of Article 22 of the Law on AML/CFT requires that the reporting entities must apply CDD measures to customers when providing services or undertaking transactions for new customers. In addition, as per Paragraph 1 of Article 16 of the Agreement on KYC and CDD, reporting units must carry out CDD measures when creating business relationships with their clients.
3. Case 2 of Article 22 of the Law on AML/CFT requires that the reporting entities must apply CDD measures to customers when carrying out occasional, one-off or several suspicious transactions [For Lao PDR: please verify whether this term is correct here as requirement is for several transactions not only for several suspicious transactions]. Further, as per Paragraph 2 of Article 16 of the Agreement on KYC and CDD, reporting units must carry out CDD measures when clients occasionally make transactions which have value of 100,000,000 kip (one hundred million kip) or more or equivalent. This is well below the required threshold of USD/EUR 15,000.
4. Similar to sub-criterion (b). In the absence of any specific exclusion, occasional transactions appear to include wire transactions as well. According to Paragraph 3 of Article 16 of the Agreement on KYC and CDD, reporting units must carry out CDD measures when clients occasionally transfer funds which have a value of 8,000,000 kip (8 million kip) or more or equivalent.
5. Cases 3 and 4 of Article 22 of the Law on AML/CFT respectively require that the reporting entities must apply CDD measures to customers when the transactions are complex, of high value, and show irregular characteristics and when the transactions are suspicious of money laundering or financing of terrorism. Further, in terms of Paragraph 4 of Article 16 of the Agreement on KYC and CDD, reporting units must carry out CDD measures when there is information or suspicion that making a transaction or creating business relationships of the client is money laundering and financing terrorism.
6. Case 5 of Article 22 of the Law on AML/CFT requires that the reporting entities must apply CDD measures to customers when the information identifying customers is not complete or suspected to be incorrect. In addition, the reporting entities must pay continual attention on customers to ensure that the previously provided information is up to date.

*Required CDD measures for all customers*

1. *Criterion 10.3* is**mostly met.** Articles 09, 11, 15, 21, 23 and 24 of the Agreement on KYC and CDD entail comprehensive customer identification and verification requirements for reporting units including FIs. These provisions cover all the expected types of customers, i.e., permanent and occasional customers and natural and legal persons and legal arrangements. Articles 9 and 11 specify know your customer requirement for firstly, legal persons and secondly for legal arrangement or legal entity arrangement, respectively. Further, Article 21 of the Agreement on KYC and CDD covers CDD requirements for legal arrangements and legal entity arrangements. As these provisions are not confined to domestic entities, they appear to cover foreign legal arrangements as well. [For Lao PDR: please confirm this] Further, similar to Criterion 10.11, Lao PDR’s claims that by far, there are no Trust companies operating in Lao PDR. As per the explanation given in Article 5 for the terms “verification of identity”, it is apparent that the FIs are legally obliged to complete verification process prior to providing services or the commencement of business relationship. Further, Article 15 of the Agreement on KYC and CDD requires the reporting units to use measures for identification of customers and checks to verify information and evidence or documents that the customer uses to verify themselves from reliable sources. However, there is no specific requirement for the reliable source to be independent although it is implied.
2. *Criterion 10.4* is **met.** Article 19 read together with Article 15 of the Agreement on KYC and CDD require FIs to identify, verify identification and authorization of persons claimed to be acting behalf of a customer.
3. *Criterion 10.5* is **partly met.** Articles 15 and 21 of the Agreement on KYC and CDD and article 24 of AML/CFT Law make it obligatory for FIs to identify and verify beneficial owners of customers. Nevertheless, Articles 15 and 21 of the Agreement on KYC and CDD do not appear to cover legal persons and cover “legal arrangements and legal entity arrangement” only. Further, as highlighted in paragraph 22 (b) of the Lao PDR 3rd Transitional FUR of 2018 (page 5), the requirement of ceasing services or business relationship in the event of failure to collect detailed customer data as required by Article 23 of the Law on AML/CFT has not been extended to cover ultimate beneficial owners.

[For Lao PDR: please see comment under 10.12: can you confirm that the Lao definition of beneficiaries of customers covers all situations envisaged by the FATF definition of beneficial owner, as the terms beneficiary and beneficial owner are sometimes used interchangeably but do not necessarily mean the same thing.]

1. *Criterion 10.6* is **partly met.** Article 24 of the Law on AML/CFT requires the reporting entities to collect data on customers’ goals and objectives in using the services provided by or establishing business relations with their institutes. However, Clause 3 of Article 15 of the Agreement on KYC and CDD require the use of necessary measures in appropriate situations in order to request information on the objectives and type of business relationship. This appears to limit the requirement for appropriate situations and fail to cover all circumstances as required by the Criterion.

[For Lao PDR: can you elaborate on the “appropriate situations” in which this would apply? 10.6, as written, requires the institution to understand the nature and purpose of the relationship in all circumstances and, where appropriate, obtain information on it. Can you confirm this is the case under the Lao law?]

1. *Criterion 10.7* is **mostly met.** Paragraph 2 of Article 22 of the Law on AML/CFT addresses the requirement of ongoing due diligence. It covers transaction scrutiny, maintenance of up-to-date information, etc. The reporting entities are required to pay special attention on business dealings or transactions with natural persons, legal persons or organisations in a country where law on AML/CFT does not exist or exists, but the enforcement of the law is not strict. Further, Articles 25 and 26 of the Agreement on KYC and CDD respectively detail ongoing monitoring of CDD and ongoing monitoring of transactions. Article 2 of the Securities Sector Instructions further elaborate on ongoing due diligence for the securities sector with respect to indicators of suspicious transactions.

*Specific CDD measures required for legal persons and legal arrangements*

1. *Criterion 10.8* is **partly met.** Article 21 of the Agreement on KYC and CDD requires REs to understand the nature of business, ownership and controlling structure of customers who are legal arrangements and legal entity arrangements. This provision does not appear to cover legal persons.
2. *Criterion 10.9* is **partly met.** Article 21 of the Agreement on KYC and CDD requires REs to identity and verify legal arrangements and legal entities arrangements by obtaining the information elaborated therein. [For Lao PDR: can you confirm that Article 21 covers all three sub-criteria under 10.9 as it is described here? There are some challenges in the unofficial translation that make it difficult to determine.] Accordingly, reporting entities must identity, check verification and make understand the nature of business customers as legal arrangement and legal entities arrangement including the structure of ownership and authority to control the business.
3. *Criterion 10.10* is **not met.** Similar to C.10.5, requirements relevant to beneficial owners contained in Articles 15 and 21 of the Agreement on KYC and CDD do not appear to cover legal persons and cover “legal arrangements and legal entity arrangement” only.
4. Criterion 10.11 is **TBC.** Lao PDR’s claim that there are no Trust companies operating in Lao PDR was well noted. Nonetheless, the Agreement on KYC and CDD contains provisions relevant to beneficial owner requirements for legal arrangements.

[For Lao PDR: Can you clarify whether (a) there is a prohibition on Trust companies, and (b) there are trusts, including foreign trusts, present in Lao? While the TC submission asserts no Trust companies operating, 10.11 is about the trusts themselves. Is it accurate to say that trusts are not present in Lao PDR, even foreign trusts? Also, could you confirm the meaning of “by far”? Do you mean “so far” in that Lao PDR has not yet encountered a trust company operating in Lao PDR? Does this includes foreign trusts.]

1. Clause 2 of the second paragraph of Article 15 of the Agreement on KYC and CDD states that “identification of the beneficial owner of customer and perform the appropriate measures to check and verify the identity of beneficial owner for legal arrangement and legal entities arrangement including the ownership structures and the control of customer of the legal arrangement and legal entities arrangement”.
2. As provided for in Article 21, reporting entities must identity, check verification and make understand the nature of business customers as legal arrangements and legal entities arrangements. Clause 2 requires reporting entities to identify the customer’s beneficial owner and establish appropriate measure to check the information and evidence that those customers provide.
3. Clause 2.1 of the Article 21 of the Agreement on KYC and CDD stipulates the cascading measures to be used in identifying beneficial owners of customers who are legal entities arrangements.
4. With respect to legal entities arrangements,
5. Clause 2.1.1 of the Article 21 of the Agreement on KYC and CDD – “requesting the evidence of identity's beneficial owner and power in controlling that legal person such as the person holds more than 25% (twenty five percent) in that legal person”
6. Clause 2.1.2 – “if there suspected as specified in no.2.1.1 of this article that individual has a power for controlling was a beneficial owner or if there are not the identification as specified in no. 2.1.1 of this article, the reporting entities must identify whose have a power to control of that legal person by other method”
7. Clause 2.1.3 – “in case the reporting entities cannot identify as specified in no. 2.1.1 and 2.1.2 of this article, the reporting entities must identify and using appropriate measure to verify information and document of customer who has the high position in that legal person”
8. As provided for in Article 2.2, with respect to legal arrangements, “identify its founders, managers, supervisors, beneficial owners as agreements or contracts in which to later beneficial owners and the person with the power to control or ownership of funds or property which the legal arrangement that having power management, control, use the results and conducting on buy - sell or administration;” (Article 2.2.1) and “in case the customer or controller has been an enterprise that registered in security exchange, which transparency and disclosure by relevant laws to identify by considering relevant information with the organization of government who has the duty on registered or registered enterprises in security exchange or other sources of information that can be trusted” (Article 2.2.2).

[For Lao PDR: Does this mean that the law nonetheless provides for KYC and CDD to be applied to trusts in the event that they are found in Lao? It would be useful for us to have further information about the lack of trusts in Lao PDR and how the legislation applicable to trusts is implemented.]

*CDD for Beneficiaries of Life Insurance Policies*

1. *Criterion 10.12* is **partly met.** Article 22 of the Agreement on KYC and CDD provides for the procedure to be followed in identifying final beneficiaries of insurance contracts in addition to the CDD requirements contained in Article 15.
2. *Criterion 10.12* is **TBA.** specifically requires the verification of the identity of the beneficiary to occur at the time of the payout. It is not clear whether Article 15 read with Article 5 would apply for verification purposes, if so, the verification should take place prior to the commencement of business relationship. This may be practically impossible with respect to beneficiary(ies) that are designated by characteristics or by class. In the absence of any special reference in this regard, it is not clear the applicable timing of verification.
3. *Criterion 10.13* is **mostly/partly met.** As set out in Article 22 of the Agreement on KYC and CDD, high risk beneficiaries of insurance contracts entail enhanced measures. Even though the requirement to verify high-risk beneficiary/beneficial owner of the beneficiary is there, it is not clear whether the verification should take place at the time of payout.

*Timing of verification*

1. *Criterion 10.14* - is **TBA (depending on the clarification of Lao PDR).** As defined in Article 5 of the Agreement on KYC and CDD, Verification of identity means: procedures that reporting units specify for their customers to show their identity every time by giving evidence or documents in order to verify their identity as legally correct before giving service or creating business relationships, which may be individuals, legal entities or organizations both domestic and foreign as specified in Article 7 of this agreement.
2. Accordingly, it appears to be mandatory for REs to verify the identity of the customers and their beneficial owners prior to providing services and commencing business relationships. Further, Lao PDR does not appear to accommodate delayed verification, thus the requirements contained in the latter part of the Criterion 10.14 do not arise.

[For Lao PDR: Please confirm that REs are not allowed to carry out delayed verification. If that is the case, then most material submitted under this criterion are irrelevant.]

1. *Criterion 10.15* is **TBA.** Similar to C 10.14, verification should take place before giving service or creating business relationship. As such, the requirement to adopt risk management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification does not arise. [For Lao PDR: Please see comment at C. 10.14.]

*Existing customers*

1. *Criterion 10.16* is **met.** Article 24 of the Agreement on KYC and CDD specifies measures of customer due diligence for Existing Clients. In terms of the said Article, reporting entities must consider taking CDD measures in accordance with Article 15 to existing customers in appropriate time on the basis of the significance and the level of customer's risk. REs are also to consider when they should take CDD measures for exiting customer and whether the receiving information is enough. Paragraph 4 of Article 15 also refers to using of CDD measures on existing customers.

*Risk-based approach*

1. *Criterion 10.17* is **TBD (awaiting translation)**. Article 12 of the Agreement on KYC and CDD requires reporting units to consider the intensity of CDD measures for customers in accordance with their ML/TF risks. When the risk is higher, “deep” CDD measures should be implemented. Such measures including obtaining of further information and senior manager’s approval are specified in Article 17.[For Lao PDR: To Lao PDR: can you elaborate on the meaning of the terms “deep”, “cursory” and “thorough” measures in the unofficial translation. It is not clear from the translation provided that these categories sufficiently cover the requisite level of CDD or EDD].
2. *Criterion 10.18 is* **mostly/partly met****(awaiting translation).**Simplified CDD measures can be adopted for low risk customers as per the risk assessment which is done accordance with Article 14 (and considers risks associated with customer, product, service, delivery channel and geography). Management processes are laid down in Article 18 of the Agreement on KYC and CDD. Where a reporting entity suspects transactions or activities involve or relate to money laundering or financing of terrorism, the reporting entity must increase the risk to high and conduct the deep measures customer due diligence immediately.

*Failure to satisfactorily complete CDD*

1. *Criterion 10.19* is **partly met.** Article 23 of the Law on AML/CFT stipulates that in case of failure to collect detailed data on customers, reporting entity must cease its services provided to or any business relations with that customer and must regard as suspicious transaction and then report it to AMLIO [For Lao PDR: Can you confirm whether this covers the inability to obtain information regarding existing customers?]. However, this requirement has not been extended for beneficial owner details.
2. Further, Article 15 of the Agreement on KYC and CDD sates that “Reporting units must perform measures for customer due diligence for the new customers or the existing customers with special care through the use of these measures so that the customer does not realize or know that they are facing measures for customer due diligence. In the event that it is found that their measures for customer due diligence are a warning to customers that they are facing such measures, reporting entities may consider the ending of such measures for customer due diligence and report the suspicious transaction report of money laundering or financing of terrorism to the AMLIO.” However, this does not cover the requirement of terminating the transaction or business relationship and consider escalating an STR as required by C.10.19.
3. *Criterion 10.20* is **not met.** Relevant provisions for tipping-off are contained in Article 28 of the Agreement on KYC and CDD. From the terminology used, it appears that RE staffs are forbidden from tipping-off customers of any ML/TF suspicion or the fact that any reporting would be occurring on the customer. However, there is no specific provision to permit FIs not to pursue the CDD process and instead to require them to file an STR, in cases where they form a suspicion of money laundering or terrorist financing, and they reasonably believe that performing the CDD process will tip-off the customer.

*Weighting and Conclusion*

1. From its initial rating of non-compliant for former R. 5 at the 2011 MER, Lao PDR has made a substantial progress by introducing most of the key CDD requirements for FIs. Being reporting entities under Article 17 of the Law on AML/CFT, FIs are required to take aforementioned CDD measures including identification and verification of identity of customers, their beneficial owners and person purporting to act for the customer, keeping CDD information up to date and relevant, application of CDD on existing customers on the basis of materiality and risk, enhanced CDD in case where ML/TF risks are higher, etc. Lao PDR meets most of the essential CDD criteria for FIs, however, deficiencies still remain regarding lack of requirement:
2. to cease services or business relations in the event of failure to collect beneficial ownership details;
3. on insurance beneficiary identity verification timing; and
4. to permit FIs not to pursue CDD process and instead file an STR where FIs form an ML/TF suspicion and cannot complete CDD without tipping off the customer.
5. **Recommendation 10 is rated Partially compliant/TBA.**

Recommendation 11 – Record-keeping

1. Lao PDR was rated partly compliant for former Recommendation 10 in its 2011 MER. As highlighted in the report, the legal obligations relating to record keeping were limited to transaction records for financial institutions regulated by the BOL. Subsequent to the introduction of the Law on AML/CFT of 2014, the 2015 follow-up report concluded that Lao PDR has addressed the major legal gaps for former R.10, although there was room for further improvement. The 2015 FUR considered Lao PDR’s compliance with former R.10 was at a level essentially equivalent to largely compliant.
2. *Criterion 11.1* is **met.** - Clause 2 of Article 28 of the Law on AML/CFT requires REs to keep records on transaction at least for five years from the date of transaction undertaking. As per Article 50 of the Law on Accounting, implementing accounting entities should maintain records of all accounting documents for minimum of 10 years. This obligatory period is extended for another 10 years for accounting documents concerning any contract after the completion of the contract. Article 68 of the Law on Commercial Banks provides that document, transaction information including database shall be stored/kept for at least 10 years.
3. *Criterion 11.2* is **mostly met.** - Similar to C. 11.1, Clause 1 of Article 28 of the Law on AML/CFT requires REs to keep copies of identification documents of customers and beneficiaries at least for ten years after the end of the business relations with the customer. Article 68 of the Law on Commercial Banks also contains relevant provisions, however, there is no specific reference to occasional customers.
4. *Criterion 11.3* is **mostly met.** –In terms of Article 50 of the Law on Accounting, all implementing accounting entities are required to maintain records of all accounting documents for a minimum of 10 years. With regard to accounting documents concerning any contract, such documents shall be kept for another 10 years after contract completion. Article 68 of the Law on Commercial Banks provides that document, transaction information including database shall be stored/kept for at least 10 years. Transaction records which should be kept under the existing legal provisions with respect to implementing accounting entities and commercial banks as mentioned in C. 11.1, appear to be sufficiently comprehensive for the purpose of reconstruction of individual transactions to be used as evidence for criminal activity prosecution. Further, Article 155 of the Securities Law requires the securities exchange, securities depository, share issuers and corporate bond issuers, listed companies, securities intermediaries and other relevant parties shall maintain information and documents relating to its business operation such as securities transaction, information about securities, information about shareholders and financial statements for the period of at least ten years after the end of the business operation. Furthermore, Draft Agreement on Payment Services intends to impose similar obligations on payment service participants by Article 47.
5. Accordingly, it appears that apart from the general requirement on record keeping on implementing accounting entities of all sectors imposed by Law on Accounting is supplemented by sectoral requirements of banking and securities sectors, in the future, in payment services as well.

*Criterion 11.4* is **met**.- Article 37 of the Law on AML/CFT requires legal persons, organisations and NPOs to make their own internal data available to competent authorities. Apart from the Law on the Bank of Lao PDR (Article 9 – Clause 7), sector-specific requirements are contained in Law on Commercial Banks (Article 99 – Clause 2), Law on Securities (Article 188 – Clause 15), Regulation on Reporting and Disclosure (Article 10), Law on Insurance (Article 96), Law on Payment System (Article 53) and Decree on Entrust (Article 4).

Weighting and Conclusion

1. Lao PDR has put most of the record keeping requirements in place. Transaction, CDD and other information and records are generally required to be kept well above the minimum period specified by the criteria. Further, there are enabling provisions for domestic competent authorities to access such records swiftly.
2. **Recommendation 11 is rated largely compliant.**

Recommendation 12 – Politically exposed persons

1. Lao PDR was rated non-compliant for former Recommendation 6 in its 2011 MER as there was no legislative, regulatory or other enforceable requirement in respect of politically exposed persons. Provisions relating to PEPs have been brought in by the Law on AML/CFT in 2014 and the Agreement on KYC and CDD in 2016. Article 8 of the Law on AML/CFT defines PEPs as foreign politicians, state officials, and officials of international organisations and also to include their family members and close associates.

[For Lao PDR: To Lao PDR: The definition of politically exposed persons under the FATF recommendations is intended to cover many categories of individuals, as follows:

Foreign PEPs are individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.

Domestic PEPs are individuals who are or have been entrusted domestically with prominent public functions, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.

Persons who are or have been entrusted with a prominent function by an international organisation refers to members of senior management, i.e. directors, deputy directors and members of the board or equivalent functions.

Article 8 defines foreign politicians and state officials as “persons who are or were in positions, trusted, and playing important roles” Can you confirm that the definition under the Law on AML/CFT would cover all categories of PEPs required under the recommendations, including for instance military and judicial officials? Is there any guidance available that would elaborate on who, specifically, is considered a PEP under the definition in the Law on AML/CFT? The Agreement on KYC references 8, 12, 13, 14, and 15 of the AML Law, but these provisions do not appear to provide any further specificity.]

1. *Criterion 12.1* is **partly met.** Article 25 of the Law on AML/CFT require REs to have an appropriate risk management system to ascertain whether customers or beneficiaries are foreign PEPs. As provided for in this Article, REs need to obtain permission of the board of directors or senior executives to initiate or continue transactions with PEPs, take appropriate measures to identify sources of funds or properties and continuously monitor business relations and transaction of PEPs. Article 20 of the Agreement on KYC and CDD further strengthens the above provision. However it is not clear that the definition of PEPs covers all categories required by the standards.
2. *Criterion 12.2 is* **partly met**. REs are also required to take the steps outlined in c12.1 for “state offcials” but it is not clear whether this definition covers all of the categories of domestic PEPs required by the standards.
3. *Criterion 12.3* is **partly met.** the obligations that apply to PEPs apply equally to family members and close associates, but the lack of clarity regarding the comprehensiveness of the definition fo PEPs has a cascading effect on this criterion.
4. *Criterion 12.4* is **partly met**. The requirement to take reasonable measures to determine whether the beneficiaries and/or, where required, beneficial owner of the beneficiary are PEPs in relation to life insurance is specified in Clause 2 of the second paragraph of Article 22 of the Agreement on KYC and CDD. However, lack of clarity regarding the comprehensiveness of the definition fo PEP has a cascading effect on this critierion.

*Weighting and Conclusion*

1. Lao PDR meets some of the criteria with respect to PEPs, but there is a lack of clarity regarding whether the definition cover all categories of PEPs required by the standards. This deficiency affects all criteria.
2. **Recommendation 12 is rated partly compliant.**

Recommendation 13 – Correspondent banking

1. In 2011 MER, Lao PDR was rated non-compliant with the former Recommendation 7. The report concluded that there was no specific legal requirement or enforceable mean that address the requirement on cross border correspondent banking relationships.
2. *Criterion 13.1* is **partly met.** Provisions relation to dealings with correspondent banks are laid down in Article 26 of the Law on AML/CFT. It requires REs, *inter alia*, to gather data on the nature of business and operations of correspondent banks, assess the credibility, management and audit of it based on the disclosed information and assess the AML/CFT implementation of it. However, there is no requirement to determine from publicly available data the reputation of respondent bank, quality of supervision including whether it has been subject to a ML/TF investigation or regulatory action as expected by Criterion 13.1. Further, even though REs are required to obtain senior manager’s approval to conduct transactions or relationships with high-risk customers as provided for in Clause 2 of Article 17 of the Agreement on KYC and CDD, there is no specific requirement to obtain such approval prior to establishing new correspondent relationships as required by the Criterion.
3. *Criterion 13.2* is **not met.** There is no explicit requirement for FIs with respect to “payable through accounts”, to satisfy themselves that the respondent bank has performed CDD obligations of the customer and the ability of FI to obtain such CDD details from the respondent bank.
4. *Criterion 13.3* is **met.** Clauses 1 and 2 of Article 52 of the Law on AML/CFT prohibits REs from having dealings with anonymous banks, financial institutions, legal persons or organisations and having dealings with banks abroad that do not have regulations on AML/CFT. Article 26 of the Law on AML/CFT specifically states that if corresponding banks have business relations or transactions with shell banks or their subsidiary, the reporting entities shall not establish or continue business relations with such corresponding banks or their subsidiary.

