



2nd Follow-Up Report

Mutual Evaluation of Bhutan

September 2018





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

APG members and observers are committed to the effective implementation and enforcement of internationally accepted standards against money laundering and the financing of terrorism, in particular the Forty Recommendations of the Financial Action Task Force on Money Laundering (FATF).

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BHUTAN: 2nd ENHANCED (EXPEDITED) FOLLOW-UP REPORT 2018

I. INTRODUCTION

1. The mutual evaluation report (MER) of Bhutan was adopted in September 2016. This follow-up report analyses the progress of Bhutan in addressing the technical compliance deficiencies identified in its MER. Technical compliance re-ratings are given where sufficient progress has been demonstrated. This report does not analyse any progress Bhutan has made to improve its effectiveness. Bhutan's progress with effectiveness will be analysed as part of the 5th year follow-up assessment and, if found to be sufficient, may result in re-ratings of Immediate Outcomes at that time.

2. The 2018 assessment of Bhutan's request for technical compliance re-ratings and the preparation of this report were undertaken by the following experts:

- *Mr. Arnold Frane, Anti-Money Laundering Council, Philippines*
- *Ms. Doreen Vai Kuan Pun, Monetary Authority of Macao, Macao, China*
- *Mr. Shaun Mark, Australian Federal Police, Australia*
- *Mr. Mohammad Abdur Rab, Bangladesh Financial Intelligence Unit, Bangladesh*
- *Mr. Shannon Rutherford, APG Secretariat*

3. The draft FUR was distributed to the global network for review on 4 July 2018 prior to its consideration by the APG Mutual Evaluation Committee on 23 July 2018 and adoption by the APG Plenary on 27 July 2018.

4. Section III of this report summarises the progress made to improve technical compliance. Section IV contains the conclusion and a table illustrating Bhutan's current Technical Compliance ratings.

II. FINDINGS OF THE MUTUAL EVALUATION REPORT

The MER rated¹ Bhutan as follows:

IO 1	IO 2	IO 3	IO 4	IO 5	IO 6	IO 7	IO 8	IO 9	IO 10	IO 11
Low	Mod	Low	Low	Low	Low	Low	Low	Mod	Low	Low
R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10	
NC	PC	PC	PC	NC	NC	NC	PC	LC	C	
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20	

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

C	C	C	PC	C	LC	LC	LC	LC	PC
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
NC	C	PC	PC	LC	PC	C	NC	NC	PC
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
PC	PC	PC	PC	PC	PC	NC	NC	LC	PC

5. Given these results, Bhutan was placed in enhanced (expedited) follow-up². Bhutan did not request re-ratings in 2017.

III. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

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

6. Bhutan requested upgrades in relation to 25 Recommendations. Bhutan has made progress to address the technical compliance deficiencies identified in the MER in relation to Recommendations: R.1, R.5, R.6, R.7, R.21, R.28, R.29, R.37 and R.38 (which were rated NC); R.2, R.3, R.4, R.14, R.20, R.23, R.24, R.26, R.30, R.32, R.34, R.35, R.36 and R.40 (which were rated PC); and R.9 and R.16 (which were rated LC).

7. As a result of this progress, Bhutan has been re-rated to LC or C on 11 Recommendations: R.1, R.2, R.5, R.9, R.14, R.21, R.23, R.29, R.32, R.35 and R.38. In addition, Bhutan has been re-rated to PC on three Recommendations: R.6, R.7 and R.28. The APG welcomes the steps that Bhutan has taken to improve its technical compliance with, R.3, R.4, R.16, R.20, R.24, R.26, R.30, R.34, R.36, R.37 and R.40; however, insufficient progress has been made to justify a re-rating of these 11 Recommendations.

Recommendation 1 (Originally rated NC – re-rated to LC)

8. In its 1st MER Bhutan was rated PC with NC.1. The deficiencies in the MER were: (i) Bhutan has not completed its NRA to identify and assess all of its ML/TF risks, (ii) mechanism to coordinate risk assessment does not include all DNFBP stakeholders, (iii) limited implementation of risk based approach, (iv) exempted measures not based on proven low risk but lack of regulatory coverage, (v) reporting entities not required to address NRA identified higher risks as NRA has not been completed, (vi) supervisors are not ensuring that reporting entities are implementing their obligations under R.1, (vii) simplified measures do not apply as *c.1.9-1.11* are not fully met.

9. With the support of the IMF, Bhutan completed its *National Money Laundering and Financing of Terrorism Risk Assessment* with final signoff in March 2017. The NRA identifies and assesses a range of ML/TF threats, vulnerabilities including in the banking sector, non-banking sector and DNFBPs and consequences with the overall conclusions of the NRA being reasonable. Relevant private sectors were involved in the NRA process. The NRA is available from the Royal Monetary Authority of Bhutan's (RMA) website and has been disseminated to FIs and DNFBPs.

10. The National Coordination Committee, established under Section 7 of the AML/CFT Act 2018, approved Bhutan's *National Strategy and Action Plan for Combating Money Laundering and Terrorism Financing* (see R.2, which has been re-rated to LC), with the strategy including the allocation of resources, by the Ministry to Finance (a NCC member), necessary for the implementation of strategy's nine objective, which are based on the risks identified in the NRA.

11. Bhutan's new AML/CFT supervisory arrangements are set out in Chapter IV of the AML/CFT Act 2018, which includes designation of a supervisor for all FI except credit cooperative / CSO savings funds and the national pension fund (R.26 is PC). Supervisors have been designated for all DNFBPs (Section 41 of the AML/CFT Act and Section 19 of the AML/CFT Regulations 2018) -

R.28 has been re-rated to PC. Supervisors are required to ensure reporting entities (REs) are complying with preventive measures obligations in AML/CFT Act and relevant AML/CFT Regulations (Section 38 of the AML/CFT Act) and supervisors are undertaking AML/CFT supervision of some FIs, mainly banks.

12. FI and DNFBPs are required to identify, assess and understand their ML/TF risks (Section 52 of the AML/CFT Act 2018 and Section 22 of the AML/CFT Regulations 2018); have policies and controls to mitigate identified risks (Section 54 and 55(1) of the AML/CFT Act 2018; and Sections 28 to 31, 37 and 84 of the AML/CFT Regulations 2018); undertake enhanced measures where higher risks are identified (84 of the AML/CFT Regulations 2018) and undertake simplified measures if lower risks are identified (Articles 21 and 86 to 90 of the AML/CFT Regulations 2018), but there is no explicit prohibition on the use of simplified measures where there is suspicion of ML/TF.

13. As a result of the above progress, R.1 has been re-rated to LC.

Recommendation 2 (Originally rated PC, re-rated to LC)

14. In its 1st MER Bhutan was rated PC with R.2. The deficiencies in the MER were: (i) Bhutan does not have a comprehensive national AML/CFT policy informed by risk, (ii) lack of domestic cooperation and coordination between FID and LEAs and supervisors on both AML/CFT operational and police issues, and (iii) Bhutan does not have a coordination mechanism to combat the financing of proliferation of WMD.

15. The National Coordination Committee established under Section 7 of the AML/CFT Act 2018 (the NCC was previously established under the authority of the RMA), approved Bhutan's National Strategy and Action Plan for Combating Money Laundering and Terrorism Financing, which is informed by risk. The Strategy is comprehensive, with clear links between strategy objectives and Bhutan's ML/TF threats and vulnerabilities. For example, the strategy includes an objective to enhance capacity of LEAs tasked with investigating ML related to corruption (identified in the NRA highest proceeds generating predicate offence), and an objective to enhance the functioning of the FIU as the NRA highlights a "higher" level of risk that perpetrators of ML are not caught. The strategy also includes a requirement that implementation is monitored and the strategy is reviewed every two years taking into account developments in AML/CFT.

16. In addition, the combination of new functions of the NCC (see section 16 of the AML/CFT Act) and recently signed MoUs provide for domestic cooperation and coordination between the FID and LEAs and supervisors including Customs, Bhutan Narcotics Control Authority (BNCA), Royal Bhutan Police (RBP), Anti-Corruption Commission (ACC) and the Office of the Attorney General (OAG) on policy and operational issues.

17. While the Department of Law and Order (DLO) is the competent authority for implementation of targeted financial sanctions pursuant to R.7, which has been re-rated to PC, it is unclear if DLO has entered into cooperation and coordination agreements to support this function (Section 82(9) of the AML/CFT Act 2018).

18. As a result of the above progress, R.2 has been re-rated to LC.

Recommendation 3 (Originally rated PC)

19. In its 1st MER Bhutan was rated PC with R.3. The deficiencies in the MER were: (i) Penal Code ML offence does not meet all elements of the Conventions, (ii) four of the 21 offences are not predicate offences for ML, (iii) no clear definition of proceeds of crime, (iv) it is unclear whether a conviction of predicate crime is necessary before proving the proceeds of crime, (v) Penal Code offence does not extend to foreign proceeds, and (vi) the ML offence included in the ACA is limited to corruption and cannot be applied to a person for both a corruption predicate and any related ML arising from that offence.

