



2<sup>nd</sup> Follow-Up Report

# Mutual Evaluation of Myanmar

August 2020





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## MYANMAR: 2<sup>ND</sup> ENHANCED EXPEDITED FOLLOW-UP REPORT 2020

### I. INTRODUCTION

1. The mutual evaluation report (MER) of Myanmar was published in October 2018. This FUR analyses the progress of Myanmar in addressing the technical compliance deficiencies identified in its MER. Technical compliance re-ratings are given where sufficient progress has been demonstrated. This report also analyses progress made in implementing new requirements relating to FATF Recommendations which have changed since the MER was adopted: R.15. This report does not analyse any progress Myanmar has made to improve its effectiveness. Progress on improving effectiveness will be analysed as part of a later follow-up assessment and, if found to be sufficient, may result in re-ratings of Immediate Outcomes at that time.

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

- *Asraf Hafizi Mohd, Manager, Financial Intelligence and Enforcement Department, Bank Negara Malaysia*
- *Young Lee, Senior Policy Advisor, U.S. Department of the Treasury*

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

### II. FINDINGS OF THE MUTUAL EVALUATION REPORT

4. Myanmar's original MER ratings and current ratings based on progress recognised in FURs are as follows<sup>1</sup>:

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

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

5. Given these results, Myanmar was placed on enhanced (expedited) follow-up.

<sup>1</sup>Original MER ratings which have changed since the MER are in brackets on the left and current ratings are on the right of the cell.

### III. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

6. This section summarises Myanmar's progress to improve its technical compliance by:
- a) addressing the technical compliance deficiencies identified in the MER, and
  - b) implementing new requirements where the FATF Recommendations have changed since the MER was adopted.

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

7. Myanmar requested re-ratings of Recommendations: 14, 19 and 24 (which were rated NC); and 10, 12, 13 and 26 (which were rated PC).

8. The APG welcomes the steps that Myanmar has taken to improve its technical compliance with 10, 12, 13, 14, 19, 24 and 26. As a result of this progress, Myanmar has been re-rated on Recommendations: 10, 12, 13, 14 and 24. However, insufficient progress has been made to justify a re-rating of 19 and 26.

#### *Recommendation 10 (Originally rated PC)*

9. The 2018 MER rated Myanmar PC for Recommendation 10. The MER identified that there were no clear prohibitions on anonymous accounts for securities, microfinance and insurance businesses; and the threshold amount for CDD on occasional customers was above the standard. In addition, CDD requiring identification of customer and verification of identity did not explicitly cover customers who are legal arrangements. The AML Law did not require identification of natural persons who own or control a customer or require ROs to understand the nature of the customer's business. There was no provision to permit CDD to cease in cases where an STR is filed to avoid tipping off.

10. On 14 November 2019, Myanmar issued Presidential Anti-Money Laundering Order (AML Order) No. 45/2019, which is enforceable means. The AML Order covers banks, non-bank and financial institutions, mobile financial service providers, microfinance institutions, insurance businesses and securities companies. There is a legal opinion from the Myanmar Union Attorney General that the AML Presidential Order is legally binding under the Constitution and Union law, and this Order is subject to the sanctions regime outlined in the AML law.

11. Section 10 of the AML Order prohibits all the reporting organisations from keeping anonymous accounts or accounts in obviously fictitious names. The regulators/supervisors for banks, microfinance institutions, insurance companies, and securities companies each issued directives with the same prohibition. The deficiency identified in the MER has been addressed.

12. Section 12 (b)(2) of AML Order No. 45/2019 outlines that CDD of occasional customers must be conducted if the transaction is equal to or above the threshold amount of USD 15 000 (or equivalent amount in any currency), or as from time to time defined by the Central Body, whether conducted as a single transaction or several connected transactions. Regulators/supervisors of banks, microfinance institutions and insurance companies also issued directives containing the same obligations. The deficiency identified in the MER has been addressed.

