



5th Follow-Up Report

Mutual Evaluation of Myanmar





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MYANMAR

5TH ENHANCED EXPEDITED FOLLOW-UP REPORT FEBRUARY 2023

I. INTRODUCTION

1. The mutual evaluation report (MER) of Myanmar was adopted in 2018. Previous FURs were adopted in 2019, 2020, 2021 and 2022.
2. This FUR analyses the progress of Myanmar in addressing the technical compliance requirements of the recommendations being re-rated. Technical compliance re-ratings are given where sufficient progress has been demonstrated.
3. This report does not analyse any progress Myanmar has made to improve its effectiveness.
4. The assessment of Myanmar's request for technical compliance re-ratings and the preparation of this report was undertaken by the following experts:
 - *Sandy Shum, Department of Justice, Hong Kong, China*
 - *Koki Amino and Rizumu Yokose, Ministry of Finance, Japan*
 - *Christopher Ploszaj, US Department of the Treasury, US*
5. Section III of this report summarises the progress made to improve technical compliance. Section IV contains the conclusion and a table illustrating Myanmar's current technical compliance ratings.

II. FINDINGS OF THE MUTUAL EVALUATION REPORT & FOLLOW-UP

6. Myanmar's MER ratings¹ and updated ratings based on earlier FURs² are as follows:

| R. | Rating | R. | Rating |
|----|-------------------------------|----|---|
| 1 | PC (2018 MER) ↑ LC (2019 FUR) | 21 | LC (2018 MER), (2019 FUR) |
| 2 | LC (2018 MER), (2019 FUR) | 22 | PC (2018 MER) ↑ LC (2021 FUR) |
| 3 | C (2018 MER) | 23 | PC (2018 MER) ↑ LC (2021 FUR) |
| 4 | LC (2018 MER) | 24 | NC (2018 MER), (2019 FUR) ↑ PC (2020 FUR) |
| 5 | LC (2018 MER) | 25 | NC (2018 MER) |
| 6 | LC (2018 MER) | 26 | PC (2018 MER), (2019 FUR), (2020 FUR), (2021 FUR), (2022 FUR) |
| 7 | NC (2018 MER) | 27 | C (2018 MER) |
| 8 | PC (2018 MER) | 28 | NC (2018 MER) ↑ PC (2022 FUR) |

¹ There four possible levels of technical compliance are: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC). Effectiveness ratings for the 11 Immediate Outcomes are: Low, Moderate (Mod), Substantial or High.

² Current ratings and the year confirmed are indicated based on the original MER or follow-up re-ratings.

| | | | |
|----|---|----|-------------------------------|
| 9 | C (2018 MER) | 29 | PC (2018 MER), (2021 FUR) |
| 10 | PC (2018 MER), (2019 FUR) ↑ LC (2020 FUR) | 30 | LC (2018 MER) |
| 11 | C (2018 MER) | 31 | LC (2018 MER) |
| 12 | PC (2018 MER) ↑ LC (2020 FUR) | 32 | PC (2018 MER) |
| 13 | PC (2018 MER), (2019 FUR) ↑ LC (2020 FUR) | 33 | PC (2018 MER) ↑ LC (2022 FUR) |
| 14 | NC (2018 MER), (2019 FUR) ↑ PC (2020 FUR), (2021 FUR), (2022 FUR) | 34 | PC (2018 MER), (2022 FUR) |
| 15 | LC (2018 MER) ↓ PC (2020 FUR) | 35 | PC (2018 MER) |
| 16 | LC (2018 MER) | 36 | PC (2018 MER), (2019 FUR) |
| 17 | C (2018 MER) | 37 | PC (2018 MER), (2019 FUR) |
| 18 | C (2018 MER) ↓ LC (2019 FUR) | 38 | PC (2018 MER) |
| 19 | NC (2018 MER) ↑ PC (2019 FUR), (2020 FUR) ↑ C (2021 FUR) | 39 | PC (2018 MER) |
| 20 | C (2018 MER) | 40 | LC (2018 MER) |

| IO 1 | IO 2 | IO 3 | IO 4 | IO 5 | IO 6 | IO 7 | IO 8 | IO 9 | IO 10 | IO 11 |
|------|------|------|------|------|------|------|------|------|-------|-------|
| Low | Low | Low | Low | Low | Mod. | Low | Low | Low | Low | Low |

7. Given these results, Myanmar remained on enhanced (expedited) follow-up as of the 2022 FUR³.

III. PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

8. This section summarises the progress made by Myanmar to improve its technical compliance by implementing requirements in place at the time of the MER.

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

9. Myanmar requested re-ratings of R.7 (which was rated NC); and R.8, R.14, R.24 and R.26 (which were rated PC).

10. The APG welcomes the steps that Myanmar has taken to improve its technical compliance with R.7, R.8, R.14, R.24 and R.26. As a result of this progress, Myanmar has been re-rated on Recommendation 14. However, insufficient progress has been made to justify a re-rating of R.7, R.8, R.24 and R.26.

Recommendation 7 [R.7] (Originally rated NC)

11. Myanmar was rated NC for R.7 in its 2018 MER. Deficiencies included no clear legal basis for issuing freeze orders in relation to PF. In addition, the obligation to freeze did not extend to all natural and legal persons in Myanmar and there were gaps in the scope of funds and assets to be frozen. There were no mechanisms to communicate designations to Reporting Organisations and no provisions

³ There are three categories of follow-up based on mutual evaluation reports: regular, enhanced and enhanced (expedited). For further information see the APG Mutual Evaluation Procedures.

for sanctioning non-compliance with the obligations. There were no provisions related to unfreezing, access to funds and delisting requests.

