FATF

8TH FOLLOW-UP REPORT

Mutual Evaluation of Korea

June 2014

FINANCIAL ACTION TASK FORCE

The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.

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ACRONYMS

AML/CFT	Anti-money laundering / Countering the financing of terrorism
CDD	Customer due diligence
CTR	Cash transaction report
DNFBP	Designated non-financial business or profession
EDFTRA	Enforcement Decree of the Financial Transaction Report Act (FTRA)
FIU	Financial intelligence unit
FTRA	Financial Transaction Report Act
FSS	Financial Supervisory Service
KoFIU	Korea Financial Intelligence Unit
LC	Largely compliant
MER	Mutual evaluation report
ML	Money laundering
MLA	Mutual legal assistance
MVTS	Money value transfer services
NC	Non-compliant
PC	Partially compliant
PEP	Politically exposed person
PFOPIA	Prohibition of Financing for Offences of Public Intimidation Act
POCA	Proceeds of Crime Act
PFOPIPWMDA	Prohibition on the Financing of Offences of Public Intimidation and Proliferation of Weapons of Mass Destruction
R	Recommendation
RBA	Risk-based approach
SR	Special Recommendation
STR	Suspicious transaction report
TCSP	Trust and company service provider
TF	Terrorist financing
UN	United Nations
UNSCR	United Nations Security Council Resolutions

MUTUAL EVALUATION OF KOREA: 8TH FOLLOW-UP REPORT

Application to exit from regular follow-up

Note by the Secretariat

I. INTRODUCTION

The relevant dates for the mutual evaluation report and subsequent follow-up reports of Korea are as follows:

- Date of the Mutual Evaluation Report: 26 June 2009.
- Since the adoption of its MER, Korea reported 7 times to the Plenary: in October 2009, in the context of the membership discussion; in February and June 2010; in February and October 2011; June 2012 and June 2013. In October 2009, while granting full member status, the Plenary also decided that an on-site visit should be conducted to confirm the progress made within a year. The report of the review team was presented and discussed at the October 2010 Plenary meeting.

Korea has submitted its eighth follow-up report and application to move from regular to biennial follow-up along with a table summarising the action taken with regard to the Recommendations rated NC/PC and a series of annexes to the Secretariat on 19 May and 2 June 2014.

When its MER was adopted, in June 2009, Korea did not meet all the FATF membership criteria. Therefore, Korea prepared an action plan setting out how it intended to improve its AML/CFT regime. A revised version of the action plan was adopted by the Plenary in October 2009. The action plan covers the period from the on-site visit, in November 2008, to June 2012. Moreover, the FATF decided that a follow-up visit should take place in order to confirm the progress made in implementing the Action Plan. That mission took place in August/September 2010 and the report of the Review Team was adopted by the Plenary in October 2010.

FINDINGS OF THE MER

Korea was rated partially compliant (PC) or non-compliant (NC) on 30 Recommendations[1]. Among the core Recommendations, one was rated NC (SR.IV) and three were rated PC (R.5, R.10 and SR.II). Five key Recommendations were rated PC (R.3, R.23, R.35, SR.I and SR.III). None of the key Recommendations was rated NC.

Core Recommendations[2] rated NC or PC
SR.II (PC), R.5 (PC), R.13 (PC), SR.IV (NC)

1 This report refers to the 40 Recommendations and IX Special Recommendations as adopted in 2004.

2 The core Recommendations of the 2004 FATF Recommendations and Special Recommendations, as defined in the FATF procedures are R.1, SR.II, R.5, R.10, R.13 and SR.IV.

Key Recommendations[3] rated NC or PC
R.3 (PC), R.23 (PC), R.35 (PC), SR.I (PC), SR.III (PC)
Other Recommendations rated PC
R.2, R.15, R.17, R.18, R.22, R.29, R.30, R.32, SR.VI, SR.VII, SR.VIII.
Other Recommendations rated NC
R.6, R.7, R.9, R.11, R.12, R.16, R.21, R.24, R.33, R.34

As prescribed by the Mutual Evaluation procedures, Korea provided the Secretariat with a full report on its progress. The Secretariat has drafted a detailed analysis of the progress made for Core Recommendations 5, 13, II and IV and Key Recommendations 3, 23, 35, I and III (see rating above), as well as a description of all the other Recommendations rated PC or NC. A draft analysis was provided to Korea for its review and comments. The final report was drafted taking into account of the comments submitted by Korea. During the process Korea provided the Secretariat with all information requested.

As a general note on all applications for removal from regular follow-up: the procedure is a *paper-based desk review* and by its nature is therefore less detailed and thorough than a mutual evaluation report. The analysis focuses on the Recommendations that were rated PC/NC, which means that only a part of the AML/CFT system is reviewed. Such analysis essentially consists of looking at the main laws, regulations and other material to verify the technical compliance of domestic legislation with the FATF standards. In assessing whether sufficient progress had been made, effectiveness is taken into account to the extent possible in a paper-based desk review and primarily through a consideration of data provided by the country. It is also important to note that these conclusions do not prejudge the results of future assessments, as they are based on information which was not verified through an on-site process and was not, in every case, as comprehensive as would exist during a mutual evaluation.

II. MAIN CONCLUSIONS AND RECOMMENDATIONS TO THE PLENARY

CORE RECOMMENDATIONS

Recommendation 5 – The Korea Financial Intelligence Unit (KoFIU) issued on 21 June 2010 the AML/CFT Regulation, which addresses a number of elements of Recommendation 5 as well as other Recommendations applicable to financial institutions and casinos. Furthermore, the identification obligation set forth in the Financial Transaction Report Act (FTRA) was amended in 2012 and most recently in 2014 in order to deal the remaining deficiencies of Recommendation 5, in particular that relating to the beneficial owner. The Regulation and the amended FTRA improve Korea's compliance with Recommendations 5, 6, 7, 9, 11, 15, 18, 21 and 22 to level at least equivalent to an LC.

Recommendation 13 and Special Recommendation IV – Through various legislative changes, Korea has expanded the scope of the predicate offences for money laundering and abolished the reporting

[3] The key Recommendations of the 2004 FATF Recommendations and Special Recommendations are R.3, R.4, R.23, R.26, R.35, R.36, R.40, SR.I, SR.III, and SR.V.

threshold brining the overall level of compliance of both Recommendations to a rating at least equivalent to an LC.

Special Recommendation II – In the area of terrorist financing, Korea also made a number of changes in order to address the deficiencies identified in its mutual evaluation report. It is however unclear from the drafting of the terrorist financing offence that the financing for any purpose other than the commission of a terrorist act is covered and for the moment there is no case that could help determining the scope of the offence. In many instances, the FATF has decided that this only shortcoming does not prevent a country from reaching a satisfactory level of compliance. Therefore, Korea should be seen as largely compliance with Special Recommendation II.

KEY RECOMMENDATIONS

Recommendation 3 – With respect to confiscation, Korea has amended the Proceeds of Crime Act (hereinafter POCA) as well as other laws to expand the range of predicate offences for money laundering and to broaden the related confiscation powers. Figures reported by Korea indicate a constant increase in the number of confiscation as well as in the amounts confiscated. Overall Korea reaches an LC rating on Recommendation 3.

Recommendation 23 - Korea has significantly improved the framework of the AML/CFT supervision, in particular, the scope of the AML/CFT obligations has been expanded and the different supervisory bodies are now implementing a more organised and systematic approach to supervision. Action is being taken in order to address the remaining scope issue. However, it is the view of the Secretariat that Korea now reaches an LC rating on Recommendation 23.

Recommendation 35 - Korea has taken a series of measures in order to remedy the deficiencies identified under Recommendation 35. Deficiencies remain with respect to the offence of conspiracy (Recommendation 1 is rated LC in the Mutual Evaluation Report) and the Palermo Convention has still not been ratified. But Korea has addressed the deficiencies in relation of the TF Convention and Special Recommendation II now reaches a satisfactory level of compliance (see SR.II above). Therefore, it is suggested that Korea should now be seen as reaching an LC rating with respect to Recommendation 35, though Korea should also be encouraged to ratify and fully implement the Palermo Convention as planned by the end of 2014.

Special Recommendation I – Among the three deficiencies identified in the Mutual Evaluation Report only that relating to the terrorist financing offence has been addressed. The other two deficiencies deal with Recommendation 3 and Special Recommendation III are now viewed as reaching a level of compliance at least equivalent to an LC. Therefore, considering the cascading effect from other Recommendations, the Secretariat suggests that Korea should be regarded as reaching an LC rating on Special Recommendation I.

