



# Anti-money laundering and counter-terrorist financing measures

## Nepal

Mutual Evaluation Report

September 2023





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## EXECUTIVE SUMMARY

1. This report provides a summary of the AML/CFT measures in place in Nepal as at the date of the on-site visit 5 to 16 December 2022. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Nepal's AML/CFT system, and provides recommendations on how the system could be strengthened.

### *Key Findings*

1. Nepal completed its second National Risk Assessment (NRA) in 2020, and, overall, competent authorities and the private sector have a varied and developing understanding of ML risks and a limited understanding of TF risk. The National Coordination Committee (NCC) is overseeing Nepal's national AML/CFT policies and implementation, which are focused on strengthening Nepal's AML/CFT legislative frameworks and institutions, building the capacity of relevant competent authorities, and operational activities targeting Nepal's highest threats and vulnerabilities. However, high level commitment, greater resources, operational-level prioritisation, and cooperation is needed for Nepal to effectively combat its ML and TF risks.
2. The Financial Intelligence Unit (FIU) is housed within the Nepal Rastra Bank (NRB) with good resources, strong operational independence, policies and procedures for all its functions and memorandum of understandings (MOUs) with relevant agencies. The FIU is making significant efforts to enhance all FIU functions through the ongoing implementation of goAML, but financial institutions' (FIs) STR reporting needs improvement and there is no reporting from Designated Non-financial Businesses and Professions (DNFBPs). Key LEAs are making reasonable use of financial intelligence.
3. The Department of Money Laundering Investigation (DMLI) is the sole ML investigative agency. While referrals to DMLI are not fully consistent with Nepal's risk profile, it has investigated 58 ML cases with 45 prosecution cases and 32 natural persons convicted of ML. The vast majority of these convictions are self-laundering related to banking offences, which are rated high-risk in the 2020 NRA and are predicate crimes of focus in the National Strategy and Action Plan. However, Nepal has few ML investigations, prosecutions, and convictions for other high-risk predicate crimes.
4. Nepal is pursuing some high-level confiscation-related policy objectives. However, this is yet to translate into institutional-level policies and procedures by Law Enforcement Agencies (LEAs), or confiscation results in line with Nepal's risks as the value of recovered confiscation orders is low. Nepal has ten successful non-conviction based confiscation cases related to ML.

5. While Nepal has two TF cases, Nepal has a limited ability to identify potential TF in line with its risks mainly due to non-integration of TF into Nepal's broader counter-terrorism strategies, lack of operational-level cooperation, and non-recognition of the financing of domestic political activities having the elements of terrorism as TF.
6. Nepal's legal framework to implement Targeted Financial Sanctions (TFS) has moderate shortcomings in regards to TF and major shortcomings with regard to PF. FIs displayed a varying understanding of their TFS obligations with commercial banks, large development banks, large non-bank remitters, and other larger FIs conducting automated screening. Other FIs and all DNFBPs are not conducting adequate TFS screening. No funds have been frozen pursuant to UNSCRs.
7. Nepal has a multi-supervisor model for both FIs and DNFBPs. For commercial banks, the NRB implemented a new framework for risk-based AML/CFT supervision in 2021 with some sanctions imposed based on recent AML/CFT supervision activities. For all other FI AML/CFT supervisors, understanding of risks and implementation of risk-based supervision is in its early stages. DNFBP AML/CFT supervision has not commenced. In line with this, commercial banks and some larger FIs understand their AML/CFT obligations and are applying CDD and record keeping requirements, but there are challenges associated with Beneficial Ownership (BO) and Politically Exposed Persons (PEPs). Implementation of all AML/CFT preventative measures in all smaller FIs is less advanced. DNFBPs implementation of preventive measures is negligible.
8. Nepal has major shortcomings in its implementation of Recommendation 24 and 25. BO information is not available from Nepal's registrars. Where LEAs may be seeking BO information from commercial banks (and other FIs if it is collected), it is unlikely to be accurate or up-to-date.
9. Nepal provides Mutual Legal Assistance (MLA) in response to incoming requests with approx. 32% of requests executed in a somewhat timely manner. Nepal averages approx. 12 outgoing MLA requests per year. In line with Nepal's risk and context, Nepal and India have a five-level border security cooperation and coordination mechanism, which is actively used to coordinate and exchange information on border-related criminal activities. A similar border cooperation mechanism exists with China.

### *Risks and General Situation*

2. The Federal Democratic Republic of Nepal (Nepal) is a lower-middle-income jurisdiction with a GDP of 40.83 billion USD (in 2022)<sup>1</sup> and per capita GDP of around \$1,336 USD (in 2022). Nepal's economy is primarily based on the agriculture and service sectors. Nepal is bordered by India to the south, east, and west, and China to the north.

3. In Nepal corruption, tax evasion and human trafficking are the highest ML threats with the greatest potential to generate proceeds and produce negative economic and social impacts. Nepal's porous borders are a significant ML risk having a strong nexus to domestic and foreign predicate offences such as narcotics trafficking, gold and cash smuggling, and environmental crime. Key vulnerable sectors include banking, cooperatives, dealers in precious metals and stones (DPMS), casinos, and remittance providers. Hundi is also prevalent in Nepal. Nepal is not a global or regional financial centre. The size and make-up of Nepal's economy and financial sector is less attractive to laundering of foreign proceeds, except in relation to casinos along Nepal's border.

4. Nepal has not experienced any acts of international terrorism in the period under review. Nepal's porous border region is a key risk factor in the nexus to regional terrorism and TF activities with some reports suggest that Nepal may be used as a transit or staging point for regional actors to commit terrorist activities not targeted towards Nepal. Nepal's domestic insurgency/terrorism and TF threat has significantly declined in recent years, but there are still small scale incidents directed at the Government and/or other political targets.

### *Overall Level of Effectiveness and Technical Compliance*

5. Following its 2011 mutual evaluation and inclusion in the FATF's International Cooperation Review Group process, Nepal's AML/CFT regime has undergone significant reform. This includes amendments to the Asset (Money) Laundering Prevention Act (ALPA) in 2011, 2014, 2016 and 2019 to enhance compliance with a range of FATF Recommendations (primarily related to the ML and TF offences and targeted financial sanctions for terrorism and TF); passing of the Criminal Proceeds and Instruments of Offence (freezing, controlling and confiscation) Act (POCA) 2013 to enhance Nepal's confiscation regime; the establishment of the Department of Money Laundering Investigation (DMLI) as the sole investigative agency for ML and TF; and passing of AML/CFT preventive measures directives for most FI and DNFBP sectors.

6. In addition to these AML/CFT focused reforms, significant other legislative reforms include the Constitution of Nepal (adopted in 2015), National Civil Code (NCivC) 2017, National Civil Procedures Code (NCPC) 2017, National Penal Code (NPC) 2017 and National Criminal Procedures Code (NCrPC) 2017.

### *Assessment of Risk, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33 & 34)*

7. Nepal completed its second National Risk Assessment (NRA) in 2020. The NRA identifies corruption, tax evasion, and financial sector crimes (such as banking offences and hundi) as high threat. The Assessment Team (AT) considers human trafficking is also a high threat and banking offences may

<sup>1</sup> World Bank data – GDP growth 2020 to 2022. <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=NP>, accessed 5 May 2023

be lower threats. The NRA assessment focuses on terrorism and Nepal's legislative framework with the TF analysis being very limited. The assessment of vulnerabilities is reasonable with banking, cooperative, DPMS and casino sectors identified as the most vulnerable sectors. Recommendation (R) 1 is rated partially compliant. Overall, competent authorities have a varied and developing understanding of ML risks and a limited understanding of TF risk.

8. The National Coordination Committee (NCC) is overseeing Nepal's national AML/CFT policies through implementation of the risk-based National AML/CFT Strategy and Action Plan 2019-2024. Nepal is focused on strengthening its AML/CFT legislative frameworks and institutions, building the capacity of relevant competent authorities, and operational activities targeting Nepal's highest threats and vulnerabilities. However, greater resources and prioritisation is needed for the activities of all competent authorities to be fully in line with Nepal's ML/TF risks.

9. Nepal's framework for AML/CFT national coordination and cooperation is well structured and focused on policy-related actions. R.2 is rated partially compliant. Enhanced use of established cooperation mechanisms for operational cooperation on all high ML threats, TF, and key vulnerabilities is needed. PF related cooperation and coordination is not occurring.

*Financial Intelligence, ML Investigations, Prosecutions and Confiscation (Chapter 3 – 10.6, 7,-8; R.1, R.3, R.4, R.29-32)*

10. The Financial Intelligence Unit (FIU) is housed within the Nepal Rastra Bank (NRB) with good resources, strong operational independence, policies and procedures for all its functions and MOUs with relevant agencies. The FIU is making significant efforts to enhancing all functions through the ongoing implementation of goAML, but STR reporting needs improvement overall and particularly from non-commercial bank financial institutions (FIs), and there is no reporting from DNFBPs. The FIU makes an annual average of approx. 293 proactive and 87 reactive disseminations to key Law Enforcement Agencies (LEAs) who are making reasonable use of this intelligence and developing their own to trace criminal proceeds related to ML, and higher-risk predicate crimes. The FIU is supporting NRB's AML/CFT supervision activities by providing information that has triggered AML/CFT onsite visits.

11. The DMLI is the sole ML investigation agency with clear designation of predicate crime authority for other LEAs and Investigative Authorities. Referrals to DMLI are not fully consistent with Nepal's risk profile (including that there are gaps in some LEAs' and Investigative Authorities' powers – R.31 is rated partially compliant), and DMLI would benefit from additional human and institutional resources to initiate and investigate more high risk predicate crime ML cases in line with Nepal's risks. DMLI has investigated 58 ML cases with 45 cases prosecuted (23 cases still under prosecution) and 32 natural persons convicted of ML. The vast majority of these convictions are self-laundering related to banking offences, which are rated high-risk in the 2020 NRA and are predicate crimes of focus in the National Strategy and Action Plan. However, Nepal has few ML investigations, prosecutions, and convictions for other high-risk predicate crimes.

12. Nepal is pursuing some high-level confiscation-related policy objectives and building the capacity of the Department for Management of Proceeds of Crime (DMPC), and has a sound legal framework. This is yet to translate into institutional-level policies and procedures by LEAs and Investigative Authorities, or confiscation results in line with Nepal's risks. Overall, Nepal requires



greater commitment to confiscation with the total value of recovered confiscation orders being approx. NPR 2.6 billion (~USD 19.5 million) in the period under review. Nepal has ten successful non-conviction based confiscation cases related to ML. Overall, LEAs' freezing and/or seizing actions are not consistent with Nepal's risks and Nepal does not maintain consolidated confiscation-related information and statistics that links LEAs' and Investigative Authorities' seizing/freezing actions, confiscation orders, and enforcement actions.

13. While the Department of Customs (DOC) and Armed Police Force (APF) is seizing some smuggled cash and gold/silver at Nepal's border, DOC is not systematically implementing Nepal's cash declaration system.

#### *Terrorist and Proliferation Financing (Chapter 4 – 10.9, 10, 11; R.1, R.4, R.5-8, R.30, R31 & R.39)*

14. In the period under review, Nepal had two TF cases both initiated by international cooperation. One case resulted in seven TF convictions, but Nepal has not enforced the court's judgments. The second case commenced in 2018 and is currently under prosecution. Notwithstanding, Nepal has a limited ability to identify potential TF in line with its risk mainly due to non-integration of TF into Nepal's broader counter-terrorism strategies, lack of operational-level cooperation through the CTM or Nepal's border security cooperation and coordination mechanism with India, and non-recognition of the financing of domestic political activities having the elements of terrorism as TF.

15. Nepal's legal framework to implement Targeted Financial Sanctions (TFS) has moderate shortcomings whereby the Freeze Order does not apply to new, or changes to, UNSCR 1267 and 1988 designations after 6 December 2013. While Nepal has a legal framework to implement TFS relating to UNSCR 1373, it is not used including in relation to Nepal's TF cases. FIs displayed a varying understanding of their TFS obligations with commercial banks, large development banks, large non-bank remitters, and other larger FIs conducting automated screening. Other FIs and all DNFBPs are not conducting adequate TFS screening. Nepal has not demonstrated that terrorists, terrorist organisations and terrorist financiers are deprived of their assets including in relation to its TF cases.

16. Nepal is not implementing a risk-based approach to preventing TF abuse of NPOs.

17. Nepal's legal framework for implementing TFS for PF has major shortcomings with natural and legal persons not required to freeze funds or assets of persons or entities designated under UNSCRs 1718 or 2231. FI and DNFBP screening is similar to TFS for TF, no funds have been identified or frozen, and specific monitoring is not occurring.

#### *Preventive Measures (Chapter 5 - 104; R.9-23)*

18. Nepal has a range of technical shortcomings in preventive measures for FIs (e.g., R.10 is rated partially compliant), which cascade to DNFBPs in combination with some DNFBP scope gaps. Nepal has sought to prohibit Virtual Assets (VA) and Virtual Asset Service Providers (VASPs). Banks play a critical role in Nepal's financial sector with implementation issues weighed most heavily for commercial banks, followed by development banks, cooperatives, casinos, real estate and DPMS.

19. The understanding of ML/TF risks and AML/CFT obligations varies considerably among FI sectors. It is notably higher among banks and other FIs with some exposure to group-wide internal

AML/CFT policies. In line with this, the application of mitigating measures is not commensurate with risk across most FIs.

20. Commercial banks, large development banks, large finance, remittance, securities and life insurance companies are applying CDD and record keeping requirements. These FIs face challenges in; (i) linking the individual to their identity due to limitations in Nepal's common identity documentation, and (ii) in identifying Beneficial Ownership (BOs) as they are fully reliant on self-declaration and information provided by the customer with limited avenues for verification. All other FIs have more limited ability to overcome these challenges and apply more rule-based CDD.

21. For enhanced due diligence, in particular Politically Exposed Persons (PEPs) screening, commercial banks and large development banks have systems to identify and monitor PEPs. Large finance, remittance, securities and life insurance companies have some systems to identify and monitor PEPs but are overly reliant on the Nepal Bankers Association's PEPs list, which may not be up-to-date and does not include family members, close associates, or foreign PEPs – these FIs have limited measures to overcome gaps in the Nepal Bankers Association's PEPs list. Nepal has technical deficiencies with regard to the application of counter measures.