12. **Criterion 7.1** is *not met*. In March 2021, Myanmar's CFT Working Committee issued the non-binding *Guidance on implementation of the countering the financing of terrorism and the proliferation of weapons of mass destruction*. This non-binding guidance outlined that TFS should be implemented without delay. In January 2023, Myanmar's Central Committee for Counter-Terrorism (CCCT) issued Order 4/2023 *The Order to the Prevention, Suppression and Disruption of Proliferation of Weapons of Mass Destruction*, which outlined that all individuals and organisations in Myanmar should freeze assets without delay in line with the UNSCR. Order 4/2023 includes mandatory language related to asset refreezing and prohibitions, and references enforcement of violations of the order in accordance with existing laws (art. 15). However, CCCT Order 4/2023 is issued under Sections 6(d) and 72(b) of the CT Law. As noted in the 2018 MER, Section 6(d) of the CT law is a generic provision in relation to WMD proliferation that does not provide any clear legal basis for issuing freeze orders in relation to proliferation financing or provide a basis to enforce obligations relating to proliferation of WMD. As such Order 4/2023 is not an enforceable means for enacting relevant requirements.

13. **Criterion 7.2** is *not met*. Freezing measures and prohibitions are limited to non-binding guidance and Order 4/2023 which is not an enforceable means for enacting relevant requirements.

14. *Criterion 7.2(a)* Paragraphs 2 and 3 of CCCT Order 4/2023 describe the requirement and process for all natural and legal persons to freeze all funds and assets owned or controlled by the designated person without delay or prior notice. The freeze order in CCCT Order 4/2023 applies in respect of UNSCR 2231, UNSCR 1718 and its successor resolutions. Article 11 of the Guidance calls for Reporting Organisations to freeze, without delay or prior notice, funds or assets of designated persons. However, the requirement in Article 11 of the Guidance does not extend to all natural and legal persons. It is unclear whether the Order supersedes the Guidance.

15. *Criterion 7.2(b)* Paragraph 3 of CCT Order 4/2023 extends the freezing obligation to the full range of funds and assets required to be frozen by this criterion.

16. *Criterion 7.2(c)* The requirements regarding preventing funds or assets from being made available to a designated person or entity are covered by CCCT Order 4/2023 paragraphs 2 and 3. However under paragraph 3(a) it appears the funds/assets can be made available with the permission of the Central Committee for Counter Terrorism. Article 14 of the Guidance provides that frozen funds and assets can only be made available if authorised by the UN Security Council or relevant Sanctions Committee to de-list the person or entity. It is unclear whether the Order supersedes the Guidance.

17. *Criterion 7.2(d)* The Order (paragraphs 3(c) and 7) and the Guidance provide the legal basis for competent authorities to establish mechanisms for communicating designations to financial institutions and DNFBPs. But neither the Order nor the Guidance go beyond saying that competent authorities shall establish communication mechanisms. Neither outlines how those mechanisms should function, how often they should refresh their designations list, and how often they are to communicate that to ROs and what their obligations are in relation to those designations. Both the Order and the Guidance say that ROs are to report to the Central Committee for Counter Terrorism when assets are frozen, but neither defines what is required in the reporting, how timely the reporting needs to be filed, and what the Committee is to do when it receives the reporting.

18. *Criterion 7.2(e)* Under paragraph 3(d) of Order 4/2023, FIs and DNFBPs are required to search for funds and assets of designated persons and report their findings to the Central Committee for Counter Terrorism. The Order creates the legal basis for FIs and DNFBPs to report attempted transactions. However, it is unclear if the Order supersedes the Guidance, which does not require the reporting of attempted transactions. Section 32 of the AML Law which requires ROs to report

attempted transactions to the FIU applies to money laundering and terrorist financing, but not to proliferation financing. As such it is not clear that enforcement powers under the AML law could be applied for failures with these elements of Order 4/2023.

19. *Criterion 7.2(f)* Paragraph 3(e) of Order 4/2023 provides that a *bona fide* third party acting in good faith can apply to the Anti-Terrorism Central Organization to have their assets and funds unfrozen.

20. **Criterion 7.3** is *not met*. While the Order and Guidance seem to address the deficiencies identified in the MER, deficiencies remain related to enforcement of the requirements. The Order and the Guidance set out what competent authorities should do in relation to monitoring the compliance of FIs and DNFBPs. Both also outline potential remedial actions and sanctions against those found to not be complying. However, these documents do not provide clear guidance for how these laws will be enforced. It also does not provide any discernment for which remedial action should be taken when and what is the threshold for escalating the remedial action or sanction. Finally, while anyone found to violate the Order shall be prosecuted in accordance with existing law, the Order and Guidance does not outline what the referral process is to the relevant law enforcement organization or judicial body, or who makes the determination if a violator should face charges under the existing law.

21. **Criterion 7.4** is *not met*.

22. *Criterion 7.4(a)* and *(b)* CCCT Order 4/2023 applies in respect of UNSCR 2231, UNSCR 1718 and its successor resolutions. The Order describes how a listed person or entity can petition the Central Committee for Counter Terrorism to be delisted if they are misidentified or the listing criteria no longer apply. However, there is still no legal basis under the CT law that can be applied in the context of an unfreezing or delisting request made further to a PF-related freeze order, as identified in the MER. The Order does not clearly describe the procedures and requirements for delisting. Other than saying relevant supporting documents are necessary, the Order does not clearly describe what those documents are and what the threshold criteria are for delisting. The Order also does not describe what the Committee will examine to verify a delisting application that will be submitted to the Security Council. The Order needs further details to have publicly known procedures for potential delisting and unfreezing of assets.

23. *Criterion 7.4(c)* The Order does authorize an exemption process for UNSCRs 1718 and 2231. However, the Order assumes that after five days, if nothing is heard from the UN that the exemption has been approved. While the UN process can be lengthy, and the UN tries to expedite exemption requests, exemptions should not be authorized until officially approved by the UN.

24. *Criterion 7.4(d)* The Order in paragraph 3(c) provides the legal basis for competent authorities to communicate with FIs and DNFBPs on new designations. The Order does not sufficiently address having a mechanism to communicate delistings. Paragraph 9 says that once the Central Committee for Counter Terrorism determines a delisting should occur, the ROs should take immediate action. The Order does not provide a legal basis or procedures for how such a delisting will be communicated to the competent authorities and then from the competent authorities to the ROs. It also does not describe how the listed individual or entity will be informed that their assets are no longer subject to a freeze.