Special Recommendation III – Korea has made significant changes to address the deficiencies identified in the Mutual Evaluation Report. The remaining deficiency relates to Recommendation 3, now rated LC. In addition to these deficiencies from the Report, the Review Team identified in 2010 another issue with respect to the terrorist assets freezing mechanism, which was not considered by the Plenary as a priority for Korea. As a consequence, Korea now seems to achieve an LC level of the compliance with Special Recommendation III.

OTHER RECOMMENDATIONS

Korea has also made progress in addressing deficiencies related to non-core and non-key Recommendations rated PC or NC. It should be noted, however, that since the decision of whether or not Korea should be removed from the regular follow-up process will be based solely on the decisions regarding the core and key Recommendations, this paper does not provide more detailed analyses regarding these other Recommendations. A summary of the progress that was reported by Korea has been included in the final section of this paper, for information only.

CONCLUSIONS

Korea has addressed most of the deficiencies related to all core and key Recommendations, and brought the level of technical compliance with these Recommendations up to a level of LC. Korea has therefore taken sufficient measures to be removed from the regular follow-up process.

III. OVERVIEW OF KOREA'S PROGRESS

OVERVIEW OF THE MAIN CHANGES SINCE THE ADOPTION OF THE MER

Since its Mutual Evaluation, Korea has introduced a series of amendments to its AML/CFT regime. Most importantly:

- Amendments to the *Proceeds of Crime Act* (POCA) were voted in March 2009 and January 2012. They extended the predicate offences for money laundering to terrorist financing, offences criminalised in the *Copy Right Act* and the *Computer Programs Protection Act*, environmental crimes and immigration and passport offences.
- The *Financial Transaction Reports Act* (FTRA) was amended in February 2012, July 2013 and May 2014. The first set of amendments expanded the range of sanctions against financial institutions and their officers and employees for failure to comply with the AML/CFT obligations and strengthened the requirements on internal procedures and control. The second set of amendments mainly abolished the threshold for reporting suspicious transactions and introduced obligations with respect to wire transfers. The most recent amendments to the FTRA adopted in May 2014 strengthened the provisions in relation to the identification of the customer and beneficial owner, regulated the situation where the financial institution is not able to complete the CDD obligations, and increased the amount of the penal sanction in case of violation of the suspicious transaction report (STR) and cash transaction report (CTR) obligations. The *Enforcement Decree of the FTRA* has also been amended on many occasions; in particular it was amended on 26 March 2010 to provide the KoFIU with the power to issue regulations with respect to the implementation of the FTRA.

- The *AML/CFT Regulation* was issued by KoFIU on 21 June 2010 to replace previous guidelines, which did not meet the FATF criteria for '*other enforceable means*'. It came into force on 30 July 2010.
- The *Prohibition of Financing for Offences of Public Intimidation Act* (PFOPIA) was amended on 23 August 2011. The amendments dealt with the criminalisation of terrorist financing and the mechanism for terrorist assets freezing. A second set of amendments were voted and came into force on 28 May 2014; they aim at addressing the remaining deficiencies of the TF offences and also include WMDs related provisions. As a result, the Act is now called *Prohibition on the Financing of Offences of Public Intimidation and Proliferation of Weapons of Mass Destruction* (hereinafter PFOPIPWMDA).

THE LEGAL AND REGULATORY FRAMEWORK

Korea's AML/CFT regime mainly relies on the laws mentioned above.

IV. DETAILED ANALYSIS OF COMPLIANCE WITH THE CORE AND KEY RECOMMENDATIONS

CORE RECOMMENDATION

RECOMMENDATION 5 – RATING PC

R.5 (Deficiency 1): Financial institutions are only expected to discover linked transactions over a twenty-four hour period, which is not sufficient to identify structured transactions intended to avoid the threshold for occasional transactions.

Article 23(2) of the AML/CFT Regulation extends to seven days the period during which multiple transactions should be considered as linked for the purposes of the occasional transaction threshold.

This deficiency has been addressed.

R.5 (Deficiency 2): Institutions are not expressly required to conduct CDD when they have doubts about the veracity or adequacy of previously obtained customer identification data.

Article 24(2) of the AML/CFT Regulation requires institutions to undertake CDD when there are suspicions that the existing customer information may be incorrect.

Article 10-2(3) of the Enforcement Decree of the Financial Transaction Report Act (EDFTRA) stipulates that institutions "may" verify the authenticity of information from documents, information or other reliable sources when they have doubts about the veracity of customer data.

This deficiency has been addressed.

R.5 (Deficiency 3): Financial institutions are not required to verify whether the natural person acting for a legal person is authorised to do so.

Article 38(3) of the AML/CFT Regulation requires institutions to check the authority of those who conduct transactions on behalf of natural or legal persons.

This deficiency has been addressed.

R.5 (Deficiency 4): For customers who are legal persons or arrangements, financial institutions are not required by law, regulation or other enforceable means to obtain information on the customer's legal form, director(s) and provisions regulating the power to bind the legal person or arrangement.

Article 38(2) of the AML/CFT Regulation requires institutions to obtain the name of the legal person, its identification number and address, while Article 38(4) requires it to check the existence of the legal person through the corporate registry or other sources.

This deficiency has been addressed.

R.5 (Deficiencies 5 and 6): There is no requirement for financial institutions to identify and verify the identity of the beneficial owner except where there is a suspicion of money laundering or terrorist financing; In the case of legal persons or arrangements, institutions are not obliged to understand the ownership and control structure of the customer or to determine who are the natural persons who ultimately own or control the customer, other than when there is a suspicion of money laundering or terrorist financing.

Article 41(1) of the AML/CFT Regulation requires institutions to identify the natural persons who ultimately own or control the customer. Article 41(2) repeats the requirement when there are suspicions of money laundering or terrorist financing. The language of the regulation replicates that of the FATF standard, but no additional official guidance has been provided to the institutions as to what measures they might reasonably be expected to take.

During the Review Mission that took place in 2010, the Review Team met with some representatives of the private sector. It appeared from the discussion the seemingly common approach by the banks, at least, is to apply two thresholds when determining who to identify in respect of corporate customers: for large companies, any shareholding of 10% or more is considered to be a beneficial owner and is subject to further identification; while for smaller companies, the threshold is 25%. However, it was not clear whether these procedures are universally applied (even among the banks, let alone in other sectors), and whether there are safeguards in determining the concept of "control" as opposed to nominal shareholding. This raised implementation concerns that Korea addressed through the most recent amendments to Article 5-2 of the FTRA, which requires reporting entities to identify 'the natural person(s) who ultimately owns or controls the customer' when establishing a business relationship or engaging in an occasional transaction.

Both deficiencies have been addressed.

R.5 (Deficiency 7): Financial institutions are not explicitly required to obtain information on the purpose and intended nature of the business relationship.

Article 37(2) of the AML/CFT Regulation requires institutions to obtain information on the purpose and intended nature of the business relationship.

This deficiency has been addressed.

R.5 (Deficiency 8): On-going due diligence on the business relationship is not expressly required in law, regulation or other enforceable means.

Article 34(1) of the AML/CFT Regulation requires institutions to conduct on-going due diligence throughout the period of the business relationship. In addition, Article 76 requires institutions to operate an on-going monitoring system for customer transactions, and to undertake analysis and internal reporting of the results of the monitoring. There are additional monitoring requirements for high-risk customers (PEPs, high net-worth individuals, etc.).

This deficiency has been addressed.

R.5 (Deficiency 9): There is no express requirement for financial institutions to scrutinise transactions throughout the course of the business relationship to ensure they are consistent with the institution's knowledge of the customer, their business and risk profile, and the source of funds.

Article 34(2)(i) of the AML/CFT Regulation requires institutions to examine transactions to check if the information that they have on customers, their business, the risk evaluation and the source of funds is consistent with the transactions.

This deficiency has been addressed.

R.5 (Deficiency 10): There is no explicit requirement that financial institutions ensure documents, data or information collected as part of CDD is kept up-to-date and relevant.

Article 34(2)(ii) of the AML/CFT Regulation requires institutions to review existing documentation, data and information on a regular basis in order to ensure that it is up-to-date. This is required particularly in the case of high-risk customers.