22. Commercial banks continue an upward trend in STR reporting over recent years and contribute almost 50% of TTRs. Other FI sectors generally record low number of STRs.

23. The recentness of DNFBP sector specific regulations/directives and the lack of AML/CFT supervision means, overall, DNFBPs implementation of preventive measures is negligible, and DNFBPs are not submitting STRs.

### *Supervision (Chapter 6 - IO3; R.14, R.26-28, R.34, R.35)*

24. Nepal has a multi-supervisor model for both FIs and DNFBPs. Nepal is not actively preventing criminals from holding or controlling FIs or DNFBPs due in part to technical gaps in licencing and registration requirements.

25. For commercial banks, NRB implemented a new framework for risk-based AML/CFT supervision in 2021 and is close to completing its second round of inspections. As a result, NRB is starting to develop an understanding of the ML/TF risks in the commercial banking sector at an institution level. NRB has also imposed fines on commercial banks for AML/CFT non-compliance, although these were limited and not dissuasive. For all other FI supervisors, the understanding of risks and implementation of risk-based supervision is in its early stages.

26. For the DNFBP supervisors, understanding of ML/TF risks is in its very early stages and AML/CFT supervision has not yet commenced.

### *Transparency and Beneficial Ownership (Chapter 7 - IO5; R.24-25)*

27. Nepal has major shortcomings regarding R.24 including that Nepal has not assessed the ML/TF risks associated with all types of legal persons created in Nepal, and implemented measures to prevent misuse of legal persons for ML/TF. All competent authorities did not demonstrate an awareness of ML/TF risks associated with legal persons.

28. Companies are required to register with the Office of the Company Registrar (OCR), which maintains basic information that is being sought by LEAs and Investigative Authorities. However, OCR has no proactive mechanisms to ensure basic information is accurate or up-to-date – very limited sanctions have been imposed by OCR.

29. Nepal relies upon information collected by commercial banks and some other large FIs in the course of implementing CDD requirements for BO information, which competent authorities are making some use of. However, information sought by these FIs is focused on the natural person owning 10% or more of shares (as controlling ownership interest in the legal person) and fully reliant on self-declaration and information provided by the customer.

30. Nepal has major shortcomings regarding R.25. Trusts can be created under the National Civil Code 2017 (NCivC), the common law, and settled in Nepal under foreign laws. Public trusts are required to be registered and private trusts are required to notify the Registrar of their existence. Trustees are required to maintain records, but relevant authorities have little information on trusts in Nepal. Nepal has not implemented other mitigating measures to prevent the misuse of trusts including that trustees are not obliged to disclose their status to FIs and DNFBPs.

#### *International Cooperation (Chapter 8 - IO2; R. 36-40)*

31. Nepal is party to relevant international conventions and has a strong framework for MLA. However, it has moderate shortcomings relating to MLA for confiscation and extradition. In both cases, the key shortcoming is that Nepal requires a treaty for confiscation and execution of the judgment of foreign courts, whereas, treaty is mandatory for extradition. Currently, Nepal only has an extradition treaty with India and a MLA treaty with China.

32. Nepal provides MLA in response to incoming requests with approx. 32% of requests executed in a somewhat timely manner. Nepal averages approx. 12 ongoing MLA requests per year with the vast majority of these requests initiated from the Court and not LEAs during investigations. Nepal is using other forms of international cooperation for AML/CFT purposes including through the FIU and Nepal Police (NP). In line with Nepal's risks and context, the Nepal and India five-level border security cooperation and coordination mechanism is actively used to coordinate and exchange information on criminal activity. A similar border cooperation mechanism exists with China.

*Priority Actions*

1. Nepal should pass the *Amendments to Some Laws relating to AML and Business Promotion Bill*. When passed, Nepal should expedite implementation and significantly enhance the capacity of impacted competent authorities to undertake their new and/or modified AML/CFT functions.
2. Nepal should enhance public and private sectors' understanding of Nepal's ML/TF risks by updating its TF risk assessment, assessing the ML/TF risks associated with legal persons and arrangements, and by conducting more focused ML risk assessments on corruption, tax evasion, human trafficking, narcotics offences, environmental crime, and border-related crimes.
3. LEAs and Investigative Authorities and the Office of the Attorney General (OAG) should prioritise the investigation and prosecution of ML associated with all high risk predicate crimes at a level consistent with Nepal's overall ML risk.
4. NRB's new AML/CFT Supervision Division should be appropriately resourced to deliver supervision across all NRB supervised FI sectors. Supervision should be risk-based and prioritised for commercial banks and other higher risk FIs supervised by NRB.
5. Nepal should significantly enhance risk-based AML/CFT supervision of cooperatives, casinos, DPMS, and real estate agents.
6. Nepal should implement TFS for TF without delay<sup>2</sup> and ensure TFS implementation by FIs and DNFBPs.
7. The FIU's goAML division should be given additional human and financial resources to expedite full adoption and operation of goAML.
8. Nepal should significantly enhance implementation of all preventative measures (and address TC gaps) by conducting a range of activities (including sanctioning where appropriate) to ensure all FIs and DNFBPs enhance their application of risk-based CDD and enhanced or specific measures (focused first on PEPs and BOs), apply mitigating measures commensurate with their risks, enhance FIU and regulatory reporting, and apply internal controls.
9. The Department for Management of Proceeds of Crime (DMPC) should receive significantly greater human and institutional resources to undertake its function and receive cooperation and coordination from all competent authorities to enhance Nepal's ability to effectively deprive criminals from their ill-gotten gains.
10. Nepal should streamline its MLA response coordination mechanisms; and establish policies, procedures and SOPs that support LEAs and Investigative Authorities to prioritise the use of MLA and other forms of international cooperation in ML/TF and high risk predicate crime cases.

<sup>2</sup> Nepal informed the assessment team at the Face-to-Face Meeting that it had issued a new 'Order to Freeze' on 25 April 2023.  
Anti-money laundering and counter-terrorist financing measures in Nepal 2023

## Effectiveness & Technical Compliance Ratings

### Effectiveness Ratings

<b>IO.1</b> - Risk, policy and coordination	<b>IO.2</b> - International cooperation	<b>IO.3</b> - Supervision	<b>IO.4</b> - Preventive measures	<b>IO.5</b> - Legal persons and arrangements	<b>IO.6</b> - Financial intelligence
<b>Moderate</b>	<b>Moderate</b>	<b>Low</b>	<b>Low</b>	<b>Low</b>	<b>Moderate</b>
<b>IO.7</b> - ML investigation & prosecution	<b>IO.8</b> - Confiscation	<b>IO.9</b> - TF investigation & prosecution	<b>IO.10</b> - TF preventive measures & financial sanctions	<b>IO.11</b> - PF financial sanctions	
<b>Moderate</b>	<b>Low</b>	<b>Low</b>	<b>Low</b>	<b>Low</b>	

### Technical Compliance Ratings (C – compliant, LC – largely compliant, PC – partially compliant, NC – non compliant)

<b>R.1</b> - Assessing risk & applying risk-based approach	<b>R.2</b> - National cooperation and coordination	<b>R.3</b> - Money laundering offence	<b>R.4</b> - Confiscation & provisional measures	<b>R.5</b> - Terrorist financing offence	<b>R.6</b> - Targeted financial sanctions – terrorism & terrorist financing
<b>PC</b>	<b>PC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>PC</b>
<b>R.7</b> - Targeted financial sanctions – proliferation	<b>R.8</b> - Non-profit organisations	<b>R.9</b> - Financial institution secrecy laws	<b>R.10</b> - Customer due diligence	<b>R.11</b> - Record keeping	<b>R.12</b> - Politically exposed persons
<b>NC</b>	<b>NC</b>	<b>LC</b>	<b>PC</b>	<b>C</b>	<b>LC</b>
<b>R.13</b> - Correspondent banking	<b>R.14</b> - Money or value transfer services	<b>R.15</b> - New technologies	<b>R.16</b> - Wire transfers	<b>R.17</b> - Reliance on third parties	<b>R.18</b> - Internal controls and foreign branches and subsidiaries
<b>LC</b>	<b>LC</b>	<b>NC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>
<b>R.19</b> - Higher-risk countries	<b>R.20</b> - Reporting of suspicious transactions	<b>R.21</b> - Tipping-off and confidentiality	<b>R.22</b> - DNFBPs: Customer due diligence	<b>R.23</b> - DNFBPs: Other measures	<b>R.24</b> - Transparency & BO of legal persons
<b>PC</b>	<b>C</b>	<b>C</b>	<b>PC</b>	<b>PC</b>	<b>PC</b>
<b>R.25</b> - Transparency & BO of legal arrangements	<b>R.26</b> - Regulation and supervision of financial institutions	<b>R.27</b> - Powers of supervision	<b>R.28</b> - Regulation and supervision of DNFBPs	<b>R.29</b> - Financial intelligence units	<b>R.30</b> - Responsibilities of law enforcement and investigative authorities
<b>PC</b>	<b>PC</b>	<b>C</b>	<b>PC</b>	<b>C</b>	<b>LC</b>
<b>R.31</b> - Powers of law enforcement and investigative authorities	<b>R.32</b> - Cash couriers	<b>R.33</b> - Statistics	<b>R.34</b> - Guidance and feedback	<b>R.35</b> - Sanctions	<b>R.36</b> - International instruments
<b>PC</b>	<b>LC</b>	<b>LC</b>	<b>PC</b>	<b>LC</b>	<b>LC</b>
<b>R.37</b> - Mutual legal assistance	<b>R.38</b> - Mutual legal assistance: freezing and confiscation	<b>R.39</b> - Extradition	<b>R.40</b> - Other forms of international cooperation		
<b>LC</b>	<b>PC</b>	<b>PC</b>	<b>PC</b>		

## MUTUAL EVALUATION REPORT OF NEPAL

### *Preface*

This report summarises the AML/CFT measures in place in Nepal as at the date of the on-site visit from 5-16 December 2022. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Nepal's AML/CFT system, and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by Nepal, and information obtained by the assessment team during its on-site visit to Nepal.

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The report was reviewed by Mr Matthew Shannon, Finance Canada; Mr. Kenneth Wong, Attorney-General's Chambers Singapore; and the FATF Secretariat.

**Statistical tables:** Information shown in tables throughout this report has been sourced directly from Nepal government authorities, unless otherwise stated.

**Translations of legal instruments:** Non-official English translations of laws and other relevant instruments were provided to the AT directly by Nepal authorities. The translations were treated as accurate for all purposes from the outset of the evaluation.

**Exchange rates:** The exchange rate used throughout this report is 1 NPR = USD\$0.0075 based on the exchange rate at the end of the onsite (16 December 2022).

**Nepal's Previous MER:** Nepal previously underwent an APG Mutual Evaluation (ME) in 2011 conducted according to the 2004 FATF Methodology. The 2011 ME report is published and is available at [www.apgml.org](http://www.apgml.org).

The 2011 ME concluded that Nepal was compliant on one Recommendation, largely compliant with three Recommendations; partially compliant with ten recommendations and non-compliant with 33 recommendations. Two recommendations were found to be not applicable.

Nepal was in the FATF's International Cooperation Review Group (ICRG) process from February 2010 until removal from the process in July 2014. Significant progress was made by Nepal while under ICRG including amendments to the ML and TF offences; establishing a confiscation regime and TFS for terrorism and TF regime; issuing enforceable CDD directives; ratification of conventions; enactment of MLA legislation; enhancing the function of the FIU; and STR reporting requirements.

## CHAPTER 1. ML/TF RISKS AND CONTEXT

1. Nepal is a landlocked country in South Asia located in the Himalayas. It is bordered by India to the south, east, and west, and China to the north. The population of Nepal is approx. 29 million with approx. 7% of the population living in the capital city of Kathmandu.

2. Nepal is a developing jurisdiction with a GDP of approx. 40.83 billion USD (in 2022)<sup>3</sup> and per capita GDP of around \$1, 336 USD (in 2022).<sup>4</sup> Nepal's economy is primarily based on the agriculture and service sectors accounting for approx. 33% and approx. 57% of GDP, respectively. Incoming remittance is also significant. Between 2015 and 2019 GDP grew at an average rate of approx. 4.75%.<sup>3</sup> However, the COVID-19 pandemic has had a significant impact on Nepal's economy with a GDP contraction of approx. 2.25% in 2020. Since the relaxing of Nepal's and global COVID-19-related restrictions, GDP growth is approx. 4.25% driven primarily by an increase in incoming tourists.

3. Nepal is a federal democratic republic, with a Government based on a multi-party system. The Constitution of Nepal adopted in 2015 establishes a federal system of government with three levels: federal, provincial, and local. Principal law-making and enforcement occurs at the federal and provincial levels with powers of the three levels of Government outlined in Schedule 5 to 9 of Constitution of Nepal. At the federal level, Nepal has a bicameral legislature, consisting of the 275 member House of Representatives (the lower house) and the 59 member National Assembly (the upper house). Nepal's head of state is the President. The executive power is vested in the Council of Ministers with the Prime Minister as the head.

4. Nepal is divided into seven provinces, each with its own Provincial Government, consisting of a unicameral legislature, Chief of Province as a representative of the Federal Government, and a Chief Minister (head of provincial government) with executive power of the province vested in the Provincial Council of Ministers. Nepal has 753 local governments at the municipal and village level, which are responsible for providing basic services and implementing local policies in accordance with Schedule 8 and 9 of the Constitution of Nepal and the Local Government Operation Act, 2017.

5. Nepal legal system is strongly influenced by common law and Hindu traditional law and also some elements of civil law system with the following hierarchy of laws:

- *Constitution of Nepal* is supreme law in Nepal with statutes required to be consistent with the Constitution (Article 1, Constitution of Nepal) and the Supreme Court having the authority to declare the legislation not consistent with Constitution void (Article 133 Constitution of Nepal).
- *International Conventions and Treaties* that Nepal has ratified are applicable as national laws in accordance to Section 9 of the Nepal Treaty Act 1991. It also provides that in the event of inconsistency between provisions of convention/treaty ratified by Nepal and Nepalese law, the convention/treaty prevails.