25. **Criterion 7.5** is *not met*. CCCT Order 4/2023 (art. 14) includes provisions that apply to freezing actions taken pursuant to UNSCR 1737 and continued by UNSCR 2231, or taken pursuant to UNSCR 2231 in keeping with the requirements under this criterion. However, as Order 4/2023 is not an enforceable means for enacting relevant requirements these are unenforceable.

Weighting and Conclusion

26. Myanmar has taken steps since its MER to issue a new Order and Guidance to cover all the relevant UNSCRs, however the guidance is non-binding and Order 4/2023 is not an enforceable means

for enacting relevant requirements. There is no clear specification of what agencies/organizations/departments are responsible for carrying out what aspects of the Order and Guidance. For criteria 7.1, which does not meet the standard, there is conflicting interpretations between Articles 8 and 11 in the Guidance, which also do not match what is outlined in the Order with respect to freezing without delay **Recommendation 7 remains rated Non-Compliant.**

Recommendation 8 (Originally rated PC)

27. Myanmar was rated Partially Compliant for Recommendation 8 in its 2018 MER. Myanmar's NRA assessed the risk of abuse of NPOs for TF as low. There are severe gaps in this analysis as it does not fully break down the NPO sector to determine if any subsets of organizations are inherently riskier than others. The NRA mentions the number of unregistered NPOs operating in Myanmar but does not assess the TF risk of their operations. The NRA also does not account for those NPOs operating in high-risk environments. The lack of a thorough risk assessment of the NPO sector affects the adherence to the standards of most of the criteria in Recommendation 8. Since the MER Myanmar has passed the Registration of Association Law (October 2022).

28. **Criterion 8.1** is partly met.

29. *Criterion 8.1(a)* While Myanmar conducted a ML/TF risk assessment in 2018 that examined NPOs and determined they were low risk, the assessment did not identify the features and types of NPOs, which by virtue of their activities or characteristics, make them vulnerable to abuse, especially when accounting for the potential risk and context. Given the size of the sector, 646 registered NPOs and potentially thousands of unregistered NPOs, more focused analysis is needed to better understand the possible TF risk of the sector.

30. *Criterion 8.1(b)* Myanmar has not identified the nature of threats posed by terrorist entities to at risk NPOs, or how/whether terrorist actors abuse those NPOs.

31. *Criterion 8.1(c)* The findings from the MER remain current and accurate. Myanmar has not identified high-risk NPOs and has not reviewed the adequacy of laws and regulations relating to NPOs to be able to take proportionate and effective actions to address the risks identified. Myanmar does have a robust registration requirement for NPOs that collects detailed information on the NPOs and their operations in Myanmar.

32. *Criterion 8.1(d)* Myanmar does not have a process to periodically reassess the risk to the NPO sector.

33. **Criterion 8.2** is partly met.

34. *Criterion 8.2(a)* Section 3(e) of the Registration of Association Law states an objective to promote accountability, integrity and Section 6(e) states the Registration Boards are to inform NPOs not to assist ML/TF directly or indirectly. The law outlines a detailed registration process for NPOs and annual financial and quarterly performance report requirements but does not set forth a clear policy for the continued monitoring of the NPOs and/or system in which such a policy would reinforce public confidence. Myanmar did not demonstrate that any notifications, orders, directives or procedures have been issued by the Union Registration Board in relation to TF risk mitigation related issues.

35. *Criterion 8.2(b)* Since the MER Myanmar has passed the Registration of Association Law (October 2022) and has undertaken some initial outreach to the NPO sector and donors to inform them about the new law and potential vulnerabilities to TF abuse. This is a good first step but given the lack of in depth understanding of TF risk and not identifying a sub-set of NPOs that may be vulnerable, it is unclear how much of this outreach was informing the sector of the risk. It is unclear if the outreach

included the smaller NPOs operating in high-risk environments with little access to information about the donor community.

36. *Criterion 8.2(c)* Myanmar did not demonstrate that it has worked with NPOs to develop and refine best practices to address TF risks and vulnerabilities and protect them from TF abuse. NPOs are subject to annual financial reporting and review as well as quarterly review of their activities in Myanmar. The measures in place constitute a monitoring program to assure compliance with Myanmar law. The measures do not assist in providing a wider understanding of TF risk and vulnerabilities to the Myanmar legal regime or NPO sector.

37. *Criterion 8.2(d)* Myanmar laws have set provisions which encourage NPOs to conduct transactions via regulated financial channels. The laws lay out the minimal limit of MMK 20 million for NPOs to have to transact through banks or non-bank financial institutions regulated by the CBM.

38. **Criterion 8.3** is *not met*. There are legal provisions in the Registration of Association Law that provide for regular monitoring of registered NPOs and taking actions against those not abiding by the law. But this framework does not address supervision and monitoring on a risk-based approach as the NRA does not adequately address NPOs as a sector by breaking down the risk associated with the types of NPOs at risk of TF abuse.

39. **Criterion 8.4** is *not met*. There is no evidence that a risk-based approach is being applied to monitor the compliance of NPOs. The Registration of Association Law in Chapter 6 lays out NPOs prohibited from registering in Myanmar under the Registration of Association Law and Chapter 10 describes the sanctions associated with violation of this law. Serious concerns are noted with the disproportionate sanctioning regime as these sections afford the Myanmar regime with potentially far reaching, and disproportionate, sanctioning and punitive measures for breaches related to the NPO law. These include prison sentences for NPO representatives who fail to register, operate after a registration expires, or join an NPO that is unregistered. It also includes religious and political restrictions that could potentially open a wide interpretation for application of the law, to include sanctions, on specific NPOs. The sanctions framework does not provide for graduated criteria that would make it possible to apply the sanctions according to the seriousness of the violations.

40. **Criterion 8.5** is *partly met*.