This deficiency has been addressed.

R.5 (Deficiency 11): There is no prohibition on institutions opening accounts, commencing business relations or performing transactions when they are unable to: verify that any person purporting to act on behalf of a customer that is a legal person or legal arrangement is so authorised and identify and verify the identity of that person; verify the legal status of the legal person or arrangement; or, identify and verify beneficial owners.

Article 44(1) of AML/CFT Regulation provides only that institutions "may" reject a transaction when they are unable to perform effective CDD on a new customer. This measure is only discretionary. It is completed by the amended provisions of Article 5-2.4 of the FTRA, which prevents reporting entities from opening new account or performing occasional transaction when they are no table to

complete their CDD obligations. Reporting entities are also required to terminate any other existing business relationship with the specified customer. It should however be noted that the sanctions applicable to the violation of the CDD obligation set in Article 17 of the FTRA do not extend to the breach of Article 5-2.4.

This deficiency has been addressed.

R.5 (Deficiency 12): Financial institutions are not required to consider filing an STR when they are unable to complete all CDD as detailed in the FATF Standards.

Article 44(1) requires institutions to consider filing an STR when they are unable to complete the CDD. This provision is completed by the Article 5-2.5 of the amended FTRA, which requires reporting entities to consider filing an STR when they are not able to complete their CDD obligations.

This deficiency has been addressed.

R.5 (Deficiency 13): There is no explicit requirement for institutions to develop internal controls to mitigate the risk posed by transactions undertaken before the completion of the CDD process.

Article 10-5 of the EDFTRA requires that financial institutions should undertake CDD before undertaking a transaction unless there are compelling reasons on the basis of criteria laid down by the KoFIU (under article 23 of the Financial Transactions Report and Supervision Regulation). Article 33 of the AML/CFT Regulation provides that, where an account is opened prior to completion of CDD, the obligation should be completed without delay, and there should be appropriate risk management procedures in place.

This deficiency has been addressed.

R.5 (Deficiencies 14 and 15): There is no provision expressly requiring CDD to be applied to pre-existing customers; There is no express requirement that financial institutions conduct CDD on pre-existing customers at appropriate times or when the institution becomes aware that it lacks sufficient information about an existing customer.

1. Article 25 of the AML/CFT Regulation requires institutions to conduct CDD, at an appropriate time, on all customers who held accounts before the amendment to the FTRA (December 2008). "An appropriate time" is defined to include circumstances when a significant transaction takes place, when there are material changes in transaction patterns, or when the institution is aware that its information base is inadequate.

2. These deficiencies have been addressed.

R.5 (Deficiency 16): There is no requirement that financial institutions terminate an existing business relationship and consider filing an STR when: the institution has doubts about the veracity or adequacy of previously obtained customer identification data; it is unable to

satisfactorily complete post-transaction or post-account opening; or is unable to satisfactorily complete CDD on existing customers.

3. Article 44(2) of AML/CFT Regulation provides only that institutions "may" close an account when they are unable to perform effective CDD on an existing customer. In such circumstances they are required to consider filing an STR. The financial institutions indicated that they use the discretion allowed by the regulation and essentially leave it to the local manager to determine whether or not to close an account in these circumstances. This obligation is completed by Article 5-2.4 of the amended FTRA which requires reporting entities not to open new accounts or perform new transactions and to terminate any existing business relationship with a customer who refuses to provide CDD information. Pursuant to Article 5-2.2 of the FTRA, CDD should be applied to existing customers when there are doubts about the beneficial owner or ML/TF concerns. See also Recommendation 5, deficiencies 14 and 15 above.

The deficiency has been largely addressed.

R.5 (Deficiency 17): Scope limitation: no formal assessment has been undertaken to justify exclusion of some smaller financial institutions, money changers, and certain investment-related companies from the requirement to have internal AML/CFT guidelines and an internal monitoring/reporting system, which may prevent them from conducting effective CDD.

A risk assessment has been undertaken by the Korea Institute of Finance, resulting in the need to change the exemptions for securities and collective investment corporations. However, subsequent amendments to the relevant legislations have not yet been made to address these issues. Korea advised without any information detail that the necessary changes will be made in due course.

This deficiency remains.

RECOMMENDATION 5 – CONCLUSION

Korea has addressed most of the deficiencies identified under Recommendation 5 through the adoption of the AML/CFT Regulation in 2010 and amendments to the FTRA made in 2012, 2013 and 2014. However, the findings of the risk assessment have not yet been incorporated into the legislation. A large majority of the essential criteria of Recommendation 5 is now met by Korea; a rating equivalent to an LC for R.5 is therefore reached.

SPECIAL RECOMMENDATION II – RATING PC

SR.II (Deficiency 1): The terrorist financing offence does not adequately cover provision/collection of funds for an individual terrorist or terrorist organisation.

The Prohibition of Financing for Offences of Public Intimidation Act (hereinafter PFOPIA) was amended in 2011 and most recently in May 2014 when it became the Prohibition on the Financing of Offences of Public Intimidation and Proliferation of Weapons of Mass Destruction Act (hereinafter PFOPIPWMDA). Article 5-2.1 and 2 now prohibits the direct and indirect provision and collection of funds or assets for natural or legal persons knowing that such persons commit or intend to commit terrorist acts defined in Article 2.1. Sanctions applicable to these offences are a maximum of 10-year imprisonment and/or a fine not exceeding KRW 100 million (USD 97 500 – EUR 71 400). It

should however be noted that if Article 6.1 explicitly provides for the provision and collection of funds for terrorists, it only refers to the provision offence provided for in Article 5-2.1 (the offence of collecting funds for terrorist is provided for in Article 5-2.2). The Act does not require a link with a specific act; however the reference to the terrorist acts defined in Article 2.1 raises doubt as to whether the financing for any purpose other than the commission of a terrorist act is covered. Should that be the case and the only remaining deficiency in the terrorist financing offence, it would not preclude Korea to be seen as reaching an LC level as was decided in a number of other cases.

The deficiency has been largely addressed.

SR.II (Deficiency 2): Terrorist financing is not a predicate offence for money laundering.

Article 2 of the POCA (Article 2.2.b.vi) was amended to add terrorist financing (with the limitation described above) as a predicate offence for money laundering.

This deficiency has been addressed.

SR.II (Deficiency 3): It is too soon to determine the effectiveness of the terrorist financing offence as it came into force on 22 December 2008.

Korea advised that there have been no prosecutions for terrorist financing. However, it should be noted that the TF offence was been recently amended and completed.

SR.II (Deficiency 4): The ancillary offence of conspiracy is only available where an offence has been committed.

The new Article 6.6 of the PFOPIPWMDA has introduced a conspiracy offence. Anyone who prepares or conspires to commit offences, including providing and collecting funds for terrorists is liable to not more than 3-year imprisonment and a fine of a maximum of KRW 20 million (USD 19 500 or EUR 14 300).

The deficiency has been addressed.

SPECIAL RECOMMENDATION II – CONCLUSION

Through a series of amendments to the act on terrorist financing, Korea has now addressed the deficiencies identified in its mutual evaluation report. There remains a doubt as to whether the financing for any purpose other than the commission of a terrorist act is covered; however, this does not prevent Korea from reaching the expected level of compliance of LC with Special Recommendation II.

RECOMMENDATION 13 – RATING PC

R.13 (Deficiency 1): The suspicious transaction reporting requirement does not apply to funds that are the proceeds of all offences that are required to be included as predicate offences under Recommendation 1.

Article 4 of the FTRA links the reporting requirement to "illegal assets" (defined as the proceeds of the listed predicate offences), to money laundering or terrorist financing, as defined in the PFOPIA. An amendment to the POCA in March 2009 extended the list of predicates to include TF and copyright and computer offences. Further amendments adopted in January 2012 extended the list of predicate offences to environmental crimes, immigration offences and passport offences. It should be noted environmental crimes are limited to the offences criminalised under the Waste Control Act and terrorism offences are still not covered. However, terrorist financing is now a predicate offence for money laundering (see SR.II above).

The deficiency has been largely addressed.

R.13 (Deficiency 2): The STR obligation is only mandatory above a transaction threshold of KRW 20 million (for transactions in Korean Won) / USD 10 000 (for transactions in foreign currencies).