20. In 2018 Bhutan passed the AML/CFT 2018 Act which criminalises ML, under Section 159 to 164, and repeals Bhutan’s previous ML offence under Section 277 of the Penal Code (Section 6 of the AML/CFT Act). This new ML offence covers all physical and material elements in line with the requirements of the Vienna and Palermo Conventions; extends to all proceeds generating predicate offences in Bhutan including those committed abroad (see Section 161(2b) of the AML/CFT Act 2018); and it is not necessary that a person be convicted of a predicate offence before property is treated as proceeds of crime (see Section 161(a) of the AML/CFT Act 2018). The ML offence extends to any type of property regardless of value that is directly or indirectly the proceeds of crime (187(12) and (21) of the AML/CFT Act 2018).

21. Section 161(1b) of the AML/CFT Act 2018 explicitly provides for *c.3.7*, and Section 6(4) of the AML/CFT Act 2018 repeals Section 76(2) of the Anti-Corruption Act (ACA) 2011, which removes the impediment to prosecute a person for both the predicate and associated ML offence.

22. Other criteria previously covered under the Penal Code ML offence are now provided for in AML/CFT Act 2018 including: *c.3.7* under Section 161(c); *c.3.8* under Section 160; and *c.3.9* under Section 164(1).

23. While the ML offence is applicable to all proceeds generating predicate offences and ancillary offences, not all designated categories of offences under the FATF Methodology are offences in Bhutan as highlighted in the MER. Specifically, racketeering and organized crime offences, counterfeiting and piracy of products, maritime piracy and market manipulation are not criminal offences in Bhutan.

24. Regarding the risks associated with these missing predicate offences, the NRA highlights there is limited opportunities for major profit-driven crime in Bhutan, with corruption the highest proceeds generating crime particularly if natural resources and state properties and evasion of taxes are involved. Proceeds generated from counterfeiting and piracy of products, and maritime piracy and market manipulation, are low to non-existent. Regarding racketeering and organized crime offences, the NRA highlights that about 49% of domestic proceeds are perceived as associated with organized crime groups, with organized crime groups mostly involved in illicit trafficking in stolen and other goods (second highest proceeds generating predicate offence – generates approx. 8% of total domestic proceeds), smuggling (generates approx. 1% of total domestic proceeds), illicit trafficking of narcotics and psychotropic substances (generates approx. 1% of total domestic proceeds) and sexual exploitation (generates less than approx. 1% of total domestic proceeds).

25. In addition, sanctions have not been prescribed for legal persons as required under 164(2) of the AML/CFT Act 2018.

26. The APG welcomes Bhutan’s steps to improve its technical compliance; however, due to remaining deficiencies in predicate crimes for ML, particularly in relation to racketeering and organized crime offences, insufficient progress has been made and R.3 remains at PC.

Recommendation 4 (Originally rated PC)

27. In its 1st MER Bhutan was rated PC with R.4. The deficiencies of the MER were: (i) scope deficiencies in predicate offences, (ii) absence of provisions for TF, property of equivalent value, (iii) deficiencies in provisions to freeze and seize for property subject to confiscation, (iv) no provision to protect rights of bona fide third parties, and (v) limited mechanisms for managing property seized.

28. With the introduction of the Chapter VII of AML/CFT Act 2018, covering confiscations, Bhutan supplemented provisions on confiscation and provisional measures included the Penal Code, Criminal Procedures Code and Anti-Corruption Act 2011. The AML/CFT Act 2018 provides for confiscation of corresponding value (Section 156 of the AML/CFT Act 2018). R.5 is re-rated to LC (see below) and definition the “instrumentalities” (Section 187(13) of the AML/CFT Act 2018), which can be confiscated upon conviction covers *c.4.1(c)*. However, consistent with R.3, the absence

of a criminal offence relating to organised crime, market manipulation, counterfeiting and piracy of products means Bhutan cannot undertake seizing and confiscation action relating to these offences.

29. Chapter VII also provides for the Financial Intelligence Department (FID) to identify, trace and evaluate and temporarily freeze property held by reporting entities for 21 day (Sections 31 and 32 of the AML/CFT Act 2018). Upon a court order the Attorney General's Office can freeze and seize property (Section 125 to 127 of the AML/CFT Act 2018) without prior notice (Section 128 of the AML/CFT Act 2018), and the court may void actions that may prejudice Bhutan's ability to recover property (Section 130 of the AML/CFT Act 2018). The rights of *bona fide* third parties are protected under Section 131 to 133 and 145 of the AML/CFT Act 2018. Deficiencies related to *c.4.2(d)* remain as appropriate investigative measures are not included in legislation.

30. While the AML/CFT Act 2018 provides a mechanism for disposal of confiscated property (Section 138) and "safekeeping" of property seized (Section 126(2) of the AML/CFT Act), it is unclear which competent authority is undertaking this "safekeeping" and whether there are procedures for assessment management.

31. The APG welcomes Bhutan's steps to improve its technical compliance. However, (i) the absence of criminal offences relating to organised crime, market manipulation, counterfeiting and piracy of products means Bhutan cannot take seizing and confiscation action relating to these offences, and (ii) the review team is not aware of mechanisms in place to manage and when necessary dispose of property. Consequently, insufficient progress has been made and the rating of R.4 remains at of PC.

Recommendation 5 (Originally rated NC, re-rated to LC)

32. In Bhutan's 1st MER it was rated NC with R.5. The deficiencies of the MER were: (i) terrorist financing under Section 329 of the Penal Code is not in accord with the TF Convention, (ii) the law does not cover the financing or support for a terrorist organization or individual terrorist, (iii) indirect support to terrorists is not covered, (iv) direct or indirect financing or support for a terrorist group or individual terrorist is not covered, (v) there is no definition for the term "funds" within the meaning of the TF Convention, (vi) organizing and directing others to commit TF offense or contributing to the commission of one or more TF offenses is not covered, (vii) the TF offense is not a predicate offense to ML, and (viii) extra-territorial application of the law is limited to Bhutanese citizens.

33. In 2018 Bhutan passed the AML/CFT Act 2018 which criminalises TF, under Section 165 to 168 and replaces Bhutan's previous TF offence under section 329(b) of the Penal Code. This new TF offence closely mirrors the TF convention applying to terrorist acts, terrorist organizations or individual terrorist (see definitions under Section 187(26), 187(27) and 187(25) of the AML/CFT Act 2018, respectively), with the definitions of terrorist organizations or individual terrorist closely mirroring *c.5.8(a)-(d)*. The offence also applies to direct or indirect provision or collection of funds (Section 165 of the AML/CFT Act 2018); funds are defined in a manner consistent with the TF Convention (Section 187(12) of the AML/CFT Act 2018); ML offence is applicable to all proceeds generating offences including TF (Section 159 and 187(21) of the AML/CFT Act 2018); and the TF offence has extra-territorial application (Section 166 of the AML/CFT Act 2018).

34. *c.5.2^{ibs}*: Section 165(2) of the AML/CFT Act closely mirrors this criterion.

35. Other criterion previously covered under the Penal Code, are now provided for in AML/CFT Act 2018 including: *c.5.6* under Section 167. There has been no change for *c.5.5*.

36. The MER highlights that Bhutan's Penal Code provides for criminal liability and sanctions for corporations and business (508 to 512 of the Penal Code). While the TF offence in the AML/CFT Act 2018 applies to both natural and legal persons, the sanctions under the act apply only apply a direct link to natural persons sanctions in the Penal Code. Therefore, it is unclear if sanctions for

legal persons in the Penal Code can be applied to the TF offence in the AML/CFT Act 2018. Notwithstanding, the NRA has assessed TF risks related to legal persons as low.

37. As a result of the above progress and in light of the NRA has assessing TF risks related to legal persons as low, R.5 has been re-rated to LC.

Recommendation 6 (Originally rated NC, re-rated to PC)

38. In its 1st MER Bhutan was rated NC with R.6. The deficiencies of the MER were: (i) Bhutan has neither mechanisms nor procedures for designation pursuant to UNSCR 1267/1989; 1988, (ii) there is no competent authority responsible for designation as required under UNSCR 1373, (iii) Bhutan lacks a framework to implement UNSCR 1373, (iv) Bhutan has no regulations in place that would govern information gathering to meet the criteria for designation and operate *ex parte* against such target, (v) scope of freezing mechanism for UNSCR 1267 is limited and does not include all persons within the country, (vi) the freeing mechanism for reporting entities does not cover UNSCR 1373, (vii) it is unclear whether the freeze covers all types of funds or assets, (viii) there are no rules that would govern the protection of the rights of bona fide third parties, (ix) Bhutan has no procedures covering de-listing, unfreezing and access to frozen funds or assets, (x) Bhutan has no legal basis covering access to frozen funds intended for basic and extraordinary expenses.