41. *Criterion 8.5(a)* The Law stipulates that each Registration Board may coordinate with the relevant government departments or organizations to achieve the Law's objectives and work programs of NPOs. The Law also stipulates that, if necessary, a Registration Board may coordinate with the relevant government departments or organizations to check on funds or property of NPOs. Government departments or organizations may request information from a Registration Board to check the activities of a NPO or cooperate with a NPO if it is deemed action needs to be taken against an NPO. There is no stipulation in the Registration of Association Law that the six levels of Registration Boards must share information with each other. There is also no stipulation that Registration Boards must refer suspected TF activity to the relevant government department or organization, only they may cooperate with them. Government departments or organizations are not required to request information from the relevant Registration Board if a NPO is suspected of TF activity, but rather data is available upon request.

42. *Criterion 8.5(b)* The findings in the MER remain current. There is no specific government department or organization assigned to investigate NPOs. The Counter Financing of Terrorism Committee can assign an investigation to a department or organization, but there is no department or organization with devoted expertise to such investigations.

43. *Criterion 8.5(c)* As found in the 2018 MER, Section 26 (f) of the CFT Rules empowers the TF Investigation Body or law enforcement agency or FIU assigned by the Counter Financing of Terrorism Committee to call for and examine the required documents any person, government department or organisation. In addition, Sections 28(h) and 46 of the 2021 Registration of Association Law allow the relevant registration board, government organisation or department to inspect documents and make enquiries of registered associations.

44. *Criterion 8.5(d)* The findings from the MER remain current. There are not mechanisms in place for government departments or organizations and the registration boards to promptly share information to take immediate preventative or investigative action. The relevant laws allow for information sharing upon request.

45. **Criterion 8.6** is *mostly met*. While the CFT Rules provide the legal authority for the CFT Working Committee to cooperate and exchange information, Myanmar has not identified specific points of contact to field international requests. Further, Myanmar does not seem to have established procedures for fielding such requests or for how any information would be exchanged.

Weighting and Conclusion

46. While the NRA does assess the risk to the NPO sector for TF as low, the NRA does not fully assess the sector by breaking NPOs out by types and identifying the subset of NPOs that are likely to be at risk of TF abuse. As such, Myanmar has not targeted outreach, regulations and monitoring to proportionally prevent and mitigate TF risks in such sectors. Serious concerns are noted with the disproportionate sanctioning regime contained in the Registration of Association Law (October 2022) as these sections afford the Myanmar regime with potentially far reaching, and disproportionate, sanctioning and punitive measures for breaches related to the law. **Recommendation 8 remains rated Partially Compliant.**

Recommendation 14 [R.14] (Originally rated NC, re-rated to PC in 2020 FUR)

47. In its 2018 MER Myanmar was rated NC for R.14. R.14 was re-rated to PC in the 2020 FUR. Remaining deficiencies include it is not clear whether there is ongoing action undertaken by Myanmar authorities to identify natural or legal persons that carry out MVTS without a license or registration, and to apply proportionate and dissuasive sanctions to them. The Central Bank of Myanmar (CBM) licensing framework does not extend to an obligation on MVTS providers to be licenced or registered, or the MVTS provider to maintain a current list of its agents accessible by competent authorities in the countries in which the MVTS provider and its agents operate. There is no legal obligation for MVTS providers to include their agents in their AML/CFT programmes and to monitor the agents for compliance with such programmes.

48. **Criterion 14.1** is *met*. Myanmar has two complementary licensing regimes for MVTS under the Financial Institutions Law and the Foreign Exchange Management Law, with Myanmar advising that providers of domestic MVTS and other Financial Institutions are required to apply for a licence in accordance with the FI Law and MVTS conducting international remittances must apply for a licence in accordance with the FEM Law. The 2016 Financial Institution Law (section 20(a)) requires a company wishing to engage in NBFBI business to apply for a registration certificate. Section 20(b) requires that persons providing NBFBI services prior to the effective date of the 2016 FI law were required to apply for a registration certificate within 6 months of the effective date. Section 159 of the FI Law contains a prohibition on a person establishing and engaging in NBFBI business without a registration certificate. The definition of NBFBI includes registered entities which carry on money services businesses (s.2(j)(5)), which would extend to all MVTS.

49. In addition, prohibitions on operating without a licence are also found in the Foreign Exchange Management Law (section 38), which covers providers of international MVTS. The detailed obligations

under the Regulation on Remittance Business are issued pursuant to s.32(a) and s.49(a) of the Foreign Exchange Management Law; and cover providers of international MVTS.

50. **Criterion 14.2** is *mostly met*. Sanctions for carrying out MVTS without licence or registration can be found in both the FI Law and the FEM Law. For MVTS carrying out domestic transactions, under section 171 of the FI Law, the penalty for a person establishing and engaging in NBF business without a registration certificate is imprisonment for two to five years and a fine of 500M Kyat (approx. 238,000USD). This is considered dissuasive but not fully proportionate as lesser sanctions do not appear available for lower-level breaches.

51. For MVTS carrying out international transactions, under Chapter 12 of the FEM Law, a penalty of up to 3 years imprisonment and/or a fine (amount not specified) and confiscation of the assets applies for engaging in international MVTS without a licence. As the fine amount is not specified and lesser sanctions do not appear to be available, sanctions under the FEM Law are considered dissuasive, but not fully proportionate.

52. Myanmar is taking actions to identify and apply sanctions to unregistered MVTS. Myanmar provided three case studies on the application of sanctions in 2022. CBM has established a procedure for the regular identification of unregistered MVTS, and CBM and MOHA have started to collect information from open and closed sources to identify unregistered MVTS business operators in Myanmar – over 50 unregistered MVTS have been identified. Myanmar has conducted AML/CFT awareness raising for unregistered MVTS.

Criterion 14.3 is *mostly met*. As per the 2020 FUR, Chapter 6 of the 2019 Remittance Business Regulation sets out the AML/CFT obligations of MVTS licensees, including the establishment of an AML/CFT unit and staff, development of an AML/CFT program, and suspicious transaction reporting requirements. Chapter 10 establishes the Central Bank's authority to examine the licensee for compliance with these obligations. The Remittance Business Regulation covers international MVTS, but not domestic MVTS. However, domestic MVTS providers are a relatively small sector, comprising less than 1% of the local banking sector. Note: risk-based supervision of MVTS is considered under R.26 and remains at PC.