Weighting and Conclusion

1. While general requirements have been established, there is neither specific requirement for FIs to fully understand AML/CFT compliance of respondent banks nor any requirement for FIs to obtain approval from senior management before establishing new correspondent relationship. There is also an absence of requirements concerning “payable through accounts”. Nevertheless, requirements pertaining to shell banks are present.
2. **Recommendation 13 is rated partially compliant.**

Recommendation 14 – Money or value transfer services

1. Lao PDR was rated non-compliant with former SR. VI. The 2011 MER noted that there was no comprehensive licensing requirement or legal requirement for list of agents.
2. *Criterion 14.1* is **mostly met.** As set out in Article 5 of the Decision on supervision of MVTS, natural persons, legal persons or organizations both local and foreign that seek to establish MVTS have to submit the application letter to industry and commerce sector as specified in the Law of enterprise and receive authorization from the Bank of the Lao PDR. As per the definition contained in Article 3, Money Value Transfer Service “MVTS” means financial service such as: receiving cash, bearer negotiable instruments or deduct money in the account for electronic transfer through the banking service or other type method such as: communication, text message, transfers or through account payment network as a part of money value transfers service.
3. Article 19 of the Decision on supervision of MVTS prohibits natural persons, legal persons or organizations to operate business or money transfer service without the authorization of Bank of the Lao PDR.
4. It is noted that Lao PDR has drafted and approved an Agreement on Payment Service which intends to cover detailed licencing procedure for MVTS providers. The procedure for such authorization by the Payment System Management Department is laid down in Part III of the Agreement on Payment Service.
5. . [To Lao PDR: is this agreement still in draft, or has it been finalised?]
6. *Criterion 14.2* is **not met.** As mentioned in C.14.1, Article 19 of the Decision on supervision of MVTS prohibits natural persons, legal persons or organizations to operate business or money transfer service without the authorization of Bank of the Lao PDR. However, the general measures contained in Article 56 against violators of the Decision who cause damage to public and the society do not seem comprehensive enough to meet requirements of the Criterion. Relevant provisions for Lao PDR authorities to identify and curb such illegal entities and to apply proportionate and dissuasive sanctions are lacking.
7. *Criterion 14.3* is **met.** MVTS companies are subject to the provisions of the Law on AML/CFT as they are included in the definition of financial institutions as contained in Article 8. Further, Article 17 of the Decision on supervision of MVTS states that MVTS providers and Agents shall comply with the obligations as defined in the AML/CFT law, such as KYC, CDD, STR of money laundering and terrorist financing and complied with relevant regulations.
8. *Criterion 14.4* is **mostly met.** As provided for in Article 11 of the Decision on supervision of MVTS, the MVTS providers are able to extend the Agents in case of having fit and proper supervision system and regulations and shall be authorized by Bank of the Lao PDR. The appointment of agents is supplemented by Article 37 of the Agreement on Payment Services.

[For Lao PDR: Please provide further information about the status of the draft Agreement and the procedures that are or will be in place for licensing or registration].

1. *Criterion 14.5* is **not met.** As noted in C.14.3, Article 17 of the Decision on supervision of MVTS requires agents to comply with AML/CFT obligations. However, there is no specific requirement for MVTS providers that use agents to include them in their AML/CFT programme and monitor them for compliance with that programme.

*Weighting and Conclusion*

1. There remain significant gaps in obligations with regard to MVTS providers. Absence of requirement to identify illegal MVTS providers and to apply appropriate sanctions; and specific requirements in relation to agents of MVTS providers are considered as key deficiencies.
2. **Recommendation 14 is rated partly compliant.**

Recommendation 15 – New technologies

1. In 2011 MER, Lao PDR was rated non-compliant with former R.8. The report concluded that Lao PDR did not have specific legislation or requirement in relation to the misuse of technological developments in ML or FT, or to address any specific risks associated with non face-to-face transactions.
2. As per the Notice on prohibition on giving Service on Crypto Currencies, the Cabinet of the Bank of the Lao PDR prohibits the financial institutions to own, operate a business, or be involved in supporting a Crypto currency business operation. It is noted that Lao PDR is yet to perform risk assessment on virtual asset and VASPs owing to this reason. It is not clear whether the prohibition covers all virtual assets as defined in FATF Recommendations. However, it is assumed that Lao PDR prohibits virtual assets and accordingly, only Criteria 15.1, 15.2, 15.3(a), 15.3(b), 15.5 and 15.11 were assessed, hereunder.

[For Lao PDR: Please confirm whether Crypto currency cover all virtual assets as defined in the FATF Recommendations]

1. *Criterion 15.1* - is **partly met.** In the absence of evidence, it is not clear whether Lao PDR has taken steps to assess the ML/TF risks associated with new products, technologies, delivery channels and practices across the financial sector and institutions (It is not apparent from the 2018 NRA report). However, there are specific provisions with respect to REs. Article 12 of the Agreement on KYC and CDD sets out *inter alia* that reporting units must assess and manage risk on the basis of at least identifying, valuing, monitoring and reducing risk of ML and TF which may arise in themselves, for instance existing or new products, existing or new methods for conducting business, methods or procedures in servicing or conducting business, the use of new technology in servicing or conducting business. If risks are found, there must be appropriate measures in order to reduce the risk of money laundering and financing of terrorism before servicing, conducting business and creating business relationships with new and old clients.
2. *Criterion 15.2* is **mostly met.** Similar to C.15.1, relevant provisions are contained Article 12 of the Agreement on KYC and CDD. Explicit provisions are lacking to the effect that the risk assessment should be undertaken prior to the launch or use of such products, practices and technologies, although it is implied as risk mitigation measures should be taken prior to servicing, conducting business and creating business relationships with new and old customers.
3. *Criterion 15.3* is **not met.** Lao PDR is yet to perform risk assessment on virtual asset and VASPs. As such, Lao PDR does not meet the sub-criteria (a) and (b) of this Criterion.
4. *Criterion 15.4* - [Analysis pending further information from Lao PDR confirming the prohibition of VASPs and VAs]
5. *Criterion 15.5* is **not met.** As Lao PDR is yet to perform risk assessment on virtual asset and VASPs, it appears that Lao PDR is yet to take action to identify natural or legal persons that carry out VASP activities without the requisite license or registration, and apply appropriate sanctions to them.
6. *Criterion 15.6 –15.10* - [Analysis pending further information from Lao PDR confirming the prohibition of VASPs and VAs]
7. *Criterion 15.11* is **not met.** As Lao PDR is yet to perform risk assessment on virtual asset and VASPs, it is not clear whether Lao PDR is in a position to provide international cooperation in relation to virtual assets as required by Criterion 15.11.

Weighting and Conclusion

1. Lao PDR has not met the essential criteria as it has not adequately assessed the risks associated with new technologies and virtual assets. It has a regime that somewhat addresses the requirements on FIs with respect to new technologies as per Criteria 15.1 and 15.2. There is a confusion whether the prohibition imposed on crypto currencies extends to cover each and every virtual asset. In any event, in the absence of a proper risk assessment on virtual asset and VASPs, Lao PDR is unable to meet requirements set out by other relevant criteria.
2. **Recommendation 15 is rated non-compliant.**

Recommendation 16 – Wire transfers

1. Lao PDR was rated non-compliant for former SR. VII at its 2011 MER. The report concluded that no specific laws, regulations or other enforceable means existed concerning wire transfers with respect to obligations of the ordering, intermediary and beneficiary financial institutions and also addressing incoming cross border wire transfers. As Lao PDR had not implemented any legal requirements, there were no corresponding measures to monitor compliance and impose sanctions.
2. *Criteria 16.1* is **mostly met.** Article 27 of the Law on AML/CFT addresses basic requirements with respect to obligations of Originator, intermediary and beneficiary financial institutions. It states, *inter alia* that in each service of wire transfer, financial institution must gather and check the information on name and surname, address, account number, and purpose of the transferor’s transfer. Detailed requirements on the information to be collected on originator and beneficiary for international wire transfers are contained in Article 5 of the Decision on the Reporting of Wire Transfers. Article 7 provides that the ordering financial institutions must ensure that the wire transfer has complete information as defined in Article 5 for both the originator and beneficiary. Although, Article 27 of the Law on AML/CFT states that FI must gather and check the information..., the Decision on the Reporting of Wire Transfers does not specifically require that the required originator information to be accurate (verified by the ordering FI). Article 2 of the Decision stipulates that wire transfers in exceeding the specified limit are wire transfers equalling 8,000,000 kip or more per instance. However, aforesaid obligations of the ordering FI are not limited to the wire transfers exceeding that threshold.

[For Lao PDR: Can you elaborate on what the impact is of the de minimus threshold if the obligations apply to wire transfers of all amounts? Where does the de minimus threshold come into play?]

1. *Criterion 16.2* is **not met.** There are no specific provisions to address instances where several individual cross-border wire transfers from a single originator are bundled in a batch file for transmission to beneficiaries.
2. *Criterion 16.3* is **TBA**. In terms of Article 7 of the Decision on the Reporting of Wire Transfers, the ordering financial institutions must ensure that the foreign wire transfer below the specified value has the name of the originator, the name of the beneficiary, account number or transaction reference number of both parties. However, as noted in C.16.1, the *de minimis* threshold does not apply to wire transfers, above provision can be considered as an additional requirement. [For Lao PDR: Same question as for C.16.1]
3. *Criterion 16.4* is **partly met.** There is no specific provision to require FI to verify information pertaining to its customer where there is a suspicion of ML/TF when conducting transactions below the *de minimis* threshold. It cannot be considered that this specific requirement is fully covered under the general CDD measures contained in Article 22 of the Law on AML/CFT.
4. *Criterion 16.5* is **met.** As stipulated by Article 6 of the Decision on the Reporting of Wire Transfers, ordering financial institutions transferring domestically must collect originator information as specified in Article 5. Article 7 specifies that the ordering financial institutions must ensure that the wire transfer has complete information as defined in Article 5 of this decision for both the originator and beneficiary. The latter provision does not differentiate domestic or foreign wire transfers.
5. *Criterion 16.6* is **not applicable.** See C.16.5. Lao PDR does not appear to permit ordering FI to include only the account number or unique reference number.
6. *Criterion 16.7* is **met.** Article 7 of the Decision on the Reporting of Wire Transfers requires the ordering financial institutions to keep information on the originator and beneficiary as specified in Article 28 of the Law on AML/CFT.
7. *Criterion 16.8* is **partly met.** Article 7 of the Decision on the Reporting of Wire Transfers requires the ordering financial institutions to ensure that the foreign wire transfer below the specified value has the name of the originator, the name of the beneficiary, account number or transaction reference number of both parties. Article 13 of the Decision stipulates that reporting entities or other relevant persons who conduct actions which violate the Decision will be warned and fined as specified in Article 65 of the Law on AML/CFT.
8. Article 23 of the Law on AML/CFT broadly specifies that in case of failure to collect detailed data in conducting CDD, the RE must cease services or business relations and to file an STR. However, there is no any specific requirement not to allow the ordering FI to execute the wire transfer if it does not comply with the specified requirements.
9. *Criterion 16.9* is **met.** In terms of Article 27 of the Law on AML/CFT, in case of acting as an intermediary of the transfer, a financial institution must ensure that the information on the transferor and details about the transfer are correctly and completely recorded before further delivery to a beneficiary. Rule 9 of the Decision on the Reporting of Wire Transfers provides that for international wire transfers, intermediary financial institutions must collect information on the originator and the beneficiary in order to send with the transfer.
10. *Criterion 16.10* is **met.** As provided for in Article 9 of the Decision on the Reporting of Wire Transfers, in the event that information is limited due to a technical issue, then all information sent from the originating financial institutions must be kept per Article 28 of the Law on AML/CFT. Record keeping requirements as set out in Article 28 are discussed under R.11.
11. *Criterion 16.11* is **partly met.** As required by Paragraph 2 of Article 9 of the Decision on the Reporting of Wire Transfers, for international wire transfers without complete information on the originator or the beneficiary as specified, intermediary financial institutions must follow Article 27 of the Law on AML/CFT. Article 27 specifies that in case of acting as an intermediary of the transfer, a financial institution must ensure that the information on the transferor and details about the transfer are correctly and completely recorded before further delivery to a beneficiary. However, specific provisions on taking reasonable measures which are consistent with straight-through processing, to identify wire transfers that lack required originator/beneficiary information are lacking.
12. *Criterion 16.12* is **met.** Article 9 of the Decision on the Reporting of Wire Transfers stipulates that intermediary financial institutions should have effective policies and procedures in the implementation of assessment measures and administration of risk in order to consider circumstances when denial and termination of wire transfers should occur or in order to specify measures in appropriate monitoring.
13. *Criterion 16.13* is **partly met.** Article 8 of the Decision on the Reporting of Wire Transfers provides that the beneficiary financial institutions, on receiving international wire transfers without complete information on the originator or the beneficiary, must follow Article 27 of the Law on AML/CFT. Article 27 specifies that in case a financial institution receives a transfer with no information or missing information on a transferor, it has to check and find the missing information from a transferring institute or a beneficiary. If the information is not provided, a financial institution receiving the transfer shall refuse the payment to a beneficiary and transfer the money back to a transferring financial institution and immediately report the case to AMLIO.
14. However, there is no specific requirement for beneficiary FIs to take reasonable measures such as conducting real-time or post-event monitoring to ascertain whether required originator or beneficiary information is lacking.
15. *Criterion 16.14* is **met.** Article 8 of the Decision on the Reporting of Wire Transfers provides that in the event that a wire transfer has complete information yet the beneficiary has never been examined or verified before, then the beneficiary financial institutions should examine and verify the beneficiary and keep information per Article 28 of the Law on AML/CFT.
16. *Criterion 16.15* is **met.** Article 8 of the Decision on the Reporting of Wire Transfers provides that the beneficiary financial institutions should have effective policies and procedures in the implementation of assessment measures and administration of risk in order to consider circumstances when denial and termination of wire transfers should occur or in order to specify measures in appropriate monitoring.
17. *Criterion 16.16* is **partly met.** Article 17 of the Decision on supervision of MVTS requires MVTS providers and Agents to comply with the obligations as defined in the AML/CFT law, such as KYC, CDD, STR of money laundering and terrorist financing and complied with relevant regulations. Accordingly, it is implied that MVTS providers are binding to the requirements on wire transfers. However, there is no specific requirement for them to comply with all of the relevant requirements of Recommendation 16 in the countries in which they operate, directly or through their agents.
18. *Criterion 16.17* is **partly met.** As noted in C.16.16, MVTS providers are subject to AML/CFT requirements and the obligation to file STRs when there is a suspicion of ML/TF. However, there is no specific requirement on filing STRs as required by the criterion.
19. *Criterion 16.18* is **met.** As per Clause 4 of Article 52 of the Law on AML/CFT, reporting entities are prohibited from having business dealings or performing transactions with natural persons, legal persons or organisations on the United Nations security council list. Article 40 of the Law on AML/CFT stipulates that funds of natural persons and legal entities including groups of terrorism financiers and international terrorist organisations stipulated in resolutions S/RES/1267 (1999), S/RES/1373 (2001) and their successors of the UN Security Council shall be immediately seized and frozen.
20. As highlighted in Article 40 of the Law on AML/CFT the implementing procedures for seizing, freezing funds of terrorists are laid down in a separate piece of legislation. Article 5.1 of the Order on the Withholding, Freezing or Seizure of Funds Relating to Terrorists or Financing of Terrorism specifies the procedure followed by REs with respect to freezing of related funds and properties. REs are empowered and required to take preliminary measures immediately to stop and withhold such funds and properties of designated clients and immediately report to the Ministry of Public Security and the FIU. Upon receipt of such report, the Ministry will issue an order to freeze or seize the funds and properties immediately.

Weighting and Conclusion

1. Lao PDR has made significant progress for requirements on wire transfers. However, lack of enforceable requirements with respect to batch transfers, not to allow the ordering FI to execute the wire transfer in the absence of compliance, straight-through processing, beneficiary FIs to take reasonable measures to ascertain missing information, specific provisions for MVTS providers remain as deficiencies.
2. **Recommendation 16 is rated partially compliant.**

Recommendation 17 – Reliance on third parties

1. In its 2011 MER Lao PDR was rated not applicable with former Recommendation 9. Lao PDR laws do not currently have specific provisions that would allow financial institutions to rely upon a third party in the process of implementing CDD.
2. *Criterion 17.1* is **N/A.**
3. Under Article 15 of the Agreement on Know Your Customers and Customer Due Diligence No.01/NCC, reporting institutions shall be responsible for the identification of customers. However, no laws and regulations have specific provisions allowing financial institutions to rely upon a third party in the process of implementing CDD. Lao PDR comfirms that FIs are not permitted to rely on anyone else to conduct CDD for them.
4. *Criterion 17.2* is **N/A.**
5. *Criterion 17.3* is **N/A**.

Weighting and Conclusion

1. Lao PDR laws do not currently have specific provisions that would allow financial institutions to rely upon a third party in the process of implementing CDD.
2. **Recommendation 17 is not applicable.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

1. In its 2011 Lao PDR was rated non-compliant with former recommendation 15 and recommendation 22 due to a lack of enforceable obligations.
2. *Criterion 18.1* is **mostly met.**
3. Article 19 of the Law on Anti-Money Laundering and Counter-Financing of Terrorism No. 50/NA, reporting entities are required to develop and implement AML/CFT programmes which cover (i) developing AML/CFT policies and procedures, and internally auditing the qualified staff selection procedure; (ii) developing AML/CFT training programs, and undertaking on-going training for staffs; (iii) internally auditing the implementation of this Law and other related laws and regulations; (iiii) evaluating their AML/CFT efforts. REs are also required to appoint a qualified information gathering and reporting staff with AML/CFT experiences at the management or senior level to response the task mentioned above.
4. There is no explicit requirement to develop and implement AML/CFT programmes regarding the ML/TF risks and the size of the business; however, it can be implied that ML/TF risks and business size are considered in developing and implementing AML/CFT programmes. For example, business operations and sizes of legal entity customers including the nature of business operation of a corresponding bank are some of detailed data which REs are obliged to collect (Article 23 and Article 26 of the Law). Article 20 of the Law also requires REs to implement risk assessment and risk based management principles. In addition, risk assessment and risk-based approach is within the scope of AML/CFT on-site inspection on financial institutions conducted by AMLIO as mentioned in AML/CFT on-site inspection manual. Lao PDR has a plan to develop guidance for FIs on how to develop their programmes and to develop specific regulation for supervisors in monitoring inspection.
5. *Criterion 18.2* is **not met.**
6. Lao PDR laws do not currently require financial groups to implement group-wide programmes against ML/TF. Article 18 of the Law on Anti-Money Laundering and Counter-Financing of Terrorism No. 50/NA requires overseas branches and subsidiaries in the group of REs to comply with Article 19-32 of the law which include AML/CFT programmes development and implemention, CDD and ML/FT risk management, audit, and/or AML/CFT functions, of customer, account, and transaction information including confidentiality. Article 6 and Article 28 of the Agreement on Know Your Customers and Customer Due Diligence No.01/NCC require the management and staffs of the REs to ensure the implement of measures in the agreement without tipping-off's customers and confidentiality of related staffs in reporting entities. However, these provisions appear to apply requirements to each part of a RE rather than a financial group in order to ensure consistency across the group. In addition, no related law notifies policies and procedures for sharing information required for the purposes of CDD and ML/TF risk management including information exchange for overseas branches and subsidiaries in the group of REs.
7. Foreign branches and subsidiaries in the group of REs are controlled as notified in AML/CFT on-site inspection manual through assessing the implementation of AML/CFT activities of REs which include group management in connection with AML/CFT activities.
8. Criterion 18.3 is **partly met**
9. In case of the country where foreign branches and subsidiaries of the REs’ group are located do not comply with AML/CFT measures of Lao PDR, REs are required to notify the supervisory authorities (Law on Anti-Money Laundering and Counter-Financing of Terrorism No. 50/NA, Article 18). However, REs including their foreign branches and subsidiaries are not required to apply appropriate additional AML/CFT measures to manage the ML/TF risks.

*Weighting and Conclusion*

1. Lao PDR has made progress for requirements on internal controls and foreign branches and subsidiaries. Measures for financial institutions are in place to meet most of requirements in internal policies, procedures and controls. There are moderate scope gaps in relation to lack of requirement for financial groups to implement group-wide programmes against ML/TF and requirement for REs including their foreign branches and subsidiaries to apply appropriate additional AML/CFT measures to manage the ML/TF risks in cases where concerns are identified with foreign branches or subsidiaries.
2. **Recommendation 18 is rated partially compliant.**

Recommendation 19 – Higher-risk countries

1. In its 2011 Lao PDR was rated non-compliant with former recommendation 21 due to a lack of enforceable obligations.
2. *Criterion 19.1* is **partly met.** Agreement on Know Your Customers and Customer Due Diligence No 01/NCC prescribes the relevant guidance. Article 12 requires REs to assess and manage ML/FT risk and implement risk-based approach for all customers. If risks are found, appropriate measures have to be implemented in order to reduce the ML/FT risks before servicing, conducting business and creating business relationships with new and old clients. Implementing “deep measures” is required for high risk customer. Article 14 of the Agreement provides risk factors from high risk customers including high risk areas or countries which cover source of income or active transactions in high risk areas or countries on ML/FT as defined by AMLIO and stakeholders in each period. REs are required to take a deep measures on customer due diligence related to these high risk factors provided in the Agreement. Article 14 of the Agreement then allows REs to consider other factors such as channel providers, type of transaction, type of financial products and information from other sources for additional risk factors.
3. Article 52 of the Law on Anti-Money Laundering and Counter-Financing of Terrorism No. 50/NA prohibits REs to deal or perform transactions with natural persons, legal persons and organisation on the United Nations Security Council list.
4. Some requirements mentioned above are not clear. While relevant requirements do not specify directly that countries called for by the FATF is one of risk factors for high risk areas or countries, Lao PDR confirms that high risk countries include those countries identified by the FATF. Lao PDR also notifies that “deep measures” refers to enhanced due diligence in the FATF requirements.
5. *Criterion 19.2* is **partly met.** REs are required to identify and assess the ML/TF risks including undertaking ML/TF risk management with all customers. At least, REs have to consider risk factors proposed in Article 14 of the Agreement on Know Your Customers and Customer Due Diligence No 01/NCC and take a deep measures on customer due diligence to manage the high risk customer. Risk factors from high risk areas or countries include source of income or active transactions in high risk areas or countries as defined by AMLIO and stakeholders in each period. Other factors such as information of the customer's lists from other sources are encouraged to consider for additional risk factors (details stipulated in Rec. 19.1)
6. Article 17 of the Agreement prescribes REs’ deep measures as proportionate countermeasures for high risk customers at least the following:
7. Determine more procedure or request more information from customers regarding operation or business’s activities, sources of capital or income and the purpose of conducting transactions or business relationship etc. in order to conduct business relationships between REs and the customers properly.
8. Determine senior manager to approve conducting transactions or business relationships with high risk customers. Senior manager is required to approve the procedures for customer due diligence of high risk customers which may cause REs to be the tools or source of ML/FT, REs are needed to deny transactions or terminate business relationships with the clients and such suspected transactions are needed to report to AMLIO.
9. Conduct procedures for detecting financial movement of high risk customers by seriously considering increasing frequency, tracking business relationships and active transactions including frequently checking customer indentity and beneficial owner of customer. REs are required to implement these measures on a regular basis.
10. Lao PDR mentions that in case that country is defined by FATF, Lao PDR also requires REs to be aware of any business relationship and must have special monitoring in place. In the event where their existing customers including new customers appear on the FATF list (Black list), REs must end the business relationship with such customer as set out in article 17 of the Agreement. REs are also prohibited to deal or perform transactions with natural persons, legal persons and organisation on the United Nations Security Council list as specified in Article 52 of the Law on Anti-Money Laundering and Counter-Financing of Terrorism No. 50/NA in order to comply with countermeasures called upon to do by the FATF. On the other hand, proportionate countermeasures regarding low risk customers are also prescribed in Article 18 of this Agreement.
11. As mentioned in Rec 19.1 above, there is not clearwhether the definition of high risk countries covers those countries identified by the FATF (details stipulated in Rec 19.1). Whereas measures identified in Article 17 of the Agreement are comply with elements of EDD measures which can be implemented as countermeasures in order to mitigate ML/FT risks, Lao PDR uses a term of deep measures rather than EDD measures.
12. *Criterion 19.3* is **partly met.** There are some measures in place to raise REs’ concerns about weaknesses in the AML/CFT systems of other countries. The AMLIO disseminates a Notification Letter to all REs in order to access AMLIO’s website for updating information of AMLIO and link to international organizations websites (UN, APG and FATF) for updating ML/FT risk situations of other jurisdictions. Based on document provided from Lao PDR, it can not ensure that the FIs are advised of concerns about weaknesses in the AML/CFT systems of other countries. However, Lao PDR indicates that there is a regular update to REs regarding this concerns. Periodic notifications are sent when the FATF lists are updated. In practice, AMLIO also periodically notifies REs to regularly monitor or screening their existing customers to update their customers’ status. [For Lao PDR: Please provide some examples of notification letters]

Weighting and Conclusion

1. There is not clearwhether high risk areas or countries including high risk customers as defined in risk factors and countermeasures cover countries identified by the FATF. In addition, based on document provided from Lao PDR, it can not ensure that the FIs are advised of concerns about weaknesses in the AML/CFT systems of other countries.
2. **Recommendation 19 is rated partially compliant.**

Recommendation 20 – Reporting of suspicious transaction

1. In its 2011 Lao PDR was rated non-compliant with former recommendation 13 and Special Recommendation IV due to gaps in coverage of predicate to ML and REs, not all FIs required to report STRs, no mandatory requirement for “attempted transactions”, no requirement for STR reporting on TF, gaps with possible monetary threshold for STR reporting and low STR numbers.
2. *Criterion 20.1* is **met.** According to Article 8 of the Law on Anti-Money Laundering and Counter-Financing of Terrorism No. 50/NA, suspicious transactions mean transactions that do not conform with the profile, occupation, and reality status of customers. Article 31 of the Law stipulates that in the case of a suspicion or a cause for a suspicion that a customer’s transaction may be a consequence of a predicate offence, relating or connecting to money laundering and financing of terrorism, REs are obliged to report such transaction to AMLIO within three working days. This reporting requirement extends to a customer’s attempt of transaction regardless of completion status and the amount of money involved.
3. Article 2 of the Instruction on Suspected Transactions Reporting on Money Laundering or Financing Terrorism No.42/AMLIU requires all branches of the REs to conduct suspicious transaction report on ML/FT and send to their head offices in order to consider adequate information before submitting to AMLIO.
4. *Criterion 20.2* is **met.** As stipulated in Rec.20.1, REs are required to report of suspicious transactions including attempted transactions and regardless of the amount of the transaction.