In 2018 Bhutan implemented a new framework for TFS under Chapter VI of the AML/CFT Act 2018 and Chapter 16 of the AML/CFT Regulations 2018, which are assessed below in the order of R.6.

Identifying and designating

39. For UNSCR 1267, the Department of Law and Order (DLO), is the competent authority for implementation of TFS (Section 81 of the AML/CFT Act 2018) including: (i) proposing names to the relevant sanctions committees (section 82(2)), (ii) identifying, including collecting and use of necessary information or evidence (Section 82(2)) on natural and legal persons for designation based on designation criteria of committees (Section 82(7)) and a “reasonable grounds” evidentiary standard (Section 82(3), and (iii) providing relevant information to the UN committees.

40. For UNSCR 1373, under Section 96 of the AML/CFT Act 2018, the Domestic Designation Committee has the power to designate *ex parte*, including upon request of a foreign jurisdiction (Section 89), natural and legal persons upon reasonable grounds that they met the designation criteria set out in UNSCR1373 (Section 187(19) and (20) of the AML/CFT Act 2018 and Section 176 of the AML/CFT Regulation 2018). DLO is responsible for identifying targets for designation by the Domestic Designation Committee. Section 97 of the AML/CFT Act 2018 provides the legal basis for the Domestic Designation Committee to request a foreign jurisdiction give effect to the it listings with further clarification, under section 178 of the AML/CFT Regulations 2018.

Freeze

41. Bhutan’s previous limited freezing mechanism was under the AML/CFT Regulations 2015, which was repealed by the AML/CFT Act 2018. For UNSCR1267, Bhutan’s freezing mechanism automatically considers funds and other assets of all natural and legal persons to be frozen upon formal publication of listings by DLO (Section 82(5) and 83 of the AML/CFT Act 2018). Therefore, the timing of the listing by DLO establishes the implementation of TFS without delay. While Bhutan provided one example of a listing publication by the DLO, it is unclear if DLO has published all updates to relevant UNSCRs and the example provided shows that the DLO’s publication was not made without delay. For UNSCR 1373, the Domestic Designation Committee has the power to order funds and other assets be frozen upon their designation of a natural and legal persons (Section 96(2)).

42. Under 119(3) of the AML/CFT Act 2018 and Section 241 of the AML/CFT Regulations 2018, RE are required to freeze “without delay”, in accordance with Section 82(5) and 96(2) of the

AML/CFT Act 2018, upon publication of listings by DLO or Domestic Designation Committee. As above, the DLO is not publishing listings without delay.

43. All natural and legal persons are required to give effect to these freeze mechanisms (Section 119(3) of the AML/CFT Act 2018), which both extent to all elements of c.6.5(b) (see section 110 of the AML/CFT Act 2018). Furthermore, Section 119 (1) to (2) of the AML/CFT Act 2018 closely mirror c.6.5(c), all persons are required to inform the FID of any property of designated persons (section 119(3) of the AML/CFT Act 2018) and rights of bona fide third parties are protected under Section 123 of the AML/CFT Act 2018. There is however no requirement to report attempted transactions as required by c.6.5(e).

De-listing, unfreezing and providing access to frozen funds

44. For UNSCR 1267, Sections 84 to 89 of the AML/CFT Act provides for unfreezing pursuant to the relevant sanctions committee decision, and in practice Bhutan advised they would follow procedures specified by the relevant UN sanctions committee to submit a de-listing. However, at present there are no publicly available procedures that specify the process for de-listing at the United Nations.

45. For UNSCR1373, Sections 101 to 109 provides a mechanism for de-listing and unfreezing of funds including a review of designation decision before a court (Section 108). All de-listing and unfreezing will be published by the DLO; the AML/CFT Law contains a mechanism for review and unfreezing of funds of persons/entities with similar names to those designated (Section 120 to 124); and Section 86 to 89 provides for access to funds for basic expenses.

46. The APG welcomes Bhutan's steps to improve its technical compliance. However, it is unclear if Bhutan is implementing TFS for terrorism/TF without delay. As a result of the above progress, R.6 has been re-rated to PC.

Recommendation 7 (Originally rated NC, re-rated to PC)

47. In its 1st MER Bhutan was rated NC with R.7. The deficiencies of the MER were: (i) the freezing mechanism is limited to UNSCR 1737, does not include all funds and do not cover all persons within the country, (ii) there are no rules that would govern the protection of the rights of bona fide third parties, (iv) Bhutan has no publicly known procedures for to submit de-listing requests to the Security Council, (v) Bhutan has no laws, rules or regulations in place governing contracts, agreements or obligations that arose prior to the date the accounts became subject to targeted financial sanctions.

48. Bhutan has implemented R.7 within the same legal framework as R.6 under Chapter VI of the AML/CFT Act 2018 and Chapter 16 of the AML/CFT Regulations 2018. The definition of targeted financial sanctions in the AML/CFT Act 2018 applies to "all measures as may be adopted from time to time by the United Nations Security Council under Chapter VII of the United Nations Charter". The AML/CFT Regulation 2018 expressly covers measures relating to Iran and DPRK. Such measures outlined in the Act and Regulations therefore cover UNSCRs related to Iran and DPRK. In addition, the AML/CFT Regulation 2018 goes beyond the requirements of R.7 and covers broader requirements of UNSCRs related to DPRK and Iran.

49. c.7.1 – Section 82(5) of the AML/CFT Act 2018 provides that the DLO shall by formal notice, publish without delay, the names of persons or organizations that are listed in United Nations Sanctions lists that are issued pursuant to a UNSCR. This list shall be communicated without delay to the FID for transmission to FIs, DNFBPs and any person or organisation that it believes has custody or control of property of a listed person. Bhutan did not demonstrate in practice that disseminations are occurring in a timely manner (see also R.6). Section 83 then provides that any property located within Bhutan of a person who is listed in a notice under section 82(5) shall be frozen by operation of the Act. Consequently, the freezing obligation only applies to domestic

persons and entities once the notice is published under section 82(5), and not immediate upon designation by the UNSCR. Hence, the manner and pace at which the domestic publication is made is crucial to implementing TFS in a timely manner.

50. Both the AML/CFT Act 2018 and the AML/CFT Regulation 2018 prescribe further measures for broader implementation of UNSCRs.

51. *c.7.2(a)* – consistent with R.6, the DLO is the competent authority for implementation of TFS. Pursuant to section 83 of the AML/CFT Act 2018, any property located within Bhutan of a person who is listed in a notice published under section 82(5) of this Act shall be frozen by operation of the Act. However, as stated above, the timeliness of the freezing is dependent on how quickly the DLO is able to publish by formal notice all new UNSC listings. The term ‘fund or property’ is defined at section 187 of the AML/CFT Act as meaning assets of every kind, whether corporeal or incorporeal, tangible or intangible, moveable or immoveable, however acquired, and legal documents or instruments in any form, including electronic or digital evidencing title to, or interest in, such assets.

52. *c.7.2(b)* – Section 110 of the AML/CFT Act 2018 defines that property of a person or organisation listed pursuant to section 82(5) of the Act includes the following funds and assets: (a) those owned or controlled, whether wholly or jointly, directly or indirectly or otherwise by the person or organisation; (b) derived or generated from funds or other assets owned or controlled directly or indirectly or otherwise by the person or organisation; and (c) of person or organisation acting on behalf of, or at the direction of the person or organisation.

c.7.2(c) – Section 119 of the AML/CFT Act 2018 prohibits making funds or other assets, economic resources, or financial or other related services available, directly or indirectly, wholly or jointly for the benefit of any person or organization listed pursuant to section 82(5). This requirement extends to any person or organisation owned or controlled, directly or indirectly by such a person, or organisation; and a person or organisation acting on behalf of or at the direction of such person or organisation. The prohibition applies unless authorised in accordance with other provisions of the Act.

53. *c.7.2(d)* – Section 82(6) of the AML/CFT Act 2018 requires the DLO to communicate without delay details of notices of listed persons or organisations to the FID for transmission to FIs, DNFBPs and any other persons or organisations that it believes has custody or control of property of a listed person or organisation. Further guidance is provided in the AML/CFT Regulation 2018; however, it is not clear that further guidance has been provided to FIs or DNFBPs on their obligations in taking action under the freezing mechanism. It is noted that Section 241 of AML/CFT Regulations 2018 requires REs to establish their own procedures for implementing the freezing of property.

54. *c.7.2(e)* – Section 242 of the AML/CFT Regulation 2018 requires FIs and DNFBPs to implement their own internal procedures and such procedures should enable REs to report the existence of property frozen pursuant to Section 83 of the AML/CFT Act 2018 to the FID without delay.

55. *c.7.2(f)* – Section 120 of the AML/CFT Act 2018 provides for the rights of affected third parties in frozen property. It allows an affected party to write to the Department for the unfreezing of their property. Any application shall be made in accordance with procedures set out in the Regulations. However, there are no procedures set out in the AML/CFT Regulation pertaining to bona fide third parties. Nevertheless, section 122 – 124 of the AML/CFT Act 2018 adequately prescribes a process by which a bona fide third party may undertake in the event they seek to have legitimate assets excluded from freezing action.