13. The underlying deficiency for Criterion 10.3 (CDD requiring identification of customer and verification of identity) is on the coverage of 'customer'. The definition of customer and person in Section 3 (i) and (k) of AML Law does not explicitly cover customers who are legal arrangements and this is carried over to Subsection 2 (g) of the AML Order. Criterion 10.3 remains mostly met.

14. The 2018 MER found that the AML Law does not explicitly require ROs to understand the nature of the customer's business, which is required as part of Criterion 10.8. Section 12 (d)(2) of the AML Order does not address the requirement to understand the nature of the customer's business, although it does cover the intended business relationship. Myanmar has clarified that this was a translation error and has since been rectified. Other Directives issued by respective supervisors mirror a similar requirement. The deficiency identified in the MER has been addressed.

15. Section 14 (a) of the AML Order mirrors the requirement under Criterion 10.10 of the Standards where steps are provided for identifying the BO (including natural person(s)) of a legal person. The deficiency identified in the MER has been addressed.

16. Section 15 of the 2019 AML Order states that if ROs reasonably believe that performing the CDD process will tip-off the customer, the process can be ceased and require the submission of an STR. The deficiency identified in the MER has been addressed.

17. Myanmar authorities have made considerable progress to address deficiencies identified, mainly with the introduction of the AML Order, which has provided clarity on the requirements on important areas such as prohibition of anonymous / fictitious accounts, revision of the CDD threshold and a provision on tipping-off. **Myanmar is re-rated to largely compliant with Recommendation 10.**

#### *Recommendation 12 (Originally rated PC)*

18. The 2018 MER rated Myanmar PC for Recommendation 12. The MER identified that enhanced CDD measures for foreign PEPs were only required on a risk-sensitive basis, timing on identification of beneficiaries of life insurance policies was not specified, and there was no requirement to determine whether a beneficiary or BO of a beneficiary of a life insurance was a PEP. In addition, consideration of an STR was only required upon drawing out of money.

19. Section 16 (a) of AML Order No. 45/2019 requires enhanced CDD measures for foreign PEPs which mirror the requirements of the FATF Methodology for obtaining senior management approval, establishing the source of wealth and the source of funds, and conducting enhanced ongoing monitoring on that relationship upon identification of foreign PEPs. The deficiency identified in the MER has been addressed.

20. The gap remains with the timing of a determination of whether a beneficiary or BO of the beneficiary of a life insurance policy is a PEP. In addition, consideration for STR reporting was confined to the drawing of money. There is no new evidence that these deficiencies in Rule 40 of AML Rules have been rectified. Criterion 12.4 remains partly met.

21. Myanmar authorities have addressed the requirement on automatic enhanced measures for foreign PEPs through the AML Order. However, requirements related to beneficiary of insurance remains unaddressed. **Myanmar is re-rated to largely compliant with Recommendation 12.**

#### *Recommendation 13 (Originally rated PC)*

22. In its 2018 MER, Myanmar was rated PC for Recommendation 13. The MER found that there were no specific controls on payable through accounts. There was no express requirement for FIs to satisfy themselves that their respondents have performed CDD obligations on customers with direct access to the accounts, nor to provide relevant CDD information upon request.

23. Myanmar has not reported any progress on Criterion 13.1. The 2018 MER found that FIs were not required to "fully understand" the nature of the respondent's business as laid out in 13.1(a). In

addition, the CDD directive is not specific about determining the reputation of the institution and quality of supervision from publicly available information. Criterion 13.1 remains partly met.

24. Section 19(e) of the AML Order requires banks and NBFIs to satisfy themselves that respondents have performed CDD on customers with direct access to correspondent bank accounts, and also that respondents can provide relevant CDD information upon request. The same requirements are included in article 40(f) of the Central Bank of Myanmar (CBM) CDD Directive 18/2019 for Banks, and for NBFIs via the CBM Directive 19/2019. Criterion 13.2 is now met.