Article 6 of the EDFTRA, which provided for the STR threshold, was modified in 2010 to reduce the threshold to KRW 10 million / USD 5 000. In July 2013, the FTRA was revised and the new Article 4 does not set any threshold for the reporting of STRs. Consequently, Article 6 of the EDFTRA was deleted. The revised FTRA and EDFTRA entered into force in November 2013.

The deficiency has been addressed.

R.13 (Deficiency 3): There is no explicit requirement to report STRs for attempted transactions.

Korea has not reported any progress or action to remedy this deficiency. As noted in the MER, the requirement is not explicit, but Korean financial institutions do report attempted suspicious transactions.

Therefore the material deficiency remains.

R.13 (Deficiency 4): It is too soon to determine the effectiveness of the new obligation to report suspicious transactions related to terrorist financing.

Deficiencies in the criminalisation of terrorist financing have now been addressed (see SR.II above). The number of STRs related to terrorist financing filed by financial institutions to the KoFIU has distinctly increased in 2010 and since then reaches in average 100 STRs every year. However, it does not seem that any is actually linked to terrorism as there has been no TF investigation or prosecution.

Table 1. **Number of TF Related STRs Received**

	2009	2010	2011	2012	2013
Number of STRs	27	101	96	116	295

RECOMMENDATION 13 – CONCLUSION

Korea has addressed or at least largely addressed two important deficiencies identified under R.13. The deficiency relating to the introduction of an explicit requirement to report attempted transactions has not been dealt with contrary to what Korea committed to in its Action Plan. Korea therefore meets a majority of essential criteria of R.13 and overall seems to reach an LC rating.

SPECIAL RECOMMENDATION IV – RATING PC

SR.IV (Deficiency 1): The suspicious transaction reporting requirement does not apply to funds linked to or related to, or to be used for, terrorist organisations or those who finance terrorism.

See SR.II – deficiency no. 1.

SR.IV (Deficiency 2): The STR obligation is only mandatory above a transaction threshold of KRW 20 million (for transactions in Korean Won) / USD 10 000 (for transactions in foreign currencies) and this is of particular concern when the nature of terrorist financing is considered.

See R. 13 – deficiency no. 2.

SR.IV (Deficiency 3): It is too soon to determine the effectiveness of the new obligation to report suspicious transactions related to terrorist financing.

See R. 13 – deficiency no. 4.

SPECIAL RECOMMENDATION IV – CONCLUSION

See conclusion of R.13.

KEY RECOMMENDATIONS

RECOMMENDATION 3 – RATING PC

R.3 (Deficiency 1): Confiscation powers are not available for the money laundering offence where the predicate offence was terrorism, including terrorist financing, or environmental crime.

Articles of the POCA providing for confiscation have not been amended since the Mutual Evaluation. As mentioned above, Article 2 of the POCA was amended on two occasions in March 2009 and July 2012 to extend the predicate offences for money laundering to terrorist financing, offences criminalised in the *Copy Right Act* and the *Computer Programs Protection Act*, environmental crimes

and immigration and passport offences. Terrorism is not a predicate offence for money laundering yet; therefore, confiscation powers do not extend to money laundering where the predicate offence is terrorism.

The deficiency has been largely addressed.

R.3 (Deficiency 2): Given the size of the economy and the risk of money being laundered in Korea the number of confiscations and the value confiscated each year is low.

Numerous efforts have been undertaken by the Public Prosecutors' Office (PPO) to increase confiscation cases, including the issuance of Guidelines for *Strengthening Prosecutions of Money Laundering Cases and Confiscation* on 1 September 2010, the formation of Taskforces for Recovering Criminal Proceeds at PPOs throughout the country, delivery of training courses on confiscation and money laundering, the inclusion of use of confiscation authority in prosecutor performance appraisals, and the submission of a draft law on Non Conviction Based forfeiture that is due to be considered for enactment by the National Assembly.

The number of confiscations and the amounts confiscated are regularly increasing, in particular since 2010.

Table 2. **Number of confiscations and the amounts confiscated**

	2007	2008	2009	2010	2011	2012
Number of Cases	507	654	605	741	1 344	1 129
Amount (USD million)	54	134	140	216	254	279

RECOMMENDATION 3 – CONCLUSION

The first deficiency is not fully met yet and this follow-up report being a desk-based review, it is not possible to firmly conclude on the action taken. However, it seems that overall Korea now reaches an LC rating on Recommendation 3.

RECOMMENDATION 23 – RATING PC

R.23 (Deficiencies 1 and 2): The scope of AML/CFT supervision by the Financial Supervisory Service (FSS) is not adequate: AML risk management, implementation of enhanced CDD for high risk customers and on-going monitoring systems for unusual, large and complex transactions are not reviewed; Institutions other than those subject to the Core Principles and are supervised by the FSS, are not adequately supervised for AML/CFT.

Pursuant to the FTRA, AML/CFT compliance supervision is granted to KoFIU. In practice, this role is delegated to sectorial supervisors, in particular the FSS, and the MER noted that the scope of AML/CFT supervision was not adequate as it primarily focused on the compliance with STR and CTR obligations. In February 2009, KoFIU circulated the *Measures to Improve the AML/CFT Supervision and Inspection Procedures* and provided all supervisory authorities with instructions on a new inspection manual and checklists. The *Measures* and instructions were to ensure a common

approach across the financial sector. Then each supervisory authority prepared a new AML/CFT inspection manual and checklists taking account of the specificities of each sector in April 2009. Afterwards, this material was revised to take account of the AML/CFT Regulation which came into force in July 2010. Inspection manuals now cover the full range of AML/CFT obligations, including risk management, customer due diligence, record-keeping, compliance monitoring, STR and CTR obligations, etc.

Korea also provided in previous follow-up reports information on the number of AML/CFT inspections and subsequent sanctions conducted in the different types of financial institutions. The most recent are those for 2012; they demonstrate a significant increase in the number of inspections carried out and subsequent sanctions applied and that compliance with the full range of AML/CFT obligations is now being verified by the different supervisory bodies.

On the occasion of the Review Mission conducted in 2010, the Review Team met with representatives of supervisory bodies and of the private sector and concluded that AML/CFT is now a component of any prudential supervision as no specific AML/CFT inspections are being conducted. The FSS, which is responsible for the vast majority of the major financial institutions, undertakes full inspections every year for the large institutions. It advised at the time of the Review Mission that it was considering reducing the inspection cycle for smaller entities to once every two years.

The deficiencies have been addressed.

R.23 (Deficiency 3): Scope limitation: no formal assessment has been undertaken to justify exclusion of some smaller financial institutions, money changers and certain investment-related companies from the obligation to have internal AML/CFT monitoring/reporting, and thus from the corresponding regulatory regime.

See Recommendation 5 – deficiency 17, above.

RECOMMENDATION 23 – CONCLUSION

Korea has significantly improved the framework of the AML/CFT supervision in broadening the scope of the obligations of which compliance is being inspected and through the implementation of a more organised and systematic approach for the different supervisory bodies. Measures have been taken to address the scope issue identified in the Mutual Evaluation Report; however, the deficiency has not been addressed yet. Despite, this remaining shortcoming, Korea should now been seen as reaching an LC rating on Recommendation 23.

RECOMMENDATION 35 – RATING PC

R.35 (Deficiency 1): The Vienna Convention has been partly implemented, but shortcomings exist in the elements of the money laundering offences.

Two sets of deficiencies had been identified in Korea's MER under Recommendation 1. The first factor related to the scope of the predicate offences for money laundering; the second related to limitation of the ancillary offence of conspiracy.

The list of the predicate offences for money laundering in the POCA was amended in March 2009 and January 2012 to extend to terrorist financing, environmental crimes and expand the range of offences under the categories of copyright and fraud. Terrorism is not a predicate offence and as mentioned above, environmental crimes are limited to offences to the Wastes Control Act and do not cover serious offences to air, land, and water, contamination and pollution, illegal fishing and logging, protection of endangered species, etc.

Korea has not made any changes to the conditions of the offence of conspiracy.

The deficiency has been largely addressed.

R.35 (Deficiency 2): The Palermo Convention has not been ratified or fully implemented.

Korea has not ratified the Palermo Convention since the adoption of its Mutual Evaluation Report. According to Korea's Action Plan, the Convention was intended to be ratified by the end of 2011. Later Korea advised that the ratification was expected by the end of 2013, now postponed until the end of 2014.