Criterion 14.4 is *mostly met*. Myanmar issued a notification on January 12, 2023, and amended the Remittance Business Regulations. Based on the regulations, the licensee is required to report on the list of agents or branch offices once in three months (Section 7 (r) of the regulations) and to provide updated list of agents if CBM and competent authorities of overseas agents and subagents ask to report (Section 7 (s)). Section 8(t) stipulates that the licensee is responsible for monitoring whether agents or branch offices are complying with AML/CFT rules and regulations. Section 10(a) provides that remittance businesses are responsible for preparing a quarterly report on ML/TF risks in terms of agents as well as geographic factors and means of payment. Providers of domestic MVTS are not covered by the obligations in the Regulation. Section 20 of the Financial Institutions Law requires all MVTS to be registered with the Central Bank of Myanmar. However, the FI law does not include any provision for domestic MVTS providers to maintain a list of their agents.

53. **Criterion 14.5** is *mostly met*. The CBM notification dated January 12 2023 amended the Remittance Business Regulations to require licensees to have responsibilities for the agents or branch offices to perform AML/CFT obligations and monitor whether they comply with the AML/CFT rules and regulations (Section 7 (t) of the regulation). Domestic MVTS are not covered by this Regulation.

Weighting and Conclusion

54. Since the last FUR Myanmar has issued a binding notification and revised the Remittance Business Regulations to extend obligations to international MVTS agents, although domestic MVTS

are not covered by these provisions. However, domestic MVTs providers are a relatively small sector, comprising less than 1% of total bank transfers in the local banking sector. Myanmar has demonstrated that it has expanded and implemented its activities to identify and take further action taken against unregistered MVTs on an ongoing basis.

55. **Recommendation 14 is re-rated Largely Compliant.**

Recommendation 24 [R.24] (Originally rated NC, re-rated to PC in 2020 FUR)

56. In its 2018 MER Myanmar was rated NC for R.24. R.24 was re-rated to PC in the 2020 FUR. Remaining deficiencies include no assessment of the risks and vulnerabilities of legal persons in Myanmar's specific geopolitical context, the lack of enforceable means in relation to the DICA Directive 17/2019, gaps in the reporting obligations and a lack of dissuasive penalties in the Companies Act and an absence of mechanisms for providing rapid international cooperation in relation to the provision of basic and beneficial owner information.

57. **Criterion 24.1** is *met* (as per the MER 2018). The analysis in the MER and available material supports the criterion rating (see the 2018 MER, c.24.1).

58. **Criterion 24.2** is *partly met*. Myanmar has formed a Money Laundering Risk Assessment Committee on Legal Persons chaired by the head of FIU and prepared additional draft risk assessment reports (the "2022 NRA") to identify threats, vulnerabilities and consequences relating to legal persons. The 2022 NRA concluded that legal persons in Myanmar was exposed to high level of ML risk, with threat and vulnerability both rated as high. That said, the 2022 NRA generally assessed the ML risk of legal persons as a whole and did not specifically analyse different types of legal persons in the risk assessment. Moreover, there have been no further steps taken to identify the TF risk of legal persons. There has been little analysis on the vulnerabilities associated with the deficiency of legal framework of beneficial ownership transparency as previously identified in the 2018 NRA, and whether and how the subsequent regulatory framework introduced in 2019 has affected or mitigated the associated risks. The deficiency has been partly addressed.

59. **Criterion 24.3** is *mostly met*. The deficiency identified in the last FUR has not been addressed. The list of directors would be available for public inspection under s.421(e) and (f) from the annual returns required to be filed by companies with DICA under section s.97(b)(xiv) of the Companies Act from time to time. There is uncertainty on what "basic information" are required to be made publicly available under DICA Directive 17/2019. Company's basic regulating power is only required to be filed with DICA only when it is amended (s.18 of the Companies Act).

60. **Criterion 24.4** is *mostly met*. The deficiency identified in the last FUR has not been addressed. While a company has the power to issue shares attached with special, limited, conditional, or no voting rights (s.62 of Companies Act), there is no express requirement under the Companies Act for the company to record in the register of members of voting associated with the shares, except that any subsequent changes (if any) to the rights attached to shares shall be reported to DICA.

61. **Criterion 24.5** is *mostly met*. The deficiency identified in the MER has not been addressed. Under Myanmar Companies Law, companies are required to keep their registries of members and shareholders up to date with updated information filed with DICA upon change, and are subject to monetary penalties for non-compliance. That said, there is no formal mechanism to ensure that the registers are accurately recorded and the applicable penalties for failing to keep accurate and up-to-date company information do not appear to make the mechanism dissuasive for foreign companies or Myanmar conglomerates.

62. **Criterion 24.6** is *mostly met*. The deficiency identified in the MER has not been addressed. Myanmar used a combination of 24.6(a), (b) and (c) for collecting beneficial ownership information. There are enforceable obligations for reporting entities to obtain beneficial ownership information and make such information available to competent authorities (s.19(d) and s.23(a) of AML Law). The ROs are required under s.20 of the AML to exercise ongoing CDD measures, but there is no specific requirement for them to hold up-to-date information on the beneficial owner in the absence of the review mechanism. For legal persons that do not maintain relationship with a reporting entity, Articles 5-7 of DICA Directive 17/2019 require legal persons to obtain up-to-date beneficial ownership information, co-operate with competent authorities and submit the beneficial ownership information to DICA. Although Article 10 of DICA Directive 17/2019 stipulates that non-compliance with the Directive shall be punishable in accordance with the AML Law, there is no provision in the AML Law that deals with non-compliance with the Directive.