25. Myanmar has taken significant steps to address technical gaps in R.13, with only minor gaps remaining against Criterion 13.1. **Myanmar is re-rated to largely compliant with Recommendation 13.**

#### *Recommendation 14 (Originally rated NC)*

26. The 2018 MER rated Myanmar NC for Recommendation 14. The MER noted the lack of action taken to identify persons that carry out MVTS without permission. Because there was no information about scope and scale of hundi, the team was unable to determine whether proportionate and dissuasive sanctions have been applied. In addition, it was not mandated that CBM undertake supervision of MVTS. Furthermore, there was no requirement for international MVTS providers partnering with banks in Myanmar, or for those banks, to provide information on its agents to CBM.

27. In November 2019, CBM issued the Remittance Business Regulation notification 21/2019 and banks who are partnering with international remittance companies are required to strictly follow the CDD measures for any international remittance transactions. In addition, CBM's training course on compliance with the regulations is a license requirement for applicants who wish to conduct remittance business.

28. However, most personal remittances come through informal hundi/hawala channels and do not use formal banking channels. It is not clear what actions are being taken to identify the population of natural or legal persons presently engaged in hundi and whether banks and other financial institutions being asked to identify accounts whose cross-border flows appear to match the profile of hundi operators. The number of investigations appears small compared to the general understanding of the expected population of hundi operators in Myanmar (see paragraph 381 of the MER).

29. The CBM has subscribed to SWIFTSCOPE, a real-time cross border inflow/outflow foreign exchange monitoring service provided by SWIFT. The necessary equipment is being installed at the CBM Yangon Branch, with the monitoring system expected to be up and running by the end of the first quarter of 2020.

30. The enhancement of Myanmar's licensing framework, the outreach on licensing obligations, and subscription to SWIFTSCOPE are welcome steps. There is no provision of the CBM Regulation on Remittance Business that expressly prohibits the conduct of remittance business without a license outside of the context of foreign exchange. Furthermore, the licensing framework principally addresses those MVTS providers that have relationships with banks. The Financial Institutions Law imposes a general requirement for licensing for all non-bank financial institutions (which would include MVTS providers), but the detailed obligations articulated in the Regulation on Remittance Business should clearly be extended to all MVTS. In January 2020, the Steering Committee on AML/CFT established a joint-agency committee to determine the scale and scope of the hundi/hawala sector, and to supervise and monitor the operators.

31. BSI investigated 19 cases relating to illegal remittance business during 2016-2019. Among them, six cases were prosecuted, eight cases were ceased and eight cases were transferred to the Internal

Revenue Department to levy tax. In those cases referred to IRD, 18 offenders were convicted, 764.29 million kyats (approx. USD600,000) had been confiscated and 29,037.3 million kyats (approx. USD21 million) and USD75,909 tax levied by Internal Revenue Department. One of the cases investigated in 2018 resulted in prosecution with a Money Laundering Offence in 2019. This action is positive, although the number of investigations to date is small as compared to the assessment team's general understanding of the expected population of hundi operators (see paragraph 381 of the MER). Myanmar has demonstrated action against unregulated actors outside the formal system. However, as identified in the MER, the lack of regulation of this sector is a significant gap in Myanmar's context. Criterion 14.2 is re-rated to mostly met.

32. Chapter 6 of the 2019 Remittance Business Regulation sets out the AML/CFT obligations of MVTs licensees, including the establishment of an AML/CFT unit and staff, development of an AML/CFT program, and suspicious transaction reporting requirements. Chapter 10 establishes the Central Bank's authority to examine the licensee for compliance with these obligations. The deficiency identified in the MER has been addressed.

33. In terms of Criterion 14.4, chapter 2 of the Remittance Business Regulation outlines the obligations for entities in Myanmar seeking a license to conduct MVTs. However, the Remittance Business Regulation does not contain a provision that expressly prohibits the conduct of MVTs without a licence/registration. The Remittance Business Regulation also does not contain a provision that requires MVTs providers to maintain a current list of agents.