Weighting and Conclusion

1. **Recommendation 20 is rated compliant.**

Recommendation 21 – Tipping-off and confidentiality

1. In its 2011 Lao PDR was rated non-compliant with former recommendation 14 due to a lack of legal “safe harbour” protection for all parties reporting STRs in good faith and legal prohibition against “tipping off.
2. *Criterion 21.1* is **mostly met.** Article 32 of the Law on Anti-Money Laundering and Counter-Financing of Terrorism No.50/NA requires the management and staff of REs to maintain the confidentiality of transaction report in suspicious of money laundering or financing of terrorism or other information reported to AMLIO. They will not be disciplined or prosecuted on the ground of disclosing customers’ secrets, if the reporting or the provision of such information is done with good faith and in compliance with this law, and will not be held liable for any wrongdoing.
3. Article 11 of this law also states that staff and officers working on AML/CFT including those participating in this work such as informants, information processors, witnesses, experts and their families, shall be protected in accordance with laws against revenge and threats against life, health, freedom and damage to their dignities, reputations or private properties.
4. The law does not specify that the protections are available even if the management and staff of the REs did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred. Nevertheless, Lao PDR confirms that the “good faith” provision in Article 32 would apply even if the management and staff of REs did not know what the underlying criminal activity was or whether it actually occurred.
5. *Criterion 21.*2 is **partly met.** The management and staff of the REs working on AML/CFT are prohibited from disclosing the fact that an STR or related information is being filed with AMLIO (details stipulated in Rec. 21.1). Article 28 of the Agreement on Know Your Customers and Customer Due Diligence No.01/NCC prohibits relevant staff from revealing information or behaving in a way that will alert the customer that he/she is facing measures of customer due diligence or being a subject in ML/FT suspicious transactions report or any information report to AMLIO.
6. There is no explicit requirement to ensure that the provisions mentioned above are not intended to inhibit information sharing under Recommendation 18, although no obvious requirement for information sharing at the financial group level (details stipulated in Rec18.2) and Lao PDR identifies that in practice those provisions are not obstacle of information sharing within a financial group.

Weighting and Conclusion

1. The moderate shortcomings are that there is no explicit requirements to ensure that the provisions of disclosing an STR or related information being filed with AMLIO are not intended to inhibit information sharing under Recommendation 18.
2. **Recommendation 21 is rated partly compliant.**

Recommendation 22 – DNFBPs: Customer due diligence

1. Lao PDR was rated non-compliant for former Recommendation 12 in its 2011 MER due to non-coverage of DNFBPs.
2. Since the 2011 MER, the Law on AML/CFT was enacted. While the Act covers most categories of DNFBPs, there is an ambiguity that has a cascading effect on each criterion in R.22. Article 8 of the Law on AML/CFT, defines DNFBPs as companies or agents that provide and manage financial payment tools, real estate trading agencies, valuable material and antique trading business, a bar association or a legal firm, notary public, external auditing firms, casinos or others. Under Article 17 of the Law on AML/CFT, reporting entities are legal persons and organisations which have the obligation to report information or suspicious activities of being money laundering and financing of terrorism to the Anti-Money Laundering Intelligence Office (herein after called “AMLIO”). Reporting entities consist of financial institutions and DNFBPs as defined in subparagraph 7 and 8 of Article 8. Taken together, these definitions create an ambiguity as to whether natural persons (individuals) are covered in these definitions (REs are limited to legal persons and organisations. However, it is clear that neither lawyers nor accountants are permitted to practice as individuals and must practice as part of an enterprise or firm, which are covered.
3. *Criterion 22.1* is **partly met**. The CDD obligations mandated by the Law on AML/CFT and the Agreement on KYC and CDD are applicable to DNFBPs as per the definitions aforementioned. However, obligations of the DNFBPs are not supplemented by sector-specific rules or regulations. The Law on AML/CFT and the Agreement on KYC and CDD do not cover all the CDD requirements set out in Recommendation 10. The existing legal provisions neither set thresholds for casinos or dealers in precious metals and stones as required by sub-criteria (a) and (c) nor specify instances where legal practitioners, accountants, trust and company service providers should comply with CDD requirements as per sub-criteria (d) and (e). Lao PDR does not allow natural person to provide legal service and to provide accounting service outside the respective legal firm or accounting/audit firm. Lao PDR’s assertion that trust companies are yet to operate in their country is well noted.

[For Secretariat: to confirm that casinos should be dealt with under R28]

1. *Criterion 22.2 is* **partly met.** Record keeping obligations set out in the Article 28 of the Law on AML/CFT apply to DNFBPs. Nevertheless, deficiencies identified under Recommendation 11 also apply to DNFBPs. Especially, the absence of provisions to require reporting entities to ensure that records are swiftly available to authorities remains a concern. There is no additional provision on record keeping requirements for DNFBPs other than provided in Article 50 of Law on Accounting. However this is a general requirement that is applicable for all sectors, specifically on accounting documents and hence, clarity needed whether this is also applicable to non-accounting documents for DNFBPs sector.
2. *Criterion 22.3 is* **partly met.** Requirements with respect to PEPs as provided for in the Law on AML/CFT and the Agreement on KYC and CDD apply to DNFBPs. However, deficiencies identified under Recommendation 12 remain deficiencies under this Criterion.

[For Secretariat: Lao PDR confirmed in R.12 that the definition under the Law on AML/CFT covered all categories of PEPs required. However, this rating will replicate final assessment in R.12]

[To Lao PDR: see queries regarding PEPs under R12]

1. *Criterion 22.4 is* **mostly met.**Article 12 of the Agreement on KYC and CDD which stipulates obligations of reporting entities on new technologies apply to DNFBPs. Provisions to ensure that the risk assessment should be undertaken prior to the launch of such product, practices and technologies are provided in Article 12 of the Agreement on KYC/CDD (Updated version).
2. *Criterion 22.5 is* **not applicable.** There are no specific provisions imposed on DNFBPs concerning reliance on third parties. It appears that REs including DNFBPs are specifically prohibited from relying on third parties and are required to carry out CDD measures on their own at all instances.

*Weighting and Conclusion*

1. DNFBPs do not cover natural persons. The Law on AML/CFT and the Agreement on KYC and CDD do not sufficiently cover the scope of the CDD requirements of Recommendation 10. They do not specify thresholds or instances as required by Criterion 22.1. There are also gaps with respect to record keeping depending on the applicability of provision use under Law of Accounting.
2. **Recommendation 22 is rated partially compliant.**

Recommendation 23 – DNFBPs: Other measures

1. Lao PDR was rated non-compliant for former Recommendation 16 in its 2011 MER.
2. The ambiguity regarding the scope of DNFBP coverage identified under R.22 has a cascading effect on each criterion in R.23.
3. *Criterion 23.1 is* **partly met.** The Article 31 of the Law on AML/CFT makes reporting entities legally obliged to submit suspicious transaction reports in case of a suspicion with respect to transactions and attempted transactions of customers. Similar to Recommendation 22, as per the definitions for reporting entities and DNFBPs, this obligation applies to DNFBPs subject to limitations mentioned in R.22.
4. However, no specific qualifications are imposed with respect to lawyers, notaries, other legal practitioners and accountants as described in sub-criterion (a), for dealers in precious metals and stones in accordance with sub-criterion (b) or concerning trust and company service providers in-line with sub-criterion (c). Lao PDR’s assertion that trust companies are yet to operate in their country is well noted.
5. *Criterion 23.2 is* **partly met**. Responsibilities of reporting entities on compliance management arrangements including the appointment of a compliance officer contained in Article 3 of the Instruction on STR on ML/TF apply to DNFBPs. Requirements on reporting entities for screening and ensuring high standards at staff recruitment and ongoing employee training are provided for in Clauses 1 and 2 of Article 19 of the Law on AML/CFT and apply to DNFBPs. Although Clause 3 of Article 19 requires having an internal audit it does not specifically require it to be independent as expected in Sub-Criterion (d) of Criterion 18.1.
6. As set out in Article 18 of the Law on AML/CFT, obligations of reporting entities which are laid down in Articles 19 to 32 of the said Law have been extended to overseas branches and subsidiaries. However, there appear to be no requirements with respect to group-wide programmes on sharing of information for CDD and ML/TF risk management purposes, group-level compliance and adequate safeguards on confidentiality and use of exchanged information as required by Criterion 18.2.
7. Criterion 18.3 expects countries to require reporting entities to apply AML/CFT measures at least equivalent to measures of the home country where the host country requirements are inferior to the home country and vice versa. Necessary detailed requirements are lacking in this regard. The only provisions available on this matter appear to be the extension of obligations of the responsibilities of the reporting entities to their overseas branches and subsidiaries as mentioned in the paragraph above and the final paragraph of Article 18 of the Law on AML/CFT which states, “in case the laws of the country where the branches subsidiaries in the group of the reporting entities are located do not allow the application of these obligations, the reporting entities shall notify their supervisory authorities”. However, the latter does not require the RE to apply appropriate additional measures to manage ML/TF risks as required by Criterion 18.3.
8. *Criterion 23.3 is* **partly met.** Article 17 of the Agreement on KYC and CDD requires reporting entities to apply enhanced due diligence measures for customers from high-risk countries. However, it is not clear whether there is any requirement for reporting entities to apply EDD to business relationships and transactions with natural and legal persons from countries for which EDD is called for by FATF or to apply countermeasures when called upon to do so by FATF or independently of any such call by FATF. It appears that reporting entities can access websites of international organisations via AMLIO website in order to obtain updates on high risk countries.
9. *Criterion 23.4 is* **met**. Article 11 of the Law on AML/CFT provides legal protection for staff, officers working in AML/CFT and their families. Confidentiality requirements and tipping-off restrictions are contained in Article 32 of the Law on AML/CFT. Tipping-off restrictions are further supplemented by Article 28 of the Agreement on KYC and CDD. Being reporting entities, DNFBPs are bound by these provisions.

*Weighting and Conclusion*

1. General requirements of the Law on AML/CFT and the Agreement on KYC and CDD on STRs, internal control, high-risk countries, legal protection, confidentiality and tipping-off are applicable to DNFBPs. However, deficiencies identified under R.20, R.18, 19 also apply to DNFBPs
2. **Recommendation 23 is rated partially compliant.**

Recommendation 24 – Transparency and beneficial ownership of legal persons

1. The 2011 MER of Lao PDR rated the former R 33 as non-compliant. At the time there was a lack of mechanisms to collect beneficial ownership; bearer shares were permitted with no ability to assess the beneficial owner of those instruments; and Lao PDR lacked effective implementation.
2. Corporate law and governance arrangements were revised in 2013 and became effective in 2014 with the enactment of the improved Enterprise Law providing for a number of types of legal persons. Other relevant enactments include the Law on Securities 2013 and the Law on Accounting 2014.
3. ***Criterion 24.1 – partly met.*** The *Enterprise Law 2014* provides for the establishment and registration of seven (7) different types of legal persons -- Articles 11 and 12 and Parts VI and VII as follows:
4. Individual (private) enterprises;
5. State enterprises;
6. Mixed enterprises;
7. Cooperative enterprises;
8. Ordinary partnerships
9. Limited partnerships
10. Limited companies; and
11. Public companies.
12. There does not appear to be any provisions in the Acts noted above permitting the registration of foreign companies. [For Lao PDR: Without any special stipulation for foreign investment, does it mean that both the foreign and domestic investors are applied with the same process to create an “enterprise” ?] While ordinary partnerships are not usually legal persons (separate legal status from the natural persons who form them), the Act provides at Article 20(1) that they are ‘enterprises’ with juristic status and therefore legal persons on registration (notwithstanding that, under Article 3, partners of such partnerships have unlimited liability).
13. Lao PDR has a centralized registry for legal persons, the Enterprise Registration Office, affiliated in the Enterprise Registration and Management Department in the Ministry of Industry and Commerce. For most legal persons, they can conduct business they get registration certificates. But there are some additional requirements for the other two kinds of businesses. The first one is the business under sectoral supervision, such as banking and securities. The legal person must apply to the sectoral supervisor for the operating license after obtaining the registration certificate. The second one is the business under the controlled list. The applicators must get investment license as the first step and then apply registration as the second step. With the investment license and registration certificate, the legal person then has to apply the operation license as the last step.(see *1st Annex 41 Flowchart involved general ledger and control account*)
14. The *Enterprises* *Law* provides processes for the creation of those legal persons but not for obtaining and recording basic and beneficial ownership information. Not all of the information relating to this criterion is publically available. [For Lao PDR: please advise whether the content of this website <http://www.ned.gov.la/> can be accessed by the assessors]
15. ***Criterion 24.2 – not met.*** Lao PDR has notassessed the ML/TF risks associated with all types of legal person created in the country.

Basic Information

1. ***Criterion 24.3 – partly met***. The Enterprises Act requires enterprises including companies to be registered with the Ministry of Industry and Commerce under Articles 14, 15 and 16 [For Lao PDR: Please confirm. There is no reference to this Ministry in the Act. This reference comes from the TC Annex only. Where is the Ministry designated as having this authority or function?]. The information to be recorded is full covered in the Act. For instance, missing from what is required to be recorded is the following:

|  |  |  |
| --- | --- | --- |
| **Enterprises – Part III** | **Partnerships – Part IV** | **Companies – Part V** |
| * proof of incorporation * legal form and status * address of the registered office * basic regulating powers, and a * list of directors. | * proof of establishment | * list of directors (the Act refers to ‘promoters’ only). |

Moreover, the Act provides limited public availability of information under Article 24. Paragraph 3 of Article 24 states that other than the document filed with the registrar and ‘Other documents can only be disclosed with the permission of the relevant enterprises. And the documents that are available are available for a fee only (which is not prescribed).

1. ***Criterion 24.4 – not met***. Article 4 of the *Decree on Official Documents 2015* provides that official documents (including those relating to ‘legal entities’) shall, in accordance with Article 22, be kept indefinitely (‘no time limit’). However, Article 24 seems to suggest that the time limit is 15 years. Nevertheless, there do not appear to be any provisions in law that could impose penalties for non-compliance
2. Article 107 of the Enterprise Law requires that a ‘registered’ share certificate contain a certain amount of identifying information including the shareholder’s name, but nowhere in the Law is there a reference to the requirement to have a shareholder register. Hence it is not clear where such information is required to be held.
3. There is however no requirement to maintain a register of shareholders or members, containing the number of shares held by each shareholder and categories of shares (including the nature of the associated voting rights). Partner of partnership are also not required to maintain a register of partners.
4. ***Criterion 24.5 - partly met.*** While Lao PDR requires enterprises to update information and changes to the registrar pursuant to Article 23 of the *Enterprise Law* it is not clear what penalty would be imposed for failure to comply. Article 209 of the Law simply states that ‘any person or organisation that violates this Law shall be sanctioned depending on the serious or non-serious category of the offence.’

Beneficial Ownership Information

1. Criterion ***24.6 -*** ***not met*:**
2. Enterprises and the enterprise registry are not required to obtain and hold up-to-date information on the companies’ beneficial ownership;
3. Enterprises are not required to take reasonable measures to obtain and hold up-to-date information on the companies’ beneficial ownership;
4. Article 21(2) of the *Agreement on KYC and CDD 2016* provides that reporting entities must identity the ‘beneficial owner’ of legal persons and establish appropriate measures to check the information and evidence that those customers by consider the following. However, nowhere in the *Agreement of KYC and CDD* is the term ‘beneficial owner’ defined. Nor is the term defined in the *Decree on Entrust*, where it appears only once in Article 4. The term is not used in the *Law on Anti-Money Laundering and Counter-Financing of Terrorism.* However, that law does define the term ‘beneficiary’ as follows:

”Beneficiary” shall mean natural person(s) who ultimately benefits from a business operation, activity or transaction including person(s) who exercise ultimate effective control over a legal person.”

The definition does not reflect the full elements of the FATF definition of ‘beneficial owner’ and, in any event, is not the term used in the *Agreement on KYC and CDD*.

1. Criterion ***24.7 -*** ***not met.***  See above c. 24.6.
2. Criterion ***24.8 - not met.*** See above c. 24.6.
3. Criterion ***24.9*** – ***not met.*** There are no requirements in the *Law on Enterprises* that requires that all the persons, authorities and entities mentioned above, and the company itself (or its administrators, liquidators or other persons involved in the dissolution of the company), should be required to maintain the information and records referred to for at least five years after the date on which the company is dissolved or otherwise ceases to exist, or five years after the date on which the company ceases to be a customer of the professional intermediary or the financial institution.
4. Article 28 of the *Law on AML/CFT* applies to reporting entities and not to the Ministry acting as the registrar of enterprises.
5. The *Law on Accounting 2013* applies primarily to transactional accounting records and not to the information required in this criterion. The *Law on Commercial Banks* applies only to commercial banks but not to enterprises and authorities referenced in this Recommendation.

Other Requirements

1. ***Criterion 24.10 -*** ***partly met***. Competent authorities, and in particular law enforcement authorities, powers to obtain basic information held under this criterion on a timely basis but not to beneficial ownership information held by the relevant parties. Article 37 of the Law on AML/CFT referenced by Lao PDR authorities in relation to this criterion is not applicable with respect to beneficial ownership information as defined by the FATF as enterprises are not required to collect it.
2. ***Criterion 24.11 -*** ***not met*.** Lao PDR explicitly permits the issuance of bearer shares under Articles 106 and 108 of the Law on Enterprises. There are, however, no mitigating measures in place in law to mitigate the risk posed by those instruments. Moreover, although not specifically mention in the law bearer share warrants are not prohibited and, appear to be able to be issued. There are however no similar mitigating measures in place to address the risk of those instruments.
3. ***Criterion 24.12 -*** Lao PDR law permits (doesn’t prohibit) the existence of nominee shares and nominee directors but has no measures:
4. requiring nominee shareholders and directors to disclose the identity of their nominator to the enterprise and to the registrar, and for this information to be included in the relevant register;
5. requiring nominee shareholders and directors to be licensed, for their nominee status to be recorded in company registries, and for them to maintain information identifying their nominator, and make this information available to the competent authorities upon request; or
6. using other mechanisms identified by Lao PDR.
7. ***Criterion 24.13 – not met.*** Lao PDR lacks specific stipulations over the failure to comply with the requirements in R.24.
8. ***Criterion 24.14 - not met.*** Lao PDR does not have mechanisms in place to ensure that it can rapidly provide international co-operation in relation to basic and beneficial ownership information (no such requirement to collect that information is extant), on the basis set out in Recommendations 37 and 40.
9. ***Criterion 24.15 - not met.*** The AMLIO Standard Operating Procedure (January 2020) sets out the general process and elements for the exchange information with foreign FIUs, but contains no stipulation on how to monitor the quality of information received from other countries beyond a requirement to provide feedback on the use made of the information provided from time to time or upon request.

*Weighting and Conclusion*

1. Lao PDR lacks significant measures in relation to this recommendation, in particular in relation to the collection of beneficial ownership information. In addition, Lao specifically authorities the issuance of bearer shares but has no measures to mitigate the ML and TF risk associated with those instruments. Lao PDR law permits nominee share- and nominee director- arrangements but also lacks mitigating measures to address the risks emanating for from those arrangements.
2. It is unclear if Lao PDR permits the registration and/or operation of foreign companies in Lao as there are no provisions relating to those legal persons. If foreign companies can operate Loa PDR needs to address their status in law and put measures in place to mitigate the risk posed.
3. Moreover, Lao PDR has not assessed the ML and TF risks of all types of legal persons in the country.
4. **Lao PDR is rated non-compliant with Recommendation 24.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

1. In its last mutual evaluation report of 2011 it was reported that Lao PDR did not recognise trusts or have arrangements similar to trusts. Foreign trusts were not recognised. No trust service providers had been established in Lao PDR at the time.

*Lao PDR Civil Code – Legal Arrangements*

1. The Civil Code No. 55/NA dated 6 December 2018 was published in the Official Gazette and effective 26 May 2020. The Code replaces and repeals civil and commercial laws containing similar provisions, including the laws of contracts, succession, and secured transactions.
2. Under Part V (Contracts), the new Civil Code permits the establishment of ‘Third-Party Contracts’ at Article 404 and 405, and the establishment of ‘Conditional Donation Contracts’ at Article 418 of Chapter 9, the terms of which, when combined, allow for the establishment of legal arrangements as contemplated by Article 2 of the Hague Convention on the Recognition of Trusts.
3. More specifically, while not explicitly styled as a ‘legal arrangement,’ a ‘civil relationship’ (Art 3(1)) can be structured whereby legal persons, natural persons or a combination of both (Art. 364) can establish a ‘conditional donation contract’ (Art 418) in the form of a third-party contract (Arts. 404, 405) for moveable or immoveable property (Art. 418) to benefit of a party not privy to the contract, so long as certain conditions binding the parties to that contract are met (Art 424). The parties to that contract are bound to execute the terms of it in ‘good faith’ (Art 378) and cannot modify its terms except in accordance with law (Art 378 –fiduciary duties, by analogy). This freedom of contract is enshrined at Art. 4 of the Civil Code. Contracts of this nature must be in writing (Art. 369 - Hague Trust Convention requires this) and because the Code does not prohibit the transfer of property from one party to the next for the benefit of a third party, under the contract conditions, the arrangement has all the hallmarks of what is described in Art. 2 of the Hague Convention on the Law of Trusts and Their Recognition. The Hague article is the basis of FATF definition of trusts and ‘similar’ legal arrangement in the Glossary.
4. *Criterion 25.1* is **not met.** Lao PDR does not require any parties to legal arrangements described above to obtain and hold adequate, accurate, and current information on the parties to those arrangements. Nor does Lao PDR require any parties to hold basic information on other regulated agents of, and service providers to, the trust, including investment advisors or managers, accountants, and tax advisors. Finally, professionals who may offer services in those arrangements as any party thereto are not required to maintain this information for at least five years after their involvement with the trust ceases.
5. Lao PDR does not prohibit the operation or foreign trusts in Lao PDR nor does the law prohibit the settlement of foreign trusts in Lao PDR subject to foreign law. There are no requirements on trustees of foreign trusts in relation to the three sub-criteria above.
6. *Criterion 25.2 is* ***not met.*** Lao PDR does not require that any information held pursuant to this Recommendation is kept accurate and as up to date as possible, and is updated on a timely basis
7. *Criterion 25.3 is* ***not met.*** Lao PDR has no measures to ensure that parties to a legal arrangement permissible under the Civil Code or trustees foreign trusts disclose their status to financial institutions and DNFBPs when forming a business relationship or carrying out an occasional transaction above the threshold
8. *Criterion 25.4 is* ***not met***. There is no information that any parties to Lao legal arrangements as described, and foreign trustees, are not prevented by law or enforceable means from providing competent authorities with any information relating to those arrangements or from providing financial institutions and DNFBPs, upon request, with information on the beneficial ownership and the assets of those arrangements to be held or managed under the terms of the business relationship.
9. *Criterion 25.5 is* ***not met.***Lao PDR has provided no information that competent authorities, and in particular law enforcement authorities, have the powers necessary to be able to obtain timely access to information held by parties to the legal arrangements described above or foreign trustees, and other parties (in particular information held by financial institutions and DNFBPs), on the beneficial ownership and control of the arrangements, including: (a) the beneficial ownership; (b) the residence of the parties or foreign trustees; and (c) any assets held or managed by the financial institution or DNFBP, in relation to any trustees with which they have a business relationship, or for which they undertake an occasional transaction.
10. *Criterion 25.6 is* ***not met.***Lao PDR has provided no information in relation to the three sub-criteria of this Recommendation.
11. *Criterion 25.7 is* ***partly met.***The Civil Code contains legal liability sections for a number of differing forms of contract (building contracts, employment contracts) however there is only a general liability section for third-party contracts or for conditional donation contracts. That section provides that the party breaching a contract may demand performance or compensation. Art. 480 sets out generally the identification of damage. Lao PDR therefore establishes liability but it is not clear how this section is applied.
12. There are no sanctions or liabilities for a foreign trustees failure to comply with the requirements of this Recommendation.
13. *Criterion 25.8 is* ***not met.***Lao PDR does not ensure that there are proportionate and dissuasive sanctions, criminal, civil or administrative, for failing to grant to competent authorities timely access to information regarding the arrangements described above or foreign trusts trust referred to in criterion 25.1.