However, action has been taken to that effect: the *Criminal Act* and *Proceeds of Crime Act* were modified and now criminalise (i) organised crime; (ii) kidnapping; and (iii) the laundering of proceeds from cross-border human trafficking. In its Action Plan, Korea also committed to criminalise obstruction of justice; however, it seems that the amendments to the *Criminal Act* submitted to the National Assembly have not been adopted.

While commenting on a draft version of this report, Korea advised that a bill ratifying the Palermo Convention has been submitted to the National Assembly at the beginning of the year.

The deficiency has been partially addressed.

R.35 (Deficiency 3): Significant shortcomings exist in implementation of the Terrorist Financing Convention.

Material deficiencies of the offence of terrorist financing have been addressed (see SR.II above). No further information was provided as to the implementation of the convention.

The deficiency seems to have been addressed.

RECOMMENDATION 35 – CONCLUSION

Korea has signed the three Conventions. With respect to the Vienna Convention, only one shortcoming concerning the conspiracy offence remains. The Palermo Convention is expected to be ratified by the end of the year. Meanwhile, a number of necessary measures prior to the ratification of the Convention has been taken with a view to implement the Convention despite the absence of ratification. Concerning the TF Convention, Special Recommendation II now reaches a satisfactory level of compliance (see SR.II above). Therefore, it is suggested that Korea should now be seen as reaching an LC rating with respect to Recommendation 35, though Korea should be encouraged to ratify the and fully implement the Palermo Convention as planned by the end of 2014.

SPECIAL RECOMMENDATION I - PC

SR.I (Deficiency 1): Collection of funds or other assets by terrorist organisations or terrorists for the general furtherance of their respective criminal activities or criminal purpose is not adequately criminalised.

See Special Recommendation II – deficiency no. 1.

The deficiency has been largely addressed.

SR.I (Deficiency 2): There is no adequate provision for confiscation of funds or assets for use by a terrorist organisation or by individual terrorists.

There is no provision for confiscation of terrorist funds or assets. Confiscation of terrorist funds or assets is possible in the frame of proceedings for money laundering when the predicate offence is terrorist financing. See also Recommendation 3, above.

The deficiency has not been addressed.

SR.I (Deficiency 3): S/RES/1373(2001) has not been fully implemented and shortcomings exist in relation to implementation of S/RES/1267(1999).

Amendments to POCA have established a mechanism to freeze and confiscate terrorist assets of any type that are to be used to commit public intimidation offences. Korea also issued a *Regulation on Formation and Operation of the Counter Terrorism Co-ordination Committee* in June 2009 and created the committee comprised of relevant government agency officials to establish an official mechanism for consultation among relevant authorities regarding implementation of the terrorist financing act, the PFOPIPWMDA, including to designate individual terrorists and terrorist organisations ("restricted persons") and to hear appeals against restricted financial transactions.

During its visit to Korea in 2010, the Review Team raised that Article 3 of the PFOPIA limits the application of the law to foreigners who intend to cause harm to Korean property or to foreigners "*within the territory of the Republic of Korea*" after committing an offence to collect, provide, deliver, or keep funds or assets knowing that such funds or assets are to be used as funds for public intimidation offences outside the territory of Korea. Applying this law to foreigners in such limited circumstances may limit the ability to designate foreign terrorists whose actions are not directed against the Korean Government or property owned by any Korean national. Article 3 was not amended and read the same in the new PFOPIPWMDA.

The Plenary decided while discussing Korea's Fifth Follow-up Report in October 2011 that it creates a potential vulnerability but does not constitute a serious deficiency that Korea needs to address urgently, given that according to Korea no terrorist assets have yet been found in the country. Korea advised that further amendments to the terrorist financing act were intended to strengthen the freezing mechanism. The PFOPIA has been amended and it is now the PFOPIPWMDA; however the provisions at stake remain unchanged.

Korea also reported that since its creation, the Committee has designated 494 persons as 'restricted persons' pursuant to the UNSCR 1373 and that the persons designated by UN Committee are now automatically designated as 'restricted persons' in Korea by virtue of the FSC Notice issued in 2009.

The deficiency has not been fully addressed.

SPECIAL RECOMMENDATION I – CONCLUSION

Korea has not yet fully addressed the third deficiency identified in the Mutual Evaluation Report, since the FATF Plenary decided that it is not a serious deficiency that needs to be addressed urgently. The other remaining shortcoming is cascading from another Recommendation. Taking account of the measures that Korea has taken to implement the UNSCRs and the fact that the deficiency relating to Special Recommendation II has been addressed, the Secretariat suggests that Korea should be regarded as reaching an LC rating on Special Recommendation I.

SPECIAL RECOMMENDATION III

SR.III (Deficiency 1): Measures for implementation of S/RES/1267(1999) do not allow for freezing of terrorist assets (only restriction of transactions) and obligations under S/RES/1373(2001) have not been fully implemented.

Since the Mutual Evaluation, the PFOPIA was amended in 2011 and 2014, introducing important changes to Korea's mechanism for freezing of terrorist assets. The revised mechanism relies on two provisions of the PFOPIPWMDA: (*i*) Article 5.1 that prohibits 'reporting entities' from conducting "*any financial transaction or make or receive payment thereof*" with a restricted person and (*ii*) Article 6.2.3 that criminalises the conduct of transaction knowing that person is designated as a restricted person. The sanctions for the violation of the prohibitions set in Article 5 are 3-year of imprisonment and/or a fine of KRW 30 million (about USD 29 000 and EUR 21 000). The most recent amendments have expanded these sanctions to legal persons in the cases where they have not paid attention or performed the necessary supervision to prevent the commission of the offence.

With respect to UNSCR 1267: The FSC Notice was amended in September 2009 in order to automatically qualify as 'restricted persons' any person listed pursuant to the UNSCR 1267.

With respect to Resolution 1373: Korea reported that a number of designation as 'restricted persons' have been decided by the FSC. Amendments to the PFOPIA also introduced an emergency designation process. No further information was provided on the implementation of UNSCR 1373.

New deficiencies were identified by the Review Team with respect to the designation of foreign terrorists and terrorist organisations that have not yet been remedied. See Special Recommendation I above.

The deficiency has not been fully addressed.

SR.III (Deficiency 2): The current regimes cover foreign exchange transactions and related foreign transactions and domestic banking, cash and securities transaction conducted by financial institutions.

The PFOPIA was amended to cover in Articles 4 and 5 any transaction or payment and the provision and collection of any funds or assets by any person for 'restricted persons'.

The deficiency has been addressed.

SR.III (Deficiency 3): There are no provisions for freezing concerning movable or immovable property or property derived from funds or assets owned or controlled by designated entities.

Revised Article 4 of the PFOPIA now covers all property rights. Consistent with the mechanism established by the revised PFOPIA, transactions on movable or immovable property or property derived from funds or assets owned or controlled by terrorists or terrorist organisations are prohibited.

The deficiency has been addressed.

SR.III (Deficiency 4): There are no provisions with respect to confiscation of funds or other assets of designated persons or entities other than those funds or assets can be confiscated as criminal proceeds.

See SR.I, deficiency no.2, above.

Korea reported in its 5th follow-up report presented in October 2011 that draft amendments to the *Criminal Act* relating to non-conviction based forfeiture have been finalised. Since then no further information has been provided.

The deficiency remains.

SR.III (Deficiency 5): Procedures underlying the mechanisms for restricting the funds or other assets of designated entities are in place but require clarification.

Korea has clarified its procedures in the 2009 Promulgation of the Regulation on Formation and Operation of the Counter Terrorism Co-ordination Committee (FSC Directive No. 209-19). Also amendments that have been made to the PFOPIA further refine the regime.

The deficiency has been addressed.

SPECIAL RECOMMENDATION III – CONCLUSION

A new deficiency (under deficiency no. 1) has been identified by the Review Team. While discussed by Plenary in October 2011, it was decided that Korea does not have remedy it urgently and the deficiency has not been addressed through the most changes to the terrorist financing act. Korea has made significant changes in its terrorist assets freezing, addressing most serious deficiencies identified in its Mutual Evaluation Report; the remaining shortcoming is primarily related to Recommendation 3, now rated LC. As a consequence, Korea now seems to achieve an LC level of the compliance with Special Recommendation III.