34. Section 2(h) of the Foreign Exchange Management Law requires licensing for those who "deal in foreign exchange" or are engaged in various activities "in respect of foreign exchange" but does not, by its terms address the licensing of domestic MVTs. Section 20 of the Financial Institutions Law does require all non-bank financial institutions to register with the Central Bank of Myanmar. Money services businesses are defined as NBFIs under the Financial Institutions Law. However, there are no provisions in either the Remittance Business Regulation or the Financial Institutions Law for MVTs providers to maintain a list of their providers. Criterion 14.4 is mostly met.

35. There are no measures in place to address the gap identified by the MER relating to the requirement to include MVTs agents within AML programs and to monitor their compliance. Criterion 14.5 is not met.

36. Myanmar has made progress in setting up a formal licensing regime, although significant gaps identified in the MER related to the unregulated sector remain unaddressed. Based on the progress to date, **Myanmar is re-rated to partially compliant with Recommendation 14.**

#### ***Recommendation 19 (Originally rated NC, re-rated to PC in 2019 FUR)***

37. The 2018 MER rated Myanmar NC for Recommendation 19, and was re-rated to PC in the 2019 FUR. The factors underlying the PC rating were no requirement for the EDD or countermeasures applied by FIs in relation to countries for which this is called for by the FATF to be proportionate to the risk. There was no clear indication what countermeasures could be included in FIU directives as no directives had been issued, and no enabling provisions for Myanmar to apply countermeasures other than EDD. The 2019 FUR also found that no measures had been taken since the FIU Directive of February 2018 (which informed ROs of the FATF list of high risk and non-cooperative jurisdictions and provided a link to the FATF homepage) to ensure that ROs are advised of concerns about weaknesses in the AML/CFT systems of other countries.

38. Section 22 (a) of AML Order 45/2019 requires ROs to apply enhanced CDD measures proportionate to the risks in relation to countries for which this is specifically called for by the FATF. AMLCB Order No 8/2019 Article 2 (a) describes the list of enhanced CDD measures that can be applied

and refers to FATF's website for the updated list. The deficiency identified in the MER has been addressed.

39. Section 22 (a) of AML Order 45/2019 requires ROs to apply countermeasures proportionate to the risks when called upon to do so by international AML/CFT organisations including FATF. AMLCB Order No. 8/2019 contains a non-exhaustive list of possible countermeasures that is an exact mirror of the Standards. However, there are no enabling provisions in law that would indicate Myanmar is able to apply countermeasures other than EDD when called upon by FATF to do so, and it is unclear how the directives in the Order can take effect. As Criterion 19.2 is a requirement imposed on the country (authorities), Section 22 of AML Order is not applicable.

40. AMLCB order 8/2019 paragraph 2 requires that all reporting organizations, including banks and financial institutions, and all government organizations conduct EDD and impose countermeasures, proportionate to the risk, to business relationships and transactions with natural and legal persons from countries for which this is called for by FATF. It is unclear how the directives in the Order can take effect or be implemented such as the enhanced reporting mechanism, refusing / prohibiting the establishment of subsidiaries and branches etc. Criterion 19.2 is partly met.

41. In terms of Criterion 19.3, Section 22 (b) of the AML Order provides the avenue for the FIU to impose requirement to ROs to conduct enhanced CDD or countermeasures on natural or legal persons from countries identified as higher risk by the FIU, Supervisor or other international bodies. However, there is no evidence on how this provision is being operationalised. This criterion is partly met.