56. *c.7.3* – Section 38 of the AML/CFT Act 2018 confirms that relevant sectoral supervisors are responsible for ensuring that REs comply with the obligations imposed under the AML/CFT Act

2018. Section 82 states that the DLO is responsible for the overall administration of UNSCRs in so far as they relate to TFS in Bhutan. There are sanctions for noncompliance as discussed in R.6.

57. *c.7.4 (a) and (b)* – Section 84 of the AML/CFT Act 2018 is broad enough to provide for unfreezing pursuant to the relevant sanctions committee decision, but there is no provision to allow persons or entities to request a de-listing pursuant to UNSCR1730. The AML/CFT Law contains a mechanism for review and unfreezing of funds of persons/entities with similar names to those designated (Section 120 to 124)

58. *c.7.4(c)* – Section 86 to 89 of the AML/CFT Act 2018 provides for access to funds for basic expenses, and de-listing unfreezing are communicated by the DLO.

59. *c.7.4(d)* – Section 84 of the AML/CFT Act 2018 provides that where a person or organisation is removed from a UNSCR list, the DLO shall cause a notice of removal to be published as soon as practicable. However there has been no guidance to FIs or other entities as to their obligations in this respect.

60. *c.7.5(a)* – Section 116 of the AML/CFT Act 2018 allows for certain payments or credits to be made into a frozen account. These include payments due under contracts, agreements or obligations which were concluded or arose before the date the account was frozen, payments of interest or other benefits or earnings due on the account. The DLO may allow receipt of other amounts into frozen accounts if provided for and in line with certain requirements of relevant UNSCRs.

61. *c.7.5(b)* – Section 238 of the AML/CFT Regulation 2018 allows a person to apply to the DLO for authorisation to act in contravention of a prohibition contained in Section 199 – 219 or Section 220 – 231. Those sections pertain to the provision of property or financial services related to the broader activity based prohibitions in USCRS. This section doesn't relate to those persons or entities that are sanctioned by the UNSC and governed by the prohibition in section 83 of the AML/CFT Act 2018.

62. The APG welcomes Bhutan's steps to improve its technical compliance. However, it is unclear if Bhutan is implementing TFS for PF without delay. As a result of the above progress, R.7 has been re-rated to PC.

Recommendation 9 (Originally rated LC, re-rated to C)

63. In its 1st MER Bhutan was rated LC with R.9. The deficiencies of the MER were a lack of clarity concerning the ability of sharing information between competent authorities internationally.

64. Under Section 76 of the AML/CFT Act 2018, it explicitly states that no confidentiality or secrecy provision in any other law shall prevent the REs from fulfilling its obligations under the Act. Sections 15 to 20 of the AML/CFT Regulation 2018 provide for cooperation between AML/CFT supervisors, including internationally, and cover regulatory information, prudential information, other AML/CFT information, and information obtained under Section 47 of the AML/CFT Act 2018, which includes customer information.

65. Section 49 of the AML/CFT Regulation 2018 provides for the exchange of customer information in group level compliance with Section 76 of the AML/CFT Act 2018, ensuring FI confidentiality or secrecy provision do not prohibit the exchange of information pursuant to R.13, R.16 (re-rated to LC), and R.17.

66. In the MER, Bhutan's level of compliance with R.13 and R.17 was primarily due to obligations included in the AML/CFT Regulations 2015, which had been repealed. Requirements covering R.13 and R.17 are now provided for in Chapter 7 and 11 of the AML/CFT Regulations 2018, respectively. *Prima facie* Bhutan's compliance with R.13 and R.17 has not been lowered.

67. As a result of the above progress, R.9 has been re-rated to C.

Recommendation 14 (Originally rated PC, re-rated to LC)

68. In its 1st MER Bhutan was rated PC with R.14. The deficiencies of the MER were: (i) authorities are not identifying illegal MVTS providers, (ii) authorities are not monitoring MVTS providers for AML/CFT compliance, and (iii) there is an absence of specific requirements in relation to agents of MVTS providers. In the MER Bhutan's level of compliance with R.14 was primarily due to obligations included in the AML/CFT Regulations 2015, which had been repealed. Bhutan has implemented new requirements to give effect to R.14 in the Inward Remittance Rules and Regulations (IRR&R) 2016, Foreign Exchange Rules and Regulations 2018, and the AML/CFT Regulations 2018, as detailed below:

69. *c.14.1:* under Section 7 of the IRR&R, banks licensed by the RMA, that provide remittance services are required to be registered with the RMA. Under Section 8 legal entity, other than banks, must be licensed to operate a money transfer agent. There is also a licensing requirement that mirrors this criterion under Section 125 AML/CFT Regulations 2018.

70. *c.14.2:* one non-bank remittance agent has been registered pursuant to the IRR&R, but Bhutan provided no other evidence that authorities are identifying natural and legal persons that carry out MVTs without license.

71. *c.14.3:* bank and non-bank MVTS are REs pursuant to Section 50 of the AML/CFT Act 2018, and the FID conducted an AML/CFT onsite visit of one non-bank MVTS in February 2018.

72. *c.14.4:* in addition to Section 7 of the IRR&R, under Section 11 authorized banks and money transfer agents are required to seek written approval from the RMA before appointing sub-agents. There is also a requirement that closely mirrors with criterion under Section 128 of the AML/CFT Regulations 2018

73. *c.14.5:* Section 129 of the AML/CFT Regulation 2018 closely mirrors this criterion.

74. While there are sanctions covering the above requirements in the AML/CFT Act 2018 and AML/CFT Regulation 2018, it is unclear if there are sanctions for non-compliance with the requirements of IRR&R 2016 and no evidence of sanctions being applied was provided to the assessment team, particularly for REs/legal entities that are not banks.

75. As a result of the above progress, R.14 has been re-rated to LC.

Recommendation 16 (Originally rated LC)

76. In its 1st MER Bhutan was rated LC with R.16 with cascade deficiencies from R.6. Cascade deficiencies remain as R.6 is re-rated PC. In the MER Bhutan's level of compliance with R.16 was primarily due to obligations included in the AML/CFT Regulations 2015, which had been repealed. Bhutan has implemented new requirements to give effect to R.16 in Chapter 10 of the AML/CFT Regulations 2018, which is assessed below in the order of R.16.

Ordering FIs

77. Irrespective of value transaction all ordering institutions must ensure all cross-border wire transfers are accompanied by information in *c.16.1(a)* and *(b)* under 136 of the AML/CFT Regulation 2018. Section 137, 138, and 139 of the AML/CFT Regulation 2018 closely mirror *c.16.2*, *c.16.5*, and *c.16.6*, respectively. REs are required to maintain all originator and beneficiary information in accordance with R.11 (Section 135 of the AML/CFT Regulations 2018), with R.11 now provided for under Section 67-68 of the AML/CFT Act 2018, and REs are prohibited from executing wire transfers that don't comply with the requirements under Chapter 10 of the AML/CFT Regulations 2018.

Intermediary FIs

78. Section 140, 141, 142 and 143 of the AML/CFT Regulation 2018 closely mirror criterion *c.16.9*, *c.16.10*, *c.16.11* and *c.16.12*, respectively. The combination of Section 141 and 135 of the AML/CFT Regulations 2018 provide for *c.16.10*.

Beneficiary FIs

79. Section 144, 146 of the AML/CFT Regulation 2018 closely mirror *c.16.13*, *c.16.15*. Irrespective of value transaction all beneficiary institutions must comply with Section 143 of the AML/CFT Regulation 2018 closely mirrors this criterion and must be maintained in accordance with R.11 (see above).

MVTS

80. Under Section 126 MVTS providers and agents are required to comply with Wire Transfers requirements included in the AML/CFT Regulations 2018, and Section 127 of AML/CFT Regulations 2018 closely mirrors *c.16.17*.

TFS

81. Section 133 of the AML/CFT Regulation 2018 requires REs to comply with TFS requirements when carrying out wire transfers, and deficiencies under *c.6.5(a)* are partly addressed and deficiencies under *c.6.5(b)* and *(c)* addressed. Therefore, deficiencies remaining under R.6; are minor as they pertain to R.16.

82. The APG welcomes Bhutan's steps to improve its technical compliance; however, due to minor cascade deficiencies from R.6, insufficient progress has been made and the rating of R.16 remains at of LC.

Recommendation 20 (Originally rated PC)

83. In its 1st MER Bhutan was rated PC with R.20 due to cascade deficiencies from R.3 and R.5. Bhutan's STR obligations under Section 144 and 144(c) of the FSA 2011 and Section 6.1 of the AML/CFT Regulations 2015 have been repealed. The AML/CFT Act 2018 includes a new STR obligation under Sections 69-71. Under this new obligation, all REs must file and STR upon reasonable grounds to suspect any property, the subject of a transaction with which it is involved is: (a) proceeds of some form of criminal activity whether committed in Bhutan or elsewhere; or (b) is related or linked to or is to be used for terrorist acts or by a terrorist or a terrorist organisation or by a person who finances terrorist acts. The requirements apply to both completed and attempted transactions and the STR must be made no later than 2 working days after the transaction or attempted transaction has taken place.