63. **Criterion 24.7** is *partly met*. The deficiency identified in the MER has not been addressed. Article 5 of DICA Directive No. 17/2019 expands Myanmar's approach to collect and obtain up-to-date beneficial ownership information under R.24.6 to all legal persons beyond the reliance on information collected during CDD conducted by ROs. That said, as mentioned above, while it is stated that non-compliance with DICA Directive 17/2019 is punishable in line with Chapter XI of the AML Law, there are no corresponding penalties in the AML Law. To date, Myanmar has not demonstrated that there are enforceable obligations for legal persons to comply with DICA Directive 17/2019.-The deficiency is material and needs to be further addressed upon review.

64. **Criterion 24.8** is *partly met*. The deficiency identified in the MER has not been addressed. While Article 6 of the DICA Directive No. 17/2019 requires all legal persons to cooperate with competent authorities to the fullest extent possible in determining the beneficial owner, Myanmar has not demonstrated that this is an enforceable obligation to date. The deficiency is material and needs to be further addressed upon review.

65. **Criterion 24.9** is *partly met*. The deficiency identified in the MER has not been addressed. While Article 8 of the DICA Directive No. 17/2019 requires all legal persons to maintain the information and records referred to for at least five years after the date on which the company ceases to be a customer of the ROs, Myanmar has not demonstrated that this is an enforceable obligation to date. The deficiency is material and needs to be further addressed upon review.

66. **Criterion 24.10** is *mostly met*. The deficiency identified in the MER has not been addressed. The gaps identified in relation to the enforceability of DICA Directive 17/2019 governing companies' obligation relating to keeping and making available beneficial ownership information remain

67. **Criterion 24.11** is *met* (as per the MER 2018, the FUR 2019 and the FUR 2020). No additional information is provided. The analysis in the MER and available material supports the criterion rating (see the 2018 MER, c.24.11).

68. **Criterion 24.12** is *met*. DICA has issued Directive No. 7/2023 disallowing nominee directors and nominee shareholders. The deficiency has been addressed.

69. **Criterion 24.13** is *mostly met*. The deficiency identified in the MER has not been addressed. The applicable penalties under the Companies Law are unlikely to be dissuasive for certain legal persons such as overseas corporations (s.52: failing to update DICA of a change in its details (such as directors or registered address) within 28 days, attracting penalty of a fine of 250,000 kyats (approx. USD 120).

70. **Criterion 24.14** is *mostly met*. FIU issued Guideline on Internal and International Information Exchange and Standard Operating Procedures on Internal and International Information Exchange in 2021, which provided for the procedural guidelines for domestic LEAs (if there is no counterpart agency

in the foreign country) and foreign counterparts to request for information via FIU. There is no information on the basis for LEAs to exchange beneficial ownership information directly with their foreign counterparts, and there is no mechanism to ensure that assistance is provided rapidly.

71. **Criterion 24.15** is *partly met*. The deficiency has been partly addressed. For informal international exchange of beneficial ownership information, FIU issued Guideline on Internal and International Information Exchange which requests LEAs to provide feedback on the quality of assistance received from foreign counterparts. However, there is no information on how LEAs monitor the quality of assistance received from other direct foreign counterparts.

Weighting and Conclusion

72. Myanmar has implemented certain directives and internal procedures for improving the framework, however, there has not been sufficient progress demonstrated. Gaps exist in the lack of comprehensive risk assessment of legal persons for ML/TF purposes, and the issue of enforceability of DICA Directive No. 17/2019 for companies' obligation in obtaining and making available of beneficial ownership information.

73. **Recommendation 24 remains rated Partially Compliant.**

Recommendation 26 [R.26] (Originally rated PC)

74. Myanmar was rated PC for R.26 in its 2018 MER. The 2019, 2020, 2021 and 2022 FURs identified progress in Myanmar's compliance with R.26, but moderate deficiencies remained. These include gaps in the fit and proper requirements in the NBFIs, insurance, securities, and microfinance sectors, an absence of AML/CFT supervision in line with core principles for core principles FIs, lack of risk-based supervisory and monitoring measures and no evidence for a periodical review of ML/TF risk profiles for FIs other than banks.

75. **Criterion 26.1** is *met* (as per the MER 2018). The analysis in the MER and available material supports the criterion rating (see the 2018 MER, c.26.1).

76. **Criterion 26.2** is *met* (as per the MER 2018). The analysis in the MER and available material supports the criterion rating (see the 2018 MER, c.26.2)

77. **Criterion 26.3** is *partly met*. Myanmar has issued a number of fit and proper criteria directives and notifications. CBM Directive 15/2022 explicitly covers all NBFIs, persons with a substantial interest in an NBFIs and beneficial owners of an NBFIs. CBM Notifications 3/2023 for remittance businesses, 4/2023 for money changers, 5/2023 for mobile financial services and 6/2023 for merchant acquiring services provide that fit and proper requirements apply to beneficial owners.

78. Ministry of Planning and Finance (MOPF) Insurance Business Regulatory Board Directive No. 1/2023, MOPF Securities and Exchange Commission of Myanmar Instruction No. 1/2023 and MOPF Microfinance Business Supervisory Committee Directive No. 1/2023 call for increased transparency of persons with effective control. However, in each of these there is no article mentioning suitability requirements and there is no explicit mention of criminal record requirements. Fit and proper gaps remain in the insurance, securities and microfinance sectors as outlined in the 2022 FUR. In addition, the regulations do not contain measures to prevent associates of criminals from holding a licence or a management function in the insurance, securities and microfinance sectors.

79. **Criterion 26.4** is *mostly met*.

80. **Criterion 26.4(a)** Myanmar advised of the October 2022 establishment of the AML/CFT Working Group (AMLWG) led by the Governor of the CBM and including heads of departments from

the CBM, MOPF, FIU, Legal Affairs Ministry, LEAs, GAD, MEG and USC. The AMLWG has reformed the Consolidated Supervision Group (CIASC) which is responsible for coordinating and cooperating with supervisors of banks and NBFIs. CBM and MOPF departments also have the power to supervise parent companies and companies affiliated with parent companies of banks and NBFIs respectively in accordance with the FI law and AML law. Although supervision is in accordance with a risk-based approach, there is no indication whether supervision is in line with core principles.