*Weighting and Conclusion*

1. Lao PDR law permits the establishment of legal arrangements as described in the FATF standards and does not prohibit the establishment of foreign or the operation of foreign trusts in the country notwithstanding that Lao PDR may not recognise those foreign trusts. However, Lao PDR has no measures in place to address the requirements of this Recommendation except to a minimal degree as noted in c.25.7.
2. **Recommendation 25 is rated non-compliant.**

Weighting and Conclusion

1. **Recommendation 25 is rated compliant/largely compliant/partly compliant/non-compliant.**

***Recommendation 26 – Regulation and supervision of financial institutions***

**[THIS CRITERION IS TO BE UPDATED]**

*Market Entry*

1. *Criterion 26.1* - AMLIO is the designated supervisor of all REs, including FIs, under Article 2, para 2 of the Decision on Organization and Operations of the AMLIO, 8 January 2020. For implementation purposes, line responsibility for supervision on particular sectors of FI is distributed among several agencies under the Decree on Entrust and Responsibility in Implementing the Activities of AML/CFT, No 127/Gov, 20 February 2020. Those responsibilities are distributed as follows.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **Banking Sector** | **Insurance sector** | **Securities Company** | **Operator of currency exchange business** | **MVTS provider** |
| **Regulatory/**  **Supervisory Authority** | |  | | --- | |  |  * AMLIO * AMLIU as per the Decision on Designated for AML/CFT Supervisor for Commercial Bank and FI   [For Lao PDR: Please clarify whether AMLIO and AMLIU is separate supervisors] | | **Lao Securities Commission Office**  AML/CFT inspection not conducted due to lack of specific personnel to assess compliance level of securities companies | **Regulator -** Bank of Lao and act as central agency to cooperate with MOF, MOIC, MPI, MPS and other sectors and local authorities concerned  Supervisor - AMLIO | Supervisor - AMLIO has rights and duties to take supervision, monitoring and inspection over financial institutions including MVTS or Currency Exchange Bureau as stipulated in the Agreement on KYC/CDD No.01/NCC, dated 15 January 2016 |
| **Role** | * Issue regulation, conduct inspection and risk assessment | | Issue regulation, conduct inspection and risk assessment | * Collecting and compiling information for reporting to government. * ~~Conduct inspection~~ Issue regulation, conduct inspection and risk assessment (AMLIO) * Other duties as specified in Article 38 of LA on Foreign Exchange Management. | [To Lao PDR: please specify role of AMLIO in supervision as it is not clear from the Decision on the Supervision of Money Value Transfer Service, dated 5 Dec 2016] |

[For Secretariat: This table will not be in the final document but is useful for determining scope for this draft.]

[For Lao PDR:]

1. To provide definition of different type of financial institutions (microfinance institutions, credit and savings union etc vs commercial banks in term of activities allowed) and to confirm whether there are different supervisors for these categories.
2. To provide explanation for the different roles by internal inspection authority and external inspection authority of the foreign exchange activity
3. For banks which also offer currency exchange services, who are the AML supervisor? AMLIO or BOL?
4. Please provide the number of supervisors responsible for AML inspection for the above reporting entities.
5. Is there any type of RE or FI which are currently not supervised?
6. Securities companies appear to have multiple supervisors. Is this the case? How does this work in practice? Are there any RE or FI which have multiple supervisors for AML/CFT?
7. *Criterion 26.2* - Before each FI submits an application to the respective authorities, they are required to establish a company in accordance with Article 15 of the Enterprise Law. Once approval has been obtained for registration of the company, FIs submit an application to the respective authorities, as outlined below. However, for insurance company Article 36 does not specify in detail what information/documents must be submitted to Ministry of Finance for licensing approval. Establishment of shell banks and operation of shell companies are not allowed by Bank of Lao.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **MVTS Provider** | **Banking Sector** | **Insurance sector** | **Securities Company** | **Operator of currency exchange business** |
| * Agreement On the Provision of Additional Information by Financial Institutions. * To be processed and approved by Bank of Lao. | * Subjected to Article 2 of the Law of Commercial Bank * Decision on the Establishment of Commercial Bank and Commercial Bank Branches * To be processed and approved by Bank of Lao. | * Subjected to Article 36 of Law on Insurance * Submit application for investment Promotion Law and Enterprise Law. * Submission to MOF for issuance of license | * Companies must meet requirements and to file documents prescribed in Article 52 * Application for business license must be approved by Securities Management Committee | * Article 20 of Law on Foreign Exchange Management * For FIs, subjected to Article 7 for Decree of Microfinance Institutions * To be processed and approved by Bank of Lao |

[For Secretariat: This table will not be in the final document but is useful for determining scope for this draft.]

[For Lao PDR:]

1. Is there any FI or financial services related activities which are not subjected to any licensing/ registration process?
2. Please provide the list of documents/ information to be submitted by insurance company to Ministry of Finance for licensing.
3. For MVTS providers, are these institutions mostly banks or it also include stand alone or independent MVTS provider. For stand alone MVTS providers, would the application for registration is under Bank of Lao’s authority?
4. Please confirm that Ministry of Finance is the licensing authority for insurance company.
5. *Criterion 26.3* - Generally, as part of the financial institutions’ licensing/ registration process, there is requirement to submit relevant information on shareholding, senior management, beneficiaries as per respective laws for banking institutions, securities company and micro finance sector. Additionally, for securities company, there is another requirement to prescribe this which is Regulation on Provision of Additional Information relating to Sources of Registered Capital, Shareholder Structure and Beneficiaries of Securities Companies. As part of the approval process, the respective authorities will determine if a person is fit and proper to own or manage a bank and prevent criminals and their associates from holding such positions. For insurance company, of which the licensing / registration is approved by Ministry of Finance, we noted that there are no details on the submission required in terms of document/information to be submitted to MOF.

[For Lao PDR:]

1. Please provide details on the insurance company’s submission required in terms of document/information to be submitted to MOF for licensing, including shareholding and BO information.
2. Is there any fit and proper criteria rules maintained internally by respective authorities as part of the licensing/ registration process?
3. Please explain the workflow for processing the application including the character vetting request/checks from law enforcement agencies (if applicable) for each authority/ sector/ FI.
4. Were there any cases where application was rejected due to criminal cases involving the senior management, board or shareholders?
5. Is there process to approve individual Board members or senior management of financial institutions for any of the financial institutions/ sector. If yes, please provide a copy of the document/ policy.

*Risk-based approach to supervision and monitoring*

1. *Criterion 26.4* –
2. *Criterion 26.4(a)* – FI supervisors adopt supervision based on Basel I and Basel II standards while Lao Securities Commission Office (Securities company supervisors) is applying for IOSCO membership and expects to become a member by year 2020. However, there is no detail information on RBA implementation based on the Basel Principles. Based on RBA Approach to AML/TFC Combating Workplan, there is a 3-phase RBA approach of which, the highest risk sector is prioritised in terms of the implementation which has taken place since March 2019 but the details of the supervision and monitoring for Group 1 sector in terms of supervision process, results and resources are not provided. Generally, there are differing state of RBA implementation for supervision and monitoring across sectors and supervisory authority. We also noted that that there are 5 sectors in Group 2 which might not be ready for RBA approach for supervision and monitoring. Meanwhile, casino which is under Group 2 is currently undergoing assessment and review for developing a supervision mechanism. Furthermore, the remaining 9 sectors in Group 3 with low risk and under government organizations are not ready to adopt the RBA.
3. *Criterion 26.4(b)* – While AMLIO is the dedicated supervisor for financial institutions including MVTS or Currency Exchange Bureau as stipulated in the Agreement on KYC/CDD, MVTS providers which are under Group 3 have yet to adopt RBA.

[For Lao PDR]:

1. Please provide the result of the Group 1 (Phase1- Phase 3) RBA approach and implementation which have been completed.
2. Please provide the on-site and off-site surveillance monitoring strategy approach/ tools/ reports for the respective group and individual FIs.
3. Allocation of supervisors for the respective sector groups and number of on-site inspection conducted.
4. For group 2 and group 3 which have yet to implement RBA, what is the current supervision and monitoring approach (interim solution) by the supervisors?
5. *Criterion 26.5* - The types of inspection on AML/CFT implementation on reporting entities (RE) is prescribed in the Law on AML/CFT, Article 59. Meanwhile, the requirement for AMLIO to conduct supervision, monitoring and inspection in regular basis on financial institutions is stipulated in the Decision On Organization and Operations of AMLIO. However, there is no detail information on how the ML/TF risk profile of RE/ sector determine or influence the supervision intensity in terms of frequency of on-site inspection or off-site monitoring by respective supervisors. AMLIO’s procedures or scope of on-site review AML/CFT are prescribed in the On-site Inspection Manual dated 08 August 2018 covering areas to reviewed such as CDD, CIP and STR.
6. The risk assessment methodology for ML/TF risk for RE is detailed out in Article 4 **-** Contents on risk assessment, based on risk management principles for the work of AML/CFT of the Manual on RBA of AML/CFT. The risk assessment comprised of 9 inherent risk indicator and 9 control indicators which will determine the final risk score of 5 categories. There is no further detail on the scoring results for each RE.

[For Lao PDR: Please confirm whether the risk assessment is applicable to all RE or selected RE only. For those RE which are not subjected to the above risk assessment, please explain the risk assessment used by the supervisor]

[For Lao PDR]

1. Please provide annual plan for AML/CFT inspection for the RE based on type and scope of inspection for RE based on the respective group/ supervisory authority.
2. Please provide supervisors assessment/ report of all RE’s ML/TF risk profile (including the AML/CFT controls) and how this translate into the frequency and intensity of supervision of each RE.
3. Please provide the risk assessment results for RE based on sector/ groups based on the risk assessment methodology for ML/TF risk as prescribed in Article 4 of the Manual on RBA.
4. *Criterion 26.6* - While there is a requirement to conduct on-site inspection on regular basis based on FI’s risk as stated in the AML/CFT On-site Inspection Manual and risk assessment methodology in place, there is lack of information in terms of the frequency with which it is reviewed and how this impacts the number of on-site inspections. Based on the RBA work plan provided, because the on-site inspection has only started recently and only on selective RE, it is unclear that the supervisor(s) review the ML/TF risk profiles of FIs or fact in major events or developments into the risk assessment.

*Weighting and Conclusion*

1. Generally, there are dedicated supervisors for each sector complemented by requirement to conduct on-site inspection and off-site monitoring. However, questions remain about the scope of supervision, how various departments and ministries’ supervision responsibilities overlap, and whether RBA determines the scope and intensity of supervisory activities.
2. **Recommendation 26 is rated compliant/largely compliant/partly compliant/non-compliant.**

***Recommendation 27 – Powers of supervisors***

**[THIS CRITERION IS TO BE UPDATED]**

1. *Criterion 27.1* -
2. *Criterion 27.2* - AMLIO has power in terms of supervision, monitoring and inspection of commercial banks’ and FI’s implementation to ensure compliance with AML/CFT requirements as indicated in the Article 4 (issue policy or regulations) and Article 9 (inspection) of the Agreement on Organization and Operations of the AMLIO. For commercial banks and FIs, AMLIU is responsible to issue regulation, on-site inspection and risk assessment of AML/CFT. Meanwhile, Lao Securities Commission Office has the power to issue regulation, conduct inspection and risk assessment of AML/CFT as provided in Chapter 2 of Law on Securities.

[For Lao PDR: Please confirm whether there are any sectors which are not supervised and subjected to inspection or monitoring]

[For Lao PDR: As with R26, please confirm the division of responsibility in terms of supervision between AMLIO, AMLIU and the other departments and ministries. Do the departments and ministries have powers that they can exercise independently or do these powers belong to AMLIO?]

1. *Criterion 27.3* - AMLIO has the right to compel for obtaining necessary information relevant to ML/TF as indicated in the Agreement On Organization and Operations of The AMLIO Article 4 and Decree on Entrust and Responsibilities in Implementing the Activities of AML/CFT.

[For Lao PDR, please confirm whether AMLIO’s authority for the above is applicable for all FIs, as this term is defined in the FATF recommendations.

[For Lao PDR: Does AMLIO or the Securities Commission have the power to compel documents from securities companies?

1. *Criterion 27.4* - Lao PDR has the ability to sanction FIs that fail to comply with the requirements under the Law on AML/CFT, (Article 65) and the Decision on Administrative Measures Violated Regulations and Law on Anti-Money Laundering and Counter-Financing of Terrorism, (Article 2 and 4).

[For Lao PDR: As under R.35, please provide more detail on what is envisaged by professional, administrative and education penalties.

Please confirm whether sanctions are imposed by AMLIO, or some other process.

Please indicate whether AMLIO or BOL has the power to withdraw, restrict or suspend FI licenses for breaches of the AML/CFT requirements.]

*Weighting and Conclusion*

1. AMLIO and other key supervisors for commercial banks, insurance company and foreign exchange company have powers to issue regulation, on-site inspection, conduct risk assessment of AML/CFT and the right to compel for obtaining necessary ML/TF information. However, there is limited information on whether other supervisors in the smaller sub-sectors have similar powers as above, or how their powers intersect with or overlap AMLIO’s supervisory powers. Lao PDR also has the power to impose various range of sanctions in line with R.35 although there are questions remaining about the types of sanctions that can be or are imposed and which entity is responsible for bringing those sanctions.
2. **Recommendation 27 is rated compliant/largely compliant/partly compliant/non-compliant.**

***Recommendation 28 – Regulation and supervision of DNFBPs***

1. In its 2011 MER, Lao PDR was rated non-compliant with former Recommendation 24. The main deficiencies were that there was no comprehensive AML/CFT regulatory and supervisory regime for casinos, no clear procedures to prevent criminals and their associates from being beneficial owners of casinos, no designated DNFBP supervisor and no implementation of AML/CFT obligations in the DNFBP sector.
2. Criterion *28.1* – is **not met**
3. *Criterion 28.1(a)* is **to be determined.**  Currently, the three casinos operating in Lao PDR that hold a business license in the form of concessional agreement (a signed agreement between a legal entity and a Government agency granting the rights to operate a business under Lao PDR laws and subject to specific terms and conditions). This agreement is granted under the Law of Investment Promotion, which applies to investment of domestic and foreign natural persons and legal entities investing and operating business activities in the Lao PDR. An investment license is issued upon signing of the concessional agreement. Any changes to the business operation, shareholders, legal representative or registered capital must be considered and approved by the licensing authority. Casinos in Lao PDR operate either in a ‘special economic zone’ (SEZ) or special promotion area. Concession businesses operating in SEZ are required to comply with Lao PDR law, or according to the concessional agreement (Article 11, Law on Investment). Internet casinos are not licensed in Lao PDR. The Draft Decree on Casino and Gambling has yet to be enacted and hence, cannot be considered to support the rating.

[For Lao PDR: The NRA refers to the requirement of licensing under the Law of Investment Promotion. Is this the relevant law for requiring the licensing of casinos? Please provide an overview of the current licensing process. What agency is responsible for licensing casinos? Is the Regulation of Minister of Information and Culture on the Management, Inspection, and Permission for Games in the Lao PDR No. 664MIC, dated 22 October 2003 still current and applicable to casinos?

[Lao PDR: What is the current regulation for casinos?]

[Lao PDR: Article 5.2 of the Regulation of Minister of Information and Culture refers to a license for the opening of casinos valid for 12 months. Is this license separate, or in addition to, to the business license (congressional agreement)?]

[Lao PDR: Article 45 of the Law of Investment Promotion requires an investor to submit an application and supporting documents, with “details of supporting documents set out in a separate regulation”. Please specify what regulation this is referring to.]

[Lao PDR: What agency grants Concessional Agreements? Is it the Ministry of Planning and Investment?]

[Lao PDR: Please provide a copy of all three concessional agreements for the casinos operating in Lao PDR]

[For Lao PDR: Are internet casinos licensed? Please provide a breakdown of internet casinos operating in Lao PDR]

1. *Criterion 28.1(b)* is **not met.** There are no measures in place to prevent criminals and their associates from owning, controlling, managing or operating casinos. The AML/CFT law defines casinos as reporting entities. Article 4 (3) of the Decree of Entrust and Responsibilities provides that an agency responsible for implementing AML/CFT activities can audit and request relevant information from REs relating to shareholders, directors and beneficial owners prior to, and/or after issuing a business registration in order to provide this information to competent authorities. However, there is no ‘fit and proper’ requirement and no requirement that this information be sourced at market-entry, prior to the issuing of a business license in order to prevent criminals or their associates from owning or controlling casinos. In addition, there is no requirement to declare changes to control/ownership. The new licensing requirements and process is stipulated in of the Draft Decree on Casino and Gambling, which has yet to be enacted and hence, not considered to support the rating.

[Lao PDR: Article 27 (e) of the *Draft Decree* states “management shall not be persons prohibited to establish, manage enterprises according to the laws and regulations”. What law or regulation prohibits criminals or their associates from owning/ controlling, or being the beneficial owner of a reporting entity or casino?]

1. *Criterion 28.1(c)* is**not met.** Casinos are defined as reporting entities under the AML/CFT and are subject to AML/CFT regulations including STR requirements (Article 17, AML/CFT law). Given that casinos are only permitted to operate in a special economic zone and specific promotion area, there is special ad-hoc committee responsible for all activities in the particular areas by coordinating with relevant sectors. There is no law or regulation that details which competent authority is responsible for supervising which casino. Lao PDR explained that casino operations are under monitoring and inspection of respective supervisory bodies referenced in the table below. However, there is no evidence that casinos are being supervised in terms of AML/CFT compliance. No STRs have been reported by casinos and no sanctions or penalties have been issued to casinos. Moving forward, post enactment of the draft Decree, the casino business supervision office will be under the purview of Ministry of Finance (Article 46 and 47).

[Lao PDR: Can you provide more information on the special ad hoc committee? Is the committee referenced in law and regulations? If so, where? Who is on the ad hoc committee? Is it a combination of agencies/supervisors?]

1. *Criterion 28.2* is **not met/partly met** – Covered DNFBPs include companies or agents that provide/manage financial payments, real estate agencies, valuable material and antique trading businesses, bar associations or a legal firm, notaries and external auditing firms which are supervised by the respective ministries. There is no law or regulation that explicitly states which supervisor is responsible for which DNFBP sector. AMLIO collaborates with the respective supervisors for AML/CFT monitoring in accordance with Article 3 of the Agreement on Organization and Operations of AMLIO.

Details of the supervisors for the respective DNFBPs (as provided by Lao PDR) are highlighted in the table below.

|  |  |  |  |
| --- | --- | --- | --- |
|  | **DNFBPs** | **No. of RE** | **Supervisor** |
| 1. | Real estate trading agencies | 464 | Department of Land, Ministry of Environment and Nature Resources |
| 2. | Valuable material and antique trading business\* | 530 | Department of Import and Export, Ministry of Industry and Commerce |
| Enterprise Regulation and Management, Ministry of Industry and Commerce |
| Internal Trade Department, Ministry of Industry and Commerce |
| 3. | Bar Association | 4 | Department of Promotion Judicial System, Ministry of Justice |
| 4. | Legal firms | 79 |
| 5. | Notary Public | 1 | Notary Department, Ministry of Justice |
| 6. | External auditing firms | 57 | Accounting Department, Ministry of Finance |
| 7. | Casino | 3 | Promote and Manager for Special Economic Zone Office, Ministry of Planning and Investment |
| Department of Mass and Culture, Ministry of Information, Culture and Tourism |
| Ministry of Finance |

\* Include dealers in precious metals and stones registered as legal person

1. *Criterion 28.3* is **not met/partly met** - There is no evidence that monitoring of DNFBPs for compliance with AML/CFT requirements has occurred. DNFBPs are defined as reporting entities under the AML/CFT law and are subject to AML/CFT obligations. However, there is no coverage of virtual asset service providers, trust company service providers, individual lawyers, accountants, real estate agents and dealers in precious metals and stones. TSCPs are yet to operate in Lao PDR and individual lawyers and accountants are not permitted to conduct business in Lao PDR.

[For Lao PDR: Are dealers of precious metals and stones required to register as legal persons? And with what competent authority? What about the dealers that do not register as legal persons?]

[For Lao PDR: Has supervision of DNFBPs occurred? Has there been any sanctions issued for non-compliance?]

*Criterion 28.4* **is not met/partly met**

1. *Criterion 28.4(a)* is **partly met/mostly met**. DNFBP supervisors have the power to supervise ‘entities under their management’ on AML/CFT implementation and compliance, including conducting audits and requesting information. However, supervisors do not have power to issue sanctions for non-compliance (Decree on Entrust). AMLIO has adequate powers to supervise reporting entities for compliance and apply administrative sanctions (Articles 3 and 9 of the Agreement on Organization and Operations of the AMLIO). Whilst AMLIO is not the designated authority to supervise DNFBPs, it is required to coordinate supervision with the designated supervisor (Article 3(4) of Agreement on Organisation).
2. *Criterion 28.4(b)* is **not met****–** There are no measures in place to prevent criminals and their associates from being professionally accredited, or being the owner, controller or manager of a DNFBP. There are no ‘fit and proper’ requirements for DNFBPs. As mentioned in C.28.1, Article 4 (3) of the Decree of Entrust and Responsibilities provides that an agency responsible for implementing AML/CFT activities can audit and request information from REs relating to shareholders, directors and beneficial owners prior to, and/or after issuing a business registration. There is no requirement for this information to be provided at market entry, or to declare changes to directors or ownership.

[Lao PDR: Which agency or agencies grant business registrations to DNFBPs?]

1. *Criterion 28.4(c)* is**not met/partly met****–** Articles 62-65 of the AML/CFT law provide a range of administrative, civil and criminal sanctions for non-compliance of reporting entities. AMLIO has the authority to apply administrative sanction measures for non-compliance (Article 3, Agreement on Organisation and Operations of AMLIO) however, the designated authorities for supervision of DNFBPs are unable to apply sanctions for non-compliance. Whilst AMLIO is required to collaborate with the designated authority in relation to supervision, this remains a moderate deficiency. No sanctions have been applied to DNFBPs in Lao PDR.
2. *Criterion 28.5* is **not met** - There is no specific requirements or policies relating to supervision of DNFBPs to be performed on a risk-sensitive basis, nor is there any evidence of risk-based supervision of DNFBPs for compliance with AML/CFT requirements. Based on the legislation development plan, which covers some of the higher risk DNFBPs such as real estate agents and dealers of precious metals, it seems that currently there is no specific regulations to cover the monitoring and supervision of these DNFBPs and this will be completed in 2021.

[For Lao PDR: The AML/CFT On-site Inspection Manual refers to financial institutions and not to reporting entities. Is there a separate manual for reporting entities or DNFBPs?

[For Lao PDR: Has onsite inspections of DNFBPs occurred? Has a risk assessment of DNFBPs occurred?

Are there any guidelines, plans, policies or guidance relating to the risk-based supervision of DNFBPs or reporting entities?]