V. OVERVIEW OF MEASURES TAKEN ON IN RELATION TO OTHER RECOMMENDATIONS RATED NC OR PC

RECOMMENDATION 2 – RATING PC

R.2 (Deficiency 1): The sanctions for legal persons convicted of money laundering are insufficiently effective and are not dissuasive or proportionate. The sanctions imposed on natural persons are not effectively implemented.

Korea reported that a review of the sanctions available for money laundering has been conducted in 2009, which has not resulted in any change to the relevant laws. Korea has undertaken alternative measures, such as the organisation of trainings for law enforcement authorities, and provided the following data on ML investigation, indictments and sanctions. The Mutual Evaluation Report of Korea was adopted in June 2009; the table below indicates a significant increase in the number of convictions in 2013, while the figures were rather stable in the past years, with the exception of 2011 where a peak was observed.

Table 3. **Number of investigations, indictments and convictions since 2007**

		2007	2008	2009	2010	2011	2012	2013
Number of Investigations	Cases	120	130	138	153	249	248	350
	Persons	254	208	240	280	607	430	605
Number of Indictments	Cases	71	86	78	80	126	109	248
	Persons	99	114	97	114	152	134	351
Number of Convictions	Cases	55	76	75	62	84	79	141
	Persons	67	99	73	87	107	98	173

RECOMMENDATION 6 – RATING NC

R.6 (Deficiency 1): Financial institutions are not required to determine whether a customer is a PEP.

Article 65 of the AML/CFT Regulation requires institutions to establish appropriate procedures to identify if a customer or a beneficial owner is a PEP, which is broadly defined under article 64 as those 'who were or have been politically and socially influential in a foreign country (generally within one year after resignation from office), their family members, or those who have a close relationship with them'. Paragraph 2 of Article 64 provides a non-exhaustive list of PEPs; it extends to senior officials of the administrative, judiciary, national defence organisations or other government agencies of a foreign country; senior officials of major political parties of a foreign country; senior executives of state-owned companies of a foreign country; royal or noble family members; religious leaders; companies or businesses associated with PEPs mentioned above.

R.6 (Deficiency 2): There is no provision requiring financial institutions to obtain senior management approval to establishing business relationships with PEPs or to continue business relationships with PEPs.

Article 66 of the AML/CFT Regulation requires institutions to have senior management approval when opening an account for a foreign PEP or maintaining a relationship with a client who is identified as a PEP.

R.6 (Deficiency 3): Financial institutions are not required to establish the source of wealth and funds of customers and beneficial owners identified as PEPs.

Article 67 of the AML/CFT Regulation requires institutions to undertake enhanced CDD for PEPs, to include identification of family members who have authority over account transactions or who have a close relationship with a PEP; and information on legal persons or organisations associated with the PEP.

R.6 (Deficiency 4): Financial institutions are not required to conduct enhanced on-going monitoring of business relationships with PEPs.

Article 68(2) requires institutions to undertake enhanced transaction monitoring in respect of PEPs.

RECOMMENDATION 7 – RATING NC

R.7 (Deficiency 1): There are no obligations for financial institutions to: determine whether a respondent institution has been subject to money laundering or terrorist financing enforcement action; assess the adequacy of the respondent's AML/CFT controls; require senior management approval before establishing the relationship; or document the respective AML/CFT responsibilities of each institution.

Article 59 of the AML/CFT Regulation requires institutions to:

- identify the respondent's operational and business characteristics;
- evaluate the level of supervision exercised over the respondent, and establish whether the respondent has been subject to any AML/CFT investigation;
- evaluate the adequacy of the AML/CFT regime in the respondent's country of domicile;
- document respective obligations;
- obtain senior management approval before establishing the relationship.

RECOMMENDATION 9 – RATING NC

R.9 (Deficiency 1): Financial institutions relying on a third party to perform CDD are not required to immediately gain from the third party the necessary information concerning elements of the CDD process.

Article 53(1)(i) of the AML/CFT Regulation requires that third parties immediately provide "necessary CDD information" to the financial institution.

R.9 (Deficiency 2): There is no requirement for financial institutions to take adequate steps to satisfy themselves that copies of identification data and other relevant CDD documentation will be made available from the third party upon request without delay.

Article 53(1)(ii) requires that third parties provide the institution, on request, with any customer identification information and documents.

R.9 (Deficiency 3): Financial institutions are not required to satisfy themselves that the third party is regulated and supervised and has measures in place to comply with CDD requirements.

Article 53(1)(iii) requires that the third parties have in place appropriate AML/CFT systems and that they be subject to effective supervision.

R.9 (Deficiency 4): There is no provision requiring financial institutions relying on CDD conducted by third parties in foreign countries to take into account whether those countries adequately apply the FATF Recommendations.

Article 53(1)(iv) states that reliance may only be placed on a third party resident in a country that is effectively implementing the FATF standards. Institutions are required to verify the adequacy of the level of national compliance.

RECOMMENDATION 11 – RATING NC

R.11 (Deficiency 1): There is no explicit requirement in law, regulation, or other enforceable means for financial institutions to pay special attention to complex, unusual large transactions, or patterns of transactions.

Article 77(1) of the AML/CFT Regulation requires institutions to pay special attention to all complex, unusual large transactions or unusual patterns of transactions that have no apparent economic or lawful purpose, and cites specifically:

- transactions that have a large value or volume relative to the relationship;
- very high turnover inconsistent with the size of the balance;
- transactions that fall outside the regular pattern of the account.

R.11 (Deficiency 2): Financial institutions are not required to examine the background and purpose of such transactions and set forth findings in writing except where there is a suspicion of money laundering or terrorist financing.

Article 77(2) requires institutions to examine as much as possible the background and purpose of any unusual transactions.

R.11 (Deficiency 3): Institutions are not required to make findings of their examinations of unusual transactions available to competent authorities.

Article 77(3) requires institutions to keep records of their examination findings. Such records are available to the competent authorities using their general powers to inspect and require the submission of information.

RECOMMENDATION 15 – RATING PC

R.15 (Deficiency 1): It is not explicitly required that the internal AML/CFT procedures, policies and controls be communicated to employees.

Article 8(2) of the AML/CFT Regulation specifies that training provided to employees must, among other things, include:

- information on the AML/CFT laws and regulations
- internal policies and procedures
- business procedures with respect to customer types
- procedures for dealing with STRs and CTRs
- the roles of executives and employees with respect to AML/CFT

R.15 (Deficiency 2): There is no requirement that compliance officers be appointed at a management level.

Article 5(2)(v) of the AML/CFT Regulation requires senior management to appoint a "reporting officer to ensure efficient AML/CFT activities", but makes no explicit reference to the management level at which this appointment should be made. However, Article 6 proceeds to list the functions of the reporting officer, most of which imply a management role (*e.g.* taking responsibility for CDD policies, establishing operating regulations, direct reporting to senior management, *etc.*).

R.15 (Deficiency 3): Audit committees are not explicitly required to test compliance with AML/CFT procedures, policies and controls.

Article 12 of the AML/CFT Regulation requires institutions to establish an independent audit procedure to review and evaluate the suitability and effectiveness of the AML/CFT systems and controls, and to address any problems.

R.15 (Deficiency 4): The obligation for institutions to have AML/CFT training for employees is very general and not well implemented in practice.

Article 7 of the AML/CFT Regulation requires institutions to create and operate an employee training programme, and requires the reporting officer to provide such training at least once a year. The general contents of the training are specified in Article 8(2), as described above. Article 9 requires institutions to maintain records of the training delivered and the names of participants.

R.15 (Deficiency 5): Financial institutions are not required to have screening procedures to ensure high standards when hiring employees.

Article 6 of the AML/CFT Regulation requires that the role of the reporting officer include the establishment and operation of a "know you employee" system. Articles 10 and 11 specify that this system should enable institutions to check the identification information of their existing and new executives and employees to mitigate the risk that they may become involved in ML/TF.

RECOMMENDATION 17 – RATING PC

R.17 (Deficiency 1): The only sanctionable AML/CFT breaches are failure to file STRs and CTRs and conducting financial transactions with restricted persons without approval.

Amendments to the FTRA have expanded the range of sanctions applicable to financial institutions and their staff for failure to comply with the AML/CFT obligations set in the Act and regulations issued under the Act (*i.e.*, the STR obligation set in Article 4 of the FTRA; the CTR obligation set in Article 4-2 of the FTRA; the obligation to adopt internal procedures and policies and on-going training set in Article 5 of the FTRA; CDD obligation set in Article 5-2; and obligations regarding wire transfers set in Article 5-3 of the FTRA), including the AML/CFT Regulation.