42. The introduction of AML Presidential Order has addressed the gaps on enhanced measures for FIs on countries identified by FATF. However, the gaps in other criteria remain. **Myanmar remains rated at partially compliant with Recommendation 19.**

#### *Recommendation 24 (Originally rated NC)*

43. Myanmar was rated NC for R.24 in its 2018 MER. The 2019 FUR identified improvements in Myanmar's compliance with this Recommendation, but major shortcomings remained. These include Myanmar authorities not having identified a provision of law or regulation requiring a resident authorised person to be accountable to competent authorities for providing all basic information and available beneficial ownership information, and giving further assistance to the authorities. However, there are general accountability measures in place for legal entities subject to the Myanmar Investment Law and associated rules. There were no legal obligations that mitigate risks of nominee shareholders or directors. Myanmar made further improvements to online access of basic and beneficial ownership information but had not identified other means of providing rapid international cooperation. There is no authority responsible for monitoring the quality of assistance received from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad.

44. Myanmar did not demonstrate further steps to assess the risks of legal persons since the 2018 MER. Criterion 24.2 remains not met.

45. Article 9 of the DICA Directive 17/2019 requires DICA to make publicly available basic information of legal persons and arrangements (individuals at risk of violence or intimidation may have their information protected). 'Basic information' is not defined in the Directive.

46. Section 421(e) and (f) allow any person to inspect registers and records kept by DICA and require copies of any documents filed with DICA. This should include a list of directors (required to be filed with DICA by s.6(b)(iv) of the Companies Act), but in terms of a company's basic regulating



powers, there is a requirement for the company constitution to be provided to DICA only if it is amended. Criterion 24.3 remains mostly met.

47. Section 90(d) of the Companies Act requires a company to include details on shares in the register of members. There is no express requirement to keep a record of voting rights associated with the shares. Section 126(a) of the Companies Act provides that if a company varies/cancels rights associated with shares, this must be reported to DICA. However, if the company does not vary or cancel those rights, there is no reporting obligation. The deficiency identified in the MER has not been addressed. Criterion 24.4 remains mostly met.

48. Under the Companies Act, the monetary penalties have been updated to reflect the change in currency following independence, and have been increased. However, the penalties [ranging from 250,000 Kyat (USD166) to 10,000,000 (USD6,645)] still do not appear dissuasive for foreign companies incorporating to do business in Myanmar or for Myanmar conglomerates. Criterion 24.5 is mostly met.

49. DICA Directive No. 17/2019 expands Myanmar's approach to collecting beneficial ownership information under R.24.6 beyond a reliance on information collected during CDD conducted by FI/DNFBP. The 2019 Directive places obligations on all legal persons incorporated in Myanmar. Under section 5 of the Directive, all legal persons are required to obtain and hold up-to-date information on their beneficial ownership and submit it in a timely manner to DICA and the Internal Revenue Department.

50. Section 10 of the Directive states that any legal person that fails to provide accurate and up-to-date information and fails to comply with the Directive, successor regulations and directive shall be punishable in line with Chapter (XI) of the AML Law. However, there are currently no corresponding provisions in the AML Law, and any penalties for failing to comply with the Directive would need to be clarified. Myanmar has made significant progress in addressing the deficiency identified in the MER, and criterion 24.6 is now mostly met.

51. Under Section 5 of the Directive on Disclosure of Beneficial Ownership Information, issued by DICA in November 2019, all legal persons are required to obtain and hold up-to-date beneficial ownership information, and to submit it in a timely manner to DICA and the Internal Revenue Department. The deficiency identified in the MER has been addressed.

52. Section 6 of the Directive on Disclosure of Beneficial Ownership Information, requires all legal persons to cooperate with competent authorities to the fullest extent possible in determining the beneficial owner, including through the authorisation of natural persons and/or DNFBPs to be accountable to DICA to provide all basic and available beneficial ownership information, and to give further assistance to authorities. The deficiency identified in the MER has been addressed.