[For Lao PDR: Does the Agreement on Organisation and Operations allow for off-site supervision as well as on-site? In addition, it is noted that there is ‘ordinary’ onsite inspection to implement AML/CFT regulations, and ‘extra-ordinary’ onsite inspections for STRs. Is there any other reasons for ordinary and extra-ordinary inspections?]

*Weighting and Conclusion*

1. The deficiencies identified in the 2011 MER have not been addressed. There is no comprehensive AML/CFT regulatory and supervisory regime for casinos, no clear procedures to prevent criminals and their associates from being beneficial owners of casinos, and no implementation of AML/CFT obligations in the DNFBP sector.
2. **Recommendation 28 is** rated **non-compliant.**

Recommendation 29 - Financial intelligence units

1. In its 2011 Lao PDR was rated non-compliant with former recommendation 26 due to a lack of enforceable obligations, STR analysis, STR guidance for non-bank reporting institutions, dissemination of STR and neccessary information, awareness raising among all REs, operational independence of FIU and effective implementation.
2. *Criterion 29.1* is **met**. AMLIO is the competent FIU authority under Article 55 of the Law on Anti-Money Laundering and Counter-Financing of Terrorism No. 50/NA. AMLIO has been established in the organisational structure of the Bank of Lao PDR and has the operational independence concerning its activities. AMLIO has main roles and tasks in data collection, analysis, dissemination, coordination with related parties both domestically and internationally. Article 3 of the Agreement on Organization and Operations of the Anti-Money Laundering Intelligence Office No. 02/NCC demonstrates that the AMLIO has responsibility for activities consistent with the requirements of Criterion 29.1 as follows:
3. To submit documents and conduct financial report relevant to suspected information on ML/FT in order to disseminate them to the related investigation organizations
4. To collect extra information that’s seem to be necessary from REs and related organizations in order to monitor, inspect and analyze the information about money laundering and countering of financing terrorism
5. To coordinate related organizations in order to inform list of terror, group of terrorism, terrorism organization, money launder and terrorism supporter and suspicious person to REs and report, follow and punish suitable case
6. To provide financial intelligence report to other organizations
7. *Criterion 29.2* is **met**.
8. *Criterion 29.2(a)* is **met**. AMLIO is the competent FIU authority under Article 31 of the Law on Anti-Money Laundering and Counter-Financing of Terrorism No. 50/NA to receive suspicious transaction reported by REs. In the case of a suspicion or a cause for a suspicion that a customer`s transaction may be a consequence of a predicate offence, relating or connecting to money laundering and financing of terrorism, REs which include FIs and DNFBPs as specified in Article 17 of the law are required to report such transaction to AMLIO within three working days. This reporting requirement extends to a customer`s attempt of transaction regardless of completion status and amount of money involved.
9. *Criterion 29.2(b)* is **met**. Article 30 of the Law on Anti-Money Laundering and Counter-Financing of Terrorism No. 50/NA outlines a range of other information and transaction reports reportable to AMLIO, which are consistent with the requirements of 29 (2) (b) and include other transactions as defined by AMLIO.
10. The Bank of the Lao PDR is responsible for setting reporting thresholds for cash transactions and wire transfers, and issuing legislations on reporting. Further details on reporting are identified in the Regulation on the Reporting of Cash Transactions Report No. 417/BOL, the Decision on the Reporting of Wire Transfers in exceeding the specified limit No. 963/BOL and the Regulation on the Declaration of Cash, Precious metals and Bearer Nego-tiable Instruments While Entering/Exiting the Lao PDR No.06/NCC.
11. *Criterion 29.3* is **met**. Article 3 and Article 4 of the Agreement on Organization and Operations of the Anti-Money Laundering Intelligence Office No. 02/NCC and the Standard Operating Procedure authorize AMLIO to collect extra information that’s seem to be necessary from REs and related organization of ministries, agencies, local authorities and other organization in jurisdiction regarding to their own works in order to monitor, inspect and analyze the information related to AML/CFT. Regarding REs, this means that AMLIO has authority to submit information requests to REs beyond STR reporting. With respect to sharing information between agencies, Lao PDR notifies that there is any restriction on AMLIO’s ability to obtain information from other agencies including tax authorities and immigration authorities.
12. In addition, the Standard Operating Procedure also requires sharing information between AMLIO and REs. The information includes reporting any transaction as defined by AMLIO such as STR, CTR, WTR and others, personal surveillance activities record of natural person including legal person as requested by the AMLIO and other information.
13. AMLIO has direct and indirect (through MoUs with other government agencies) access to a wide range of information to enable AMLIO to properly undertake it functions. For example, AMLIO accesses external sources (World Check One and other available open sources) and compares the information with its internal database in order to proof of reasonable grounds of STRs received. In this regard, the requirements of Criterion 29.3 (a) and (b) have been satisfied.
14. *Criterion 29.4* is **met**. The Standard Operating Procedure states that AMLIO is responsible for conducting tactical, operational and strategic analysis consistent with the requirements of Criterion 29.4. On receipt of an STR, AMLIO conducts tactical analysis to determine whether the STR provides reasonable grounds to suspect ML or TF. Tactical analysis is based on domestic databases (including information from all reporting entities under the Law No.50/NA, relevant ministries and sectors having information requested, others as may be defined and the needs of AMLIO activities in each period), public sources including World Check one database and International FIUs. Based on the tactical analysis, AMLIO conducts operational analysis to identify further proof of reasonable grounds for suspect and come up with potential target, identified links and possible proceeds of crime related to ML/TF. In case of reasonable grounds to suspect that funds are the proceeds of a criminal activity or are related to TF, AMLIO will file an FIR and submit to related competent authorities for further investigation.
15. Strategic Analysis is conducted on an annual basis based on information from AMLIO’s internal database including internal and international partners in order to identify potential trends and typologies related to ML/TF. Strategic analysis assists Lao PDR to identify weaknesses and challenges including developing policy and plan to counter such trends.
16. *Criterion 29.5* – **is mostly** **met**. Article 3 of the Agreement on Organization and Operations of the Anti-Money Laundering Intelligence Office No. 02/NCC authorizes AMLIO to disseminate, spontaneously and upon request, information and the results of its analysis to relevant competent authorities. AMLIO has responsibility to submit documents and financial report relevant to ML/FT to the related investigation organizations including providing financial intelligence report to other organizations. Information and analysis on money laundering or financing of terrorism of individual, entity or other organization are also disseminated to Law enforcement organizations (Article 8 of the Agreement). The Standard Operating Procedure shows that AMILO, law enforcement agencies and related government agencies are required to share information upon request including information related to AML/CFT, trends of ML/FT and other necessary information. The receipient would be aware of the use of information.
17. The Standard Operating Procedure identifies forms for requesting, reporting or providing information shall be made in writing with signatures of authorized persons from both parties and submitted in writing or electronic format according to the information sharing platform in each period. Lao PDR mentions that paper-based channel and email are used in practice. To ensure the secure of the information dissemination in form of paper-based, AMLIO will authorize specific officer, resgister along with document reference number, date of issuance, details of receiver along with address. Email is used to send particular data including in urgent case to competent authority regarding security concern. In addition, Competent Authority Data Sharing (CADS) which is a new online data sharing platform will be launched to share information between AMLIO and relevant agencies electronically. CADS is somewhat secure platform on information exchange since it consists of Data encrypt/decrypt (Certificate Authority) and as well as Firewall.
18. *Criterion 29.6* **is met.**
19. *Criterion 29.6(a)(c)* is **met**. Article 8 of the Agreement on Organization and Operations of The Anti-Money Laundering Intelligence Office No.02/NCC requires FIU authorities to maintain the confidentiality of information collected.
20. The Standard Operating Procedure defines principles of information sharing between AMLIO and other competent authorities, and between AMLIO and REs including information exchange with international FIU. The principles cover contents, methods, confidentiality and responsibility for such cooperation in a systematic and prompt manner with regards to AML/CFT. Regarding security and confidentiality of information received, AMLIO shall, in conformity with any applicable laws and regulations, including, without limitation, laws and regulations on the protection of privacy and on computerized databases, operate a database containing all relevant information concerning reports as provided under the Law on Anti-Money Laundering and Counter-Financing of Terrorism No. 50/NA. The officers, employees, agents or such other persons appointed to posts in AMLIO shall be required to keep confidential any information obtained within the scope of their duties, even after the cessation of those duties within the financial intelligence unit. Such information may not be used for any purposes other than those provided for by the Law and may not otherwise be disclosed except by order of a court of competent jurisdiction. In the event that reports were received through post office, the security and confidentiality of requesting letter from LEAs should be the responsibility of AMLIO by referring to the security policies and AML/CFT Law No.50/NA.
21. The Standard Operating Procedure also provides procedures for AMILOs’ analysts concerning receiving reports, methods for prioritizing suspicious cases, preparation, storage of information, approval, dissemination and evaluation of report data. Internal policies on data management and entry-exit analysis division including internal instruction on information supervision and entry-exit server’s room are provided for relevant staff and other competent authorities.
22. *Criterion 29.6(b)* is **met**. AMLIO provides training on ethics and confidentiality of information received to all applicants prior to becoming a permanent staff of AMLIO (Article 3 and Article 7 of the Agreement on Organization and Operations of the Anti-Money Laundering Intelligence Office). The Standard Operating Procedure requires AMLIO to provide trainings to staff regarding to AML/CFT in each period to upgrade capacity in performing their duties. Lao PDR mentions that the trainee or temporary staff will be trained on overview of AML/CFT including roles and functions of AMLIO which will include roles of each division also emphasize on confidentiality. The trainee or temporary staff will be authorized to access only basic information of relevant division.
23. Article 51 of the Law on Anti-Money Laundering and Counter-Financing of Terrorism No. 50/NA prohibits related staff and competent authorities from disclosing confidential information, neglecting their duties and responsibilities (including impeding STR processing or analysis) and any other activities that contravene laws and legal regulations. AMLIO’s internal policies provide that violations shall be punished by warning and punishment in accordance with applicable laws and regulations.
24. *Criterion 29.7 is* **partly** **met.**
25. *Criterion 29.7(a)(c)* is **met**. AMLIO is the competent FIU authority under Article 55 of the Law on Anti-Money Laundering and Counter-Financing of Terrorism No. 50/NA. AMLIO has been estrablished in the organisational structure of the Bank of Lao PDR and has operational independence over its activities. AMLIO has main roles and tasks in data collection, analysis, dissemination, coordination with related parties both domestically and internationally to combat and prevent money laundering and terrorism financing. Lao PDR informs that AMLIO had been under the BOL since 2007 until 2016 AMLIO are independent of the Bank of the Lao PDR. The status, mandate, duties, rights, organizational structure, personnel, principle and work procedures of AMLIO is defined in separate regulation in the Agreement on Organization and Operations of The Anti-Money Laundering Intelligence Office No.02/NCC.
26. In practice, AMLIO is under direct supervision-leadership of National Coordination Committee for Anti-Money Laundering and Counter-Financing of Terrorism (NCC) as stated in Article 2 of the Agreement. Lao PDR manages the AML/CFT activities centrally and unanimously in the nation, by assigning the NCC which is directly responsible for managing, monitoring, inspecting on the basis of coordination with other concerned authorities and related local administrations. Article 53 of the law on Anti-Money Laundering and Counter-Financing of Terrorism No. 50/NA identifies that the NCC is non-permanent body and consists of Chairman (Deputy Prime Minister), Deputy Chairman (Governor of Bank of Lao PDR is the first deputy chairman and act as standing member of the committee, and the second deputy chairman is Deputy Minister of Ministry of Public Security) and a number of members (equivalent-ranking of Deputy Minister from relevant ministries and Deputy Head of related organizations) who will be appointed or removed by the Prime Minister. AMLIO is mandated to assist the NCC to ensure the tasks are in order and smooth, in line with law and international standard. In order to ensure that the authorities have capacities to carry out their functions, AMLIO provides internal training courses for its authorities as mentioned in Article 3 and Article 7 of the Agreement on Organization and Operations of The Anti-Money Laundering Intelligence Office and its standard operating procedure.
27. *Criterion 29.7(b)* is **met**.Article 6 of the Agreement on Organization and Operations of the Anti-Money Laundering Intelligence Office No.02/NCC notifies that Director General of AMLIO may have own responsible directly to the NCC about accomplished and pending any rights and duties stipulated in Article 3 and Article 4 of the Agreement. Director General of AMLIO may sign every documents related to AMLIO, in case of standing or absence in the office, Director General of AMLIO may hand over to Deputy Director General of AMLIO. This authorities AMLIO to make arrangements or engage independently with other domestic competent authorities or foreign counterparts on the exchange of information. Article 3 of the Agreement on Organization and Operations of the Anti-Money Laundering Intelligence Office authorizes AMLIO to collaborate, coordinate and exchange of information independently with relevant partners at domestic level and international level. In addition, the Standard Operating Procedure emphasizes that AMILO, law enforcement agencies and related government agencies are required to provide information upon requests, share information related to the ML/FT trends and other necessary information. These include signing the Memorandum of Understanding with foreign counterparts.
28. *Criterion 29.7(d)* is **partly** **met**.Regarding budget and human resource, Lao PDR indicates that AMLIO still proposes the request for budget and human resource supporting to the Bank of the Lao PDR. Budget requested from AMLIO is approved by the NCC then the Bank of the Lao PDR issues budget in annual basis to AMLIO to carry out its functions. The AMLIO budget is separated internally from the rest of the BOL budget. [For Lao PDR: What is the process through which AMLIO gets its human resources or has its human resource approved?].
29. Article 6 of the Agreement on Organization and Operations of the Anti-Money Laundering Intelligence Office No.02/NCC authorizes AMLIO to carry out its functions independently (details stipulated in Rec.29.7 (b)). However, there are some gaps to ensure that AMLIO will be able to obtain and deploy the resources needed to carry out its functions, on an individual or routine basis, free from any undue political influence or interference, which might compromise its operational independence. Article 6 of the Agreement notifies that Director and Deputy Director of Division, staffs and contract’s employee shall be appointed and removed by the standing Vice-Chairman of NCC (Governor of Bank of Lao PDR) upon recommendation by the Bank of Lao PDR.
30. *Criterion 29.8* is **met**. At the time of the evaluation, Lao PDR is in the process of applying Egmont Membership under the sponsorship of Indonesia FIU (PPATK) and AMLO. Now, Lao PDR is at step 4 of membership process and is preparing for Egmont On-site visit. Lao PDR confirms that the application to join Egmont was unconditional.

Weighting and Conclusion

1. Lao PDR has significant progress with respect to roles, responsibilities and powers of financial intelligence unit. The minor shortcoming relate to sufficient operational independence since Director and Deputy Director of Division including the staff of AMLIO shall be appointed and removed by the standing Vice-Chairman of NCC (Governor of Bank of Lao PDR) upon recommendation by the Bank of Lao PDR.
2. **Recommendation 29 is rated largely compliant.**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

1. In its 2011 Lao PDR was rated partially compliant with former recommendation 27 due to a lack of formal designatied law enforcement investigator on TF, coordination between the designated ML investigation unit and other departments in the police, and effective implementation of ML investigation.
2. *Criterion 30.1 is* **partly met.** LEAs have been designated to investigate predicate offences which include all criminal offences leading to and including money laundering, to further prosecution of ML/TF cases. Designated LEAs comprise the Police Investigators (police department is a subsector in the Ministry of Public Security), the Military Investigators (Ministry of National Defence), the Investigation Office of Customs (Ministry of Finance), the Investigation Office of Forestry (Ministry of Agriculture and Forestry), the Investigation Office of Anti-corruption (State Audit Organisation) and other investigation offices as provided by laws (Article 46 of Law on the Criminal Procedure No.37/NA) [For Lao PDR: please confirm the transaltions of Art 8-12 of the Decree on Entrust and Article 46 of the Law on Criminal Procedure are referring to the same agencies/ministries. If yes, what are the correct translated titles?]. The five main investigative bodies mentioned above play significant roles in implementing the activities of AML/CFT as stipulated in Article 3 of the Decree on Entrust and Responsibilities in Implementing the Activities of AML/CFT, No.127/ Gov. The bodies have the rights and duties to conduct criminal investigations within their responsible areas, or at the place where the incident occurred as identified in Article 8 through Article 12 of the Decree on Entrust and Responsibilities in Implementing the Activities of AML/CFT, No.127/ Gov, and Article 76 through Article 81 of the Law on the Criminal Procedure No.37/NA. The Ministry of Public Security has authoritiy to conduct ML/TF investigation, while the others carry out ML investigation [For Lao PDR: As only MOPS has the authority to investigate TF, how do the other investigation organisations refer TF investigations to MOPS, are there legal provisions explicitly allowing this? Please provide a clearer translation of the Decree on Entrust.].
3. *Criterion 30.2 is* **partly met*.*** Law enforcement officials from the Ministry of Finance; Ministry of Agriculture and Forestry; Ministry of National Defense State; Inspection and Anti-Corruption Authority have responsibility and authority to investigate ML offences within their responsible areas, or at the place where the incident occurred regardless of where the predicate offence occurred, and the Ministry of Public Security has the same responsibility and authority for both ML/TF offences (details stipulated in Rec.30.1 and Article 8 Law on AML/CFT No. 50/NA) [For Lao PDR: As only MOPS has the authority to investigate TF, how do the other investigation organisations refer TF investigations to MOPS, are there legal provisions explicitly allowing this? Please provide a clearer translation of the Decree on Entrust.]. Lao PDR points out that all investigative bodies are responsible for financial investigation based on legal basis and the predicate offense investigation has to be done in parallel with financial investigation [For Lao PDR: please provide the legal basis for all investigative organisations/bodies to conduct financial investigations, or the basis for investigative bodies to refer financial investigations to MOPS or another body to be conducted in parallel.] Article 9 of the Directive on Money Laundering and Terrorist Financing Prosecution No. 01/NCC states that the investigation-interrogation of the predicate offences shall be conducted parallelly with the investigation-interrogation of the money laundering and financing of terrorism based on the information, evidences and financial transactions or other properties occurred in the period of the commission of predicate offenses. Article 11 of the Decree No. 127/Gov authorises the Ministry of Public Security to investigate predicate offences parallel with financial investigation.

[For Lao PDR: it appears that Article 11 of the Decree on Entrust authorises MOPS to conduct parallel financial investigations, however, it is unclear where that power is granted to the other four bodies, please provide an accurate translation of the legal provision that explicitly authorises this, noting the footnote 82 to R30 which differentiates financial investigations from criminal ML/TF investigations].

1. The investigative bodies have duties to cooperate or coordinate with relevant partners (Article 47 Law on the Criminal Procedure No.37/NA and Article 41 Anti-Corruption Law (revised version) No. 27/NA) [For Lao PDR: Please provide an accurate translation of Art 41 Anti-Corruption Law No.27/NA) in the context of cooperation and coordination e.g. the statement “Coordinate with sector involve finding out the building, arrest according to the order of people’s prosecutor or people’s court”]. In addition, the Ministry of Public Security is responsible for providing information such as the investigation of predicate offences and other related activities of AML/CFT to relevant competent authorities (Article 11 Decree No.127/Gov). However, it is not explicit whether the cooperation and coordination among the investigative bodies focuses on referring a financial investigation to another body or conducting a financial investigation [For Lao PDR: Can you clarify more for this area or provide additional supporting documents?].
2. *Criterion 30.3 is* **partly met.** Whereas other designated agencies proceed with relevant money laundering investigation, the Ministry of Public Security is responsible for proceeding money laundering and terrorist financing, and conducting financial investigation parallel with investigation of predicate offences (Details stipulated in Rec. 30.1 and Rec. 30.2). These designated authorities have the rights to issue an order to confiscate or seize property which might be the proceeds of crime in order to guarantee for compensation, fines, and other fee, or to handover to the state (Article 53 and Article 128 of the Law on the Criminal Procedure No.37/NA). However, it is not clear whether these designated bodies have authorities to identify and trace assests [For Lao PDR: It appears that Art 128 of the Law on Criminal Procedure authorises the confiscation or seizure of property, but it does not authorise identification or tracing. Is this located in another article? Please identify where the power to identify and trace assets is contained in legal provisions for investigative organisations– is it articles 3 and 4 of the Instruction on Application of Provisional Measures on Properties Relating to ML and TF No 08/NCC?].
3. Article 47 of the Law on the Criminal Procedure No.37/NA requires designated law enforcement investigation organisations to report complaints regarding offences and submit a copy of the order issued to open investigations to the public prosecutor immediately. In case of sufficient information relating to the offence, the law enforcement investigators will submit their relevant investigations to the public prosecutor to carry out further criminal proceeding (Article 53 and Article 56 of Law on the Criminal Procedure No.37/NA and Article 35 of the Anti-Corruption Law (revised version) No. 27/NA) [For Lao PDR: do the obligations contained in these Articles 47, 53 and 56 Criminal Procedure No.37/NA and Article 35 Anti-Corruption Law No.27/NA also apply to proceeds of crime/asset confiscation cases?].
4. *Criterion 30.4 is* **mostly met.** The Lao Securities Commission Office is a securities companies’ supervisor which has the responsibility for pursuing financial investigations of predicate offences, to the extent that designated competent authorities are exercising functions covered under Recommendation 30.
5. Article 162 and Article 163 of the Law on Securities (Amended version) No. 79/NA authorizes competence officer from the Lao Securities Commission Office to investigate securities cases which is a predicate offence. When the securities investigation officers receive an instruction to initiate an investigation, they must conduct the investigation, as defined in the law on criminal procedure (Article 160 of the Law on Securities No. 79/NA). Lao PDR indicates that the securities investigative officer is responsible for financial investigation based on legal basis and the predicate offense investigation has to be done in parallel with financial investigation [For Lao PDR: Please confirm whether the securities investigative officer has authoritiy to conduct financial investigation including pursuing ML/TF offences investigation in parallel with financial investigation? And provide the legal provision that states this.] To issue an order to seize or confiscate property, search building and person relating to securities case, the securities investigation officer is required to submit his/her investigations for consideration by the Office of Public Prosecutor (Article 163 of Law on Securities (Amended version) No. 79/NA). In conducting investigation, the securities investigation officer shall coordinate with the relevant parties, including the Office of Public Prosecutor and investigation organisations (Article 163 Law on Securities (Amended version) No. 79/NA), In case of sufficient information relating to the offence, the securities investigative officer will submit his/her investigations for consideration by the Office of Public Prosecutor to review and prosecute in court (Article 163 of Law on Securities (Amended version) No. 79/NA).
6. Regarding the FIU, Lao PDR has an intention to enhance capacity building of AMLIO's staff by identifying enforcement of the laws especially financial investigation techniques as one of core training course as identified in the Standard Operating Procedure.
7. *Criterion 30.5 is* **partly met.**
8. The investigative office of Anti-Corruption is authorized to investigate corruption cases prescribed in the law on anti-corruption (Article 80 Law on the Criminal Procedure No.37/NA). The Anti-Corruption authority is assigned to investigate and interrogate about ML offences which lead to the criminal proceeding in case of ML/TF (Article 12 of Decree on Entrust and Responsibilities in Implementing the Activities of AML/CFT, No.127/Gov). Article 9 of the Directive on Money Laundering and Terrorist Financing Prosecution No. 01/NCC notifies that the investigation-interrogation of the predicate offenses shall be conducted parallelly with the investigation-interrogation of the money laundering and financing of terrorism based on the information, evidences and financial transactions or other properties occurred in the period of the commission of predicate offences. Lao PDR indicates that Anti-Corruption authority is responsible for financial investigation based on legal basis [For Lao PDR: please provide the the legal provision that authorises the Anti-Corruption authority to conduct financial investigations].
9. Article 5 of the Anti-Corruption Law (revised version) No. 27/NA provides that the Anti-Corruption authority should deal an offence with strictly, immediately, and with justice. Article 7 of the Anti-Corruption Law (revised version) No. 27/NA identifies public and private partners to prevent and counter corruption by the timely provision of cooperation, facilitation, information, and evidence. The Anti-Corruption authority has powers to identify and trace the evidence related to corruption. In addition, the Anti-Corruption authority is able to initiate freezing or seizing of property that is, or may become, subject to confiscation (Article 53 and Article 128 of the Law on the Criminal Procedure No.37/NA and Article 41 of the Anti-Corruption Law (revised version) No. 27/NA). [For Lao PDR: Please recheck rights and duties in Article 41 of the Anti-Corruption Law (revised version) No. 27/NA since there is minor different information provided in Lao PDR TC (Rec. 30.5) and in the Anti-Corruption Law.]