84. The requirement to file STRs is framed broadly in terms of requiring a report for any suspected criminality, and R.5 is re-rated LC. However, the predicate crime gap outlined at R.3 (remains at PC) cascades into R.20 in that racketeering and organized crime offences, counterfeiting and piracy of products, maritime piracy and market manipulation are not criminal offences in Bhutan.

85. The APG welcomes Bhutan's steps to improve its technical compliance; however, in light of the serious criminal offences that are not yet criminalised in Bhutan (see R.3), R.20 remains at PC.

Recommendation 21 (Originally rated NC, re-rated to LC)

86. In its 1st MER Bhutan was rated NC with R.21. The deficiencies of the MER were: (i) a lack of protection for RE's directors and employees, and (ii) provision in the FSA (Section 141) requiring REs to report all evidence of serious criminal or terrorism activity to the RMA and not the FID.

87. Section 145 of the FSA 2011, which previously provided for *c.21.1*, was repealed by the AML/CFT Act 2018. The obligation is now under Section 79 of the AML/CFT Act 2018, including protection from criminal and civil liability for REs and their directors, directors, officers or employees for disclosures in good faith in accordance with obligation in the AML/CFT Act.

88. The requirement for REs to report all evidence of serious criminal or terrorism activity to the RMA (Section 141 of the FSA) has also been repealed pursuant Section 6(1) of the AML/CFT Act 2018, and Section 80 of the prohibits REs and their directors, officers or employees from disclosing, the fact a STR or related information has been filed. However, this provision does provide for the disclosure of STR related information for the purposes of legal advice. Confidentiality protections during the provision of legal advice are unclear.

89. As a result of the above progress, R.21 has been re-rated to LC.

Recommendation 23 (Originally rated PC, re-rated to LC)

90. In its 1st MER, Bhutan was rated PC with R.23 due to deficiencies for DNFBPs for R.18, R.19, R.20 and R.21.

91. Under Section 50 of the AML/CFT Act 2018, all DNFBPs are REs. As above, all REs are required to submit STRs, but R.20 is rated PC due to the predicate crime gap outlined at R.3 (remains at PC) that cascades into R.20, and lack of clarity on any confidentiality protections during the provision of legal advice related to STRs (R.21).

92. The STR threshold for dealers in dealers in precious metals and stones under Section 73 of the AML/CFT Act 2018 is set in Section 162 of the AML/CFT Regulations 2018 at Nu 25,000 (~3,600 USD) or equivalent foreign currency. As above, R.21 is re-rated to LC and applies to all REs including DNFBPs.

93. In the MER, Bhutan's level of compliance with R.18 and R.19 was primarily due to obligations included in the AML/CFT Regulations 2015, which had been repealed. Requirements covering R.18 and R.19 are now provided for in Section 28 to 57 and Chapter 13 of the AML/CFT Regulations 2018, respectively. *Prima facie* Bhutan's compliance with R.18 and R.19 has not been lowered. DNFBPs are required to comply with these requirements.

94. As a result of the above progress, R.23 has been re-rated to LC.

Recommendation 24 (Originally rated PC)

95. In its 1st MER Bhutan was rated PC with R.24. The main deficiencies of the MER were: (i) no risk assessment of legal persons, (ii) details of shareholders not fully captured, (ii) lack of mechanisms to identify beneficial owners in a timely manner, (iii) lack of record keeping requirements, (iii) no explicit mechanisms against nominee directors, (iv) lack of proportionate and dissuasive sanctions.

96. In 2016 Bhutan passed The Companies Act of Bhutan 2016 (Companies Act), which repeals the previous Companies Act of 2000 – the primary basis of Bhutan's compliance with R.24. In addition, CDD BO obligations included in the AML/CFT Regulations 2015 have been repealed. For these reasons Bhutan's new framework to give effect to R.24 is assessed below in the order of R.24.

97. *c.24.1* – The Companies Act 2016 provides for the formation of a number of kinds companies including:

- companies limited by shares (one person company, private company & listed company and public company)
- government companies (a public company more than 50% owned by the government)

- foreign companies (incorporated under another jurisdiction but registered to do business in Bhutan).

98. *c.24.2* – Bhutan undertook a NRA in March 2017, which included coverage of all types of legal persons and members from Office of Registrar of Companies (Registrar) in the NRA technical working group. The NRA assesses the ML and TF risk of legal persons as a group as low. The NRA does not however assess the ML and TF risk for all types of legal persons separately and individually as required by this criterion.

99. *c.24.3* – Pursuant to Chapter 4 of the Companies Act 2016, all legal persons incorporated in Bhutan are required to be registered with the Registrar for incorporation. In an application for incorporation, the Registrar shall receive a copy of the company’s Articles of Incorporation which state the name of the company and the regulations of the company (section 23). The Articles contain the company’s name, registered office, and business activities undertaken along with shareholders details of the company; however, these requirements are not contained in the law. Rather they are prescribed in Model Articles of Incorporation, which the company may choose not to adopt (Section 23 of the Companies Act 2016). The model articles are available at https://www.citizenservices.gov.bt/c/document_library/get_file?uuid=3ffe80f4-88d8-4d32-93c5-ec999ffd295&groupId=10137. If a company chooses not to adopt the model articles the Registrar may prescribe applicable rules for the company (section 24). Directors are required to file *Consent to act as director of a Company Form* with the Registrar (Section 140 of the Companies Act 2016). Section 404 of the Companies Act provides that any person may inspect documents held by the Registrar. The word “person” is defined in section 416(31) as anyone including government agencies.

100. In addition, under section 267 of the Companies Act the prescribed information updated to the Registrar annually by companies is listed in the *Form for Annual Return* which is published on the Registrar’s website (www.moea.gov.bt/forms) and must be submitted at the close of the close of each financial year (31st December). The required information covers *c.24.3* and *c.24*. The Registrar can review and verify the company status and update basic information during annual inspections as empowered by section 238.

101. *c.24.4* - Section 85 of the Companies Act 2016 requires companies to maintain a register of shareholders. The register must be kept at the company’s registered office under section 228 of the Companies Act 2016. The register must contain details about shareholders of a company which includes their name and address, type of shares, date of allotment and nominee in the event of death (Sections 85). Share transfers must be registered by the company (section 93). The above information is readily accessible to any government authorities requiring such information.

102. In addition, foreign share ownership must be registered in the share register and with the Registrar under section 52 of the Companies Act

103. *c.24.5* – Under section 267 of the Companies Act companies are required to provide an annual update of information to the Registrar indicating the range of shareholder and directors information. Moreover under section 97 any transfer of shares must registered immediately on transfer in the shareholder register (section 85(d)). It is not clear in the Companies Act how changes of directors are registered within the company documents even though changes must be notified annually in the Annual Return for information to the Registrar.

104. *c.24.6* – Bhutan uses a combination of mechanisms pursuant to *c.24.6* to obtain some BO information.

105. Under *c.24.6(a)* - Foreign share ownership (but not domestic share ownership) must be collected by the company and registered with the Registrar in the name of the ‘beneficial owner’ under section 52 of the Companies Act. It is unclear however if the term ‘beneficial owner’ in the Companies Act is intended to mean the same as the definition in the AML/CFT Act 2018 as it is not defined in the former. Moreover the definition in the AML/CFT Act 2018 contains an ambiguity in

section 187(5) with the definition of ‘person’ in a controlling interest context (‘person’ is defined to include ‘legal person’ – s. 187(17))

106. Under *c.24.6(c)* - The AML/CFT Act 2018 along with the AML/CFT Regulation prescribe CDD requirements in Bhutan. Section 69 of the Regulation requires REs to identify the BO as part of CDD procedures and take reasonable measures to verify the identity of the BO, using relevant information or data obtained from a reliable source, such that the RE is satisfied that it knows who the BO is. As above, BO definition in the AML/CFT Act 2018 contains an ambiguity in section 187(5) with the definition of ‘person’ in a controlling interest context (‘person’ is defined to include ‘legal person’ – s. 187(17)).

107. *c.24.7* – The requirement to keep information held by companies in Bhutan up to date does not extend to beneficial ownership information.

108. *c.24.8* – The Companies Act 2016 does not require that companies incorporated thereunder have a resident natural person (such as a resident director or secretary) or DNFBP (such as a TCSP) responsible or authorised to cooperate with, or accountable to, competent authorities. Section 213 requires that companies have a secretary and section 214 requires that the secretary is responsible for legal compliance, but neither section, nor any other section of the Act, requires that the secretary shall be a resident of Bhutan.