53. Section 8 of the 2019 Directive on Disclosure of Beneficial Ownership Information requires all legal persons to maintain the information and records referred to for at least five years after the date on which the company is dissolved or otherwise ceases to exist, or five years after the date on which the company ceases to be a customer of the professional intermediary or the financial institutions. The deficiency identified in the MER has been addressed.

54. As noted above in paragraph 52, Section 6 of the Directive on Disclosure of Beneficial Ownership Information gives a mandate for legal entities and their representatives to cooperate with authorities. Under section 94 of the Code of Criminal Procedure, law enforcement has the authority to compel "the production of any document or other thing is necessary or desirable or the purposes of any investigation, inquiry, trial or other proceeding under this Code". Myanmar authorities advise this includes any investigation for ML/TF.

55. According to subsection (g) of section 10 and subsection (e) of section 14 of Anti-Money Laundering Law 2014, the MFIU and the Security Body (competent authority to investigate and prosecute offences relating to ML, TF and money and properties obtained by illegal means) can assess any required data and information compiled by ROs including banks, FIs and government organisation (which includes DICA).

56. Section 440(c) gives DICA the authority to obtain a court order to compel natural and legal persons to assist in prosecutions under the Companies Law. This would appear to include disclosures of basic and beneficial ownership (subject to the gaps in the framework described above). Moreover, according to section 94 of the Code of Criminal Procedure, “whenever any court or any officer in charge of a police-station considers that the production of any document or other thing is necessary or desirable or the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be requiring him to attend and produce it or to produce it at the time and place stated in the summons or order”. By exercising this power, any police officer including BSI officers and Anti-Corruption Commission officer who can apply the power of police officers, can request data and information from relevant persons and organisations. Criterion 24.10 is mostly met.

57. The 2019 FUR found that Criterion 24.11 was met. Section 81 of the Myanmar Companies Act (MCA I) bans the issuance of bearer shares following the commencement of the law; the Act came into force in August 2018. Section 82 provides for a phase out period for those bearer shares issued prior to this date. However, section 82(c) gives DICA significant discretion to extend the phase-out period if it is satisfied that cancellation and surrender would not be in the best interests of the company. The transitional period between the previous Companies Act and the present one was between August 2018 and 31 July 2019, and this phase-out period was not extended by DICA. This criterion is met.

58. In relation to Criterion 24.12, none of the provisions of the Company Law identified by Myanmar appear to require transparency related to nominee shares or directors that would mitigate against their risks of misuse. This criterion remains not met.

59. In terms of Criterion 24.13, MCA I requires companies to update DICA as to changes in their registry of directors. The cited obligation in the Myanmar Companies Law applies only to overseas corporations, and the penalty of 250,000 kyat (~\$175 USD) is unlikely to be dissuasive to overseas corporations in particular. Section 10 of the Directive on Disclosure of Beneficial Ownership Information provides that any violation is punishable in line with Chapter XI of the AML Law.

60. Reporting entities subject to the beneficial ownership identification and verification obligations described in Section 19(d)(iii) of the Anti-Money Laundering Law are subject to the civil and criminal penalties described in the AML Law. Section 44 of the AML Law provides for a prison sentence of up to three years and a fine. Legal entities are subject to a fine of up to 100 million kyat (~\$71,000 USD). These sanctions appear to be dissuasive and proportionate.

61. While the sanctions for obliged entities under the AML Law is proportionate and dissuasive, the sanctions under the Companies Law are not. Given the predominant role that existing information collected by FIs plays in Myanmar’s beneficial ownership transparency regime (see generally IO.5 in the MER), the sanctions regime in the AML Law is given greater weight. Criterion 24.13 is rated mostly met.

62. The 2019 DICA Directive on Disclosure of Beneficial Ownership Information (Directive No. 17/2019) provides that basic information will be available publicly and beneficial ownership information will be available to competent authorities. However, the availability of this information to domestic competent authorities does not address mechanisms for providing rapid international

cooperation. Myanmar has not identified other means of providing rapid international cooperation in relation to basic and beneficial ownership information. Criterion 24.14 remains mostly met.