It should be noted that Korea also relies on the provisions of the *Real Name Financial Transactions and Guarantee of Secrecy Act*. Article 3 of this Act requires financial institutions to conduct business with customers under their real names; however, the Act was not adopted with a view to impose AML/CFT obligations. Article 3 of this Act is interpreted broadly as relating to CDD.

R.17 (Deficiencies 2 and 3): The level of sanctions available for natural and legal persons who fail to comply with their AML/CFT obligations is very low and not proportionate to the more sever breaches which may occur; Sanctions are not often applied by supervisory authorities and are usually in the nature of a request to the institution during the on-site inspection that corrections be made.

The revised Article 11.2 adds two measures to the correction order that was the only sanction available for financial institutions under the FTRA: institutional warning and institutional caution. The difference between the three types of sanctions applicable to financial institutions is unclear. When a financial institution does not comply with a correction order or fails to take "necessary measures" against their agents or after 3 institutional warnings or cautions, a suspension of all or part of its activity can be pronounced for up to 6 months (Article 11.4) and an administrative fine up to KRW 10 million (approx. USD 8 900) can be imposed (Article 17.1.2). A suspension of activity may also be imposed in case of failure to take a measure prescribed by the *Enforcement Decree of the*

FTRA, but not those in the AML/CFT Regulation. In addition, pursuant to the amendments to Article 17 administrative fines will be applicable not only to failure to file an STR or a CTR but also to customer due diligence. Measures against employees would be as follows: demand of dismissal; suspension up to 6 months; reduction in salary; reprimand and caution. Slightly different sanctions are provided for executives. Despite the amendments made to the FTRA, the sanction regime remains of concern as it still primarily targets employees rather than financial institutions and cannot be seen as being proportionate and dissuasive.

Korea reported that in May 2009 the Financial Supervisory Service sanctioned 256 natural persons and 4 financial institutions for failure to comply with their AML/CFT obligations. Korea also provided for 2013 the number of financial institutions inspected, the nature of the sanctions applied and the nature of the deficiencies identifies during these inspections. No financial sanction has ever been imposed.

Classification	FSS	Korea Post	SMBA	Bank of Korea	Agricultural Cooperatives	Fisheries Cooperatives	Forestry Cooperatives	Credit Union	Community Credit Cooperatives	Total
Examination	43	190	194	237	589	39	69	83	341	1 785
Censure	5	-	-	-	-	-	-	-	-	5
Improvement Order	17	-	-	-	-	3	-	1	133	154
Corrective Order	-	12	-	-	117	2	18	2	10	161
Warning	1	9	-	-	253	30	-	5	33	331
Demand for Corrective Action	3	-	-	-	-	-	-	-	-	3
Warning to Management	2	-	-	-	-	-	-	-	-	2
On-site Corrective Action	10	229	-	-	-	116	147	24	16	542
Explanatory Statement	-	-	-	1	-	-	-	-	-	1
Total	38	250	0	1	370	151	165	32	192	1 199

Classification	FSS	Korea Post	SMBA	Bank of Korea	Agricultural Cooperatives	Fisheries Cooperatives	Forestry Cooperatives	Credit Union	Community Credit Cooperatives	Total
Examination	43	190	194	237	589	39	69	83	341	1 785
Organizational Environment	-	17	-	-	145	-	18	-	-	180
Compliance to Guidance	4	22	-	-	10	27	17	9	-	89
Data Storage and Management	-	3	-	-	2	-	-	1	12	18
Internal Reporting System	6	-	-	-	7	3	-	4	20	40
STR Reporting System	7	78	-	-	-	64	52	-	10	211
CDD	17	100	-	-	2	22	8	1	5	155
CTR Reporting System	3	-	-	1	-	-	-	6	13	23
Education and Training	-	30	-	-	66	10	59	4	50	219
Internal Audit	1	-	-	-	138	25	11	7	82	264
Total	38	250	-	1	370	151	165	32	192	1 199

RECOMMENDATION 18 – RATING PC

R.18 (Deficiency 1): There is no prohibition in law, regulation or other enforceable means on financial institutions from entering into or continuing correspondent banking relationships with shell banks.

Article 58(2) of the AML/CFT Regulation prohibits institutions from entering into or continuing correspondent banking relationships with banks that have no physical presence or have been established in a country or jurisdiction where supervision is not available.

R.18 (Deficiency 2): There is no requirement in law, regulation or other enforceable means for financial institutions to satisfy themselves that respondent financial institutions do not permit their accounts to be used by shell banks.

Article 58(2) requires institutions to take appropriate measures to ensure that the respondent bank prevents its correspondent account from being used by shell banks. However, the requirement does not appear to cover the broader issue of whether the respondent may provide facilities to shell banks more generally.

RECOMMENDATION 21 – RATING NC

R.21 (Deficiency 1): There is no requirement in law, regulation or other enforceable means for financial institutions to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations.

Article 70 of the AML/CFT Regulation requires institutions to pay special attention to transactions with customers from "non-cooperative countries" (NCCs), which are defined to include those on the NCCT list itself and countries identified by the FATF as not adequately complying with the FATF Recommendations. However, there is no broader requirement to consider the risks associated with countries beyond those identified by the FATF.

R.21 (Deficiency 2): Where transactions have no apparent economic or lawful purpose, there is no requirement to examine the background and purpose of the transactions, set forth findings in writing and make them available to assist competent authorities.

Article 71 requires institutions to examine the purpose and background of transactions with customers from NCCs when there is no apparent economic or lawful purpose, and, upon request, to provide such information to the KoFIU.

R.21 (Deficiency 3): While there are demonstrated means of notifying financial institutions of weaknesses in the AML/CFT systems of other countries, institutions are not provided clear advice on what action should be taken.

Article 72 requires institutions to take "appropriate measures" with respect to transactions with customers from NCCs, including applying enhanced due diligence, monitoring and STR filing.

R.21 (Deficiency 4): The only possible counter-measure is application of enhanced customer due diligence and as this was only implemented on 22 December 2008 it is too early to assess the effectiveness of this measure.

Article 72(2) provides for the KoFIU to specify additional measures that must be taken by financial institutions beyond enhanced due diligence. However, it seems that this power has not yet been used.

RECOMMENDATION 22 – RATING PC

R.22 (Deficiencies 1 and 2): Foreign subsidiaries are not required to observe AML/CFT measures consistent with Korean requirements; Not all Korean AML/CFT measures must be observed by foreign branches.

Article 27(1) of the AML/CFT Regulation requires institutions to ensure that their overseas branches or subsidiaries fulfil AML/CFT obligations. Article 27(3) requires that Korean standards should be the minimum standard applied by branches and subsidiaries.

R.22 (Deficiency 3): Financial institutions are not required to pay special attention to the application of AML/CFT measures in branches and subsidiaries located in jurisdictions which insufficiently apply the FATF Recommendations.

Article 27(2) requires institutions to pay special attention to their branches and subsidiaries that operate in countries that do not adequately apply the FATF standards.

R.22 (Deficiency 4): Financial institutions are not required, where the home and host country requirements differ, to apply the higher of the two standards wherever possible.

Article 27(3) requires institutions to apply Korean standards if they are higher than local requirements, provided that the foreign domestic law permits this.

RECOMMENDATION 29 – RATING PC

R.29 (Deficiency 1): The inspection areas of some supervisory authorities and self-regulatory organisations entrusted with inspection are under-resourced.

See R.23 and 30.

R.29 (Deficiency 2): The only sanctionable AML/CFT breaches are failure to file STRs and CTRs and conducting financial transactions with restricted persons without approval.

See R.17 above.

R.29 (Deficiency 23): Scope limitation: no formal assessment has been undertaken to justify exclusion of some smaller financial institutions, money changers and certain investment-related companies from the obligation to have internal AML/CFT monitoring/reporting, and thus from the corresponding regulatory regime.

See R.23 above.

SPECIAL RECOMMENDATION VI – RATING PC

SR.VI (Deficiency 1): The limitations identified under Recommendations 4-7, 9-11, 13, 15, 17, 21-23 and Special Recommendation VII also affect compliance with Special Recommendation VI.

See progress on respective Recommendations.

SPECIAL RECOMMENDATION VII – RATING PC

SR.VII (Deficiency 1): Ordering financial institutions are not required by law, regulation or other enforceable means to include full originator information in messages accompanying cross-border or domestic wire transfers, though the institutions do in fact appear to be including full originator information in the messages.