<sup>3</sup> World Bank data – GDP growth 2020 to 2022. <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=NP>, accessed 5 May 2023

<sup>4</sup> World Bank data – GDP growth 2020 to 2022. <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=NP>, accessed 5 May 2023



- *Statutes* are enacted by the Federal Parliament under Part 9 of Constitution of Nepal having precedence over other laws subordinate there to including administrative measures. The Constitution of Nepal also allows for the issuance of Ordinance by the President on recommendation of the Council of Ministers when both Houses of the Federal Parliament are not in session and circumstances exist which render it necessary to take immediate action (Article 114 Constitution of Nepal). Ordinance have the same force and effect as a statute but must be enacted by Parliament within 60 days of both Houses sitting to remain in force and effect.
- *Rules and By-Laws* may be issued pursuant to statutory delegation by the Council of Ministers and authorized agencies respectively. The rules and by-laws must be compliant with the terms of the enabling statute.
- *Directives* are departmental or ministerial orders issued under the authority of statutes or rules.

6. Nepal has a three tier Judicial System of the Supreme Court, High Courts (Appellate Court), and District Courts (first instance court). The Supreme Court is the apex court and the court of record. All other courts and institutions exercising judicial powers are under its jurisdiction. The Supreme Court has both original and appellate jurisdiction and consists of a chief justice (appointed by the President on the recommendation of the Constitutional Council) and maximum of twenty other judges. Other judges of the Supreme Court, High Courts, and District Courts are appointed on the recommendation of the Judicial Council. Article 152 of the Constitution of Nepal provides for Special Courts with the Special Court designated with exclusive jurisdiction over ML, TF, corruption offences, and other designated offences (Special Court Act, 2002).

### ***ML/TF Risks and Scoping of Higher-Risk Issues***

#### *Overview of ML risks*

7. In Nepal corruption, tax evasion and human trafficking are the highest ML threats with the greatest potential to generate proceeds. Nepal's NRA recognises the ML risks of these offences. According to Transparency International, Nepal's Corruption Perception Index score is 34/100 and ranks Nepal at 110/180 globally<sup>5</sup> (see para 31 for further information). Tax evasion both direct and indirect is due to a culture of low compliance; high costs to comply with requirements; and weak enforcement.<sup>6</sup> It is estimated 1.5 million Nepalese are vulnerable to trafficking as Nepal is a source, transit and destination jurisdiction for human trafficking.<sup>7</sup> The forms of human trafficking include forced labour, domestic servitude, and sex trafficking.<sup>8</sup>

8. Nepal's border region is a significant risk, having a strong nexus to domestic and foreign offending with criminal activity exploiting Nepal's porous border, particularly with India. Nepal and India share a porous and open border of more than 1,800 km with few check points and a large volume of people moving without a passport or visa on a daily basis. Nepal's NRA recognises the strong nexus between the border, transnational crimes and illegal activities. Border related offences such as smuggling and narcotics trafficking are higher ML threats in Nepal. Whilst Nepal is not a significant

<sup>5</sup> Transparency International, 2023, Nepal Corruption Perception Index, 2022, <https://www.transparency.org/en/countries/nepal>, accessed 29 May 2023.

<sup>6</sup> Bertelsmann Stiftung, 2022, BTI 2022 Country Report — Nepal, Gütersloh: Bertelsmann Stiftung, [https://bti-project.org/fileadmin/api/content/en/downloads/reports/country\\_report\\_2022\\_NPL.pdf](https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_NPL.pdf), accessed 21 February 2023.

<sup>7</sup> United States Department of State, 2022, 2022 Trafficking in person report, U.S. Embassy in Nepal, <https://np.usembassy.gov/2022-trafficking-in-person-report/>, accessed 01 March 2023.

<sup>8</sup> Ibid

producer of narcotics domestically, hashish, heroin and domestically produced cannabis and opium are trafficked to and through Nepal across the porous border. The porous border also lends itself to the smuggling of people, cash, counterfeit currency, and gold and other precious metals. Environmental crime is also a higher ML threat with Nepal being a source and transit jurisdiction for illegal wildlife trade.<sup>9</sup>

9. Domestic proceeds are laundered within Nepal and abroad mainly within the region due to strong economic and trade connections, particularly with India. Nepal's information and statistics on ML cases highlights laundering through the banking (including via remittance), DPMS and real estate sectors, and in cash. Considering global ML typologies and the lack of AML/CFT and other controls, ML through casinos and legal persons and arrangements is likely.

10. Incoming remittances significantly contribute to Nepal's GDP (approx. 26%), with an estimated large portion flowing through hundi. Funds are laundered and moved abroad through hundi (including by high-net worth individuals) and also to avoid currency transfer restrictions, for tax evasion, and as part of trade-based ML.<sup>10</sup>

11. Nepal is not a global or regional financial centre with the size and make-up of Nepal's economy and financial sector less attractive to laundering of foreign proceeds. Nepal is however exposed to foreign ML threats from neighbouring jurisdictions due to its porous border and its close economic and trade links. In addition, casinos particularly in the border region are a key vulnerability to the laundering of foreign proceeds.

### *Overview of TF risks*

12. Nepal is not a high-risk jurisdiction for TF. Nepal has not experienced any acts of international terrorism in the period under review and does not have nationals or persons/entities located in Nepal designated under United Nations Security Council Resolutions (UNSCR) 1267 or 1989. Nepal is not identified as a major source or route jurisdiction for foreign terrorist fighters.

13. Nepal's porous border is a key risk factor in the nexus to regional terrorism and TF activity with reports<sup>11</sup> that Nepal may be used as a transit place or staging point for terrorists to hide.<sup>12</sup> Other regional open source reports<sup>13</sup> indicate that regional foreign-backed religiously motivated extremist

<sup>9</sup> UNODC, 2020, World Wildlife Crime Report 2020: Trafficking protected species, United Nations Publication, [https://www.unodc.org/documents/data-and-analysis/wildlife/2020/World\\_Wildlife\\_Report\\_2020\\_9July.pdf](https://www.unodc.org/documents/data-and-analysis/wildlife/2020/World_Wildlife_Report_2020_9July.pdf), accessed 01 March 2023.

<sup>10</sup> Nepal Risk Assessment, 2020, pg 127.

<sup>11</sup> India Today, 2018, Arrested IM terrorist Qureshi had been living in Nepal with fake documents, <https://www.indiatoday.in/india/story/arrested-im-terrorist-qureshi-had-been-living-in-nepal-with-fake-documents-1151283-2018-01-22>, accessed 28 February 2023.

<sup>12</sup> U.S. Department of State, 2020, Country Reports on Terrorism 2020: Nepal, <https://www.state.gov/reports/country-reports-on-terrorism-2020/nepal/>, accessed 28 February 2023.

<sup>13</sup> Hindustan Times, 2023, 'Trace source of money reaching madrasas on Indo-Nepal border' <https://www.hindustantimes.com/cities/lucknow-news/trace-source-of-money-reaching-madrasas-on-indo-nepal-border-101675792023789.html>, accessed 28 February 2023.

<sup>13</sup> The Indian Express, 2023, Probe Funding of illegal madrasas along Nepal border: UP govt to DM, <https://indianexpress.com/article/cities/lucknow/probe-funding-of-illegal-madrasas-along-nepal-border-up-govt-to-dm-8376616/>, accessed 28 February 2023.

groups have recently increased their presence in Nepal, particularly along the India-Nepal border. These groups are not focused on Nepal. Nepali authorities acknowledge the challenge of Nepal's porous border and the security threat it poses including in relation to terrorism and TF.

14. Historically, Nepal has also faced a high risk of domestic insurgency/terrorism and TF. The domestic TF threat has been decreasing with the significant decline in domestic insurgency/terrorism in recent years<sup>14</sup> due in part to the Government's longstanding peace agreement policy. For example, in March 2021 the Government and Communist Party of Nepal (Maoist Centre) signed a three-point peace agreement. Notwithstanding, Nepal still faces domestic insurgency/terrorism and TF threats primarily related to smaller scale incidents (mainly involving small improvised explosive devices and/or small arms) directed at the Government and/or other political targets.

15. There is limited information available on how insurgents/terrorist or groups raise, move and use funds in Nepal. The AT assumes that minimal funding and material support is required with funds moved via cash and/or hundi. Notwithstanding, Nepal's two TF cases (see IO.9) demonstrate that the formal financial sector has been abused for TF.

#### *Overview of Nepal's risk assessment*

16. Nepal completed its first NRA in 2016 and the second in 2020. The 2020 NRA is based on the risk assessment tool developed by the World Bank. Nepal did not provide to the AT any other form of completed national or sectoral AML/CFT-related risk assessment. The Implementation Committee (IC) and 25 sectoral sub-committees coordinated the individual NRA modules. There are two versions of NRA: full version available to the government agencies and a sanitized version for the public.

17. Nepal assesses the overall level of ML risk as medium with corruption, tax evasion, and financial sector crimes (such as banking offences and hundi) identified as high threat. Drug trafficking, organised crime, extortion, arms related offences, fraud, counterfeiting of currency, environmental crime, robbery (theft), human trafficking and sexual exploitation, smuggling (including black marketing) and forgery offences are identified as medium threat. Counterfeiting and piracy of products is identified as medium low threat. Insider trading and market manipulation, trafficking of stolen goods, kidnapping, illegal restraint and hostage taking are identified as low threat. The public NRA discusses corruption, tax evasion and financial sector crimes (such as banking offences and hundi) as major threats.

18. The AT's view is that the threat level of drugs trafficking and environmental crime may be higher, and banking offences are not at the same level as corruption and tax evasion. The AT considers Nepal's findings regarding other ML threats as reasonable.

19. Nepal assesses its overall level of ML vulnerability as medium-high with banking, cooperative, DPMS and casino sectors medium-high vulnerability. Nepal assessed vulnerabilities of formal foreign exchange dealers and remittance providers as low; however, when combined with hundi these sectors

<sup>13</sup> The Daily Guardian, 2020, Pak-funded mosques, guesthouses emerge along India-Nepal border, <https://thedailyguardian.com/pak-funded-mosques-guesthouses-emerge-along-india-nepal-border/>, accessed 28 February 2023.

<sup>14</sup> Institute for Conflict Management, 2023, Number of Terrorism Related Incidents Year Wise, <https://satp.org/datasheet-terrorist-attack/incidents-data/nepal>, accessed March 2023.

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are rated high vulnerability. Nepal also rates the real estate sector as high vulnerability. In general, the AT considers Nepal's findings regarding sector vulnerabilities as reasonable. However, the NRA does not cover some FI sectors (for example, payment service operators and providers, including domestic money value transfer services) nor the DNFBP sectors of lawyers, notaries and company/trust service providers.

20. Nepal assesses its terrorism/TF risk as medium for domestic threat and low for international threat. While non-profit organisations (NPOs), open borders, the informal economy and innovations/trends in information technology are identified as TF vulnerabilities, the analysis is focused on Nepal's legal and institutional frameworks for terrorism and TF. The AT acknowledges that Nepal does not have high TF risks; however, the TF assessment in the NRA is very limited.

### *Scoping of Higher Risk Issues*

21. During the mutual evaluation on-site visit and in this report, the AT focused on the below higher risk issues.

22. The AT focused on high-threat predicate offences of corruption, tax evasion and human trafficking. The AT focused most on corruption due to the level of corruption in Nepal; the potential to generate proceeds; the nexus with other predicate crime offending; and the significance of economic and social impacts. The assessment team gave equal focus to tax evasion and human trafficking.

23. Nepal's porous border is a significant ML risk. There is a strong nexus between the border and predicate crime offending in Nepal including higher-risk predicate crimes of narcotics trafficking, smuggling (primarily precious metals and cash), and environmental crimes. The team placed focus on these issues and predicate crimes.

24. Domestic proceeds are laundered within Nepal and abroad, including neighbouring jurisdictions. For the formal sector, the AT focused on laundering through the banking, remittance, DPMS and real estate sectors. Due to global typologies and the significant lack of AML/CFT controls, laundering through the casino sector and legal persons and arrangements was also a focus. In the informal sector, the AT focused on laundering through hundi. Nepal has sought to prohibit VASPs with the assessment team focusing on Nepal actions to enforce this prohibition. .

25. Nepal is not a high-risk jurisdiction for TF. Noting the decrease in insurgency/terrorism; the government's commitment to upholding the Peace Agreements; and open source reports on Nepal's nexus to regional terrorism, the AT focused on TF risks linked to Nepal's border regions and TF associated with smaller scale incidents directed at the Government and/or other political targets. This focus included consideration of Nepal's international cooperation with neighbouring jurisdictions as well as domestic coordination among Nepal's LEAs. Based on global typologies and regional context, Nepal's cash economy and hundi providers were also an area of some focus. Based on Nepal's two TF cases control measures in the formal sector was also a focus. While NPOs are identified as a TF vulnerability, the sector is not considered at high risk for TF abuse.

26. As there are many competent authorities involved in Nepal's AML/CFT regime and Nepal has strong links to neighbouring jurisdictions (particularly with India), the AT placed some focus on domestic and regional cooperation and coordination.

*Materiality*

27. Nepal is a developing jurisdiction classified as a Lower-Middle-Income Economy. GDP is approx. 40.83 billion USD (in 2022)<sup>15</sup> and per capita GDP of approx. \$1, 336 USD (in 2022)<sup>16</sup>. Nepal's economy is primarily driven by service sector (approx. 57% of GDP) and agriculture (approx. 33% of GDP). Other key sectors of Nepal's economy include, remittances from Nepalese workers abroad and small and medium-sized enterprises.

28. Nepal's trade is heavily influenced by its geography with its economy heavily dependent on trade with India and China. India is Nepal's largest trading partner representing approx. 68% of exports and approx. 63% of imports<sup>17</sup> including that most imports and exports to other jurisdictions pass through India. Nepal's main exports include textiles, carpets, and handicrafts, while the main imports include petroleum products, machinery and equipment. China is Nepal's second largest import partner (representing approx. 15.7% of total imports primarily machinery/electrical products<sup>18</sup>) and is among the top investors in Nepal's infrastructure. Nepal's imports from China fell to approx. 1.84 billion USD in 2022 down from approx. 2.38 billion USD the previous year, while exports to China totalled approx. 5.39 million USD in 2022, down from 8.37 million USD over the same period.<sup>19</sup>

29. Remittance from Nepali migrants working abroad is a crucial source of household welfare and a major source of foreign exchange earnings for Nepal. According to the World Bank, Nepal received 8.2 billion USD in remittances in 2021, which accounted for approx. 22.6% of the country's GDP. Nepal is among the top 25 remittance recipient jurisdictions.<sup>20</sup> The top destinations for Nepali migrant workers and related remittance are the Gulf jurisdictions (particularly Qatar, Saudi Arabia, and the United Arab Emirates) as well as Malaysia and South Korea.<sup>21</sup> The majority of foreign work remittances are sent through formal channels, such as banks and remittance providers. However, hundi channels are also prevalent for both inbound and outbound remittance, particularly in rural areas where formal financial services may not be available.