81. *Criterion 26.4(b)* The analysis in the 2021 FUR and available material supports the current criterion rating (see the 2021 FUR, c.26.4(b)). Myanmar has provided the CBM's 2022 revised AML/CFT Off-site and On-site Supervision Handbooks for supervising financial institutions which outline inspection procedures to assess the FIs compliance with Myanmar's AML/CFT requirements.

82. **Criterion 26.5** is *mostly met*. Myanmar has provided the CBM's 2022 revised AML/CFT Off-site and On-site Supervision Handbooks, the Financial Regulatory Department's AML/CFT Inspection Manual for insurance companies and the revised supervision Manual for Securities. The supervisory manuals for financial institutions and insurance companies contain detailed guidelines and methods for determining the frequency and intensity of supervision for each institution. However, the description is not detailed in the Securities Supervision Manual.

83. **Criterion 26.6** is *mostly met* (as per the MER 2018). The Revised Onsite AML/CFT Supervisory Handbook and the Revised Offsite AML/CFT Supervisory Handbook (for FIs), the Inspection Manual Version 1.10 (for security firms) and MBSC Directive 4-2022 (for Microfinance businesses), provide that the frequency and intensity of supervision is determined on a risk-based basis. The FI and microfinance supervisory manuals provide for regular risk reviews, including in the event of major changes in the management or operations of the institution. However, there is no specific provision for regular risk reviews in the insurance supervision manual, only a mention in the checklist items, and no mention was found in the securities supervision manual itself. The issues raised in the MER, namely "periodic review of ML/TF risk profiles" and "significant changes and developments in management or operations", should continue to be addressed in the supervision of insurance and investment firms.

Weighting and Conclusion

84. Myanmar has issued a number of fit and proper criteria directives and notifications, as well as revised onsite and off-site supervision handbooks and manuals. However, there are gaps in the risk profile of the securities sector by the SECM. In addition, gaps remain in the insurance, securities and microfinance sectors with respect to fit and proper requirements and preventing criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function. These deficiencies are considered moderate, as in the context of Myanmar the securities, microfinance and insurance businesses are relatively minor sectors.

85. **Recommendation 26 remains rated Partially Compliant.**

IV. CONCLUSION

86. Overall, Myanmar has made minimal progress in addressing the technical compliance deficiencies identified in its MER and has been re-rated to LC on Recommendation 14. Insufficient progress has been made to support a re-rating for R.7, R.8, R.24 and R.26.

87. A summary table setting out the underlying deficiencies for each of the recommendations assessed in this report is included at Annex A.

88. Overall, in light of the progress made by Myanmar since its MER was adopted, its technical compliance with the FATF Recommendations as follows as of the reporting date February 2023:

| R. | Rating |
|----|---|
| 1 | PC (2018 MER), ↑ LC (2019 FUR) |
| 2 | LC (2018 MER), (2019 FUR) |
| 3 | C (2018 MER) |
| 4 | LC (2018 MER) |
| 5 | LC (2018 MER) |
| 6 | LC (2018 MER) |
| 7 | NC (2018 MER, 2023 FUR) |
| 8 | PC (2018 MER) |
| 9 | C (2018 MER) |
| 10 | PC (2018 MER), (2019 FUR) ↑ LC (2020 FUR) |
| 11 | C (2018 MER) |
| 12 | PC (2018 MER) ↑ LC (2020 FUR) |
| 13 | PC (2018 MER), (2019 FUR) ↑ LC (2020 FUR) |
| 14 | NC (2018 MER), (2019 FUR), ↑ PC (2020 FUR), (2021 FUR), ↑ LC (2023 FUR) |
| 15 | LC (2018 MER), ↓ PC (2020 FUR) |
| 16 | LC (2018 MER) |
| 17 | C (2018 MER) |
| 18 | C (2018 MER), ↓ LC (2019 FUR) |
| 19 | NC (2018 MER), ↑ PC (2019 FUR), (2020 FUR) ↑ C (2021 FUR) |
| 20 | C (2018 MER) |

| R. | Rating |
|----|---|
| 21 | LC (2018 MER), (2019 FUR) |
| 22 | PC (2018 MER), ↑ LC (2021 FUR) |
| 23 | PC (2018 MER), ↑ LC (2021 FUR) |
| 24 | NC (2018 MER), (2019 FUR), ↑ PC (2020 FUR) (2023 FUR) |
| 25 | NC (2018 MER) |
| 26 | PC (2018 MER), (2019 FUR), (2020 FUR), (2021 FUR), (2023 FUR) |
| 27 | C (2018 MER) |
| 28 | NC (2018 MER), ↑ PC (2022 FUR) |
| 29 | PC (2018 MER), (2021 FUR) |
| 30 | LC (2018 MER) |
| 31 | LC (2018 MER) |
| 32 | PC (2018 MER) |
| 33 | PC (2018 MER), ↑ LC (2022 FUR) |
| 34 | PC (2018 MER), (2022 FUR) |
| 35 | PC (2018 MER) |
| 36 | PC (2018 MER), (2019 FUR) |
| 37 | PC (2018 MER), (2019 FUR) |
| 38 | PC (2018 MER) |
| 39 | PC (2018 MER) |
| 40 | LC (2018 MER) |