109. *c.24.9* – As above, REs are required to maintain records for five years, however companies are not required. Specifically the winding-up provisions of the Companies Act do not contain record keeping provisions following dissolution.

110. *c.24.10* – Supervisors and FIU have the power to obtain information from RE (Section 31(3) and 47 of the AML/CFT Act 2018). As discussed in the MER, in general terms LEAs are able to obtain information from FIs and DNFBPs (R.31 was rated PC). However, there are no legislative requirements to ensure timely access.

111. *c.24.11* – While bearer shares and bearer share warrants are not explicitly prohibited, bearer shares cannot be issued because all shares must be registered with company in the name of the holder – section 85 – in the company shareholder register.

112. *c.24.12* – Section 176 of the Companies Act permits ‘shadow directors’ which are directors ‘accustomed to act in accordance with the directions or instructions of some other person’ i.e. nominee directors. The Act does not prohibit nominee shareholders and there is an absence of measures in the Act designed to mitigate the risk associated with shadow directors and nominee shareholders.

113. *c.24.13* – Sanctions in regards to CDD BO REs are discussed under R.35. Section 405 of the Companies Act 2018 contains a general sanction, for non-compliance with the Company Act, of a one-off maximum fine of Nu 100,000 (~15,000 USD) and a per-day maximum fine of Nu 10,000 (~154 USD) (maximum) for repeat offences.

114. *c.24.14 and c.24.15* – Authorities can access basic information maintained by the companies, reporting entities and DNFBPs to the extent that it is available, and can exchange this information with foreign authorities (see R.29). However, R.37 is rated NC and R.40 is rated PC, and access to beneficial ownership is limited.

115. The APG welcomes Bhutan’s steps to improve its technical compliance; however, shortcomings remain in Bhutan’s mechanism to provide for BO information. Consequently, insufficient progress has been made and the rating remains at of PC.

Recommendation 26 (Originally rated PC)

116. In its 1st MER Bhutan was rated PC with R.26. The deficiencies of the MER were: (i) a minor scope limitation in AML/CFT supervision of credit cooperative/CSO savings funds and the

national pension fund, (ii) insufficient market entry requirements for money changers and non-bank MVTS providers, (iii) and no provisions relating to adherence to the Core Principles and on the application of consolidated group supervision.

117. Bhutan's new supervisory arrangements are set out in Chapter IV of the AML/CFT Act 2018. There is no supervisor designated for credit cooperative / CSO savings funds and the national pension fund. Section 44 of the AML/CFT Act 2018 establishes the FID as the supervisor of all REs not designated in the AML/CFT Act 2018; however, it is unclear if additional rules or regulations are required to give effect of this provision as has been completed in respect to DNFBPs (see R.28), and the FID has not conducted AML/CFT supervision of credit cooperative / CSO savings funds or the national pension fund.

118. Bhutan has some market entry requirements on non-bank money transfer agents in the IRR&R. However, it is unclear if there are sanctions for non-compliance in the IRR&R. There is also a licensing requirement that mirrors this text of *c.14.1* under Section 125 AML/CFT Regulations 2018, but the requirements for obtaining a license are unclear.

119. Bhutan is yet to implement a risk-based approach to supervision of core principle institutions and monitoring all other FIs with no provisions relating to adherence to the Core Principles in the AML/CFT Act 2018 or AML/CFT Regulations 2018. Section 48 of the AML/CFT Regulations 2018 provides for consolidated group supervision. Bhutan adopted a risk-based supervision manual in May 2018 and has undertaken to AML/CFT supervision of banks.

120. In the MER, Bhutan's level of compliance with *c.26.5* and *c.26.6* was primarily due to obligations included in the AML/CFT Regulations 2015, which had been repealed. Requirements covering *c.26.5* are now provided for in Section 14 of the AML/CFT Regulations 2018. *Prima facie* Bhutan's compliance with *c.26.5* has not been lowered. It is unclear if there are requirements to give effect to *c.26.6*

121. The APG welcomes Bhutan's steps to improve its technical compliance; however, as it is unclear if there is a supervisor designated for credit cooperative/CSO savings funds and the national pension fund and there are no provisions relating to adherence to the Core Principles. Consequently, insufficient progress has been made and the rating remains at of PC.

Recommendation 28 (Originally rated NC, re-rated to PC)

122. In its 1st MER Bhutan was rated NC with R.28. The main deficiencies were: (i) the absence of a designated competent authority for supervision, (ii) lack of effective systems for monitoring and ensuring compliance with AML/CFT requirements for all categories of DNFBP, (iii) absence of AML/CFT compliance monitoring or supervision of DNFBPs has been carried out, (iii) and monetary sanctions are not dissuasive.

123. As above, Bhutan's new supervisory arrangements are set out in Chapter IV of the AML/CFT Act 2018, which includes designation of a supervisor for all DNFBPs except accountants (see Section 39 to 43). Under Section 44 of the AML/CFT Act 2018, the FID is the supervisor of all REs not identified in the AML/CFT Act 2018, and has been designated as the supervisor for accountants pursuant to Section 19 of the AML/CFT Regulations 2018. Bhutan's has not designated other categories of DNFBPs as REs in accordance with Section 187(7g) of the AML/CFT Act 2018. There are sanctions for these requirements as discussed in R.35, which is re-rated LC. However, it is unclear if supervisors can prevent criminals and their associates from holding a controlling interest or management function in all DNFBPs including through the application of fit and proper tests for real estate agents and precious stones and gems dealers.

124. Under Section 38 of the AML/CFT Act 2018, all supervisors must ensure compliance with AML/CFT Act and have the power to inspect and require REs to produce documents and records pertaining to its AML/CFT programme, CDD and customer transactions (Section 47) and issue

rectification orders (Section 48). DNFBP supervisors are required to take a risk-based approach (section 46 of the AML/CFT Act), with explicit requirement for covering *c.28.5(a)* and *(b)* under Section 14 of the AML/CFT Regulations 2018. However, no onsite or off-site DNFBPs supervision has been undertaken; although the NRA has assessed the ML/TF risks in the DNFBP sector as relatively low.

125. The APG welcomes Bhutan's steps to improve its technical compliance; however, it is unclear if supervisors can prevent criminals and their associates from holding a controlling interest or management function in all DNFBPs and no AML/CFT supervision of DNFBPs has been undertaken. As a result of the above progress, R.28 has been re-rated to PC.

Recommendation 29 (Originally rated NC, re-rated to LC)

126. In its 1st MER Bhutan was rated NC with R.29. The main deficiencies were: (i) the FIU has conducted very limited operational analysis and no strategic analysis, (ii) there are no SOP for STR receipt and analysis, and (iii) there is a lack of confidentiality requirements, (iv) operational independence and autonomy of the FIU is not fully ensured.

127. At the time of the MER, the FIU was established under the 141 of the FSA 2011, which was repealed. The FIU is now established in accordance with *c.29.1* under Chapter III of the AML/CFT Act as the Financial Intelligence Department (FID) within the RMA. The functions of the FID are outlined under Section 37 and provide for *c.29.2* with REs required to submit STRs, cash transaction reports and wire transfer reports to the FID pursuant to Section 69, 74, and 75 of the AML/CFT Act 2018, respectively. *c.29.3* is provided for under Article 31(3)-(5) of the AML/CFT Act 2018.

128. Regarding deficiencies of the MER:

- Pursuant to Chapter III AML/CFT Act 2018, the FID has approved SOP for STR receipt and analysis, and the FID's limited operational analysis (in accordance with *c.29.4(a)*) is disseminated upon approval of the operational head of the FIU in accordance with Section 11 of the AML/CFT Regulations 2018, and via secure means (in accordance with *c.29.5*). Bhutan provided no evidence that it has conducted strategic analysis.
- Provisions in the FSA that prohibit the disclosure of any confidential information by any RMA officer, employee, or adviser of the RMA are still in effect. In addition, the AML/CFT Regulations 2018 provides a board protection of information and where FID staff shall not disclose information (Section 3), FID staff are subject to security clearance (Section 5), and access to facilitates and information (*c.26.6(c)*) is limited (Section 4). More detailed requirements covering security, confidentiality and handling of all information including ICT system are including in the FID's SOPs.

129. Regarding operational independence and autonomy of the FID, under Section 26 of the AML/CFT Act 2018, the head of the FID is responsible for day-to-day operations and management of the FID, and to ensure the FID carries out its functions to: (i) receipt, request, analyse and disseminate information from REs and other sources (Section 31(2) to 31(5) and Sections 37(1) to 37(4)), and (ii) engage with foreign counterparts for the exchange of financial intelligence (Section 31(1) and Section 37(9)). As above, Section 11 of the AML/CFT Regulations 2018 gives the operational head of the FIU the power to disseminate information. Adequate resource and deployment of those resources is provided under section 30 of the AML/CFT Act. As a result of the above progress, and noting no strategic analysis has been completed, R.29 has been re-rated to LC.