30. The size of the informal economy in Nepal is significant accounting for around 50% or more of GDP. Around 60%-80% of the total work force is engaged in informal work<sup>22</sup> in a range of activities including agriculture, small-scale trade, construction and the service sector. The informal economy has

<sup>15</sup> World Bank data – GDP growth 2020 to 2022. <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=NP> Date accessed 5 May 2023

<sup>16</sup> World Bank data – GDP growth 2020 to 2022. <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=NP>. Date accessed 5 May 2023

<sup>17</sup> World Integrated Trade Solution, 2019, Nepal Trade Summary, <https://wits.worldbank.org/CountryProfile/en/Country/NPL/Year/LTST/Summarytext>, accessed 09 March 2023.

<sup>18</sup> World Integrated Trade Solution, 2019, Nepal Trade Summary, <https://wits.worldbank.org/CountryProfile/en/Country/NPL/Year/LTST/Summarytext>, accessed 09 March 2023.

<sup>19</sup> Nepal seeks easier trade access to Chinese markets, 2023, Reuters, <https://www.reuters.com/world/asia-pacific/nepal-seeks-easier-trade-access-chinese-markets-2023-03-14/#:~:text=Nepal%27s%20imports%20from%20China%20fell,same%20period%2C%20official%20data%20showed.>

Date accessed 1 May 2023

<sup>20</sup> The World Bank Group, 2023, Personal Remittances, Received (% of GDP) – Nepal, <https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=NP>, accessed 09 March 2023.

<sup>21</sup> Government of Nepal, 2022, Ministry of Labour, Employment and Social Security – Nepal Labour Migration Report, [https://moless.gov.np/storage/files/post\\_files/Nepal%20Labour%20Migration%20Report\\_2022.pdf](https://moless.gov.np/storage/files/post_files/Nepal%20Labour%20Migration%20Report_2022.pdf), accessed 09 March 2023.

<sup>22</sup> <https://www.ilo.org/kathmandu/areasofwork/informal-economy/lang--en/index.htm> ; <https://www.worldeconomics.com/National-Statistics/Informal-Economy/Nepal.aspx>

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a strong nexus with use of cash with cash the dominant mode of day-to-day transactions in Nepal especially in rural areas. This is despite the recent introduction of cash transaction limits (refer para 91).

### *Structural Elements*

31. The following structural challenges impact the effectiveness of Nepal's AML/CFT regime:

- *Commitment to address AML/CFT issues:* While Nepal's actions to enhance its AML/CFT systems since its 2011 MER demonstrate a commitment to combating ML/TF, this commitment is not uniform across Nepal's AML/CFT system with criminal justice elements, TFS, supervision and regulation of DNFBPs requiring enhanced commitment. In addition, delays in the passing of current AML/CFT legislative reforms (e.g., *Amendments to Some Laws relating to AML and Business Promotion Bill*) suggest high level political commitment is lacking.
- *Political stability:* Nepal has experienced political instability since it became a Republic in 2008 with no government to date managing to complete a full term in power. However, Nepal's political stability is improving. The World Bank's global index of political stability, ranked Nepal 8.06 in 2011 and 38.21 in 2021 (a score of 0 represents the lowest politically stable jurisdictions<sup>23</sup>).
- *Rule of law:* In 2021, the World Bank's global index for Nepal's rule of law was 34.62.<sup>24</sup> Nepal fell two positions in its global ranking and is 70th place out of 139 jurisdictions worldwide.<sup>25</sup> Reasons for Nepal's rule of law declining<sup>26</sup> include prolonged political instability, bureaucracy and governance issues.<sup>27</sup> Freedom House's report in 2021 rates Nepal as 'partly free' with political rights scoring 25/40 and civil liberties receiving 32/60.<sup>28</sup>
- *Transparency and corruption:* Transparency International ranked Nepal 110 out of 180 countries in 2022<sup>29</sup> on the Corruption Perceptions Index (CPI) with a score of 34/100. While Nepal's score has improved since 2012 indicating its perceived level of corruption is becoming less, reports<sup>30</sup> indicate that corruption is widespread in Nepal. The World Bank global index percentile ranks Nepal's control of corruption at 33.17<sup>31</sup> (0 represents the lowest ranked jurisdiction) placing Nepal in the bottom third of countries in the world; however, there has been improvement since 2011 when Nepal was percentile ranked 23.22.

<sup>23</sup> <https://info.worldbank.org/governance/wgi/>

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> The World Justice Project, 2021, Rule of law Project,

[https://worldjusticeproject.org/sites/default/files/documents/Nepal\\_2021%20WJP%20Rule%20of%20Law%20Index%20Country%20Press%20Release.pdf](https://worldjusticeproject.org/sites/default/files/documents/Nepal_2021%20WJP%20Rule%20of%20Law%20Index%20Country%20Press%20Release.pdf) date accessed 23 March 2023.

<sup>27</sup> The Himalayan, 2021, Editorial: Poor rule of Law, <https://thehimalayantimes.com/opinion/editorial-poor-rule-of-law>, accessed 23 March 2023.

<sup>28</sup> Freedom House, 2022, Freedom in the World 2022: Nepal, <https://freedomhouse.org/country/nepal/freedom-world/2022>, date accessed 23 March 2023.

<sup>29</sup> Transparency International, 2023, Nepal Corruption Perception Index, 2022, <https://www.transparency.org/en/countries/nepal> Date accessed 29 May 2023.

<sup>30</sup> Freedom House, 2022, Freedom in the World 2022: Nepal, <https://freedomhouse.org/country/nepal/freedom-world/2022>, date accessed 23 March 2023.

The Kathmandu Post, 2023, Nepal's position in corruption index remains unchanged,

[https://kathmandupost.com/national/2022/01/26/nepal-s-position-in-corruption-index-remains-unchanged#google\\_vignette](https://kathmandupost.com/national/2022/01/26/nepal-s-position-in-corruption-index-remains-unchanged#google_vignette) date accessed 20 February 2023.

<sup>31</sup> Worldwide Governance Indicators, Nepal: Control of Corruption,

<https://info.worldbank.org/governance/wgi/Home/Reports> date accessed 23 March 2023.

- *Independent and efficient judicial system:* Nepal's Constitution 2015 provides for the separation of powers with three separate branches of government – executive, legislative and judiciary.<sup>32</sup> The judiciary has a three-tier structure comprised of the Supreme Court of Nepal, High Courts and District Courts. The Special Court is designated with exclusive jurisdiction over ML, TF, corruption offences and other designated offences. Recently, Nepal has faced internal pressures to reform the judicial system to make it more efficient, transparent and accountable. There have also been calls for Nepali authorities to end political interference in the enforcement of the law and administration of justice<sup>33</sup> and protect the integrity of the Supreme Court to ensure public trust in the judiciary.<sup>34</sup>
- *Stable and effective Government institutions:* Nepal's government faces challenges in effectively delivering services. The World Bank global index ranks Government effectiveness at 20.9 in 2016 (0 represents the lowest ranked jurisdiction).<sup>35</sup> Key AML/CFT institutions such as the NRB are stable. However, Nepal's AML/CFT regime continues to undergo structural reform (since 2011) with the draft *Amendments to Some Laws relating to AML and Business Promotion Bill* aiming to make further structural change including giving ML investigation authority to predicate crime investigation agencies and TF investigation authority to NP. Currently, DMLI is the sole ML and TF investigation agency.

### **Background and other Contextual Factors**

32. Nepal officially adopted the federal system with the promulgation of the Constitution in 2015. Nepal continues to face significant challenges in the transition to fully institutionalize three layers of governments as Nepal embeds and refines its federal system. Key ongoing challenges include implementation responsibilities and resource allocation between federal and provincial governments, capacity of provincial and local government institutions, and disparities between regions and provinces access and delivery of basic services. AML/CFT-related functions and institutions are across Nepal's three levels of Government, which creates challenges to effective implementation.

33. Nepal is in the process of rolling out a new national (federal level) identity card with a unique identifier number with corresponding biometric and demographic data. At the time of the onsite, around 33% of the population had obtained a National ID Number. The most common form of identification in Nepal is Citizenship Card and Driver's License. The Citizenship Card is issued at age 16 by District Administration Offices under the MoHA and includes the holders name, address, and date of birth and photograph at the time of issuing. This card is not required to be updated. A Driver's License, issued by provincial authorities, includes holders name, address, and date of birth and photograph at the time of issuing. It is required to be renewed every five years.

34. As discussed in paragraph 30, the size of the informal economy in Nepal is significant with cash the dominant mode of day-to-day transactions in Nepal especially in rural areas. Driven by a range of NRB initiatives, level of financial inclusion in Nepal is increasing, particularly in access for formal

<sup>32</sup> BTI Transformation Index, 2022, Nepal, <https://bti-project.org/en/reports/country-dashboard/NPL>, date accessed 23 March 2023.

<sup>33</sup> International Committee of Jurists, 2020, Nepal: high level mission urges law and policy reform to achieve human rights accountability and strengthen justice sector institutions – ICJ Report, <https://www.ici.org/nepal-high-level-mission-urges-law-and-policy-reform-to-achieve-human-rights-accountability-and-strengthen-justice-sector-institutions-icj-report/> date accessed 23 March 2023.

<sup>34</sup> Human Rights Watch, 2021, Nepal: Protect Judicial Independence and Integrity, <https://www.hrw.org/news/2021/11/12/nepal-protect-judicial-independence-and-integrity> date accessed 23 March 2023.

<sup>35</sup> <https://info.worldbank.org/governance/wgi/>

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financial services and the adoption and use of digital/mobile financial services.<sup>36</sup> Percentage of the population (above 15 years) with an account in a financial institution has increased from 25% in 2011 to 53% in 2021.<sup>37</sup>

### *AML/CFT strategy*

35. Nepal is implementing the National AML/CFT Strategy and Action Plan 2019-2024 (AML/CFT Strategy and Action Plan), which includes 10 objectives to enhance Nepal's AML/CFT system. The implementation of the National AML/CFT Strategy and Action Plan is overseen by the NCC with guidance from the National Review Council (NRC). Individual strategies and actions are implemented with support by several inter-agency cooperation and coordination mechanisms.

### *Legal & institutional framework*

36. The key AML/CFT institutions include:

- FIU-Nepal is designated as Nepal's FIU, established within the NRB in 2008 as an independent unit. The FIU is also the secretariat of the NCC.
- Nepal Rastra Bank (NRB) is the central bank of Nepal and is the supervisory authority of banks and other FIs (see Table Chap 1.3). The Governor leads the RCM and the Deputy Governor is the lead of the IC.
- Ministry of Law, Justice and Parliamentary Affairs (MoLJPA) is responsible for drafting laws and making legal reforms and is also designated as the Central Authority for MLA.
- Ministry of Home Affairs (MoHA) is responsible for maintaining peace and security in Nepal. MoHA is designated as the Central Authority for extradition and is responsible for Nepal's TFS regime for TF and PF. The Secretary leads the CTM.
- Armed Police Force (APF) under the Ministry of Home Affairs is a paramilitary land force responsible counter-insurgency and maintaining internal security, disaster response, and border security. The APF has no authority to investigate ML/TF or predicate crimes.
- Ministry of Foreign Affairs (MoFA) is responsible for implementing Nepal's foreign policy, maintaining international relations and cooperation, and some elements of Nepal's MLA and TFS regimes.
- Office of the Attorney General (OAG) is the prosecution authority of Nepal. The Special Government Attorney Office is responsible for ML and TF prosecutions in the Special Court. The Deputy Attorney General leads the ICM, and the Chief of the Special Government Attorneys Office leads the ICC.

<sup>36</sup> Member Series: Nepal's Financial Inclusion Journey Towards Access to Finance, Financial Literacy and Financial Consumer Protection, <https://www.afi-global.org/publications/member-series-nepals-financial-inclusion-journey-towards-access-to-finance-financial-literacy-and-financial-consumer-protection/>; Nepal Financial Inclusion Report 2023, <https://www.uncdf.org/article/8240/nepal-financial-inclusion-report-2023>; IMF Data Access to Macroeconomi & Financial Data, <https://data.imf.org/?sk=e5dcab7e-a5ca-4892-a6ea-598b5463a34c&sid=1460043522778>, date accessed 23 March 2023.

<sup>37</sup> World Bank, The Global Findex Database 2021, <https://www.worldbank.org/en/publication/globalindex/Data>, date accessed 23 March 2023.



- Office of the Company Registrar (OCR) is the registrar for companies (see IO.5 for discussion on other competent authorities responsible for the registration of other legal persons/entities and arrangements in Nepal).
- Department for Management of Proceeds of Crime (DMPC) under the Ministry of Home Affairs is responsible to manage and auction the confiscated assets.

*LEAs and Investigators Authorities<sup>38</sup>:*

- Department of Money Laundering Investigation (DMLI) is the sole agency responsible for investigation of ML and TF.
- Police: Nepal Police (NP) is primarily responsible for prevention and investigation of crime and maintaining law and order in Nepal with the vast majority of predicate offence investigations conducted by NP and their respective bureaus. Under the Constitution of Nepal each province has a police service with the division of responsibility between NP and provincial police in accordance with the Nepal Police and Province Police (Operation, Supervision and Coordination) Act, 2020. However, overall, Nepal is still establishing provincial police services.
- Department of Customs (DOC) is a department in the Ministry of Finance and is responsible for the implementation of Nepal's cash declaration system and investigation of predicate offences under the Customs Act.
- Commission for the Investigation of Abuse of Authority (CIAA) is a constitutional body responsible for anti-corruption including as a role of ombudsman, investigation and prosecution of corruption related cases.
- Department of Revenue Investigation (DRI) is a department under Office of the Prime Minister and Council of Ministers (OPMCM) and is authorised to investigate tax evasion and abuse of foreign exchange.
- Inland Revenue Department (IRD), under the Ministry of Finance, is authorised to investigate administrative tax revenue collection with any criminal element referred to the DRI.
- Department of National Park and Wild Life Conservation (DoNPWLC) and NP can investigate national parks and wildlife offences under the National Parks and Wildlife Conservation Act 1973.
- Department of Forest and Soil Conservation (DoFSC) can investigate forestry offence under the Forest Act 2019.
- Securities Board of Nepal (SEBON) is responsible for investigating securities related offences under the Securities Act.