[For Lao PDR: as mentioned above it appears that Articles 53 and 128 only authorises investigation organisations to seize and confiscate property, where in the legal provisions is the power to identify and trace assets/property – is it articles 3 and 4 of the Instruction on Application of Provisional Measures on Properties Relating to ML and TF No 08/NCC?]

1. Pursuant to Article 32 and Article 38 of the Anti-Corruption Law (revised version) No. 27/NA, an investigative case shall be submitted to the public prosecutor for consideration within 2 months for major offences and within 3 months for crimes, from the date of the order to open an investigation.

Weighting and Conclusion

1. Five main law enforcement bodies which are the Ministry of Public Security, the Military Investigators, the Investigation Office of Customs, the Investigation Office of Forestry and the Investigation Office of Anti-corruption are authorized to investigate predicate offences which include all criminal offences leading to and including money laundering, to further prosecution of ML/TF cases. Whereas other designated agencies proceed with relevant money laundering investigation, the Ministry of Public Security is responsible for proceeding money laundering and terrorist financing. The Lao Securities Commission Office as a securities companies’ supervisor is another body which has the responsibility for pursuing financial investigations of predicate offences, to the extent that designated competent authorities are exercising functions covered under Recommendation 30. However, there are moderate shortcomings. It is not explicit whether the cooperation and coordination among the investigative bodies focuses on referring a financial investigation to another body or conducting a financial investigation. It is also not clear whether securities investigative officers have authoritiy to conduct financial investigation including pursuing ML/TF offences investigation in parallel with financial investigation. It is also not clear whether law enforcement investigation organisations have power to identify and trace assests.
2. **Recommendation 30 is rated partly compliant.**

Recommendation 31 - Powers of law enforcement and investigative authorities

1. In its 2011 Lao PDR was rated largely compliant with former recommendation 28 due to a lack of effective implementation of available powers in investigation and prosecution.
2. *Criterion 31.1 is* **mostly met.** The Law on Criminal Procedure No.37/NA empowers law enforcement investigators to obtain access to crucial documents and information for use in investigations, prosecutions and related actions. The compulsory measures available to authorities are as follows:
3. Articles 43, 113, 115, 116 and 118 authorise the issuing of warrants and taking of testimony with a documentary record from relevant persons such as an accused person, injured party, civil plaintiff or witness. The warrant shall include the responsibilities of the person subject to a warrant not obeying that warrant.
4. Articles 121 to 125 authorise the searching of buildings, vehicles or individual suspects. Searching shall be conducted within 24 hours from the date of signing the order by prosecutor or the People’s Court. In necessary and urgent cases, the search shall be reported to the public prosecutor within 24 hours after completing such search.
5. Articles 126 to 128 enable the confiscating/seizing and obtaining of objects or documents that are relevant as evidence or for the tracing of offences. Law enforcement investigators are able to confiscate/seize objects or documents at the time of search, suspicious postal objects and telegraphs related to the offences with an order from the head of the investigation or public prosecutor, or objects which are useful for the case with an order from the head of the relevant investigation organization in order to guarantee for compensation, fines, and other fee, or to handover to the state.
6. Articles 129 to 134 authorize law enforcement agencies to inspect incident site (crime scene), conduct autopsies, appoint experts or specialists to perform inspections and test information.
7. Individuals and related partners must follow and respond to requests from the authorities including the handover of gathered criminal evidence to the relevant authorities (Article 43 of Law on the Criminal Procedure No.37/NA). Article 26 of the Law on the Criminal Procedure No.37/NA provides that public and private partners which are state authorities, the Lao National Construction Committee, social organizations, civil society, and entities are required to work closely with criminal proceeding authorities within their own responsible areas regarding the measures to prevent and suppress criminal offences.
8. Regarding power to obtain and access to records held by FIs and DNFBPs, articles 8, 9, 11 and 12 of the Decree on Entrust and Responsibilities in Implementing the Activities of AML/CFT, No.127/Gov empower Ministry of Finance, Ministry of Agriculture and Forestry, Ministry of Public Security and State Inspection and Anti-Corruption Authority to request information from REs. However, these powers are broad and not compulsory in their terms.
9. *Criterion 31.2 (a)-(d) is* **partly met.** The Law on National Public Security Work, No. 40/NA and the Law on Customs No. 04/NA states that Academic Combatants, which are departments and headquarters under Ministry of Public Security for the protection of political security and social order under the security sector (Article 34 of the Law on National Public Security Work, No. 40/NA), and Customs have key roles to apply investigative techniques for money laundering, associated predicate offences and terrorist financing which relate to accessing computer systems and controlled delivery.
10. Article 34 of the Law on National Public Security Work, No. 40/NA authorizes the Academic Combatants to collect information on accounting movements, sources of money which might be illegal and affect on national security and social order. They are also empowered to use communication tools to perform national security tasks in the event of an emergency to prevent damage that may cause to society or harm the country. In addition, the Academic Combatants are assigned to inspect transport vehicles, communications equipment, technical system networks - information, documents, goods, packages, any place related to the commission of a crime (Article 34 of the Law on National Public Security Work, No. 40/NA).
11. Article 16 of the Law on Customs No. 04/NA empowers Customs to control goods arriving at the Customs border checkpoint by requiring the transporter to submit a manifest within 24 hours including conveyance papers, goods cannot be loaded without this submission. Parcel post and mail which are imported, exported or in transit are subject to customs control (Article 21 of the Law on Customs No. 04/NA). A legal entity running a business as a freight forwarder and dispatching parcels and mail shall be responsible for customs clearance on behalf of the goods owner as prescribed in the Customs Law and regulations. Article 20 of this law provides that personal belongings of passengers travelling by car, train, boat, and airplane through customs checkpoints are under customs control. Passengers have to declare any goods in excessive amount permitted by regulations and compliance with other requirements which are, the export and import of foreign currencies, Lao Kip, precious objects, and archaeological and cultural objects.
12. Lao PDR mentions that the Law on Public Security Forces (Amended Version) No. 20/NA empowers competent authorities to perform undercover operations and intercepting communications. Article 11 of the Law No. 20/NA identifies that the professional public security forces are the armed forces, which comprise many specialists who systematically receive specialized training, and belong within the organizational structure of the public security forces, with police chiefs and officers being equipped completely with weapons and specialized technics [For Lao PDR: is this “techniques”?]. They have the rights to investigate-interrogate criminal cases and use investigation-interrogation methods including preventive measures such as quarantine, arrest, release, search, confiscation and fines as determined in the law (Article 12 of the Law No. 20/NA). They are able to equip and use weaponry, explosive substances, explosives, land, water and air vehicles, specialized animals, equipment, specialized technical equipment in accordance with the law and regulations to ensure the operation of duties. They are also authorized to monitor and check the frequency waves, electronic businesses, information-news management and computing systems as determined in the law [For Lao PDR: do the powers in article 12 paragraph 10 purport to cover intercepting communications techniques? The translation is not clear.]. However, these powers are broad and not specific to undercover operation and intercepting communication techniques.
13. *Criterion 31.3* is **partly met.**
14. *Criterion 31.3(a)* is **met.**
15. Articles 2, 3 and 4 of Instruction on Application of Provisional Measures on Properties Relating to Money Laundering or Terrorist Financing No.08/NCC provide that investigative bodies shall use investigative techniques and preventive measures to identify and monitor properties related to money laundering including terrorism or terrorist financing, proceeds of money laundering or predicate offences including instrumentalities for committing the offences, and property of corresponding value from money laundering or related to money laundering in case it is impossible to withhold, seize or freeze such property at that time. A competent authority shall issue an order to seize or freeze properties immediately without a prior notice if property as defined in Article 3 of this instruction is detected.
16. When reporting entities and postal enterprises receive notification of lists of persons associated with properties subject to seizure or freezing as defined in article 3 of the Instruction from the investigation authorities, or once there is evidence confirming that the property of their customer attempting to conduct a transaction or establish a business relationship with them is connected to money laundering or terrorist financing, reporting entities and postal enterprises must suspend related transactions and withhold such property then report immediately to AMLIO and investigative authorities. In case of receiving a report from reporting entities and postal enterprises, investigative authorities must issue an order to seize or freeze such properties immediately.
17. Reporting entities and postal enterprises are able to withhold such property for a period not exceeding 30 working days. Any natural persons and legal persons shall strictly comply with the order. If the property is needed for the investigation of predicate offences relating to money laundering, a seizure or freezing order shall be effective till a prosecution comes to an end.
18. Law enfocrement and investigative authorities are authorized under the Article 26 and Article 43 of the Law on the Criminal Procedure No.37/NA to compel the production of necessary information for an investigation and to gather evidence related to money laundering, associated predicate offences and terrorist financing, including information of ordinary person and legal entities.
19. *Criterion 31.3(b)* is **partly met.**
20. Articles 3 and 4 of Instruction on Application of Provisional Measures on Properties Relating to Money Laundering or Terrorist Financing No.08/NCC provides that investigative bodies shall use investigative techniques and preventive measures to identify and monitor properties identified in Article 3 of the Instruction. A competent authority shall issue an order to seize or freeze properties without a prior notification if traces of properties relating to money laundering or terrorist financing, as defined in Article 3 of this instruction, are detected. REs are able to withhold such properties from customers for a period not exceed 30 working days (Article 2 Instruction No.08/NCC). Article 2 Instruction No.08/NCC also requires REs to immediately report to AMLIO and investigation authorities in the meantime they withhold the properties. With an order, designated investigators start the process of seizures but before they have seized, they can either inform or not inform, the owners of the properties of the assets (Article 4 of the Instruction). [For Lao PDR: Please confirm whether the matter “they can either inform, or not inform, the owners of the properties of the assets” is correct? If it is correct, please clarify more.] Any natural persons and legal persons shall strictly implement compliant with the order and the order shall be effective till a prosecution comes to an end.
21. *Criterion 31.4* is **mostly met.** Article 43 of the Law on the Criminal Procedure No.37 empowers law enforcement investigators to obtain access to all crucial documents and information for investigation purposes and other relevant intention. Individuals and related partners must follow and respond to requests from the authorities including handing over gathered criminal evidence to the relevant authorities. Significant public and private partners including AMLIO in its role as the FIU are obliged to work closely with criminal proceeding authorities within their own responsible areas regarding the measures to prevent and suppress criminal offences (Article 26 of the Law on the Criminal Procedure No.37/NA).
22. There is explicit power for Ministry of Finance, Ministry of Agriculture and Forestry, State Inspection (and Anti-Corruption Authority and Ministry of Public Security to obtain information from AMLIO. Article 8, 9 and 12 of the Decree on Entrust and Responsibilities in Implementing the Activities of AML/CFT, No.127/Gov empowers these competent investigative authorities to request information in their roles from reporting entities and AMLIO. Information sharing on money laundering, associated predicate offences and terrorist financing between the Ministry of Public Security in its role as a significant law enforcement investigator and AMLIO is authorised under Article 11 of the Decree. The Ministry of Public Security officers are designated to review and consider the completeness and adequacy of information in Financial Intelligence Reports (FIR) conducted by AMLIO including providing feedback or recommendations regarding the FIR in order to initiate a criminal proceeding in the case of ML. Conversely, the Ministry of Public Security officers shall report a result of the investigation to AMLIO. Conversely, AMLIO (FIU) is required to submit documents and conduct financial reports relevant to suspicious information on ML/TF in order to disseminate them to the related investigation organisations (Article 3 of Agreement on Organization and Operations of the Anti-Money Laundering Intelligence Office No. 02/NCC). AMLIO is also authorised to require the provision of extra necessary information from the related organisations of Ministries, agencies, local authorities and other organisations in the jurisdiction including Reporting Entities regarding to their own works (Article 4 of Agreement).
23. In addition, there are MoUs between investigative bodies and AMLIO such as MoU between Anti Money Laundering Intelligence Unit, Bank of Lao PDR and Economic Police Department, Ministry of Public Security on access to and exchange of financial Intelligence and information relating to suspected Money Laundering. [For Lao PDR: Please provide MoU between FIU and Customs Department of MOF including MoU between FIU and Anti-Corruption Department of SIAA.]

Weighting and Conclusion

1. There are moderate shortcomings. Based on information provided, there are broad powers for law enforcement investigators to obtain and access to records held by FIs and DNFBPs. In addition, it is not clear whether there are specific investigative techniques on undercover operations and intercepting communications and whether the requirement for competent authorities to identify assets without a prior notification cover to the owner or not.
2. **Recommendation 31 is rated partially compliant.**

Recommendation 32 – Cash Couriers

1. In the second round, Lao PDR was rated non-compliant with these requirements due to the declaration requirement not including bearer negotiable instruments, declaration requirements not extending to mail or cargo; the absences of a form for incoming and departing passengers; sanctions and confiscation measures not being stipulated in law; the absences of a legal framework to empower Customs Officers to enforce a declaration requirements and effectiveness identified through the fact that a voluntary declaration had never been made by a traveller.
2. *Criterion 32.1* is **partly met**.Lao PDRimplemented a declaration system that exists for incoming and outgoing cross-border transportation of both national and foreign currency at all ports of entry to/departure points from Lao PDR, including airports, rail, road and river crossing border points (Article 20 Reporting of Personal Belongings Passengers – Customs Law (Revised version) No.04/NA 20 December 2011). Travellers are required to declare to a Customs Officer *all physical inward and outward transportations of foreign or national currency, precious metals and BNIS* above the prescribed threshold of 100,000,000 (one hundred million Kip is approx. $11,000 USD) (Article 3 and 4 Declaration of Cash, Precious Metals and Bearer Negotiable Instruments While Entering or Exiting the Lao PDR No.06/NCC 19 May 2015 ). The Customs Declaration Form for Personal Effects states that *“only one written declaration per family is required”* and the declaration itself refers to *“I am / we are”* indicating that the form can be submitted on behalf of multiple persons however in practice Lao PDR confirm that every traveller is required to make a declaration. A declaration system for inbound/outbound airline passengers was implemented in November [Lao PDR: Please confirm this has been implemented and how it works in practice. If it is different to the Customs Declaration Form for Personal Effects, when was that customs declaration form introduced and how is the API/PNR system different to the customs declaration form?] 2020 which requires passengers to declare the carriage or otherwise of *foreign or national currency, precious metals* *and BNIs* above the prescribed threshold of 100,000,000 (one hundred million Kip- $10,700 USD) on an Airline Passenger Information form (API).
3. [For Lao PDR: Can the associated regulation be provided for the API form? Is information about currency, precious metals and BNIs contained in the API/PNR form or does it contain different information? Who collects the disclosure information ? Are passengers required to disclose their carrage of funds prior to boarding the aircraft ? The associated regulation is required to fully explain his process.]
4. Currency control measures exist which require that the Bank of Lao PDR (Article 7 ) approve the removal of cash or foreign currency from Lao DPR. The prescribed amount is 100 million kip (USD10,700).(Article 10 Decision on Opening Bank Accounts, Money Transfer and Carrying Cash In and Out of Lao PDR No.454/BOL, dated 30 May 2019) Having obtained the corresponding certification document, travellers are still required to declare the transportation to a Customs Officer. Transportation of foreign currency in cash through mail and cargo is also subject to prior authorisation
5. [For Lao PDR: Can you provide the legal reference to this requirement? Article 33 of Law on AML and CFT does not cover mail or cargo].
6. *Criterion 32.2* is**mostly met*.*** Lao PDR has a written declaration system in place, and all travellers must complete a Customs Declaration Form when entering or exiting Lao PDR with national or foreign currency, precious metals or BNIs of a value of equal or exceeding the prescribed threshold of 100 million kip(USD10,700)(Article 33 Law on Anti-Money Laundering and Counter Financing of Terrorism 21 July 2014).
7. *Criterion 32.3 is* **not applicable.**
8. *Criterion 32.4 is* **met***.* Article 3 of the Law on Customs No.04 December 2011 establishes that Customs Administration is a function of the Ministry of Fiance. Article 8 of the Decree on Entrust and Implementing the Activities of AML/CFT No127 20 Feb 2020 outlines the responsibilities of the Ministry of Finance which includes responsibility to co-operation and investigation of violations of failure to declare; or the making false declarations associated with cash, precious metals and BNIs at the border, and to investigate associated predicate offences for which they are responsible. Customs has the authority to request and obtain further information from the carrier with regard to the origin and the intended use of the cash, precious metal or BNI upon discovery of a false declaration or a failure to declare (Article 34 Law on Anti-Money Laundering and Counter Financing of Terrorism 21 July 2014).

406.405. *Criterion 32.5 is* **met.** There exists a wide range of proportionate and dissuasive sanctions for making a false declaration or failing to declare. Almost all of the relevant sanctions include the ability to freeze, seize, and confiscate the cash involved (Customs Law (Revised version) No.04/NA, 20 December 2011, Article 88-96; Law on Foreign Currency Management No55/NA 22 December 2014, Article 49; and Penal code No.26/NA 17 May 2017 Article 284 and 286).

1. *Criterion 32.6* is **partly met**.Authorities have established a Cross Border Report Online System in January 2020 (Notice on Cross Border Report No.245/CD dated 14 January 2020) at 13 priority international border crossing points [For Lao PDR: If there are border points where it is not installed, how is the reporting conducted?] through which Customs Officials submit reports to the AMLIO. These reports are required to be submitted within 15 working days of the declaration having been made (Article 6 Regulation on the Declaration of Cash Precious Metals and Bearer Negotiable Instruments While Entering / Exiting the Lao PDR No.06/NCC 19 May 2015).

**[For Lao PDR: Please confirm how this is undertaken in practice, by email, by phone, directly into a database?]**

[For Lao PDR: Are the declarations themselves provided to AMLIO? **What happens to the physical reports that a completed by the traveller ? Where are they stored ?]**

1. *Criterion 32.7* *is* **partly met**.Lao PDR Customs and other security agencies (e.g departments of immigration and related authorities) are required to coordinate and cooperate at the border. (Part V (Article 53- 54 ) of the Law on AML and CFT No 50/NA July 2014 requires that the NCC (Chair - Deputy Prime Minister of Lao DPR) has a duty to co-ordination the various elements of thte AML/CFT system.)

[**For Lao PDR: Do AMLIO provide intelligence to border authorities?].**

1. *Criterion 32.8* is ***met****.* Customs have the power to inspect particular, suspicious, or random targets; check and examine cross-border vehicles, goods, and articles, and detain items, goods, and articles in violation of relevant laws and administrative regulations, including the regulations on the control of the cross-border transportation of cash. Customs also have the power to seize undeclared cash BNIs or precious metals without delay for the purpose of investigation of money laundering or the financing of terrorism. (Article 34 of the Law on AML and CFT No 50/NA July 2014)
2. *Criterion 32.9* is **mostly met**.As mentioned at c.32.7, the information collected at the border is made available to the FIU who when appropriate can share and exchange this information with its foreign counterparts. The same information is also available for exchange with some foreign customs authorities via MOUs, and international conventions. Information collected at the border is retained for 3 years (Article 64 Law on Customs), however information provided to AMLIO is retained for 10 years (Article 50 Law on Accounting No47/NA 26 December 2013). [For Lao PDR: Please provide a full list of MoUs which Customs rely upon to share information].
3. *Criterion 32.10* is **met**. Lao PDRhas safeguards in place to ensure proper use of the information collected through the declaration system. The cross-border declaration system does not appear to restrict trade payments between countries nor the freedom of capital movements.
4. *Criterion 32.11* is **met/mostly met.** The wide range of sanctions mentioned above in c.32.5, including seizure and confiscation, equally apply to persons who carry out a physical cross-border transportation of currency that is related to ML and TF. In addition, in such cases, persons also qualify for criminal sentences for ML and TF, as set out in R.3 above.

*Weighting and Conclusion*

1. Further information is required on border co-ordination and the exchange of information.

Recommendation 32 is partially compliant.

Recommendation 33 – Statistics

1. *Criterion 33.1 is* **not met.**
2. *Criterion 33.1(a) -* AMLIO is required to maintain statistics as part of its Standard Operating Procedure which was introduced on 15 January 2020. These statistics include data on reports received, disseminated and the international exchange of intelligence.

[For Lao PDR: Please provide comprehensive statistics on the number of reports received from reporting entities and data on the number then disseminated to LEAS – it is noted that stats are contained with the document Anti Money Laundering Intelligence Office Strategic Report however these statistics conflict with the statistics provided within the Report on National Money Laundering and Financing Risk Assessment of the Lao PDR]

1. *Criterion 33.1* (b) - Law Enforcement agencies and Prosecutors are required maintain comprehensive information and statistics associated with ML/TF investigations prosecutions and convictions as per Article 100 of The Memo of Investigation of the Law on Criminal Procedure No.37/NA November 2014. [For Lao PDR: Confirm legislation].

[For Lao PDR: Please provide comprehensive statistics on ML/TF Investigations Prosecutions and Convictions and Sentences]

1. *Criterion 33.1* (c) - Along with 33.1(b) Authorities are required to maintain statistics on property confiscated.

[For Lao PDR: Provide comprehensive statistics on property frozen, seized and confiscated it is noted that some of these statistics are referred to in the Report on National Money Laundering and Financing Risk Assessment of the Lao PDR ]

1. *Criterion 33.1* (d) - It will be a duty of the Ministry of Justice to collect statistics on mutual legal assistance request and other international requests for co-operation made and received pursuant to Article 44 Rights and Duties of the Public Prosecutors Office in the Draft Law on Mutula Legal Assistance.

[For Lao PDR: Please provide comprehensive statistics on mutual legal assistance request and other international requests for co-operation made and received]

Weighting and Conclusion

1. No statistics have been provided for the four main areas covered by R.33.
2. Recommendation **33 is rated non-compliant.**

Recommendation 34 – Guidance and feedback

1. *Criterion 34.1 is* **partly met.**Lao PDR had issued guidance such as Decision on Reporting Suspicious Transaction Related to ML/TF No.13/NCC, dated 19 October 2015, Instruction On **Indicators** of Transactions Suspected of Money Laundering or Financing Terrorism No. 41/AMLIU, dated 12 January 2016, Instruction on Suspected Transactions Reporting on Money Laundering or Financing Terrorism No. 42/AMLIU, dated 12 January 2016. In addition, a provision on feedback to REs regarding STR submission is also available in the Standard Operating Procedure (SOP) clause 2.3. and risk assessment is provided in the Agreement on KYC/CDD. There was also an engagement program conducted by AMLIO with the REs which focus on STR, AML/CFT policy, NRA, KYC/CDD and RBA.

[To Lao PDR: r34 seeks information on guidance from competent authorities, supervisors, and SRBs and relates to applying all national measures, not just STR reporting. Could you please provide further information on guidance outside of STR reporting, such as guidance on CDD and implementation of RBA? Also provide any information on whether there was any engagement or outreach program conducted with RE on other areas.]