Recommendation 30 (Originally rated PC)

130. In its 1st MER Bhutan was rated PC with R30. The deficiencies in the MER were: (i) that only the Anti-Corruption Commission is designated to investigate ML, (ii) there was no designated authority to investigate TF, and (iii) the role of the Royal Bhutan Police to identify and trace property subject to confiscation was not clearly defined.

131. As discussed above, Bhutan criminalises ML under Sections 159-164 of the AML/CFT Act and TF under Sections 165-168 of the AML/CFT Act. The Anti-Corruption commission is designated to investigate ML related to corruption offences in the Anti-Corruption Act of Bhutan (Section 162 of the AML/CFT Act), and the Royal Bhutan Police is designated to investigate ML related to all other predicate offences criminalised in Bhutan (Section 163 of the AML/CFT Act 2018). See above discussion in R.3 on missing predicate crimes.

132. While Section 163 may authorise Royal Bhutan Police to investigate TF where it is a predicate crime to ML, there is no explicit designated authority to investigate TF.

133. Regarding Royal Bhutan Police role in tracing property, upon a court order the Attorney General's Office/Anti-Corruption Commission/ Royal Bhutan Police can freeze and seize property (Section 125 to 127 of the AML/CFT Act 2018) without prior notice (Section 128 of the AML/CFT Act 2018). However, this mechanism does not appear to allow for expeditious freezing or seizing. The FID can order a RE to temporarily (21 days) freeze funds under Section 32 of the AML/CFT Act 2018.

134. The APG welcomes Bhutan's steps to improve its technical compliance; however, as there is no explicit designated authority to investigate TF, insufficient progress has been made and the rating remains at PC.

Recommendation 32 (Originally rated PC, re-rated to LC)

135. In its 1st MER Bhutan was rated PC with R32. The deficiencies in the MER were; (i) Bhutan had no system whereby the FID was notified of the suspicious cross border incidents, (ii) there was no MoU between the FID and Customs or other LEAs relating to cross border issues, (iii) there was an inability to detain currency where there was a suspicion of ML and TF, and (iv) there was no regulation or provision for declaration information to be retained.

136. The RMA entered into a MoU with the Department of Revenue and Customs (Customs) on 23 November 2017. The objective of the MoU is to facilitate information exchange and general cooperation on ML, including sharing of information between the RMA, through the FID, and Customs. See R.2 and R.40 for discussion of other MoUs signed with other LEAs.

137. In the MER Bhutan's level of compliance with R.32 was primarily due to obligations included in the AML/CFT Regulations 2015, which had been repealed. Bhutan has implemented new requirements to give effect to R.32 in the AML/CFT Regulations 2018, as detailed below:

138. *c.32.1* – Bhutan has implemented a declaration system under Sections 163 to 165 of the AML/CFT Regulations 2018.

139. *c.32.4* – no change from MER.

140. *c.32.5* – In addition to legislation discussed in the MER, undeclared or falsely declared cash can be confiscated under Section 171 of the AML/CFT Regulations 2018.

141. *c.32.6* – pursuant to Section 166 of the AML/CFT Regulations 2018, Customs are making all cross border declaration information available to the FID including suspicious cross border incidents. The mechanism is via the above mentioned MoU.

142. c.32.7 – As above the FIU and Customs signed a MoU, and see R.2 in respect to the role of the NCC in cooperation and coordination of Bhutan’s AML/CFT regime including cross-border declaration.

143. c.32.8 – no change from MER with Customs unable to detain currency where there was a suspicion of ML and TF.

144. c.32.9 - Section 169 of the AMLCFT Regulation 2018 requires the FID to maintain all information received pursuant to cross-border declarations for 10 years.

145. 32.10-11 - no change from MER

146. As a result of the above progress, R.32 has been re-rated to LC.

Recommendation 34 (Originally rated PC)

147. In its 1st MER Bhutan was rated PC with R.34. The deficiencies in the MER are a lack of feedback to reporting entities from the FID.

148. Under Section 37 (7) of the AML/CFT Act 2018, the FID has the function to provide feedback and guidance to reporting entities on ML/TF issues, and supervisors have power to issue directions and guidance to reporting entities they supervise (Section 45 of the AML/CFT Act). However, it is unclear if procedures or systems have been set up to provide feedback, directions and/or guidance to all REs, and whether these procedures or systems are being used to assist REs implement the new requirements of the AML/CFT Act 2018 and AML/CFT Regulations.

149. The APG welcomes Bhutan’s steps to improve its technical compliance; however, insufficient progress has been made and the rating remains at PC.

Recommendation 35 (Originally rated PC, re-rated to LC)

150. In its 1st MER Bhutan was rated PC with R.35. The deficiencies in the MER were the monetary sanctions are not sufficiently dissuasive. As above, Bhutan has implemented a new sanctions regime in accordance with its new supervisory and preventative measures regime in the AML/CFT Act 2018 and the AML/CFT Regulations 2018 as discussed below:

- R.6, under Section 180 of the AML/CFT Act 2018, natural persons (which may include RE directors and senior management) and legal persons (including REs), upon conviction, that fail to comply with the obligation to freeze, prohibition on funds and reporting requirements are liable for value-based sentencing in accordance with the Penal Code, which as highlighted in the MER may not be dissuasive in all circumstances for natural persons. The sanction for legal persons is prescribed in Section 179 of the AML/CFT Regulation 2018 of max Nu 10,000,000 (~147,625 USD), which is dissuasive.
- In addition, under Section 244 of the AML/CFT Regulation 2018, REs that fail to comply with Chapter 16 of the AML/CFT Regulation 2018 (which covers freezing without delay related to UNSCR 1267 and 1373 and reporting to the FID), supervisors can impose sanctions under Section 172 of the AML/CFT Act, which includes official reprimand, administrative fine, suspension and revocation of license (see below).
- R.9 to R.23:
 - Under the combination of Section 169 to 170 of the AML/CFT Act 2018 and 265 of the AML/CFT Regulations 2018, REs, their directors or employees are liable for administrative penalty for failure to comply with preventative measure requirements under Chapter V of the AML/CFT Act 2018, additional requirements issued under the power of supervisors (Section 45 of the AML/CFT Act 2018) or production of

documents and records for supervision (Section 47 of the AML/CFT Act 2018). Pursuant to Section 265 of the AML/CFT Regulations 2018, supervisors can impose sanctions under Section 172 of the AML/CFT Act. Sanctions under Section 172 include official reprimand (Section 172(1)), administrative fine (172(2)), suspension and revocation of license (Section 172(3) and (4)). The administrative fines under Section 172(2) have been prescribed in Section 263 of the AML/CFT Regulations 2018 and is maximum Nu 10,000,000 (~147,000 USD).

- Under Section 171 of the AML/CFT Act 2018 REs for failure to comply with supervision and preventative measure requirements issued under Chapter IV and V of the AML/CFT Act 2018. Sanctions are under Section 172 (see above). While it is unclear if sanctions under 171 include directors and senior management, preventive measures liability and sanctions are also included under Section 169, 170 and 172 (see above).
- There is a range of additional sanctions that are generally dissuasive and proportionate for non-compliance with AML/CFT Regulations 2018 covering internal controls, CDD, STR reporting, cash and other transaction reporting, MVTs, reliance on third parties, DNFBPs, wire transfers, non face-to-face business relationships (see Section 251 to 260 of the AML/CFT Regulations 2018). These sanctions are only applicable to REs.
- Under Section 173 to 174 natural or legal persons that establish or enter into or continue a business relationship with a shell bank are liable for value-based sentencing in accordance with the Penal Code, which as highlighted in the MER may not be dissuasive in all circumstances for natural persons. While Section 173 applies to both natural and legal persons, the sanctions under the Act only apply a direct link to natural persons sanctions in the Penal Code. Therefore, it is unclear if sanctions for legal persons in the Penal Code can be applied to Section 173. Irrespective of this, under Section 175 a natural or legal person that deals with a shell bank is liable to pay a fine, which has been prescribed in Section 264 of the AML/CFT Regulations 2018 and is max Nu 10,000,000 (~147,000 USD).
- Under Section 177 of the AML/CFT Act 2018, REs (it is unclear if this also includes directors and senior management), are liable for a fine for failure to perform record keeping requirements (Sections 67 and 68), which is prescribed in Sections 268 of the AML/CFT Regulations 2018, as a fine of Nu 100,000 (~1,470 USD) per day for the first 30 days and Nu 10,000 (~147 USD) per day after that. Under Section 266 of the AML/CFT Regulation 2018, a natural or legal persons (which includes REs and their directors and senior management) that destroy, conceal, improperly alter any record or account required to be kept under the AML/CFT Act 2018 shall be liable for conviction for felony in the fourth degree, which includes imprisonment of between three and five years (Section 3(11) of the Penal Code). While the Section 266 applies to both natural and legal persons, the sanctions under the act only apply a direct link to natural persons sanctions in the Penal Code. Therefore, it is unclear if sanctions for legal persons in the Penal Code can be applied to Section 266.
- Under Section 179 of the AML/CFT Act 2018, a natural or legal persons (which includes REs and their directors and senior management) that contravenes tipping off and confidentiality obligations (Section 80 of the AML/CFT Act) are liable for conviction for misdemeanour in accordance with the Penal Code, which includes imprisonment of between one and three years (Section 3(b) of the Penal Code). However, it is unclear there are sanctions for REs. The MER highlights that Bhutan's

Penal Code provides for criminal liability and sanctions for corporations and business (508 to 512 of the Penal Code). While the Section 179 applies to both natural and legal persons, the sanctions under the act apply only apply a direct link to natural persons sanctions in the Penal Code. Therefore, it is unclear if sanctions for legal persons in the Penal Code can be applied to Section 179.