*FI Supervisors:*

- NRB is the AML/CFT supervisor for commercial banks and other FIs (see Table 5).
- Department of Cooperatives (DeoC) is the AML/CFT supervisor of cooperatives. For those cooperatives operating at provincial or local level only, AML/CFT supervision is designated to the relevant provincial or local body.
- National Insurance Authority (NIA) is the AML/CFT supervisor for the insurance sector.
- SEBON is the AML/CFT supervisor for the securities sector.
- IRD is designated the AML/CFT supervisor for pension funds.

<sup>38</sup>There are some other competent authorities that are not LEAs *per se*. See competent authorities are identified in c.30.4. Anti-money laundering and counter-terrorist financing measures in Nepal 2023

### *DNFBP Supervisors<sup>39</sup>:*

- Ministry of Culture, Tourism and Civil Aviation (MoCTCA) is designated the AML/CFT supervisor for casinos.
- Department of Land Management and Archive (DoLMA): is designated the AML/CFT supervisor for real estate agents.
- IRD: is the designated AML/CFT supervisor for DPMS.
- Nepal Bar Council (NBC) is the designated AML/CFT supervisor for lawyers.
- Nepal Notary Public Council (NNPC) is the designated AML/CFT supervisor for notaries.
- Institute of Chartered Accountant of Nepal (ICAN) is the designated AML/CFT supervisor for chartered accountants and registered auditors.
- OCR is the designated AML/CFT supervisor for TCSPs.

### 37. Nepal's AML/CFT cooperation and coordination mechanisms:

- National Review Council (NRC) is responsible for framing and reviewing the implementation of Nepal's AML/CFT policies.
- National Coordination Committee (NCC) is responsible for coordinating, framing and recommending national AML/CFT policies including the National Strategy and Action Plan.
- Regulatory Coordination Mechanism (RCM) is responsible for AML/CFT supervision cooperation and coordination.
- Investigation Coordination Mechanism (ICM) and Investigation Coordination Committee (ICC) are responsible for ML, TF investigation cooperation and coordination.
- Counter Terrorism Mechanism (CTM) and Targeted Financial Sanctions Committee (TFSC) are responsible for countering TF and TFS cooperation and coordination.
- Implementation Committee (IC) is responsible for conducting national risk assessments.

### *Financial sector, DNFBPs and VASPs*

38. Nepal is a developing jurisdiction classified as a Lower-Middle-Income Economy. Nepal is not a global or regional financial centre with its financial sector dominated by banks. In recognition of the different ML/TF risks, context and materiality of the financial and DNFBPs sectors, the AT focused most on commercial banks followed by development banks, savings and credit cooperatives, casinos, real estate and DPMS. Moderate focus was placed on money changers, remittance companies, securities and insurance FIs. Lawyers and accountants were also given moderate focus. For others FIs and DNFBPs such as the Employee Provident Fund, Citizen Investment Trust, Postal Saving Bank, hire purchase providers, payment service operators and providers, finance companies, micro-finance institutions and the Postal Savings Banks received less focus, similarly for notaries and TCSPs.

### *Overview of the financial sector*

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<sup>39</sup> There are some professionals (such as providers of taxation, consultancy or non-chartered accountancy/bookkeeping services) undertaking DNFBP activities that do not have a designated AML/CFT supervisor.

39. Nepal's financial sector comprises of banks and FIs, cooperatives, foreign exchange and MVTS, an insurance sector, a securities sector, the postal savings bank, and various other FIs. The total value of the financial sector is approx. NPR 9,200 Billion (~USD 69 billion).

40. *Banks and FIs:* The sector is regulated under NRB Act and the BAFIA by the NRB. The sector consists of commercial banks, development banks<sup>40</sup>, finance companies and micro finance institutions and the Infrastructure Development Bank. Banks and these FIs make up approx. 85% of total financial sector assets<sup>41</sup> with the 27 commercial banks<sup>42</sup> accounting for approx. 65% of total financial sectors assets. These FIs provide a range of financial services activities including digital banking, internet banking, mobile banking, and QR payments. The NRA 2020 rates the banking and FI sector as medium-high vulnerability, with current account deposits, business credit and trade finance identified as the most vulnerable products. Micro-finance institutions are only included in the NRA 2020 analysis of financial inclusion.

41. *Cooperatives:* Cooperatives play a significant role in Nepal's economy, particularly in rural areas. They are member-owned organisations focused on promoting the economic and social well-being of members. There are over 30,000 cooperatives in Nepal, with a combined membership of over 7.33 million people holding approx. 5% (NPR 478 billion; ~USD 3.5 billion) of total financial assets and engaging in a high volume of cash transactions.

42. Cooperatives are regulated by the Cooperative Act and overseen by Ministry of Land Management, Cooperatives and Poverty Alleviation at the federal, provincial and local level. There are three basic types of cooperatives:

- Saving and credit cooperatives – the most common form of cooperative, which accept savings/deposits and provides lending to members.
- Production based cooperatives – are involved in activities such as agriculture and other small-scale industries.
- Multipurpose Cooperatives- are involved in multiple economic activities.

43. There are 14,484 savings and credit cooperatives. The NRA 2020 rates the cooperative sector as medium-high vulnerability due to a lack of AML/CFT knowledge and a complex AML/CFT supervisory framework across DeoC, the 7 provincial and 753 local bodies. The National Cooperative Bank Limited operates at the national level and is the sole institution focused on providing financial services (mainly savings and loans) to its approx. 13,700 member cooperatives across 77 districts of Nepal. The National Cooperative Bank Limited has 68 branches across Nepal and holds approx. 12% of total cooperative sector assets.

44. *Foreign exchange and MVTS:* In addition to commercial banks and four of the development banks, there are 353 licensed money changers, 218 hotels licensed to undertake currency exchange and 42 international MVTS providers licensed for inbound remittance only (under the NRB Act and FERA). No remitter is permitted to remit funds out of Nepal with all outward remittance required to be via

<sup>40</sup> All development banks have private ownership.

<sup>41</sup> Approx. 17% of sector assets are held by the NRB.

<sup>42</sup> Three banks are majority state-owned; three are joint venture with foreign banks; 19 are private banks; two are foreign subsidiary.

banking channels. Nepal's restrictive controls on foreign exchange and remittance means that currency exchange and international MVTs through licensed FIs are assessed in the NRA 2020 as low vulnerability.

45. *Insurance sector:* The insurance sector is regulated under the Insurance Act 2022 by the NIA. There are 41 insurance FIs, including 19 that provide life insurance products assessed as the higher risk. Insurance FIs hold approximately 5% or NPR 575 billion (~USD 4.3 billion) of financial assets, predominantly by life insurance FIs. The NRA 2020 rates the insurance sector as medium vulnerability.

46. *Securities sector:* The securities sector is regulated under the Securities Act by the SEBON. The Nepal Stock Exchange was established in 1994 and is the only exchange in Nepal. Market capitalization is approx. USD 24 billion and approx. 217 companies are listed on the exchange primarily commercial banks, hydro-power companies, insurance companies, and finance companies. The securities market is limited to domestic investors only. The NRA identifies shares and mutual funds identified as most vulnerable to ML/TF. There are 80 securities FIs (Stock Brokers, Merchant Bankers, and Fund Managers) that hold less than 1% (NPR 65 billion equivalent to approx. USD 487 million) of financial assets. The NRA 2020 rates the securities sector as medium vulnerability.

47. *Postal Savings Bank (PSB):* Through the network of Nepal Post Offices, the Postal Savings Bank provides saving accounts to government officials (max deposit NPR 1.5 million ~USD 11,250), domestic transfers (max NPR 10,000 ~USD75 per transfer), and low value remittance to/from India and a small number of key foreign jurisdictions. There are 68 Postal Savings Bank units/branches throughout Nepal, which operate as independent units e.g., transfer from one PSB unit to another is a domestic wire transfer. The NRA assesses the PSB as low vulnerability.

48. *Various other FIs:* includes hire-purchase providers, payment service operators and providers (including domestic MVTs), 52 pension funds, the Employees Provident Fund (EPF), Citizen Investment Trust (CIT). The EPF and CIT are both government entities. Nepal assesses Employees Provident Fund, Citizen Investment Trust and other pension funds as having lower levels of vulnerability. The NRA 2020 does not cover payment service operators and providers.

**Table 1: Overview of FIs**

Institution Type	# of Entities	Total Assets (Billion NPR)	Total Assets (~USD)	Indicative Proportion of total FI sector Assets
<b>Banks and FIs</b>				
Commercial banks (A Class)	27	6,020.55	45.1 billion	65.5%
Development banks (B Class)	17	612.73	4.5 billion	6.7%
Finance companies (C Class)	17	152.04	1.1 billion	1.65%
Micro finance institutions (D Class)	65	519.6	3.9 billion	5.6%
Infrastructure Development Bank	1	25.86	194 million	.28%
<b>Cooperatives</b>				
Cooperatives	30,879	477.99	3.585 billion	5.20%
<b>Foreign exchange and MVTs</b>				
MVTs (incoming remittance only)	42	2.34	17.5 million	.03%
Money changers	353	.70	5.25 million	.01%

Money changers (hotels)	218	N/A	N/A	N/A
<b>Insurance Sector</b>				
Life Insurance	19	502.08	3.765 billion	5.46
General Insurance	22	50.05	375.4 million	.54%
<b>Securities Sector</b>				
Securities Brokers	50	34.37	258 million	.37%
Merchant Bankers	30	29.55	221.6 million	.32%
Fund Managers	81 (within securities broker or merchant banker firms)			
<b>Postal Savings Bank</b>				
Postal Savings Bank	1 (68 units/ branches)	1.61	12 million	.02%
<b>Various Other FIs</b>				
Hire Purchase loan providing companies	10	19.06	143 million	.21%
Payment system operators	10	2.48	18.6 million	.03%
Payment Service Providers	27	5.08	38.1 million	.06%
Employees Provident Fund	1	459.42	3.45 billion	5.0%
Citizen Investment Trust	1	247.51	1.856 billion	2.69
Other Pension Funds	52	N/A	N/A	N/A

### Overview of DNFBBPs

49. *Casinos:* There are 28 licensed casinos (including 15 mini-casinos) with physical venues in Nepal. Ten are in Kathmandu and the remainder in various locations close to the Indian border. The largest casino has 101 table games. The annual turnover of Nepal's casinos is estimated at NPR 9 billion (~USD 67.5 million). The NRA 2020 rates the casino sector as medium-high vulnerability.

50. Along with casinos with a physical venue, the ALPA also includes "internet casinos" as DNFBBPs supervised by MoCTCA. An internet casino does not meet the definition of casino in the Casino Regulations and is not separately defined in any legislation in Nepal. While Nepal reports internet casinos are currently prohibited, there is no explicit legislative provision for this.

51. *Real estate agents:* The real estate sector is currently unregulated and largely unorganised. However, there are 208 companies registered with OCR as real estate agents and primarily engaged in property development, subdivisions, apartment sales and commercial real estate. There are estimated to be thousands of persons in Nepal operating informally as real estate agents, including in rural areas. The NRA 2020 rates the real estate sector as high vulnerability, in part due to the current lack of regulatory framework. The AML/CFT directive issued by DoLMA in June 2022 required all real estate agents to declare themselves to DoLMA. As at the date of the onsite visit, no real estate agents had done so.

52. *DPMS:* The DPMS sector is large and lacks a current business regulatory framework. There are approx. 13,406 registered DPMS in Nepal. The vast majority are retailers, many of which are small businesses. The NRA 2020 rates the DPMS sector as medium-high vulnerability, in part due to a lack of AML/CFT awareness and the lack of a regulatory framework.

53. *Lawyers, notaries, chartered accountants, registered auditors, TCSPs and other professionals:* The number of these professionals that are DNFBBPs undertaking activities subject to the ALPA is unknown. For lawyers, notaries, chartered accountants and registered auditors, the professional codes of conduct restrict the extent to which they can engage in financial transactions for clients. Therefore, the main activities likely to be carried out subject to the ALPA are incorporating legal persons and

preparing documentation relating to the sale and purchases of businesses or real estate. For TCSPs and any other similar professionals (such as providers of taxation, consultancy and non-chartered accountancy/bookkeeping services), there are no such professional restrictions. None of these DNFBP sectors are included in the NRA 2020.

#### *Overview of VASPs*

54. Nepal has sought to prohibit VASPs; however, the prohibition does not cover the full scope of VA and VASP activities under the FATF Recommendations (see R.15). No VASPs are licensed or accredited to operate in Nepal and the size of the informal sector is unclear. Nepal police have taken some actions against natural and legal persons involved in VA/VASPs (see R.15). According to Chainalysis, Nepal is ranked 16th out of 146 jurisdictions in the 2022 Global Crypto Adoption Index which is based on a jurisdiction's usage of different types of cryptocurrency services. Nepal is ranked 74th out of 154 jurisdictions in the 2021 Decentralised Finance Adoption Index<sup>43</sup>, which highlights countries with the highest grassroots cryptocurrency adoption by individuals.

#### *Preventive measures*

55. ALPA 2008 and ALPR 2016 are the primary AML/CFT preventive measures instruments, which are supported by sector specific enforceable by-laws and directives issued by the regulating authority as outlined in the below table.