89. Myanmar has 25 Recommendations rated C/LC.

Summary of Technical Compliance – Deficiencies underlying the ratings ⁴

| Compliance with FATF Recommendations | | |
|--|---------------|---|
| Recommendation | Rating | Factor(s) underlying the rating ⁵ |
| 7. Targeted financial sanctions related to proliferation | NC (MER) | <ul style="list-style-type: none"> The CT Law does not provide a clear legal basis for issuing freeze orders in relation to PF (c.7.1) There are detailed provisions in the March 2021 <i>Guidance on implementation of the countering the financing of terrorism and the proliferation of weapons of mass destruction</i> and CCCT Order 4/2023 <i>Order to the Prevention, Suppression and Disruption of Proliferation of Weapons of Mass Destruction and Financing of Proliferation of Weapons of Mass Destruction</i>, but they are not enforceable. Order 1/2017 does not apply to freezing actions taken pursuant to UNSCR 1737 and continued by UNSCR 2231, or taken pursuant to UNSCR 2231 (c.7.5) |
| 8. Non-profit organisations | PC (MER 2018) | <ul style="list-style-type: none"> The draft NRA only included very basic assessments of elements of the NPO sector operating in Myanmar and any TF vulnerabilities. There was no differentiation amongst the types of features of NPOs within the sector or identification of categories of NPOs at possible risk of TF abuse. The draft NRA noted that there are many unregistered NPOs and that these are not considered in the draft NRA (c.8.1(a)) Myanmar has not identified the nature of threats posed by terrorist entities to at risk NPOs, or how/whether terrorist actors abuse those NPOs (c.8.1(b)) Myanmar has not identified high-risk NPOs and has not reviewed the adequacy of laws and regulations relating to NPOs in order to be able to take proportionate and effective actions to address the risks identified (c.8.1(c)) Myanmar has not demonstrated policies to promote accountability and integrity in NPO management and administration. Myanmar did not demonstrate that any notifications, orders, directives or procedures have been issued by the Union Registration Board in relation to TF risk mitigation related issues (c.8.2(a)) There does not appear to have been any outreach to the donor community about TF risks (c.8.2(b)) There has not been any work with NPOs to develop and refine best practices to address TF risks and vulnerabilities (c.8.2(c)) Myanmar did not demonstrate that a risk-based approach to supervision or monitoring has occurred (c.8.3) There is no evidence that risk-based measures are being applied by Myanmar (c.8.4) Registration by local associations is not mandatory and other monitoring mechanisms appear to be limited (c.8.4) Under the Registration of Association Law 2022 sanctions are disproportionate and punitive and do not provide for graduated criteria according to the seriousness of the violations (c.8.4) |

⁴ Ratings and factors underlying the ratings are only included for those recommendations under review in this FUR.

⁵ Deficiencies listed are those identified in the MER unless marked as having been identified in a subsequent FUR.

| Compliance with FATF Recommendations | | |
|--|--|---|
| Recommendation | Rating | Factor(s) underlying the rating ⁵ |
| | | <ul style="list-style-type: none"> No mechanisms have been established to ensure that in the event of misuse of an NPO, relevant information is promptly shared with competent authorities in order to take preventive or investigative action. There has been no evidence provided that suggests any assessment of NPOs for involvement in TF takes place (c.8.5(d)) |
| 14. Money or value transfer services | NC (MER 2018) PC (FUR 2020) PC (FUR 2022) | <ul style="list-style-type: none"> Minor gaps remain with identifying MVTS providers that operate without licence and applying proportionate and dissuasive sanctions to them (c.14.2) Gaps in obligations on and supervision of providers of domestic MVTS (c.14.3, c.14.4 & c.14.5) |
| 24. Transparency and beneficial ownership of legal persons | NC (MER 2018) PC (FUR 2020) | <ul style="list-style-type: none"> The draft NRA does not assess the vulnerabilities of various forms of legal persons or the ML/TF risks of legal persons vis-à-vis Myanmar's specific geopolitical context (c.24.2) The NRA does not analyse or assess the vulnerabilities stemming from deficiencies in the legal framework related to beneficial ownership (BO) in a meaningful way (c.24.2) The DICA Directive 17/2019 does not define 'basic information' (c.24.3) There is no obligation under the Companies Act to provide DICA with a copy of a company's constitution if it is not amended (c.24.3) There is no express requirement under the Companies Act for a company to keep a record of voting rights associated with shares (c.24.4) There is no obligation under the Companies Act for a company to report on rights associated with shares if the company does not vary or cancel those rights (c.24.4) There are currently no corresponding provisions for the DICA Directive No. 17/2019 in the AML Law, and any penalties for failing to comply with the Directive would need to be clarified (c.24.6) DICA's authority to obtain a court order compelling natural and legal persons to assist in prosecutions under the Companies Act (which appears to include disclosure of basic and BO) are subject to gaps in the framework described above (see criteria 24.3 and 24.4 and relevant gaps in the operation of the Companies Act and DICA directives) (c.24.10) None of the provisions of the Companies Law identified by Myanmar appear to require transparency related to nominee shares or directors that would mitigate against their risks of being misused (c.24.12) Sanctions under the Companies Law are not proportionate and dissuasive. The reporting obligation provided by section 51 of the Companies Law applies only to overseas corporations, and the penalty of 250,000 Kyat is unlikely to be dissuasive to overseas corporations in particular (c.24.13) Myanmar has not identified other means of providing rapid international cooperation in relation to basic and BO information (c.24.14) There is no authority responsible for monitoring the quality of assistance received from other countries in response to |

| Compliance with FATF Recommendations | | |
|---------------------------------------|--------------------------------|--|
| Recommendation | Rating | Factor(s) underlying the rating ⁵ |
| | | <p>requests for basic and BO information, or requests for assistance in locating BOs residing abroad (c.24.15)</p> <ul style="list-style-type: none"> • The availability of basic and BO information to domestic competent authorities does not address the lack of mechanisms to monitor the quality of assistance received from other countries (c.24.15) • The public availability of basic information and the availability of BO information to domestic competent authorities does not address mechanisms for providing rapid international cooperation (c.24.14) |
| 26. Regulation and supervision of FIs | PC (MER 2018) PC (FUR 2022) | <ul style="list-style-type: none"> • Moderate shortcomings on fit and proper requirements across different FIs (c.26.3) • Deficiencies with the supervision of core principles FIs and group supervision, as well as limited scope of supervision of non-bank money changers, NBFIs and mobile financial services providers (c.26.4) • No proper basis to determine the frequency and intensity of supervision activities (c.26.5) • Deficiencies remain with regard to supervisors (other than CBM for banks) not reviewing ML/TF risk profiles periodically or where there are major changes and developments in the management or operations of a FI (c.26.6) |