*Weighting and Conclusion*

1. There is limited guidance issued and few awareness campaign program with the reporting entities.
2. Recommendation **34 is rated partially compliant**

Recommendation 35 – Sanctions

1. *Criterion 35.1 is* **mostly met/partly met.**
2. Law *on* AML/CFT cover criminal, civil or administrative sanctions for violation of the AML/CFT requirements set in Rec.6, Rec.8 and Rec.23 as determined in the Law on AML/CFT, Article 61, 64, 65, 67 and 69. In addition, there is also Decision on Administrative Measures Violated Regulations and Law on Anti-Money Laundering and Counter-Financing of Terrorism No.09/NCC, dated 30 March 2016. However, the administrative sanctions in the form of warning for initial violations as provided in Article 3 of the Decision on Administrative Measures Violated Regulations and Law on Anti-Money Laundering and Counter-Financing of Terrorism may not be proportionate or dissuasive. This covers key obligations such as compliance program, KYC procedures, CDD collection of detailed customers’ data and data collection on wire transfers. Both administrative and criminal measures may be applied for offences related to key obligations such as compliance programme, KYC, CDD collection and STR. Usually a warning letter will be issued to REs for first time offence but recurring offence will be subjected to a more punitive sanction or criminal measures as deemed appropriate by authorities. Meanwhile, other sanctions of the Law on AML/CFT can be summarized as follows:

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
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| |  |  |  |  | | --- | --- | --- | --- | | **Article** | **Sanction type** | **Applicability** | **Offence** | | Article 62 | Education Measures | Natural person, legal person or organization | * Delayed STR submission * Failure to maintain confidentiality of STR | | Article 63 | Disciplinary measures | Officers | * Non-criminal | | Article 64 | Fining measures | Natural person, legal person or organization | * Non-criminal * Violations of Article 50, 51 and 52 | | Article 65 | 1. Warned in writing and recommended to exercise their rights and obligations;  2. Fined as per a separate regulation. | Reporting entities | * Violation of Article 18: Rights and Obligations of Reporting Entities | |  | 1. Suspended from business operation or subject to management removal; 2. Have their business permits or licenses withdrawn; 3. Be criminally prosecuted in accordance with relevant laws fined 100,000,000kip (USD11,090) up to 2,000,000,000kip (USD22,180,000).” | Reporting entities | * Violation of Article 50 and 52 |   **Criminal measures**   |  |  |  |  | | --- | --- | --- | --- | | **Article** | **Offence Type** | **Applicability** | **Sanctions** | | 66 | Money Laundering | Natural persons | * <1,000,000,000Kip (<USD112,315): shall be deprived of freedom from 3-7 years, fined 300,000,000- 500,000,000 Kip (USD33,300 -USD855,500) with his/her properties to be confiscated. * >1,000,000,000 (>USD112,315) shall be deprived of freedom from 7-10 years, fined 500,000,000 Kip up to 700,000,000 Kip (USD33,300 –USD77,700), and with his/her properties to be confiscated. | | 66 | Money Laundering | Organized group, habitual offense | * An offender shall be deprived of freedom from 10-15 years, * fined 700,000,000 Kip up to 900,000,000 Kip (USD 89,852 –USD112,315) and with his/her properties to be confiscated. * The act of preparation and attempt to commit an offence shall also be penalized. | | 67 | Terrorist Financing | Natural persons | * <1,000,000,000Kip (<USD112,315): shall be deprived of freedom from 5-8 years, fined 500,000,000- 800,000,000 Kip (USD56,158 – USD89,852) with his/her properties to be confiscated. * >1,000,000,000 (>USD112,315) shall be deprived of freedom from 8-12 years, fined 800,000,000 Kip up to 1,000,000,000 Kip (USD 89,852 –USD112,315), and with his/her properties to be confiscated. | | 67 | Terrorist Financing | Organized group, habitual offense | * An offender shall be deprived of freedom from 12-20 years, * fined 800,000,000 Kip up to 1,000,000,000 Kip (USD 89,852 –USD112,315) and with his/her properties to be confiscated. * The act of preparation and attempt to commit an offence shall also be penalized. | | 69 | Organized criminal group and racketeering | Natural person | * Imprisonment of 3 to 6 years, * Fined 30,000,000 Kip up to 60,000,000 Kip (USD3,330– USD6,660) and with his/her properties to be confiscated. * The act of preparation and attempt to commit an offence shall also be penalized. | |

1. *Criterion 35.2 is* **met.** The sanctions in the Law on Anti-Money Laundering and Counter-Financing of Terrorism No. 50/NA, dated 21 July 2014 is applicable to natural person and legal person as provided in Article 61 of the law.

**“Article 61 Measures against violators**

Any natural person, legal person or organization violating this law shall be educated, disciplined, fined or criminally punished in accordance with the severity of the violation, and shall pay compensation for damages incurred.”

*Weighting and Conclusion*

1. While Lao PDR provides a range of sanctions, further clarity is needed on whether the maximum sanctions available or applied for serious offences are dissuasive and proportionate.

[To Lao PDR: while R35 speaks to whether sanctions are available (and the IO deals with how they are applied) we will need further information on whether relatively serious offences can be punished by more than administrative penalties.]

1. **Recommendation** 35 **is rated largely/partially compliant.**

Recommendation 36 – International instruments

1. *Criterion 36.1* is **mostly met.** Lao PDR acceded to the Vienna Convention on 11 October 2004, the Palermo Convention on 26 September 2003, the United Nations Convention against Corruption on 10 December 2009, and the Terrorist Financing Convention on 29 September 2008. However, Lao PDR has not yet acceded to 2 of the 9 treaties related to the Terrorist Financing Convention, namely (a) the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; and (b) the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf.
2. *Criterion 36.2* is **partly met.** The relevant articles of the Vienna Convention, the Merida Convention, the Palermo Convention, and the Terrorist Financing Convention have been implemented to some extent, but there are some shortcomings in implementation, such as (a) some deficiencies in the mutual legal assistance law 2020 (MLA Law 2020) (see R.37 and R.38); (b) investigators are not supported with the power to conduct control deliveries (see R.31); (c) unclear provision for the ancillary offences of association with or participation in money laundering (see R.3); (d) unclear provision to enable law enforcement authorities to conduct joint investigation based on bilateral or multilateral agreement (see R.40).

Weighting and Conclusion

1. Lao PDR is a party to the four conventions, but there are some shortcomings in implementation (see R.3, R.31, R.37, R.38, and R.40).
2. **Recommendation 36 is rated partly compliant**

Recommendation 37 - Mutual legal assistance

1. *Criterion 37.1* is **met**. Since Lao PDR’s 2011 mutual evaluation, the MLA Law 2020 was enacted. Article 44 of Law on Money Laundering and Counter-Financing Terrorism 2014 provides general provision on mutual legal assistance in money laundering and terrorist financing cases. This provision also states that the mechanism and procedures for mutual legal assistance are defined in the relevant regulations and laws. Article 3(6) of MLA Law 2020 provides definition of criminal matters that related to criminal offences and criminal proceedings, but contains no further explanation of the scope of criminal offences, except under article 44 of AML and CFT Law. Moreover, Chapter 4, article 31 to article 35 of MLA Law 2020 regulates the execution of mutual legal assistances. Moreover, article 272 of Law on the Criminal Procedure 2017 requires Lao PDR authorities to comply with agreements with foreign countries, as well as with any international conventions to which Lao PDR has become a party. Lao PDR has signed treaties covering various forms of mutual legal assistance with a few countries, namely the United Kingdom and Northern Ireland, Vietnam, as well as ASEAN MLAT. Moreover, article 271 paragraph 2 of Law on the Criminal Procedure allows Lao PDR to provide judicial assistance, including MLA without agreement and with mutual cooperation basis, but should not conflict with the Lao PDR laws.
2. *Criterion 37.2* is **mostly met**. [For Lao PDR: Please provide an explanation of the designated authority for judicial assistance. Is there any guidance on judicial assistance?]- The assessor acknowledges article 9 of MLA Law 2020 which regulates the request of mutual legal assistance via a focal coordination agency through diplomatic channels. The law also designates the People’s Supreme Court Office as a focal coordinator as indicated in article 43 para 1 of MLA Law 2020 and provides for coordination with the Ministry of Public Security, the People’s Court, the Ministry of foreign Affairs, theMinistry of Justice, and theLocal Administration Office. Moreover, article 44(2) of MLA Law 2020designates the Public Prosecutor Office to coordinate with foreign organizations about the international cooperation for mutual legal assistance in criminal matter, and article 45(2) of MLA Law 2020 requires the Ministry of Public Security to take the lead and support the execution of mutual legal assistance in criminal matters requests in accordance with the scope of its own responsibilities.
3. Nevertheless, it is unclear in the implementation of treaties, such as the ASEAN MLAT that only contains a general provision regarding nomination of a central authority (Article 4) without specifying one, and there is no other established official mechanism to execute mutual legal assistance, including prioritisation and monitoring of mutual legal assistance requests.

[For Lao PDR: Please provide further information regarding the established official mechanism for transmission and execution of requests, processes for timely prioritisation and execution of requests pursuant to the ASEAN MLAT or other treaties, and information about the case management system in place.]

1. *Criterion 37.3* is **not met**. There is provision under article 3 of ASEAN MLAT regarding the limitations on providing assistance amongst the countries party to the treaty. Article 3(1)(e) ASEAN MLAT permits parties to provide mutual legal assistance in the absence of dual criminality. Nevertheless, the dual criminality limitation still applies when the domestic law does not permit assistance in the absence of dual criminality, and it is also regulated under 8(1) and article 8(6) of MLA Law 2020. The assessor acknowledges that article 272 of criminal law regulates judicial assistance provision. Moreover, article 273 of it provision provides the requirement of refusal of judicial assistance. This provision states that Lao PDR may refuse a foreign request if parties do not comply with the agreement, and the requirement of dual criminality as mentioned in the MLAT applies unreasonably or unduly restrictive on MLA. According to the article 8(1) of MLA Law 2020, the absence of dual criminality is a basis for authorities to refuse requests for mutual legal assistance. [For Lao PDR: Please clarify as to whether Lao PDR uses an offence based or conduct based dual criminality requirement] Similarly, article 8(6) also regulates the dual criminality requirement, except where defined differently in a treaty on international cooperation for mutual legal assistance in criminal matters to which Lao PDR is a party or international principles of justice, the internal laws of the requesting state or Lao PDR may allow execution of the request, and shows unreasonably or unduly restrictive conditions. The exception provision provides unclear and inconsistent explanation regarding the prohibitation of mutual legal assistance. Moreover, the MLA Law 2020 permits refusal if the requesting countries have not yet confirmed that they will provide similar legal assistance in the future that may be requested by Lao PDR (article 8(7) of MLA Law 2020), and the provision allowing refusal where cooperation may cause harm to a person is unclear (article 8(9)of MLA Law 2020) [For Lao: Is this clause regarding the death penalty? Please clarify the translation in the final law], and cause a severe burden for Lao PDR (article 8(10) of MLA Law 2020). Moreover, article 14 of the MLA Law 2020 provides rights for any individual to refuse to give any statements, evidence or relevant documents if as defined under the Law on Criminal Procedure and it is unclear what is being provided for under this provision [For Lao PDR: please clarify what this provision means, and whether it is contemplating situations like the right to silence for a defendant]. Those considerations of refusal are unreasonably or unduly restrictive on MLA.

[For Lao PDR: please provide an translation of the final Mutual Legal Assistance Law as it has been enacted, and further explanation regarding the meaning and implementation of Article 8(6).]

1. *Criterion 37.4* is **partly met**. There is no provision in Criminal Law related on judicial assistance and the MLA Law 2020 to refuse requests on the sole ground that the offence involves fiscal matters, or on the grounds of secrecy or confidentiality requirements on financial institutions or DNFBPs. However, according to article 1(5) of ASEAN MLAT and other treaty of judicial cooperation states explicitly that parties should not refuse the mutual legal assistance on solely on the ground of banks and similar financial institution, as well as related to fiscal matters.
2. *Criterion 37.5* is **met**. Article 14 of the MLA Law 2020 regulates the requirement of confidentiality of mutual legal assistance requests. A similar requirement is also contained in article 9 of ASEAN MLAT. The provision requires both Lao PDR and requesting countries shall kept the information confidential and not to disclose to public and third states. Nevertheless, article 14 is unclear the mechanism on how Lao PDR’s authorities keep the confidential information or documents of mutual legal assistance request, in order to protect the integrity of the investigation or inquiry. [For Lao PDR: According to Lao PDR explanation during the virtual Pre ME, Lao PDR mentioned there is a guidance the implementation of MLA or judicial assistance. Can Lao PDR provide it to assessor?]
3. *Criterion 37.6* is **not met**. Article 273 of it provision provides the requirement of refusal of judicial assistance. It provision require that Lao PDR may refuse the foreign request if parties not comply with the agreement. Moreover, article 3(1)(e) ASEAN MLAT permits parties to provide mutual legal assistance in the absence of dual criminality. However, the dual criminality limitation still applies when the domestic law does not permit assistance in the absence of dual criminality. Article 8(1) of the MLA Law 2020 allows authorities to refuse requests for mutual legal assistance in the absence of dual criminality. Moreover, article 8(6) also regulates similar dual criminality requirement, and prevents Lao PDR from providing mutual legal assistance based on a foreign countries request.
4. *Criterion 37.7* is **partly met**. There is no specific mechanism or legal requirement to decide whether the offence is within the same category of offence, or denominate the offence by the same terminology in the event of implementation of dual criminality requirement, both based on treaties and international conventions that Lao PDR become a party. Article 8(1) of MLA Law 2020 provides explicitly that the absence of dual criminality allows Lao PDR to refuse the mutual legal assistance. Nevertheless, article 8(6) the MLA Law 2020 provides that Lao PDR may provide assistance if there shall be defined differently of the component of criminal offences determined under the Laws of Lao PDR, except regulates in the treaty of international cooperation for mutual legal assistance in criminal matter to which Lao PDR is a party or international principles of justice, However it is unclear the mechanism how Lao PDR can proceed such requests from foreign countries. [For Lao PDR: an accurate translation fo the final MLA law as enacted is needed]
5. *Criterion 37.8* is **not met**. Article 35 to article 36, and article 43 on the MLA Law 2020 designates the People's Supreme Court Office as a focal coordinator and authorises coordination with the Ministry of Public Security, the People’s Court, the Ministry of foreign Affairs, the Ministry of Justice, and the Local Administration Office. Moreover, several agencies, such as the Public Prosecutor Office, the Ministry of Public Security, the People's Supreme Court Office, the Ministry of Foreign Affairs, the Ministry of Justice, and the Local Administration Office are assigned as management organisations of activities of international corporation for mutual legal assistance in criminal matters. Article 45(2) of MLA Law 2020 assistance provide authority to the Ministry of Public Security to execute the mutual legal assistance request. However, the provision does not provide further explanation related to the powers and investigative techniques that might be used by Ministry of Public Security as required under Recommendation 31 in response to a mutual legal assistance request. [For Lao PDR: According to Lao PDR explanation on Pre ME, Lao PDR mention there is a guidance the implementation of MLA or judicial assistance. Can Lao PDR provide it to assessor?] Additionally those powers that are not available to LEAs domestically (Recommendation 31) are equally unavailable in response to a mutual legal assistance request.

[For Lao PDR: Please provide further explanation regarding the implementation of MLA through criminal procedure. This will be revisited with the translation of the final MLA Law as enacted]

*Weighting and Conclusion*

1. Lao PDR just passed the MLA Law 2020 during the ME process. Before the MLA Law enacted, Lao PDR implementing the MLA based on article 272 of of Law on the Criminal Procedure 2017, including MLAT. It provision allows Lao PDR to conduct judicial assistance based on agreement or mutual cooperation. The Criminal Procedure 2017 and MLAT provide refusal conditions and it shows dual criminality as unreasonably or unduly restrictive on MLA, and similar findings were also found in the MLA Law 2020, The MLA Law 2020 does not contain clear processes for the timely prioritisation and the absence of a case management system, there is no provision on refusing requests on the sole ground that the offence involves fiscal matters, or on the grounds of secrecy or confidentiality requirements on financial institutions or DNFBPs, except in the treaties, and limited further explanation onlegal requirement to decide whether the offence is within the same category of offence, or denominate the offence by the same terminology in the event of implementation of dual criminality requirement, and minor deficiencies on further explanation related to the powers and investigative techniques as required under Recommendation 31 in response to a mutual legal assistance request.
2. **Recommendation 37 is rated partly compliant.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

1. *Criterion 38.1* is **partly met.** Article 272 of the Law on the Criminal Procedure 2017 requires competent organisations providing judicial assistance to comply with the agreements that have been signed with other countries to exchange information, to freeze or to seize the assets of an accused person or defendant. Similar provision for such assistance is also made under article 24 paragraph 1/26 [For Lao PDR: the different translations have conflicting article numbers, please provide a translation of the final MLA Law as enacted] of MLA Law 2020 that requires the execution of freezing and seizuring shall allow by the Criminal Procedure Law of Lao PDR. There is unclear definition or scope of property that can be frozen, seized, and confiscated under article 52 and article 53 Penal Code 2017 that apply for criminal offences. The assessor acknowledge that article 53 Penal Code 2017 provide limited scope of property that called translate it into “items” and limited to property that used in the offence (or instrumentalities used in) or in the preparation for the offence (or instrumentalities intended for use in), or that were obtained from an intentional offence (or proceeds from). Moreover, article 31 paragraph 1 of MLA Law 2020 states that the assets that may confiscate related with the assets limited from the proceed of offences and/or materials used in the proceed of offences in Lao PDR. However, explicit provisions exist under article 41 Law on Money Laundering and Counter Financing of Terrorism 2014 that also cover laudered property from, and article 31 the draft mutual legal assistance law, even though there is no provision for confiscation of property of corresponding value. Moreover, article 22 ASEAN MLAT contains similar requirements for parties to article 272 Law on the Criminal Procedures 2017. However, the assessor acknowledge the findings on c.37.8 that mention the powers that are not available to LEAs domestically (Recommendation 31) are equally unavailable in response to a mutual legal assistance request, and it cause unclear provision under Penal Code 2017 does apply for MLA or judicial assistance or not.
2. *Criterion 38.2* is **not met** - As mentioned above, Article 272 Law on the Criminal Procedures 2017 regulates assistance in compliance with agreements that have been signed with other countries to freeze or to seize the assets of an accused person or defendant. Moreover, article 31 of MLA Law 2020 also applies to the confiscation of assets according to a court ruling or the competent authority of the requesting state, Nevertheless the provision limited to convictions of assets related with proceed of offences and/or materials used in the proceed offences. There is also no such a provision in the ASEAN MLAT.
3. *Criterion 38.3* is **not met/partly met.**
4. *Criterion 38.3(a)* is **not met***.* Although article 43 MLA Law 2020 designates several Lao PDR authorities to manage the mutual legal assistance request and, article 24 of MLA Law 2020 requires the focal coordinating agency to notify the requesting state of seizure and confiscation action pursuant to the request, this law has not been enacted. Additionally, there is no mechanism regarding the coordination of seizure and confiscation actions with other countries. [For Lao PDR: According to Lao PDR explanation at the virtual Pre ME, Lao PDR mentioned there is a guidance document on the implementation of MLA or judicial assistance. Can Lao PDR provide it to assessor? Does the guidance provide mechanism regarding the coordination of seizure and confiscation action with other countries?]
5. *Criterion 38.3(b)* is **partly met**. Article 7 MLA Law 2020 provides general provision related to storage of seized and frozen properties. This provision require investigative authorities to maintain the freezing and seizing properties. Moreover, article 24 paragraph 3 of MLA Law 2020 provides that management and protection of the freezing and seizuring asset shall be performed based on Law on Criminal Procedure. However, the requirement in the Law on Criminal Procedure for maintaining the properties is limited to assets under investigation, and provides an unclear explanation regarding the maintenance of confiscated assets and which agencies are required to maintain the assets. Moreover, there is no specific law regarding the managing and disposing of property frozen, seized, or confiscated. [For Lao PDR: Does Lao PDR provide guidances or furher explanation on article 52 and 53 Penal Code 2017 or article 108 of the Law on the Criminal Procedure 2017?]
6. *Criterion 38.4* is **partly met/not met**. Article 30 of the MLA Law is unclear as to whether it provides for asset sharing arrangements. [For Lao PDR: please provide an accurate translation to clarify. The translation of the final MLA Law as enacted may cause this rating to be revisited] Although under article 22(5) ASEAN MLAT there is provision for asset sharing by agreement, this only applies to countries party to the treaty as regulates under article 272 of the Law on the Criminal Procedure 2017. Notwithstanding the provision in the ASEAN MLAT, there are no further regulations governing Lao PDR’s asset sharing arrangements based on the treaty.

Weighting and Conclusion

1. The MLA Law 2020 provides requirement that the assets that may confiscate related with the assets limited from the proceed of offences and/or materials used in the proceed of offences in Lao PDR, and not cover asset that require in c38.1(e), The law also not cover the request of confiscation asset on the basis of non-conviction based confiscation proceedings and related provisional measures considering the mutual legal assistance related with confiscation limited to the assets proceed of offences and/or materials usedin the proceed of offences in Lao PDR based on criminal conviction. Moreover, the MLA Law 2020 has unclear provisions related to asset sharing.

Weighting and Conclusion

1. **Recommendation 38 is rated partially compliant.**

Recommendation 39 – Extradition

1. *Criterion 39.1* - Extradition is governed by the Law on Extradition and by treaties and international conventions to which Lao PDR is a party.
2. *Criterion 39.1(a)* is **mostly met**. Extraditable offences in Lao PDR are those punishable under the penal law by imprisonment or detention for more than 12 months (Article 7 Law on Extradition). The penalties imposed for both money laundering and terrorist financing under the Penal Code (Articles 130 and 131) qualify these offences for extradition purposes. Moreover, Article 4 of the Law on Extradition states that one of the principles of extradition is criminally punishable offences under the penal law (see the definition of penal law on article 3 of the Penal Code), which includes the Penal Code and other laws which define criminal offences such as the Law on Money Laundering and Counter-Financing Terrorism 2014. However, according to extradition treaties between Lao PDR and Cambodia, China, and Thailand, the assessor founds limited information regarding treaties that have been signed by Lao PDR on extradition matters.

[For Lao PDR: Does the Extradition Law provide a list of offences? Does it cover ML and TF? Please provide the mechanism provision related with extradition] [For Lao PDR: please provide further information on the extradition treaties that Lao PDR is a party to and the offences covered by those treaties]

1. *Criterion 39.1(b)* is **partly met**. The extradition law contains general provisions. Lao PDR provides for the specific processes related to the steps in the execution of extradition request in the Extradition Manual. Lao PDR has no case management system. However, there is a certain time period (within 30 days) for the Ministry of Foreign Affairs to coordinate with the competent authorities to execute the extradition request. However, this time period is only for extradition process after court decision had been made or upon final court’s decision as indicated in the article 22 of the Extradition Law.

[For Lao PDR: Please provide any guidilines or policy frameworks for the execution and management of extradition requests. Do you operate a case management system for extradition requests?]

1. *Criterion 39.1(c)* is **met**. The reasons for refusal of extradition requests in Lao PDR, particulary under article 8, article 10 of the Law on Extradition, do not seem unreasonable or unduly restrictive. Although article 7 of the Law on Extradition provides the requirement of dual criminality, an extradition request may still be granted whether both parties classify the conduct as constiuting an offence within the same category of offence or not.
2. *Criterion 39.2* is **mostly met**. Lao PDR refuses extradition requests relating to Lao PDR citizens, aliens or stateless persons residing in Lao PDR (article 11 Law on Extradition). However, this provision contains an exception where a treaty on extradition provides otherwise. Refusal of a request may not be grounds for a person to be released from criminal liability, and they will be prosecuted by Lao PDR authorities domestically. [For Lao PDR: does article 11 effectively mean that Lao PDR uses a model under c39.2(b) rather than c39.2(a)?] [For Lao PDR: Does Lao PDR apply the international principle of *aut dedere aut judicare*, to prosecute persons accused of serious international crimes where no state has requested their extradition?]
3. *Criterion 39.3* is **partly met.** As mentioned in subcriterian 39.1(c), although Lao PDR imposes dual criminality requirement, an extradition request may still be granted whether both parties classify the conduct as constiuting an offence within the same category of offence or not. The absence of further regulation regarding procedures makes the mechanism for ensuring this approach is taken is unclear. [For Lao PDR: Please provide provisions that cover implementation of dual criminality for extradition] [For Lao PDR please provide further regluation about the mechanism how Lao PDR can classify the offences have the same category of offence or not. If there is further regulation, Lao PDR may explain with cases.]
4. *Criterion 39.4* is **not met.** The extradition law of Law PDR does not provide for simplified extradition mechanisms.