151. Bhutan's sanctions regime is complex, with liability and sanctions for REs, their directors or senior management spread over the Penal Code, AML/CFT Act and AML/CFT Regulation 2018, which overall are proportionate and dissuasive. However, it is unclear if sanctions for R.21 can be applied to REs. As a result of the above progress, R.35 has been re-rated to LC.

Recommendation 36 (Originally rated PC)

152. In its 1st MER Bhutan was rated PC with R36. The deficiencies in the MER were: (i) Bhutan had not ratified and implemented the Palermo and Merida Convention, and (ii) Bhutan had not yet fully implement conventions.

153. Bhutan ratified the Merida Conventions on 21st September 2016. Bhutan has not ratified the Palermo Convention.

154. While implementation of the relevant conventions has improved, particularly in relation to TF with R.5 re-rated to LC (see above), other elements of the conventions are yet to be fully implemented – as above, R.3 and R.4 rated PC.

155. The APG welcomes Bhutan's steps to improve its technical compliance; however, insufficient progress has been made and the rating remains at PC.

Recommendation 37 (Originally rated NC)

156. In its 1st MER Bhutan was rated NC with R37. The deficiencies in the MER were: (i) lack of a legal framework to rapidly provide the widest range of MLA, (ii) no designated central authority, (iii) lack of confidentiality requirements, (iv) lack of clarity on dual criminality, (v) not clear law enforcement powers can be used.

157. Bhutan is currently in the initial stages of drafting new MLA legalisation.

158. The APG welcomes Bhutan's steps to improve its technical compliance and awaits adoption of the draft MLA Law; however, insufficient progress has been made and the rating remains at NC.

Recommendation 38 (Originally rated NC, re-rated to LC)

159. In its 1st MER Bhutan was rated NC with R.38. The deficiencies in the MER were: (i) no provision for freezing and confiscation.

160. As discussed in R.4, with the introduction of the Chapter VII of AML/CFT Act 2018, covering confiscations, Bhutan supplemented provisions on confiscation and provisional measures included the Penal Code, Criminal Procedures Code and ACA. Section 139 to 141 of the AML/CFT Act provides for freezing and confiscation of “*property of, or in possession or under the control of the person named*” in Court Orders or Affidavits from the foreign jurisdiction, which can covers the circumstances of 38.1(a)-(e). However, it is unclear if freezing can be take place expeditiously as an application to, and approval from, the High Court is required. The FIU, using its powers in Section 31 of the AML/CFT Act 2018, can expeditiously identify property in response to foreign requests.

161. Bhutan can provide assistance to requests for co-operation made on the basis of non-conviction with the application process (under Section 140 of the AML/CFT Act 2018), to the High

Court, to give effect to foreign freezing and confiscation requests only requiring that the person has been charged with an offence.

162. Moderate deficiencies noted in c.4.4 with regard to property management and disposals apply and there are no arrangements to give effect to *c.38.3(a)*. Section 142 of the AML/CFT Act 2018 gives the Ministry of Finance the discretion to share confiscated property with foreign jurisdictions, but it is unclear if a decision to share would primarily be made when there were co-ordinated law enforcement actions.

163. As a result of the above progress, R.38 has been re-rated to LC.

Recommendation 40 (Originally rated PC)

164. In its 1st MER Bhutan was rated PC with R.40. The deficiencies of the MER were; (i) Evidence that Bhutan can provide rapid and a wide range of international cooperation (except India) was not provided to the assessment team, (ii) There are no clear documented mechanisms and processes as required by 40.2(c), (d) and (e), (iii) No evidence was provided in support of timely negotiation of agreements, and Bhutan has not signed agreements with the widest range of foreign counterparts, (iv) No evidence (except India) was provided to show the provision of feedback, (v) No evidence (except India) was provided in support of the absence of unreasonable or unduly restrictive conditions on the provision of information exchange, (vi) General confidentiality provisions are also applicable to information from foreign counterparts, (vii) No evidence (except India) was provided in support of authorities' ability to conduct inquiries on behalf of foreign counterparts, (viii) It is unclear if the FID can exchange information without a MOU, (ix) There is no specific requirement for providing feedback, (x) There are no specific legal provisions to allow supervisors to perform measures as detailed under c.40.13-15, (xi) Besides the ACC, LEAs do not have specific provision to enable them to use their powers on behalf of foreign counterparts, (xii) There are limited provisions for the ACC and Police to conduct joint investigations, and the BLO and BNA act as coordination agencies for terrorism and drug related activities, (xiii) No evidence was provided in support of information exchange with non-counterparts.

165. To rectify these deficiencies Bhutan has:

- Passed the AML/CFT Act, which under Section 31.1 gives the FID the power to request and share information to and from a foreign counterpart, and under Section 37(9) enter into arrangements with foreign counterparts that perform similar functions.
- The FID signed a MoU with Cambodia FIU in July 2017, Sri Lanka FIU in July 2017 and Myanmar FIU in October 2017.
- The ACC signed a MoU with ACC of Bangladesh in June 2017.
- The ACC, RBP and OAG signed a MoU in December 2017 on cooperation, assistance, information sharing and the investigation and prosecution of corruption offences.
- The RMA and Reserve Bank of India signed a MoU in April 2017 on cooperation and information sharing on bank supervision.

166. The APG welcomes these steps to improve its technical compliance; however, in light of the many deficiencies identified in the MER (see also above) insufficient progress has been made and the rating remains at PC.

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

167. Since the adoption of Bhutan’s MER, Recommendations 5 and 8 have been amended. See above for re-rating of R.5, and for R.8:

- There is some coverage of the NPO sector in the 2017 NRA.
- Civil Society Organization Authority is in the initial stages of revising its Civil Society Act, and is negotiating a MoU with the FID for sharing of information and cooperation.

3.3. Brief overview of progress on other recommendations rated NC/PC

168. In addition to progress on discussed above including for R.8, Bhutan has made continued progress on R.31 with LEAs signing MOUs to facilitate information exchange and cooperation.

169. As discussion above, Bhutan passed the AML/CFT Act 2018 in March 2018, which includes Bhutan new ML and TF offences, a new targeted financial sanctions regime, new AML/CFT supervision arrangements, a new AML/CFT preventative measures regime, and supplements Bhutan’s confiscation regime. This act also repeals section 146 of the FSA pursuant to which the AML/CFT Regulations 2015 were issued. The AML/CFT Regulations 2015 provided for R.10, R.12, R.13, R.15, R.17, R.18, and R.19. In June 2018 Bhutan passed the AML/CFT Regulations 2018, which provides for elements of Bhutan’s AML/CFT regime previously covered under the AML/CFT Regulations 2015. *Prima facie* Bhutan’s level of compliance R.10, R.12, R.13, R.15, R.17, R.18, and R.19 has been lowered.

IV. CONCLUSION

170. Overall, Bhutan has made progress in addressing the technical compliance deficiencies identified in its MER and ratings have been upgraded on 14 Recommendations, including R.1, R.2, R.5, R.14, R.21, R.23, R.29, R.32, R.35 and R.38 from NC/PC to LC, and R.9 from LC to C. In addition, R.6, R.7, and R.28, have been re-rated to PC.

171. Bhutan has taken steps to improve its technical compliance primarily through enactment of the AML/CFT Act 2018 and AML/CFT Regulations 2018; however, insufficient progress has been made to justify a rating on R.3, R.4, R.16, R.20, R.24, R.26, R.30, R.34, R.36, R.37 and R.40.

172. Overall, in light of the progress made by Bhutan since its MER was adopted, its technical compliance with the FATF Recommendations has been re-rated as follows.

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
LC	LC	PC	PC	LC	PC	PC	PC	C	C
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
C	C	C	LC	C	LC	LC	LC	LC	PC
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
LC	C	LC	PC	LC	PC	C	PC	LC	PC
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
PC	LC	PC	PC	LC	PC	NC	LC	LC	PC

173. At the 2018 APG Annual Meeting members adopted the Bhutan FUR and decided that Bhutan exit enhanced (expedited) follow-up and be placed on enhanced follow-up, and will continue to report back to the APG on progress to strengthen its implementation of AML/CFT measures.

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