63. The availability of basic and beneficial ownership information to domestic competent authorities does not address the lack of an authority responsible for monitoring the quality of assistance received from other countries. Criterion 24.15 remains not met.

64. Myanmar has made commendable progress regarding a number of gaps since its mutual evaluation, but significant gaps remain. **Myanmar is re-rated to partially compliant with Recommendation 24.**

#### *Recommendation 26 (Originally rated PC)*

65. Myanmar was rated PC for R.26 in its 2018 MER. The MER noted a number of deficiencies: consolidated group supervision on AML/CFT did not occur; supervision of core principles institutions was not yet conducted in line with core principles; and CBM supervision of non-bank money changers, NBFIs and mobile financial services is limited to compliance with prudential regulations. There was also a lack of measures to apply risk-based supervisory and monitoring measures in ensuring institutions' compliance to AML/CFT requirements.

66. In relation to Criterion 26.4(a), the 2018 MER found that consolidated group supervision on AML/CFT does not occur. From a risk and context perspective, there are significant domestic group holdings where conglomerates have ventured into core principles businesses (banking, insurance and securities).

67. Section 55 of FI Law on "Subsidiaries and Consolidated Supervision" on banking businesses provides CBM with the power to conduct prudential supervision on a consolidated basis. However, despite the power being provided, there is no evidence the regulatory and supervisory framework for financial group supervision has been developed. Consolidated financial group supervision including AML/CFT does not occur. This could be due to the separation of regulatory and supervisory power between CBM (bank), MOPF (insurance) and SEC (securities).

68. There is no legal, institutional and regulatory framework that enables all or any of these 3 supervisors (CBM, SEC and MOPF) to conduct consolidated financial group supervision on conglomerates that venture into these three financial services (banking, insurance and securities). This deficiency is not addressed.

69. The MER also found that supervision of core principles institutions was not conducted in line with core principles. CBM's supervision activities on its regulatees is guided by the risk-based Supervision Guide issued in 2020. It covers wide range of risk areas, including those related to operational, legal and regulatory risks that complement existing AML/CFT supervision and regulation. The guide also specifies the measures for domestic and international among the supervisors. This guide specifically caters for the banking sector. No evidence was provided on whether there is a similar approach by supervisors of other sectors (i.e. insurance, securities).

70. In relation to Criterion 26.4(b), the MER identified that CBM supervision of non-bank money changers, NBFIs and mobile financial services is limited to compliance with prudential regulations. There is no indication that CBM supervision of non-bank money changers, NBFIs and mobile financial services has been expanded beyond compliance with prudential regulations. This deficiency is not addressed. Criterion 26.4 is partly met.

71. In terms of Criterion 26.5 the revised/updated Onsite AML/CFT Supervision Hand Book is noted, but does not address how the frequency and intensity of supervision of the banks is differentiated.

It appears that all banks and other regulatees were visited once a year, regardless of risk. The in-progress “Guidance Manual for Risk Based Supervision and Management Mechanism of AML/CFT regime on Microfinance Institutions and Insurance Businesses” is noted. There is a lack of clarity on whether risk-based supervision has been implemented on other FIs.

72. In March 2020, CBM has updated the Onsite AML/CFT Supervision hand book based on the recent issued of presidential AML order, CDD directive, remittance business regulation and mobile financial services regulation that are covered all financial institutions. Criterion 26.5 is rated partly met.

73. There are limited changes made to Myanmar’s legal and regulatory frameworks to address deficiencies identified in the 2018 MER. The changes include the issuance of the Risk-based Supervision Guide issued in January 2020 to guide CBM’s supervision activities in line with core principles. **Myanmar remains rated at partially compliant with Recommendation 26.**

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

#### *Recommendation 15 (Originally rated LC)*

74. Since the adoption of Myanmar’s MER, Recommendation 15 has been amended. The FATF methodology under Recommendation 15 has been amended to include requirements related to virtual assets (VA) and virtual asset service providers (VASPs).