**Table 2: Sector Specific AML/CFT Directives**

Sector	Instrument	Issuing Authority
<b>Banks and all other FIs</b>		
BFIs Sector - commercial banks, development banks, finance companies	AML/CFT Directive #19 for Class A, B, and C FIs (primary AML/CFT-related directive containing various provisions and additional detail to comply with the requirements of the ALPA and ALPR) Directive #10 for Class A, B, and C FIs (focused on market entry) Directive #6 for Class A, B, and C FIs (focused on internal controls)	NRB
BFIs Sector - Microfinance	AML/CFT Directive #18 for (primary AML/CFT-related directive containing various provisions and additional detail to comply with the requirements of the ALPA and ALPR) Directive #10 for Microfinance (Class D) (focused on market entry) Directive #6 for Microfinance (Class D) (focused on internal controls)	NRB
Infrastructure Development Bank	AML/CFT Directive #17 for Infrastructure Development Bank	NRB
Cooperatives Sector	AML/CFT Directive on Cooperatives	Department of Cooperatives
Foreign exchange and MVTs Sector	Directive #27 for Money Changers and Remittance companies	NRB
Insurance sector	AML/CFT Directive on Insurance Sector	Nepal Insurance Authority (NIA)

<sup>43</sup> Chainalysis, October 2021, The 2022 Geography of Cryptocurrency Report: Analysis of Geographic Trends in Cryptocurrency Adoption and Usage, <https://blog.chainalysis.com/reports/2022-global-crypto-adoption-index/>, accessed 1 May 2023.

Securities sector	AML/CFT Directive on Securities Sector	Securities Board of Nepal (SEBON)
Payment service operators and providers	Directive #14 for PSP/PSO (primary AML/CFT-related directive containing various provisions and additional detail to comply with the requirements of the ALPA and ALPR) Directive #8 fo PSP/PSO (focused on branchless banking) Directive #5 for PSP/PSO (focused on transaction thresholds) Payment and Settlement By-laws 2020	NRB
Pension Funds	AML/CFT Directive for Retirement funds	IRD
Hire Purchase Companies	Nil	N/A
EPF, CIT and Postal Saving Bank	AML/CFT Directive for EPF, CIT and Postal Saving Bank	NRB
<b>DNFBPs</b>		
Casinos	AML/CFT Directive for Casinos (containing various provisions and additional detail to comply with the requirements of the ALPA and ALPR)	MoCTCA
Real estate	AML/CFT Directive for Real Estate	DoLMA
DPMS	AML/CFT Directive for DPMS (containing various provisions and additional detail to comply with the requirements of the ALPA and ALPR)	IRD
Lawyers	Nil	N/A
Notaries	Nil	N/A
Chartered accountants and registered auditors	AML/CFT Directive for accountants and auditors (containing various provisions and additional detail to comply with the requirements of the ALPA and ALPR)	ICAN
TCSPs	AML/CFT Directive for TCSP	OCR

### *Scope of AML/CFT obligations on DNFBPs*

56. The definition of DNFBP in the ALPA includes all sectors required by the FATF standards. Under s2(n) and (af) of the ALPA, DNFBPs are reporting entities as follows:

57. *Casinos*: The definition of DNFBP includes “casinos or internet casinos” (s2(n)(1) ALPA). A casino is defined in the Casino Regulations 2013 as a game played for the entertainment of tourists in a traditional way or through modern machines or equipment by placing a bet at a venue (s2(c)). An internet casino (without a physical venue) does not meet this definition and is not separately defined in legislation in Nepal.

58. *Real estate agents*: The definition of DNFBP includes “real estate agents” (s2(n)(2) ALPA). A real estate agent is defined in the AML/CFT directive issued by the DoLMA as a firm, company, entity, or person operating professionally with an objective of buying and selling real estate (s1, directive issued 7 June 2022). The AML/CFT directive issued by DoLMA currently restricts the application of the ALPA only to the sale and purchase of a house or land of NPR 10 million (~USD75, 000) or over (s1). This is a scope gap for real estate agents.

59. *DPMS*: The definition of DNFBP includes “dealers in prescribed precious metals or stones” (s2(n)(3) ALPA). DPMS are defined in the AML/CFT directive issued by the Inland Revenue Department (IRD) as importers, distributors, including wholesale traders, involved in the transaction of precious metals and commodities (s2(c), directive issued 2020). This does not include retailers of precious metals and stones (that engage in cash transactions over the relevant threshold as per c.22.1(c)). This

is a scope gap for DPMS. However, the scope gap is reduced to some extent because of a wider prohibition on cash transactions over NPR 1 million (~USD7,500) to buy or sell goods or services has been in place since 2017. The prohibition does not apply where there are reasonable grounds necessitating the use of cash. There are 13,406 DPMS in Nepal, the vast majority of which are retailers.

60. *Lawyers, notaries, other independent legal professionals and accountants:* The definition of DNFBP includes “notaries, auditors, accounting or other similar professionals” when they carry out, prepare for, or engage in, transactions for a client or party concerning various activities specified in the ALPA (s2(n)(4)). The list of activities meets all requirements of c.22.1(d).

61. Lawyers are licensed by Nepal Bar Council to present, plead, advocate and counsel legal services (s22 Nepal Bar Council Act). These services do not involve any of the activities specified in c.22.1(d) and s2(n)(4) of the ALPA. Therefore, if a lawyer undertakes any of these activities, it is outside the scope of their legal practitioner’s licence. The extent to which a lawyer may carry out activities subject to c.22.1(d) is also restricted because lawyers are prohibited from engaging in transactions for a client of the transfer of property (including funds) as a broker (s3(w) Code of conduct for legal practitioners 1994). Nepal reports that this prevents a lawyer from negotiating or representing a client in relation to financial transactions. Therefore, the main activities carried out by lawyers that are subject to the ALPA are likely to be incorporating legal persons and preparing documentation relating to the sale and purchases of businesses or real estate. There are approximately 24,000 lawyers in Nepal. The number of lawyers engaging in activities subject to the ALPA is not known.

62. Notaries are certified by Nepal Notary Public Council to certify, translate or attest deeds and other documents (s19 Notary Public Act 2006). These services do not involve any of the activities set out in c.22.1(d) and s2(n)(4) of the ALPA. Therefore, if a notary undertakes any of these activities, this is outside the scope of their certification as a notary. Notaries are also required to comply with the Code of Conduct for legal practitioners (s4.5 Professional Code of Conduct of Notary Public 2007). Consequently, as for lawyers above, the extent to which a notary may carry out activities subject to c.22.1(d) is restricted. There are approximately 3,640 registered notaries in Nepal. The number of notaries engaging in activities subject to the ALPA is not known.

63. Chartered accountants and registered auditors are certified by the Institute of Chartered Accountants (ICAN) to provide chartered accountancy and registered auditor services. These services do not involve any of the activities set out in c.22.1(d) and s2(n)(4) of the ALPA. Therefore, if a chartered accountant or registered auditor undertakes any of these activities, this is outside the scope of their professional certification. The extent to which a chartered accountant or registered auditor carries out activities subject to c.22.1(d) is also restricted. This is because the Code of Ethics for Professional Accountants 2018 states they are not permitted to assume custody of client money or other assets unless permitted to do so under law, and in accordance with any accompanying conditions (s350). Nepal reports that there are no such circumstances currently permitted under any prevailing laws.

64. Notwithstanding the restrictions on assuming custody of client money or assets, ICAN classifies the types of activities that chartered accountants and registered auditors could undertake that are subject to the ALPA under five categories – real estate purchases or sales, management of capital or assets, management of investments, formation or management of legal persons and sale or purchase of businesses. There are 1,870 chartered accountants and 7,228 registered auditors across 5,249 firms. The number engaging in these five categories of activities is unknown.



65. Other similar professionals (that are not lawyers, notaries, chartered accountants or registered auditors) in Nepal also undertake activities set out in c.22.1(d) and s2(n)(4) of the ALPA. These DNFBPs include professionals that provide taxation, consultancy and accountancy/bookkeeping services (that are not chartered accountancy services). The number of other professionals that are DNFBPs engaging in these activities is unknown.

66. *TCSPs*: The definition of DNFBP includes “company or trust service providers”. A TCSP is defined as a business, which prepares for, engages in, or carries out transactions on behalf of customers or parties for various specified activities (s2(n)(5)). The list of specified activities meets the requirements of c.22.1(e). OCR has identified approximately 20 main TCSPs operating in Nepal. The number of additional TCSPs is unknown. The extent to which TCSPs carry out transactions on behalf of customers is also unknown. An AML/CFT directive issued by OCR on 17 July 2022 required all TCSPs to declare themselves to OCR by 18 October 2022. As at the date of the onsite visit, no TCSPs had done so.

### *Legal persons and arrangements*

67. Nepal has not assessed its risks associated with legal persons or arrangements with the AT of the view that legal persons are being used to launder proceeds of crime in Nepal (see overview of ML risks). Key vulnerabilities related to legal persons and arrangements include challenges identifying BO for FIs/DNFBPs, limited understanding of ML/TF risk by all competent authorities, limited measures to prevent abuse, and recentness of criminal sanctions for legal persons in Nepal<sup>44</sup>.

### *Legal persons*

68. In accordance with the NCivC and other prevailing laws, companies, corporations, associations, cooperatives, private firms and partnerships firms can be formed in Nepal. The primary form of limited liability legal person in Nepal is a company. Companies may be public, private (including non-profit distributing companies), or foreign companies limited by shares and established under the Companies Act 2006. The vast majority of companies in Nepal are private companies (see Table Chap 1-3). Other forms of legal persons in Nepal include: (i) Corporations established by the Government of Nepal under relevant laws<sup>45</sup>, (ii) Associations established under the Associations Registration Act 1977, (iii) Cooperatives established under Cooperatives Act 2017.

69. In addition, unlimited liability Partnership Firms are formed under the Partnership Act, 1964. Unlimited Private firms are formed under the Private Firm Registration Act 1958. See Table Chap 1-4 for number of these entities at the time of the ME onsite visit.

<sup>44</sup> Criminal sanctions on the legal person (as opposed to the natural person that committed the act and persons acting as the Principal Official of the legal person e.g. Chairman, Board Member, General Manager, Managing Director or the Official of a company or corporate body working in the same capacity) was introduced to Nepal legal system with the introduction of the ML offence in the 2011 the ALPA.

<sup>45</sup> Throughout the assessment process Nepal provided very limited detail to the AT on Corporations Anti-money laundering and counter-terrorist financing measures in Nepal 2023

**Table 3: Companies currently registered in Nepal**

	Companies		
	Public Company	Private Company	Foreign Company
<b>Total number</b>	1,848	291,769	4,878

**Table 4: Other legal persons and entities currently registered in Nepal**

	Associations	Cooperatives	Private Firms	Partnership Firms
<b>Total number</b>	>100,000	30,879	643,396	10,063

*Trusts and other Legal Arrangements*

70. The NCivC sets out a regulatory basis for settling and administering trusts (Chapter 6), including a form of simple trusts, usufructs, in chapter 7 (s314-367 NCivC). A usufruct settled under the NCivC meets the requirements of the FATF's definition 'legal arrangement,' incorporating Article 2 of the Hague Convention. Nepal usufructs have a number of elements that are analogous to an express trust: a settlor, trust property, a purpose, a deed of trust and beneficiaries (who are also trustees).

71. As outlined in the previous MER common law trusts can be settled and operate in Nepal. The Income Tax Act 2000 (s2(t) and 2(m)) recognises and establishes a regime to tax trusts and define the words *trust* and *trustee* and elements of a common law trust in Nepal. The Income Tax Act 2000 also applies to foreign trusts in Nepal.

72. Nepal law does not prohibit the operation or settlement of foreign express trusts, or other foreign legal arrangements, in the Nepal. The ALPA and related regulations extend FI/DNFBP's CDD obligations to identify customers who are trusts (without distinction between foreign or domestic trusts) and the duties on reporting entities to collect information from them in relation to who exercises ultimate effective control over a trust and other types of legal arrangements (s7A(4)(a&c) of the ALPA and r4B and r4C ALPR).

73. Nepal does not hold information on how many trusts exist in Nepal.

*Supervisory arrangements*

74. Nepal has a multi-supervisor model with five FI supervisors and seven DNFBP supervisors as outlined in the below tables. There are other similar professionals (such as providers of taxation, consultancy or non-chartered accountancy/ bookkeeping services) that are DNFBPs and have no designated AML/CFT supervisor. Nepal has sought to prohibit VASPs and therefore has not established supervisory arrangements.

**Table 5: FI AML/CFT Supervisors**

Sector	Prudential Regulator for Fit & Proper	AML/CFT Supervisor
Commercial banks	NRB - Bank and FI Regulation Department	NRB - Bank Supervision Department
Development banks		NRB - FIs Supervision Department
Finance companies		
Microfinance Institutions		NRB - Microfinance Institutions Supervision Department
Cooperatives Sector	DeOC, Province and Local Government.  Regulated by NRB Bank and FI Regulation Department if deposit liability is over NPR 500 million (~USD3,750,000)	DeOC except for the National Cooperative Bank, which is supervised by the NRB - Non-bank FIs Supervision Department
Foreign Exchange and International MVTs Sector	NRB - Foreign Exchange Management Department	NRB - Non-bank FIs Supervision Department
Insurance Sector	NIA	NIA
Securities Sector	SEBON	SEBON
Payment Services Operators and Providers (including domestic MVTs)	NRB - Payment Service Department	NRB - Payment Systems Department
Pension funds	IRD	IRD
Hire-purchase loan providers	NRB - Bank and FI Regulation Department	NRB - Non-bank FIs Supervision Department
Employees Provident Fund, Citizen Investment Trust, Postal Savings Bank, Infrastructure Development Bank	NRB - Bank and FI Regulation Department	NRB - Bank Supervision Department

**Table 6: DNFBP AML/CFT Supervisors**

Sector	Prudential / Fit & Proper	AML/CFT Supervisor
Casinos	MoCTCA <sup>46</sup>	MoCTCA
Real estate agents	None	DoLMA
DPMS	None	IRD
Lawyers	Nepal Bar Council	Nepal Bar Council
Notaries	Nepal Notary Public Council	Nepal Notary Public Council
Chartered accountants and registered auditors	ICAN	ICAN
TCSPs	None	OCR

### *International Cooperation*

75. Nepal is not a global or regional financial centre with the size and make-up of Nepal's economy and financial sector less attractive to laundering of foreign proceeds with the exception of casinos in the border region, which are a key vulnerability to the laundering of foreign proceeds.