Article 47 of the AML/CFT Regulation requires the ordering institution to "supply" the originator's name, account number and address/unique identifier. New Article 5-3 of the FTRA requires the

ordering financial institution to include the name, account number and address or resident number of the customer sending international wire transfers above the threshold USD 1 000.

SR.VII (Deficiency 2): There is no requirement that each intermediary or beneficiary institution in the payment chain be required to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer.

Article 48 of the AML/CFT Regulation requires the intermediary institution to include the information provided to it in accordance with Article 47 (see above) together with the name of the originating bank.

SR.VII (Deficiency 3): Beneficiary institutions are not required to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.

Article 49(2)-(3) of the AML/CFT Regulation requires the beneficiary institutions to establish risk-based procedures to identify wire transfers that lack complete originator information; either to request any missing information or reject the transaction; and to consider filing an STR when the information is not supplied.

SR.VII (Deficiency 4): As limited obligations exist in law, regulation or other enforceable means with respect to wire transfers (these are primarily found in guidance), there is limited corresponding monitoring or sanctions by supervisory authorities in this area.

Inspection manuals have been expanded to include review of wire transfers.

RECOMMENDATION 30 – RATING PC

R.30 (Deficiency 1): KoFIU has insufficient human resources for effective analysis when the large volume of STRs is considered.

In 2012, two new staff joined the strategic analysis team of KoFIU. There are currently seven staff in the team. In addition to this limited staff increase, KoFIU has implemented a two-stage process for the STR analysis and has enhanced the training programmes for its analysts. According to the Korea authorities, the introduction of the two-stage process allowed KoFIU to significantly increase the number of STRs analysed and disseminated to law enforcement agencies.

Table 4. **STR Analysis and Dissemination**

	2009	2010	2011	2012	2013
Number of STRs analysed	13 053	19 012	16 494	21 376	25 030
Number of STRs disseminated	7 711	11 868	13 110	22 173	29 703

R.30 (Deficiency 2): Enforcement agencies have received limited training with respect to terrorist financing.

Korea last reported on this deficiency in its fifth follow-up report to the FATF Plenary dated October 2011 that four training sessions were organised for law enforcement agencies in 2011; all include among other things one section on TF investigations.

R.30 (Deficiency 3): Supervisory authorities, other than the FSS and FSC, and relevant self-regulatory organisations do not have sufficient resources to conduct their AML/CFT supervision roles.

No staff increase was granted. However, Korea reported that KoFIU provided supervisory bodies with an AML/CFT risk-based inspection methodology and checklists that are in use since April 2009.

RECOMMENDATION 32 – RATING PC

R.32 (Deficiency 1): There are no centralised statistics on the number of AML/CFT inspections carried out on different financial sectors, deficiencies and violations found, actions taken by entrusted agencies and sanctions by the KoFIU.

Korea advised that statistics on AML/CFT supervision are systematically prepared through the AML/CFT Information System for Supervision and Examination. Information on 1) the number of AML/CFT inspections conducted by the different supervisory bodies; 2) the number and nature of deficiencies identified and 3) the actions taken / sanctions imposed have been provided for 2012, see annex.

R.32 (Deficiency 2): Statistics are not available on the outcomes of matters presented to the courts.

A central database on criminal statistics was first put in May 2010; it is fully operational since July 2010. It collects and manages statistics on indictments and court decisions in ML cases.

R.32 (Deficiency 3): It is not possible to properly determine effectiveness of MLA related to money laundering due to the limited statistics available.

No action taken or currently contemplated.

RECOMMENDATION 12 – RATING NC

R.12 (Deficiency 1): With the exception of casinos, no AML/CFT obligations have been applied to DNFBP sectors.

No changes made to relevant laws. Korea conducted an AML/CFT risk assessment of the DNFBPs sectors that was completed in November 2010. FATF RBA Guidance papers were discussed with relevant SROs. In December 2011 a second policy research was completed. Korea advised that further research are being carry out and are expected to be completed by the end of 2014. A draft law on AML/CFT for DNFBPs, other than casinos, is expected to be prepared by June 2015. It should

be noted that according to its Action Plan, such draft law was meant to be submitted to the National Assembly by June 2011.

R.12 (Deficiency 2): As the AML/CFT obligations for casinos are identical to those for financial institutions they suffer from the same deficiencies identified previously with respect to Recommendations 5, 6 and 9-11.

See Recommendations 5, 6, 9 and 11 above.

R.12 (Deficiency 3): The AML/CFT obligations for casinos came into force so recently that it is too soon to determine their effectiveness.

See Recommendations 16 and 24 below.

RECOMMENDATION 16 – RATING NC

R.16 (Deficiency 1): Only one type of DNFBP – casinos – is required to report suspicious transactions and this obligation suffers from the same limitations as noted for R.13.

See Recommendations 12 and 13 above

R.16 (Deficiency 2): Only one type of DNFBP – casinos – is required to have some internal AML/CFT controls, reporting officers and employee training and this obligation does not involve establishment of a full compliance management function or employee screening.

See Recommendation 15 above.

R.16 (Deficiency 3): It is too early to assess the effectiveness of obligations imposed on casinos.

Korea reported that casinos have filled 28 STRs and 1 208 CTRs in 2009; 69 STRs and 1 563 CTRs in 2010; 147 STRs and 2 916 CTRs in 2011, 242 STRs and 4 920 CTRs in 2012 and 430 STRs and 8 719 CTRs in 2013.

See also R.24 below.

R.16 (Deficiency 4): No DNFBPs are obliged to pay special attention to business relationships and transactions with persons from or in jurisdictions which insufficiently apply the FATF Recommendations.

No changes made to relevant laws.

RECOMMENDATION 24 – RATING NC

R.24 (Deficiency 1): With the exception of casinos, no AML/CFT supervision is in place for DNFBP sectors.

No progress was reported.

R.24 (Deficiency 2): AML/CFT supervision for casinos came into force so recently that it is too soon to determine its effectiveness.

Korea reported in February 2011 that inspections were conducted in nine casinos 2009 and 2010; one of them was sanctioned for violation of the AML/CFT obligations (a fine of KRW 87 million, about USD 80 000 / EUR 60 000).

RECOMMENDATION 33 – RATING NC

R.33 (Deficiencies 1, 2 and 3): Laws do not establish adequate transparency concerning beneficial ownership and control of legal persons; Competent authorities are not able to obtain in a timely fashion adequate, accurate and timely information by competent authorities on the beneficial ownership of legal persons; There are no measures to ensure that bearer shares are not misused for money laundering and terrorist financing.

No changes made or currently contemplated to relevant laws. Korea reported that a policy research on this issue was completed in December 2011 and that policy on legal persons and beneficial ownership are being prepared on the basis of the conclusions of this research. Korea advised that it also plans to conduct a risk assessment of different types of legal persons and arrangements in 2013.

RECOMMENDATION 34 – RATING NC

R.34 (Deficiencies 1, 2 and 3): Laws do not require adequate transparency concerning the beneficial ownership and control of trusts and other legal arrangements; Although law enforcement agencies have powers to obtain information on legal arrangements, there is minimal information concerning the beneficial owners of legal arrangements that can be obtained; Providers of trust and company services are not subject to AML/CFT obligations.

No changes made or currently contemplated to relevant laws. See Recommendation 33 above.

SPECIAL RECOMMENDATION VIII – RATING PC

SR.VIII (Deficiency 1): No outreach has been undertaken to the NPO sector on terrorist financing risks and preventative measures.

Two training sessions were organised for NPOs, in February and August 2010, on their TF risks and preventative measures they should implement.

SR.VIII (Deficiency 2): There is no domestic co-ordination or information sharing among NPO supervisory authorities or between these authorities and other government agencies, including law enforcement.

Pursuant to the *Regulation for Coordination and Information Sharing Task Force among NPOs Supervising Authorities*, a national committee, comprised of representatives of the FIU and 5 of the different ministers in charge of NPOs was established in January 2010. Its missions are 1) education and inspection methods of NPOs; 2) international discussions and exchange of information and 3) foreign information requests.

SR.VIII (Deficiency 3): Points of contact have not been identified to respond to international requests for information regarding NPOs.

Korea advised that a point of contact was designated when the Task Force was established in January 2010.