75. Myanmar was already assessed against this criterion 15.1 and 15.2 as a part of its 2018 MER, and rated as mostly met.

76. Although Myanmar has issued a public notice warning the public and banks about the risks associated with crypto-currency and digital currency, and required banks to conduct enhanced due diligence and to report suspicious activities, Myanmar has not demonstrated that it has identified and assessed the ML/TF risks emerging from virtual asset activities or operations, nor applied a risk-based approach, or required VASPs to take appropriate steps to identify, assess, manage, and mitigate their ML/TF risks. Myanmar advised that CBM issued Notification No. 9/2020 on May 15, 2020 regarding prohibition and punishment of virtual assets under the Financial Institutions of Myanmar Law and the Foreign Exchange Management Law. The notification prohibits supervised entities from dealing with digital currency, but does not prohibit persons in Myanmar from owning/buying/selling digital currency. In addition, notification 9/2020 falls outside the review period covered by this FUR and therefore cannot contribute to the rating of this criterion. Criterion 15.3 is not met.

77. Myanmar has pursued action against a crypto-currency exchanger, and has investigated a small number of illegal remittance businesses generally (though has not identified which of these businesses are crypto businesses). Criterion 15.5 is partly met.

78. In relation to criterion 15.7, while Myanmar has required banks to report suspicious transactions related to digital currency activity, Myanmar has not otherwise demonstrated its compliance with this provision. Criterion 15.7 is not met.

79. Regarding criterion 15.10, with respect to criterion 6.5(d), CFT Rule 8 requires the Working Committee to issue freeze orders without delay and prior notice, to all natural and legal persons, including all ROs; this requirement would apply to any VASP in operation in Myanmar. As to 6.6(g), de-listings of 1373 designations are published in the Official Gazette and relevant websites, and all natural and legal persons are required to unfreeze assets immediately once a cancellation order is received. Myanmar has not demonstrated that the communication mechanisms, reporting obligations and monitoring referred to in criteria 6.5(e), 7.2(d), 7.2(e), 7.3 and 7.4(d) apply to VASPs with respect to TFS. Criterion 15.10 is partly met.

80. Regarding criterion 15.11, the CBM has in place Memoranda of Understanding with various key regional counterparts, relating principally to the exchange of supervisory information. The CBM asserts that information that would fall within the scope of these MOUs includes information relating to virtual assets. Myanmar has not otherwise demonstrated its compliance with this provision, in line with this criterion (and as incorporated by reference, applicable provisions of Recommendations 37 through 40). Criterion 15.11 is partly met.

81. Myanmar has not demonstrated its compliance with the provisions of criteria 15.4, 15.6, 15.8 and 15.9. These criteria are not met.

82. The new elements related to VA and VASPs are given considerable weight in R.15. Given the significant deficiencies related to VA and VASPs, **Myanmar is re-rated to partially compliant with Recommendation 15.**

#### IV. CONCLUSION

83. Overall, Myanmar has been re-rated on five Recommendations. Recommendations 10, 12 and 13 have all been re-rated to largely compliant and Recommendations 14 and 24 have been re-rated to partially compliant. Insufficient progress has been made on Recommendations 19 and 26 to justify re-rating at this time.

84. The new obligations related to VA and VASPs under Recommendation 15 has reduced the level of compliance with Recommendation 15 to partially compliant.

85. Overall, in light of the progress made by Myanmar since its MER was adopted, the review team assesses Myanmar's technical compliance with the FATF Recommendations is as follows as of the reporting date (February 2020):

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

86. The Myanmar FUR was adopted out-of-session by the APG membership in July 2020. Myanmar will remain in enhanced (expedited) follow-up, and will continue to report back to the APG on progress to strengthen its implementation of AML/CFT measures.