76. Laundering of domestic proceeds abroad is mainly within neighbouring jurisdictions due to strong economic and trade connections, particularly with India. Nepal's porous border region is a

<sup>46</sup> Also licensed and regulated by NRB in relation to foreign exchange transactions.  
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significant ML risk with a strong nexus between the border and predicate crime offending in Nepal (including high risk predicate crimes). Nepal's porous border region is also a key risk factor in the nexus to regional terrorism and TF activities. Some reports indicate that Nepal may be used as a transit or staging point for regional actors to commit terrorist activities not targeted towards Nepal. To mitigate these risks, Nepal has formal border security cooperation mechanisms with China and India.

77. The top destinations for Nepali migrant workers and related remittance are the Gulf jurisdictions.

78. Nepal can provide a wide range of MLA under the MLA Act, but can only provide extradition with treaty jurisdictions. Competent authorities use a range of mechanisms to engage in other forms of international cooperation.

### *Key Findings and Recommended Actions*

#### *Key Findings*

1. Nepal completed its second NRA in 2020. All competent authorities are aware of the NRA and in agreement with its high threats and key vulnerabilities with the exception of human trafficking and sexual exploitation. Overall competent authorities have a varied and developing understanding of ML risk. Outside of key LEAs, ML understanding is most noticeably deficient in ML typologies and the interaction between Nepal's ML threats, sector vulnerabilities and other contextual factors.
2. Key relevant competent authorities understand Nepal's terrorism risks and have some understanding of associated TF risks, but overall competent authorities' understanding of Nepal's TF risk is limited.
3. The NCC is overseeing Nepal's national AML/CFT policies through implementation of the risk-based National Strategy and Action Plan. Consistent with the current level of maturity of Nepal's AML/CFT system and the National Strategy and Action Plan, the activities of competent authorities are focused on strengthening Nepal's AML/CFT legislative frameworks and institutions, building the capacity of relevant competent authorities, and operational activities targeting Nepal's highest threats and vulnerabilities. However, greater resources and prioritisation is needed for the activities of all competent authorities to be fully in line with Nepal's ML/TF risks.
4. Nepal's framework for AML/CFT national coordination and cooperation is well structured and actively operating to support policy-related AML/CFT activities. AML/CFT supervision coordination and cooperation is focused on development of sector specific AML/CFT directives and AML/CFT supervision manuals with some operational cooperation between the FIU and NRB supervisors. LEA coordination and cooperation is focused on development of policies and procedures around ML with some cooperation and coordination between OAG and LEAs. TF coordination and cooperation is more limited, and PF related cooperation and coordination is not occurring.
5. A public sanitized version of the NRA is available with most FIs and some DNFBPs aware of the NRA.

#### *Recommended Actions*

- A. Update and enhance all competent authorities' understanding of ML risks including relation to ML typologies for all higher risk predicate crimes (including human trafficking and sexual exploitation), all vulnerable FI/DNFBP sectors, legal persons and arrangements, PEPs, cross-border issues (including trade-based money laundering), VA/VASPs, the impact of the informal economy, and emerging risks. This should involve completion of sectoral risk assessments.
- B. Update and enhance all competent authorities' understanding of TF risk including by conducting a comprehensive assessment of Nepal's TF risk.
- C. Ensure the National Strategy and Action Plan gives more focus to AML/CFT supervision operational priorities and LEA operational priorities, which should be set appropriately to address Nepal's ML/TF risks.

- D. Continue to enhance operational AML/CFT cooperation and coordination through the RCM, ICM and CTM.
- E. Promote and develop FIs and DNFBPs awareness of Nepal's ML/TF risks including in relation to all high risk predicate crimes (including human trafficking and sexual exploitation) through ongoing outreach and engagement.
- F. Enhance cooperation and coordination on PF through the CTM/TFSC or other mechanism.

79. The relevant Immediate Outcome considered and assessed in this chapter is IO1. The recommendations relevant for the assessment of effectiveness under this section are R1, 2, 33 and 34 and elements of R.15.

### ***Immediate Outcome 1 (Risk, Policy and Coordination)***

#### *Nepal's understanding of its ML/TF risks*

80. Overall competent authorities have a varied and developing understanding of ML risks mainly informed by Nepal's second NRA in 2020. Nepal's understanding of its TF risk is limited. Besides its NRAs, Nepal has no other ML or TF risk assessments.

81. Nepal completed its first NRA in 2016 and the second in 2020. The 2020 NRA is based on the risk assessment tool developed by the World Bank and was coordinated by the IC with support from 25 agencies. Representatives from relevant private sector entities were involved throughout the process (see detail below).

82. Nepal assesses its overall ML threat level as Medium. The analysis covers 19 predicate offences with corruption, tax evasion, and financial sector crimes (such as banking offences and foreign exchange offences mainly related to hundi) identified as high threat (threats rated medium to low are listed in Chapter 1). The AT's view is that the threat level of banking offences is not at the same level as corruption and tax evasion, and that drug trafficking and environmental crime may be higher than Medium threat. Nepal informed the AT that human trafficking and sexual exploitation is considered medium threat<sup>47</sup>. The AT's view is that the threat level of these predicate offences is high.

83. Nepal assesses its overall ML vulnerability level as Medium-High with the banking, cooperative, DPMS and casino sectors rated Medium-High vulnerability. Nepal assessed the vulnerabilities of formal foreign exchange dealers and remittance providers as Low; however, when combined with hundi these sectors are rated High vulnerability. Nepal also rates the real estate sector as High vulnerability. In general, the assessment team considers Nepal's findings regarding sector vulnerabilities as reasonable. However, the NRA does not cover some non-bank FIs and DNFBP sectors (see detail in R.1).

<sup>47</sup> The AT was provided an April 2020 English draft of the full NRA and the June 2020 English version of the sanitized public NRA. The full draft NRA identifies human trafficking and sexual exploitation as High ML threat. The public version of the NRA does not however identify human trafficking and sexual exploitation as a major threat (the public NRA uses 'major' as the highest threat category).

84. Nepal assesses its domestic terrorism/TF threat as Medium and international terrorism/TF threat as Low. This is generally in line with the AT views on Nepal's domestic/regional and international TF threat level. As outlined in Chapter 1, Nepal has not experienced any acts of international terrorism in the period under review; however, Nepal faces some domestic and regional TF risks. Primarily, Nepal's porous border region is a key risk factor in the nexus to regional terrorism and TF activities. Some reports indicate that Nepal may be used as a transit or staging point for regional actors to commit terrorist activities not targeted towards Nepal. Nepal's domestic terrorism and TF threat level has significantly declined in recent years, but there have been some small scale incidents (mainly involving small improvised explosive devices and/or small arms) directed at political targets in the period under review. However, Nepal's TF assessment is very limited with the analysis and discussion not sufficient to support all competent authorities understanding of Nepal's TF risks.

85. Overall competent authorities have a varied and developing understanding of ML risks based mainly on Nepal's 2020 NRA as no sector-based risk assessments have been completed. All competent authorities are aware of the NRA with authorities able to identify and in agreement with ML threats and vulnerabilities. The exception to this is, human trafficking and sexual exploitation where agreement on the risk rating varies with most LEAs and Investigative Authorities met during the ME onsite visit viewing the risk as high. This varied understanding is mostly due to the difference between the full NRA and the sanitised public version<sup>42</sup>, and differing views on the impact of Government measures to combat human trafficking and sexual exploitation (i.e., residual vs. inherent risk) including measures adopted after the NRA was completed.

86. During the onsite visit, DMLI and the FIU demonstrated that they have a reasonable understanding of ML risks and common ML typologies for high risk predicate crimes, particularly banking and foreign exchange offences, and are giving some consideration to emerging ML risks. Other LEAs have some understanding of ML risks and their understanding of ML typologies is more advanced for high risk predicate crimes under their investigative authority. Overall, however, LEAs and Investigative Authorities do not have an in-depth understanding of ML risks and typologies for all high and medium threat predicate crimes, or an in-depth understanding of the interaction between Nepal's ML threats, sector vulnerabilities, and other contextual factors. For example, LEAs and Investigative Authorities had a limited understanding of TBML issues, how proceeds of corruption may be laundered in different FIs or DNFBPs, and ML risks associated with legal persons. LEAs and Investigative Authorities do understand the nexus between contextual factors (such as the informal economy and the porous borders) and predicate crime offending.

87. Core principles supervisors' are aware of the NRA with authorities able to identify and in agreement with ML threats and vulnerabilities. NRB, as the primary FI supervisor, has the most advanced understanding of ML risks, which includes an evolving understanding of institutional level risk in the commercial bank sector. Notwithstanding, all core principles supervisors' understanding of ML risks does not extend to an in-depth understanding of how Nepal's ML threats, sector vulnerabilities and other contextual factors interact. For other FI supervisors and for all the DNFBP supervisors, while they are aware of the NRA, understanding of Nepal's ML risks is limited.

88. While competent authorities have a limited understanding of TF risk overall, key relevant competent authorities such as NP and APF demonstrated to the AT during the onsite visit that they have a more advanced understanding of Nepal's terrorism risks. These are mainly associated with Nepal's border region being used as a transit place or staging point for attacks not focused on Nepal, and smaller

scale incidents (mainly involving small improvised explosive devices and/or small arms) primarily directed at political targets. While these competent authorities understand the TF risks associated with these threats, it does not extend to an in-depth understanding of TF typologies (particularly at the cell or organisational level) because they do not focus on the financing in their investigations and other activities. During the onsite visit, DMLI also demonstrated it has some understanding of TF risks and typologies based on its two TF cases (see IO.9).

89. Overall however, competent authorities view TF as involving the collection, raising or sourcing of funds through the formal financial sector, and conflated TF risk with the absence or low occurrence of terrorist activities. Nepal's lack of a terrorism offence and non-recognition of domestic political activities having the elements of terrorism compounds these misunderstandings. All FI and DNFBP supervisors conflate TF and ML risks with their understanding focused on implementation of TFS.

#### *National policies to address identified ML/TF risks*

90. Nepal is implementing its National AML/CFT Strategy and Action Plan 2019-2024 (National Strategy and Action Plan). The National Strategy and Action Plan is informed by the 2016 NRA, a 2018 Self-Assessment, and was updated with supplementary activities based on the 2020 NRA findings.

91. The National Strategy and Action Plan contains ten objectives with each objective including several strategies and activities assigned to relevant competent authorities. In line with Nepal's ML/TF risks and context and gaps and vulnerabilities in Nepal's AML/CFT regime (as identified in the NRA), the objectives are focused on strengthening Nepal's AML/CFT legislative frameworks and institutions, building the capacity of relevant competent authorities, and operational activities targeting Nepal's highest threats and vulnerabilities. This approach is consistent with the current development and maturity of Nepal's AML/CFT regime. However, the National Strategy and Action Plan would benefit from a more integrated approach to corruption, human trafficking, and border issues. The TF elements of the National Strategy and Action Plan would benefit from greater focus on specific TF threats and vulnerabilities.

92. Nepal's National AML/CFT Strategy and Action Plan includes an objective related to PF focused on enhancing Nepal's legal framework for TFS for PF.

#### *Exemptions, enhanced and simplified measures*

93. To enhance the effectiveness of AML/CFT controls, promote financial inclusion, and in recognition of the nexus between Nepal's informal/cash economy and criminal offending (the 2020 NRA acknowledges the link between the informal/cash economy and criminal offending, particularly in relation to hundi), since 2017, there has been a NPR 1 million (~USD 7,500) maximum threshold for cash transactions. All payments for goods and services above this threshold are required to be via banking channels.

94. Nepal has not applied other enhanced or simplified AML/CFT measures based on high or low risks identified in the NRA.

#### *Objectives and activities of competent authorities*



95. Under the direction of the NCC and in accordance with the National Strategy and Action Plan, Nepal has focused (in the last few years) its AML/CFT activities on: (i) revision and issuance of AML/CFT preventative measures directives for most FI and DNFBP sectors, (ii) developing a framework for risk-based AML/CFT supervision of FIs (mainly commercial banks), (iii) strengthening of FIU's functions by implementation of goAML, and (iv) drafting amendments to AML/CFT legislation (e.g., *Amendments to Some Laws relating to AML and Business Promotion Bill*). These activities are addressing Nepal's higher ML/TF vulnerabilities.

96. Over the last two years, Nepal has focused its AML/CFT supervisory resources on the implementation of risk-based supervision for the commercial banking sector. This is consistent with the materiality of Nepal's financial sector and its ML/TF risks with commercial banks accounting for approx. 65% of total financial sector assets and the sector is rated Medium-High vulnerability in the NRA. For all other FI sectors, allocation of resources and the implementation of measures has been very recent with risk-based supervision only in its very early stages. AML/CFT supervision of DNFBPs has not yet commenced. This is not consistent with Nepal's identified level of sector vulnerability, particularly for cooperatives, DPMS, real estate agents and casinos.

97. The National AML/CFT Strategy and Action Plan includes several objectives related to ML and confiscation. However, overall, Nepal is not adequately focusing criminal justice system resources and efforts on confiscation and ML. For example, (i) DMLI is focused on financial sector crime ML cases which are rated as High risk in the NRA, but would benefit from additional human and institutional resources to undertake its function fully in line with Nepal's ML risks, and (ii) LEAs and Investigative Authorities require additional training and enhanced policies/procedures and SOPs to assist them to identify ML elements in their predicate crime cases and to coordinate with DMLI on ML and predicate crime investigations.

98. Regarding confiscation, Nepal has focused resources on building the capacity of the DMPC, which is responsible for asset management and recovery of assets subject to confiscation orders by the court. However, the low value of confiscations (see IO.8) demonstrates a lack of resources and prioritisation on confiscation across Nepal's criminal justice system. The DOC and APF are seizing smuggled cash and gold/silver at Nepal's border.

99. Consistent with the National AML/CFT Strategy and Action Plan and Nepal's terrorism/TF risks, NP, APF and other competent authorities are focused on surveillance and disruption, primarily along Nepal's border in cooperation with regional partners. The AT acknowledges that Nepal's TF risk is not high; however, Nepal; (i) is not implementing TFS for terrorism and TF without delay and there has been limited outreach and support to the private sector, and (ii) TF is not adequately integrated into Nepal's broader counter-terrorism strategies or investigations. Nepal's National AML/CFT Strategy and Action Plan includes an objective related to PF. However, Nepal has not allocated sufficient resources to develop the legal framework for TFS for PF or support implementation by the private sector.