Weighting and Conclusion

1. The legal basis of Lao PDR Extradition are Extradition Law, treaties, and international conventions. Article 4 of the Law on Extradition states that one of the principles of extradition is criminally punishable offences under the penal law, which includes the Penal Code and other laws which define criminal offences such as the Law on Money Laundering and Counter-Financing Terrorism 2014 and the extradition process provides for certain time periods to be met. Lao PDR imposes dual criminality requirement, an extradition request may still be granted whether both parties classify the conduct as constiuting an offence within the same category of offence or not. However, The absence of further regulation regarding procedures makes the mechanism for ensuring this approach is taken is unclear. While Lao PDR does not extradite its own nationals, expceptions contained in treaties are allowed, and nationals will be prosecuted domestically. There is no case management system in extradition process,
2. **Recommendation 39 is rated largely compliant.**

Recommendation 40 – Other forms of international cooperation

1. *Criterion 40.1* is **partly met**. International cooperation in Lao PDR is conducted through bilateral and multilateral agreements. Article 42 of Law on Anti-Money Laundering and Counter-Financing of Terrorism 2014 requires competent authorities to conduct international cooperation on AML/CFT in conformity with international agreements and treaties to which Lao PDR is a party. Although articles 14 and article 43 of the Law on Anti-Money Laundering and Counter-Financing of Terrorism 2014 promote cooperation and allows Lao PDR to exchange information on money laundering and terrorist financing matters, the provisions are in broad broad terms. According to the information provided to assesors, the competent authorities able to provide international cooperation include the FIU, law enforcement, and limited supervisory agencies (insurance only). [For Lao PDR: plesase provide list of MoU of supervisory agencies with foreign counterpart] However, the provisions are unclear, such as (a) whether international cooperation implemented solely through agreements based on article 43(2) of the Law on Anti-Money Laundering and Counter-Financing of Terrorism 2014; (b) whether the scope of international cooperation does include associated predicate offences; and (c) whether the exchange of information may conducted both spontaneously and upon request.

[For Lao PDR: Please provide copies of any bilateral and multilateral agreements, and other regulations that provide international cooperation related with AML CFT]

1. *Criterion 40.2(a)* is **met.**  Competent authorities related with AML/CFT have a lawful basis for providing international cooperation under article 14 [For Lao PDR: please clarify the interpretation and implementation of article 14, does it impose any obligation or provide a legal basis, or is in encouraging or aspirational? This might be a translation issue.]and article 42 Law on Anti-Money Laundering and Counter-Financing of Terrorism 2014. Moreover, conducting international cooperation is also regulated under several other provisions, such as:

* Article 10 of The Anti-Corruption Law
* Article 8 of Law on the Office of the Public Prosecutor (Amended version)
* Article 7 of Law on People’s Court (Amended version)
* Article 9 of The Law on National Security Work,
* Article 6 of Law on Bank of the Lao PDR
* Article 7 of Law on Insurance
* Article 165 Law on Securities

[For Lao PDR: please provide further details and/or provisions on whether assistance is provided on the basis or agreements and treaties or the principles or mutual cooperation, or a combination of both] The detailed mechanisms of international cooperation are regulated under the Law on International Conventions and Treaties Number 18 year 2017.

1. *Criterion 40.2(b)* is **partly met.** Article 43(2) of the Law on Anti-Money Laundering and Counter-Financing of Terrorism 2014 requires Lao PDR’s competent authorities to conduct international cooperation through signed agreements with foreign countries or to become a party to the international treaties and agreements on AML/CFT. This provision provides limited means for competent authorities to conduct cooperation, and will impact the efficient of international cooperation implementation, except for the FIU with limited requirements. Section 2.2 paragraph 4 of Standard Operating Procedure of AMLIO 2020 provides that the exchange information be conducted through a paper based system or electronically depending on other information exchange system during each period.

[For Lao PDR: Please identify and provide the provisions of the law or treaties that outline the means of cooperation]

1. *Criterion 40.2(c)* is **partly met***.* There is no provision in Lao PDR law related the obligation for competent authorities to use secure gateways, mechanisms or channels that will facilitate and allow for the transmission and execution of requests. Additionaly, no such requirement is contained within the MOUs or other agreements provided by Lao PDR. Nevertheless, the confidentiality provisions are in place. However, some efforts for multilateral cooperation agreements are in place to share information, as follows:

* Interpol 24:24 Hour 7:7 Day ‘I 24/7’ for information exchange among Interpol members (as well as further extend to internal cooperation among related agencies such as Immigration Department and utilising the Electronic Asian Database System (EADS) although not established, the signing of MOU on mutual cooperation between AMLIO and Interpol is underway;
* Electronic Asian Database System (EADS) is a website which used to exchange the information between police within 10 ASEAN countries, Software-Defined Wide Area Network: SD-WAN;
* The TF statistics database Japan-ASEAN, Safe Mekong Coordination Centre on drug offences (namely: Lao PDR, Vietnam, Myanmar, Thailand and China); - The Border Liaison Office (BLO) in the form of MOUs (Vietnam, Myanmar, Thailand and China), this particular mechanism for information exchange is able to be utilised without prior approval from MOFA; and
* Lao PDR entered into the WCO member in year 2007.

[For Lao PDR: Please provide further information on the types of information that Lao PDR may shared through these mechanisms and identify the Lao PDR agencies that are able to share information through them.] [ For Lao PDR: please provide the electronic mechanim that used to exchange information WCO to support the findings]

1. *Criterion 40.2(d)* is **partly/not met***.* There is no provision in the law or procedure in Lao PDR’s competent authorities related to the prioritisation and timely execution of requests. However, Lao PDR states that in their implementation of requests the competent authorities prioritize and execute an inward request based on priority of risk.

[For Lao PDR: Please provide any provisions of the law that outline the prioritisation and timely execution of requests] [ For Lao PDR: Please provide the list of type of information request and time average of Lao PDR to provide information to requesting country on each competent authorities to support assessor analysis in c40.2(d)]

1. *Criterion 40.2(e)* is **not met***.* There is no further provision in the law or procedure in Lao PDR’s competent authorities related to the safeguarding of the information received beyond the confidentiality provisions are in place in some MOUs signed by competent authorities.
2. *Criterion 40.3* is **not met.** Lao PDR’s competent authorities are empowered to conduct international cooperation on AML/CFT through signing/ed agreements with foreign countries or under international treaties and agreements to which Lao PDR is a party under article 43(2) on Anti-Money Laundering and Counter-Financing of Terrorism 2014. Lao PDR authorities explain that they conduct bilateral or multilateral agreements based on ~~reciprocicy and national priorities and interest~~. Nevertheless, there are no further provisions in the law or procedures that require competent authorities to negotiate and to sign the agreements in a timely manner. Moreover, according to the MOUs provided to the assessor by Lao PDR the competent authorities engage with a limited range of foreign counterparts [For Lao PDR: where is the legal provision stating that Lao PDR provides international cooperation based on reciprocity?], for example AMLIO has agreements with only 14 foreign FIUs. Similar conditions exist with law enforcement agencies and supervisory agencies.
3. *Criterion 40.4* is **not met.** There are no provisions in the law or procedures from Lao PDR’s competent authorities related to the obligation of competent authorities to provide feedback in a timely manner to competent authorities from which they have received assistance, on the use and usefulness of the information obtained, except for the FIU. Section 2.2 paragraph 4 of Standard Operating Procedure of AMLIO 2020 limited requires AMLIO to provide feedback that consists of information that has been utilized in their operation from time to time. Moreover, similar provisions are found in the bilateral FIU MOUs with the absence of the obligation of competent authorities to provide feedback in a timely manner

[For Lao PDR: Please provide further information regarding feedback provisions under existing treaties.]

1. *Criterion 40.5* is **partly met.** There is no all encompassing provision under the Law on Anti-Money Laundering and Counter-Financing of Terrorism 2014 that regulates the prohibition of exchange information, nor procedural requirement under competent authorities’ regulations, and the law and procedures are unclear on whether there exist refusal on the grounds on c40.5(a)-(d) or not Nevertheless, limited requirements apply in MOUs among FIUs, particularly that a request should not be refused if there is an inquiry, investigation or proceeding underway in the requested country, unless the assistance would impede that inquiry, investigation or proceeding (e.g.article 5 MoU between AMLIO and AMLC).

[For Lao PDR: Please identify the provisions that place restrictions on cooperation so they can be analysed against c40.5(a)-(d). Do any of those specific grounds for refusal exist in the MOUs or laws? Please confirm that article 5 of the MOU between AMLIO and AMLC is limited to circumstances where an ongoing inquiry would be impaired by the execution of the request.]

1. *Criteria 40.6* is **partly met**. The only provision in the law that regulates the mechanism of control and safeguards related to information exchanged is article 51(2) on Anti-Money Laundering and Counter-Financing of Terrorism 2014 that prohibits staff and competent authorities disclosing confidential information to unrelated natural persons, legal persons or organisations. Moreover, section 2.3.9 of the Standard Operating Procedures of AMLIO states that information may not be used for any purposes other than those provided for by the Law on Anti-Money Laundering and Counter-Financing of Terrorism 2014 and may not otherwise be disclosed except by order of a court of competent jurisdiction. The MOUs between FIUs prevent requesting competent authorities from using information provided other than as stated in the MOU and prevent further disclosure without permission from the requested counterpart, such as the article 3(a) and article 3(b) MoU between AMLIO and AMLC. [For Lao PDR: Please provide all relevant MoUs of competent authorities to assist the analysis] Moreover, according to Section 2.2 paragraph 5 Standard Operating Procedures of AMLIO the AMLIO may refuse a case where such requested information is not consistent or aligned with cooperation principles as defined in the MOU signed between the two FIU or other international cooperation principle. While some safeguards and controls exist to limit the unauthorised use and dissemination of information, these are not universal across agreements, however competent authorities have the power to enter such agreements.
2. *Criteria 40.7* is **partly met**. Section 2.2 paragraph 2 Standard Operating Procedures of AMLIO requires confidentiality as the scope of international cooperation with foreign FIU[For Lao PDR: Please provide clarification of the translation of this provision and its implementation. Please clarify where confidentiality is required specifically?] , and the requirement for confidentiality appears in MOUs FIU-to-FIU (e.g. article 6 MoU between AMLIO and AMLC). The FIUs to shall keep the information confindential, and protect the same confidentiality as provided by the national legislation of the receiving parties for similar information from national sources. A gap exists for law enforcement and supervisory agencies for which no requirement on confidentiality currently exists. [For Lao PDR: please provide information regarding the confidentiality requirements in other MOUs]
3. *Criterion 40.8* is **not met.** There is no provision under the law, nor requirement under the standard operating procedure, 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. There is also unclear provision under MoUs that exist between competent authorities and their foreign counterparts.

*Exchange of Information Between FIUs*

1. *Criterion 40.9* is **mostly met.**  Article 42 Law on Anti-Money Laundering and Counter-Financing of Terrorism provides principles to be followed by competent authorities when providing international cooperation on AML/CFT matters [For Lao PDR: Please provide articles in AML and CFT Law that mention that the international cooperation alo include associated predicate offences]. Moreover, Lao PDR’s competent authorities are empowered to conduct international cooperation on AML/CFT through signing/ed agreements with foreign countries or under international treaties and agreements to which Lao PDR is a party under article 43(2) on Anti-Money Laundering and Counter-Financing of Terrorism 2014 However, there is no explicit legal basis that mentions FIU as a part of competent authorities under this provision. Nevertheless, article 55 Law on Anti-Money Laundering and Counter-Financing of Terrorism explicitly regulates the duties of AMLIO to conduct coordination domestically and internationally in AML/CFT matters. Moreover, section 2.2 paragraph 1 of the Standard Operating Procedure of AMLIO provides the policy upon which AMLIO conducts cooperation with foreign FIUs.
2. *Criterion 40.10* is **mostly met**. Section 2.2 paragraph 6 of the AMLLIO Standard Operating Procedures requires AMLIO to provide feedback to the requested jurisdiction on how the information has been utilised either periodically or upon request. Nevertheless, this is unclear that the requirement to provide feedback for foreign counterparts is mandatory, and conducted upon request or whenever possible. MoUs between FIU that provided by Lao PDR shown feedback requirement, both upon request and whenever possible (e.g. article 8 MoU between AMLIO and AMLC).

[For Lao PDR: is the requirement to provide feedback to foreign counterparts in section 2.2 paragraph 6 of the AMLIO SOP mandatory? And must this information be provided on a periodic basis as well as when the feedback is requested?] [For Lao PDR – that is the clause referred to, is the obligation mandatory?]

1. *Criterion 40.11* is **met.** Although they are not clearly defined, AMLIO has broad powers of information collection, as the FIU, under the Agreement on Organisation and Operations of AMLIO. Article 3 paragraph 2 on Agreement On Organization and Operations of AMLIO (Revised) No. 02/NCC stated the duties of AMLIO to collect ML/TF information from reporting parties, including additional information when necessary. These powers are also regulated under article 8 of Agreement on Organisation and Operations of AMLIO, namely that AMLIO has a right and duty to collect and require suspicious transaction reports of money laundering and financing of terrorism, cash transaction reports, cash border reports and other transactions including information from reporting entities. However, based on rights and duties provision as above it is unclear that AMLIO have as wide as possible an authority to obtain information of financial, administrative and law enforcement to undertake its functions. Nevertheless, according to section 2.1 to section 2.3 of Standard Operating Procedure of AMLIO AMLIO is enabled to share information it is able to collect within its powers, with law enforcement agencies, related government agencies, international FIU, and reporting entities.

*Exchange of Information Between Financial Supervisors*

1. *Criterion 40.12* is **mostly met**. *General provisions -* Article 14 of Law on Anti-Money Laundering and Counter-Financing of Terrorism provides regulation for AMLIO to promote international cooperation, both bilateral, regional, and global in the insurance sector. This provision allow international corporation, including exchange of lessons, information, seminars, technical knowledge upgrading and capacity building, technical assistance. Moreover, Article 42 Law on Anti-Money Laundering and Counter-Financing of Terrorism 2014 provides that competent authorities can conduct international cooperation on AML/CFT. Article 14 and article 43(1) also promote and allow Lao PDR to exchange information on money laundering and terrorist financing matters.
2. *Lao Securities Commission Office* – Article 164 of Law on Securities (Amended version) provides regulation of Lao Securities Commission Office and promotes international cooperation, both bilateral, regional, or global in the securities sector. This provision allows international cooperation conducted in many forms, including sharing information, techniques, specialization, and human resources. Moreover, according to Article 3 (14) of Decision On Organization and Operations of Lao Securities Commission Office No. 013/LSC, dated 17/12/2013, the Securities Commission Office has the right and duty to cooperate with other countries and international organizations regarding supervision and development of securities as assigned by the Securities Commission. Nevertheless, article 165 of Law on Securities (Amended version) limits foreign counterparts solely to foreign securities commissions. Moreover, article 166(1) also requires international cooperation in securities should be conduct through signing an agreement.
3. *Bank of the Lao PDR –* Article 6 of Law on Bank of the Lao PDR provides regulation of the Bank of the Lao PDR and promotes international cooperation, both bilateral, regional, and global in banking sector.

[For Lao PDR: Please confirm whether this provision allows for a legal basis for the conduct of international corporation in many forms, including sharing information, experience, technology, and capacity building, or whether it merely encourages what Bank of Lao PDR can share with its foreign counterparts . ] [For Lao PDR: Please further explantion which legisalstion and article that mention general scope of international cooperation as a benchmark for providing international cooperation with counterparts that also apply for Bank of the Lao PDR]

1. *Ministry of Finance* - Article 7 of Law on Insurance (Amended version) provides regulation of the Ministry of Finance and promotes international cooperation, both bilateral, regional, and global in the insurance sector. This provision allows international corporation, including exchange of technical lessons, technical expertise and information-news, human resource development.

There is no legal basis for DNFBP’s supervisory agencies to provide cooperation with their foreign counterparts, except for auditors regulated under article 7 Law on Independent Audit Number 51/NA on 2014 and notaries under article 8 of the Law on Pubic Notary (Revised) Number 11/NA on 2009

1. *Criterion 40.13* is **partly met.**  As provisions mentioned above, article 42(1) of Law on Anti-Money Laundering and Counter-Financing of Terrorism, article 164 of Law on Securities (Amended version), article 6 of Law on Bank of the Lao PDR, and article 7 of Law on Insurance (Amended version) able to conduct exchange information. However, those regulation not provide detail provision regarding information that may exchange, including information domestically available to them and information held by financial institutions with foreign counterparts. There is no legal basis for DNFBP’s supervisory agencies to provide cooperation with their foreign counterpart. [For Lao PDR: Please identify which sections of which MOUs the powers and obligations are located in relevant to c40.13?] [For Lao PDR: Please further explantion which legisalstion and article that mention general scope of international cooperation as a benchmark for providing international cooperation with counterparts that also apply for this criteria]
2. *Criterion 40.14* is **partly met**. Article 42(1) of Law on Anti-Money Laundering and Counter-Financing of Terrorism, Article 164 of Law on Securities (Amended version), Article 6 of Law on Bank of the Lao PDR, and Article 7 of Law on Insurance (Amended version) provide general provisions of international cooperation in supervisory measures, including AML/CFT supervision. Therefore, there is unclear whether Lao PDR regulates the sharing information related to responsibility for financial institutions operating in the same group, including in the MOUs between Securities Commission with foreign counterparts (Thailand and China), except for Bank of the Lao PDR. Article 94 number 11 to 12 of Law on Bank of the Lao PDR provide rights to cooperate with related sector both domestic and foreign country in bank supervision and cooperate with foreign country, regional and global on bank supervision matter. There is no legal basis for DNFBP’s supervisory agencies to provide cooperation with their foreign counterpart.

[For Lao PDR: Please provide further information about the requirements of c.40.14(a)-(c) under Lao PDR law. And please specifically highlight where the authority to share the information in (a)-(c) is found in its laws or MOUs?] [For Lao PDR: Please further explantion which legisalstion and article that mention general scope of international cooperation as a benchmark for providing international cooperation with counterparts that also apply for this criteria]

1. *Criterion 40.15* is **partly met.** There is no explicit provision authorising financial supervisors to conduct inquiries on behalf of foreign counter parts and, as appropriate, to authorise or facilitate the ability of foreign counterparts to conduct inquiries themselves in Lao PDR. Solely under general provisions of international cooperation on supervision measures as mentioned above, do all supervisory agencies have wide ranging power to engage in cooperation and information exchange, which may include conducting inquiries on behalf of foreign counterparts and facilitation of foreign counterparts’ inquiries. There is no legal basis for DNFBP’s supervisory agencies to provide cooperation with their foreign counterpart, except for auditors and notaries.

[For Lao PDR: Please clarify the interpretation of the general provision, what it allows, and its implementation. Also, is there any explicit provision allowing foreign counterparts to conduct inquiries themesleves in Lao PDR?]

1. *Criterion 40.16* is **partly met**. The Securities Commission is required to maintain confidentiality regarding any information, documents or evidence by Article 169 of Law on Securities (Amended version). Further the Securities Commission is prohibited from disclosing, providing or otherwise using confidential information without prior authorisation (article 184(1) of Law on Securities (Amended version)) [For Lao PDR: Please confirm this is correct as the translation is unclear, is there another transaltion that can be provided?]. Similar provisions also exist under article 92(1) of Law on Commercial Bank ~~Law on Bank of the Lao PDR~~ and article 67 Law on Accounting Law (Amended) No 47 NA on 2013 Nevertheless, there is no specific provision that provides that financial supervisors should ensure that they have the prior authorisation of the requested financial supervisor for any dissemination of information exchanged, or use of that information for supervisory and nonsupervisory purpose. There is no legal basis for DNFBP’s supervisory agencies to provide cooperation with their foreign counterpart, except for auditors and notaries.

[For Lao PDR: Please highlight the requirements in the MOUs? Only one example is provided in the TC Table from Lao PDR.]

*Exchange of Information Between Law Enforcement Authorities*

1. *Criterion 40.17* is **met**. ***General provision also applied to Ministry of Finance, Ministry of Agriculture and Forestry, and Ministry of Public Security*** *–* the legal basis of law enforcement to conduct exchange information with foreign counterparts for intelligence or investigation purposes is regulated under article 271 of law on the Criminal Procedure 2017[For Lao PDR: please clarify if article 271 covers intelligence and investigation purposes]. According to article 272 of the Law on Criminal Procedure 2017, the coverage of intelligence or investigation as above limited relating to cross border crimes and other, and is not explicit those crimes including money laundering, assoaciated predicate offences, and terrorist financing. Article 42 of Law on Anti-Money Laundering and Counter-Financing of Terrorism 2014 provide competent authorities to conduct international cooperation on AML/CFT. Moreover, article 14 and article 43(1) of it provision promotes and allows Lao PDR to exchange information on money laundering and terrorist financing matters. Nevertheless, Article 42 of Law on Anti-Money Laundering and Counter-Financing of Terrorism 2014 does not require exchange information related with associated predicate offences. Specific provision, as follows:
2. ***State Inspection and Anti-Corruption Authority*** *- Investigations that are associated with its obligations to investigate the offences of money laundering such as abusing the authority, bribery, grafting, and others that leading to the criminal proceeding in case of Money Laundering and Counter-Financing of Terrorism* it has an authority to exchange information with foreign counterparts regulates under article 10 The Anti-Corruption Law. The provision promotes competent authorities to conduct cooperation with foreign countries, region and international organizations on the prevention and countering of corruption.
3. ***Office of the Public Prosecutor*** – article 8 of Law on the Office of the Public Prosecutor (Amended version) giving an authority to public prosecutor to conduct cooperation with foreign, regional and international level, particularly in exchanging lessons, information, technology, training or seminars, capacity building, technical skill.
4. ***The People’s Court*** – article 7 Law on People’s Court (Amended version) giving an authority to the people’s court promotes foreign, regional and international cooperation, such as legal and judicial cooperation by sharing lessons, information, technology, training or seminars, capacity building to develop investigation and evidence composition, decisions and quality of judgement call, transparency and ensure the fairness in society.
5. [For Lao PDR: Can the information be shared for intelligence purposes or investigative purposes, do those purposes include ML/TF and predicate offences, or for identification and tracing of proceeds and instrumentalitites – and where are the specific provisions allowing it?]
6. *Criterion 40.18* is **partly met**. Ministry of Finance, Ministry of Agriculture and Forestry, and Ministry of Public Security have an authority to conduct criminal proceedings under criminal procedure law, including to conduct inquiries and obtain information on behaf of foreign counterparts, based on agreements that Lao PDR has signed with foreign countries or international conventions that the Lao PDR (Article 46 and 270). Lao PDR has MOUs related to judicial assistance with two countries, namely China and Vietnam. There are unclear provisions under The Anti-Corruption Law, Law on the Office of the Public Prosecutor, and Law on People’s Court (Amended version) as to whether law enforcement agencies are authorised to conduct investigations in response to requests from foreign counterparts, including obtaining information on behalf of a foreign counterpart.
7. *Criterion 40.19* is **not met.** The criminal procedure law, the Anti-Corruption Law, Law on the Office of the Public Prosecutor, and Law on People’s Court (Amended version) do not regulate the powers of law enforcement to conduct cooperative investigations or form joint investigative teams. Additionally, no such powers were found in the MOUs on judicial assistance

*Exchange of Information Between Non-Counterparts*

1. *Criterion 40.20* is **partly met.** ~~Article 14~~ article 42 par 1 of Law on Anti-Money Laundering and Counter-Financing of Terrorism 2014 provides powers to competent authorities, including law enforcement agencies to conduct wide range relation and cooperation with foreign countries, regions, and international community on AML/CFT, and the scope of cooperation includes the gathering (collection), studying, and analysing, and exchange of information, technologies and lessons on money laundering and financing of terrorism (article 43(1)). Although these general provisons are in place, that may provide the legal basis of exchange of information between non-counterparts, there are no specific provisions in Lao PDR law to authorise the exchange of information with non-counterparts. There is also an absence of MoU or treaties for Lao PDR’s competent authorities to conduct horizontal cooperation with foreign non-counterparts, and therefore these provisions do not yet sufficiently comply with this criterion.

*Weighting and Conclusion*

1. Lao PDR conduct international cooperation in AML/CFT areas under Article 42 of Law on Anti-Money Laundering and Counter-Financing of Terrorism 2014 that requires competent authorities to conduct international cooperation on AML/CFT in conformity with international agreements and treaties to which Lao PDR is a party, and also other regulations related to the powers of law enforcement agencies and supervisory agencies. Nevertheless, some deficiencies have been found, such as using the most efficient means to-cooperate, limited requirement regarding clear and secure gateways, prioritisastion and timely execution of request, as well as the safeguarding provisions. There is limited implementation of timely arrangements of agreement, and no provision on feedback, except for AMLIO. The assessor also found the limitation provision regarding refusal grounds, the absence of specific provision related with the exchange information both in law enforcement agencies and supervisory agencies, and also the absence of MoU or treaties for Lao PDR’s competent authorities to conduct horizontal cooperation with foreign non-counterparts
2. **Recommendation 40 is rated partially compliant.**

1. NCC Decision on Appointment of Committees for drafting of sub-legislation for implementing measures on counter proliferation financing “PF” 6 February 2019 [↑](#footnote-ref-1)