### *National coordination and cooperation*

100. Nepal's framework for AML/CFT national coordination and cooperation is well structured and is actively operating to support policy-related AML/CFT activities. The NCC, comprising of all relevant AML/CFT agencies and coordinated by the Secretary OPMCM and the FIU as its secretariat, meets

regularly with a mandate to frame and recommend national AML/CFT policies. Implementation of Nepal's AML/CFT national policies including the National Strategy and Action Plan is reviewed by the NRC led by the Minister for Finance.

101. Nepal has four primary AML/CFT inter-agency cooperation and coordination mechanisms<sup>48</sup>. While these mechanisms have been formed somewhat recently they are being actively used to support implementation of National Strategy and Action Plan activities as follows:

- RCM, led by the Governor Nepal Rastra Bank, has met on nine occasions since 2019. In line with the maturity of Nepal's AML/CFT supervision regime, the RCM is being actively used to share information for, and support the development of, sector specific AML/CFT Directives and AML/CFT supervision manuals. Some cooperation and coordination between the FIU and NRB supervisors is occurring under the RCM.
- ICM, led by the Deputy Attorney General, has met on nine occasions since 2019 with meetings focused on development of LEAs and Investigative Authorities' policies and procedures around ML. In addition, operational financial crime (including ML) prevention, cooperation and coordination is via the ICC. The ICC is chaired by the Chief of the Special Government Attorney Office, is attended by the relevant LEAs, and meets on a bi-monthly basis to discuss cases. Limited detail was provided to the AT on the use of this committee with the AT understanding that the ICC is primarily used for OAG to provide guidance to LEAs and Investigative Authorities on their investigations.
- CTM, led by the Secretary, Ministry of Home Affairs, has met on 10 occasions over the period under review with meetings focused on the TF risk scenario, enhancing capacity of Special Bureau of NP, and updating TFS information on agencies' websites. This mechanism is not actively used for TF operational cooperation and coordination.

102. In recognition of the need to enhance TFS for TF and PF implementation, Nepal established the TFSC under the CTM in November 2022. As at the end of the onsite this committee had not met.

103. While PF coordination and cooperation is under the mandate of the CTM, Nepal did not demonstrate that PF related coordination and cooperation is occurring.

### *Private sector's awareness of risks*

104. A public sanitized version of the NRA is available with most FIs and some DNFBPs met by the AT during the onsite visit aware of the NRA. Participation of the private sector, especially banks, throughout the ME process was reasonable (involving the completion of surveys and participation in meetings and discussions on relevant draft modules of the NRA) noting that the NRA does not cover lawyers, notaries or company/trust service providers and that much of the real estate agent sector is not formalised in Nepal. Relevant supervisors and the FIU have undertaken some outreach activities that include coverage of ML/TF risk and the NRA to support risk awareness. However, outreach to DNFBPs has been limited. During the onsite visit, most FIs and DNFBPs met by the AT were in agreement with the identification higher threats and vulnerabilities in the NRA. Most FIs and DNFBPs were of the view that human trafficking was high risk.

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<sup>48</sup>In addition to the four inter-agency cooperation mechanism, the IC led by NRB Deputy Governor coordinated Nepal's 2020 national risk assessment.

*Overall conclusion on Immediate Outcome 1*

105. Nepal completed its second NRA in 2020. DMLI and the FIU have a reasonable understanding of ML risks, but overall Nepal has a varied and developing understanding of ML risks. Key relevant competent authorities such as NP and APF understand Nepal's terrorism/TF risks, but overall Nepal has a limited understanding of TF risk. The NCC is overseeing Nepal's national AML/CFT policies through implementation of the risk-based National Strategy and Action Plan. Nepal is focused on strengthening its AML/CFT legislative frameworks and institutions, building the capacity of relevant competent authorities, and operational activities targeting Nepal's highest threats and vulnerabilities. However, greater resources and prioritisation is needed for the activities of all competent authorities to be fully in line with Nepal's ML/TF risks. Nepal's framework for AML/CFT national coordination and cooperation is well structured and is operating to support policy-related AML/CFT activities, but operational coordination should be enhanced, particularly for TF and PF. Most FIs and some DNFBPs are aware of the NRA and its findings.

106. **Nepal has a moderate level of effectiveness for IO.1.**

### *Key Findings and Recommended Actions*

#### **Key Findings**

##### ***Use of Financial Intelligence (Immediate Outcome 6)***

1. Overall key LEAs are making reasonable use of FIU financial intelligence, developing their own financial intelligence and other information to build evidence and trace criminal proceeds related to ML, higher-risk predicate crimes and TF. Other LEAs and Investigative Authorities rely on human sources to initiate cases and to develop evidence as opposed to adopting a “follow the money approach”.
2. The FIU is making significant efforts to enhance all FIU functions through the ongoing implementation of goAML, which is an integrated database and intelligence analysis system for the secure receipt, analysis and exchange of FIU intelligence and information.
3. The FIU is receiving an annual average of approx. 1,528 STR/SARs with 82% of all STRs/SARs from commercial banks. The high percentage of reporting by commercial banks is consistent with the materiality of Nepal’s financial sector. While reporting from other FI sectors is increasing, it is not consistent with sector risks.
4. Quantity and quality of STR/SARs reporting has increased with the adoption of electronic reporting via goAML; however, PEPs reporting is a challenge for all FIs. To improve FIs reporting, the FIU has updated its guidance and is conducting outreach in cooperation with AML/CFT supervisors.
5. There has been no STR/SARs reporting from DNFBPs, which is not consistent with Nepal’s ML/TF risks.
6. DOC is very rarely providing cross-border cash declarations to the FIU in accordance with the ALPA.
7. The FIU makes an annual average of 293 proactive disseminations to key LEAs and is responding to LEAs’ financial intelligence requests as a matter of priority. FIU analysis is systematic with the FIU having a focus on improving the quality of its financial intelligence products in accordance with its increasing analytical capability in goAML and increasing quantity and quality of FI reporting. The FIU is making limited disseminations related to corruption.
8. The FIU is supporting NRB’s AML/CFT supervision activities by providing information that has triggered AML/CFT onsite supervision visits.
9. The FIU has produced two strategic analysis reports, but their use has been limited.
10. The FIU has 18 MOUs with relevant LEAs and Investigative Authorities, AML/CFT supervisors and other competent authorities to support cooperation and secure information/intelligence exchange. Secure information/intelligence exchange with NP, DMLI, CIAA, DRI and IRD is via goAML. Overall, the FIU, LEAs’ and Investigative Authorities’ cooperation is focused around FIU proactive and reactive disseminations. The FIU has the strongest operational cooperation with NRB’s

AML/CFT supervisors. With other supervisors, cooperation is focused on supporting supervisors' engagements with FIs and DNFBPs on reporting obligations.

### ***ML Investigation and prosecution (Immediate Outcome 7)***

1. The DMLI is the sole investigative agency for ML. Referrals to DMLI by LEAs and Investigative Authorities is not fully consistent with Nepal's risk profile. LEAs and other Investigative Authorities prioritise their own predicate crime cases and require enhanced policies/procedures and SOPs to assist them to identify, refer, and coordinate ML and predicate crime investigations.
2. Gaps in DMLI's special investigation techniques and powers of some other LEAs and Investigative Authorities impacts their ability to identify and/or investigate complex ML.
3. ML activity is not investigated and prosecuted fully in line with Nepal's risk profile, particularly for corruption. DMLI has investigated 58 ML cases with 45 cases prosecuted in the Special Court by OAG (23 are still under prosecution). The vast majority of investigations and prosecutions relate to banking and foreign exchange offences with few cases related to other high-risk predicate crimes. DMLI requires additional human and institutional resources and ML training to increase its focus on complex ML cases of all high risk predicate crimes.
4. Nepal has convicted 32 natural persons of ML with the vast majority of these convictions being for self-laundering related to banking offences and foreign exchange, which are rated high-risk in the 2020 NRA and are predicate crimes of focus in the National Strategy and Action Plan. Nepal has one significant successful ML corruption case. There has been no legal persons convicted of ML with two cases involving legal persons currently under trial
5. Nepal's application of sanctions is not a fully effective deterrent to offenders.
6. Nepal is successfully using non-conviction based confiscation in ML cases where it has been unable to obtain an ML conviction.

### ***Confiscation (Immediate Outcome 8)***

1. While Nepal has high-level confiscation related policy objectives mainly focused on building the capacity of the DMPC, these high-level actions are yet to translate into confiscation results in line with Nepal's risks. DMPC requires skilled resources, internal policy/procedures, and adequate operational cooperation from all LEA and Investigative Authorities and OAG to effectively carry out its function.
2. In the last 5 years, Nepal's total recovered confiscation orders is NPR 2.6 billion (~USD 19.5 million), which is not in line with the level of proceeds generating criminal offending in Nepal. With the exception of ML and TF cases, Nepal does not maintain consolidated confiscation-related information and statistics that links LEAs' and Investigative Authorities' seizing/freezing actions, confiscation orders, and recovery actions. Therefore, the value of confiscation in relation to individual predicate crimes is unclear.
3. Confiscation results are not in line with Nepal's risks. LEAs and Investigative Authorities have not fully adopted a "follow the money approach" and require capacity and skilled resources to identify assets for confiscation. LEAs and Investigative Authorities are primarily freezing/seizing property used in the commission of the offence and items identified during the investigation of the predicate

offence. Nepal did not demonstrate confiscation of property of corresponding value or confiscation cases related to foreign offences or proceeds moved out of Nepal.

4. Where Nepal is unable to obtain an ML conviction, Nepal is successfully using non-conviction based confiscation and has 10 successful cases resulting in confiscation orders for a total of approx. NPR 44.3 million (~USD 332,000).

5. Across LEAs and Investigative Authorities and DMPC significant weaknesses are noted with asset management.

6. The DOC and APF are seizing some smuggled cash and gold/silver at Nepal's border. However, DOC is not systematically implementing Nepal's cash declaration system and effectively identifying non-compliance.

7. For TF, DMLI has seized and frozen funds in Nepal's two TF cases but in Nepal's convicted TF case a confiscation order of approx. NPR 5,100,000 (~USD 38,250) against the principal offender has not been enforced.

### ***Recommended Actions***

#### ***Use of financial intelligence (Immediate Outcome 6)***

- A. The FIU's goAML division should be given priority for available human resources to expedite full adoption and operation of goAML.
- B. DMLI, NP, DRI and CIAA should increase their use of financial intelligence to develop and investigate ML/TF and trace proceeds in predicate crime offending particularly across the high risk predicates crimes of corruption, tax evasion, and human trafficking.
- C. All other LEAs and Investigative Authorities should build their human and institutional capacity, through development of adequate policies/procedures/SOPs, to develop and use financial intelligence in their predicate crime investigations.
- D. The FIU should enhance FIs reporting with a focus on enhancing the quality and quantity of STRs/SARs reporting through additional outreach and guidance, targeting Nepal's higher ML/TF risks (particularly corruption) and FI sectors.
- E. Nepal should enhance FIU reporting by DNFBPs. This should prioritise casinos and higher risk DPMS and real estate agents.
- F. The FIU should enhance its analysis capability with a focus on actionable financial intelligence for corruption, tax evasion, human trafficking and other high risk predicate crimes.
- G. The FIU should enhance its strategic intelligence analysis to further support LEAs target Nepal's high and emerging ML/TF risks; and FIs and DNFBPs to identify and report ML/TF and other criminal offending.
- H. LEAs should provide regular feedback to the FIU on its analytical products to enable the FIU to further increase the quality of disseminations.

- I. All declarations under Nepal's cash declaration system should be shared with the FIU in a timely manner and in accordance with the ALPA.

### ***ML investigation and prosecution (Immediate Outcome 7)***

- A. Nepal should pass the *Amendments to Some Laws relating to AML and Business Promotion Bill*, which aims to give ML investigation authority to the predicate crime investigation agency. When passed, Nepal should expedite implementation and significantly enhance the capacity of impacted competent authorities to undertake their new/modified functions.
- B. All LEAs and Investigative Authorities should prioritise and increase the identification of ML in their cases, particularly high risk predicates related to corruption, tax evasion, human trafficking, narcotics, smuggling (particularly cash and precious metals) and environmental crime.
- C. Nepal should prioritise further training of all LEAs and Investigative Authorities and the development of enhanced policies/procedures and SOPs to assist all LEAs to identify ML; cooperate between investigative agencies to prioritise ML investigations; and coordinate during investigations to efficiently refer cases to the DMLI.
- D. Nepal should prioritise and increase complex ML cases of all higher-risk predicates, such as corruption, tax evasion, human trafficking, narcotics, smuggling, environmental crimes and cases involving legal persons. This should include providing further ML investigation training and additional specialised human and institutional resources to DMLI.
- E. Nepal should prioritise further ML training to OAG and provide additional human and institutional resources to increase OAG's Special Government Attorney Office's focus and capacity to prosecute more complex ML cases of all high risk predicates, particularly corruption cases and cases involving legal persons.
- F. To support efficient judicial processes and the appropriate application of proportionate and dissuasive ML sanctions, Nepal should provide specialised ML training to judges.
- G. Nepal should amend relevant legislation to provide all LEAs and Investigative Authorities with the full range of powers as required under R.31.

### ***Confiscation (Immediate Outcome 8)***

- A. All LEAs and Investigative Authorities should place a greater emphasis (and achieve greater results) on the seizing/freezing and confiscation of proceeds of all higher-risk crimes, including property of corresponding value.
- B. Nepal should ensure all future high-level confiscation policies support a whole of government approach to depriving individuals of their ill-gotten gains while also improving individual agencies' confiscation results. Recovery from offences generating significant proceeds of crime, and crimes consistent with Nepal's risk profile (corruption, tax evasion, human trafficking, and other higher risk crimes and movement of proceeds abroad) should be a clear and explicit focus.

- C. All relevant competent authorities should adopt adequate institutional-level policies to prioritise confiscation, and operational-level procedures/SOPs to support confiscation-related activities.
- D. All relevant competent authorities should record comprehensive statistics on their freezing/seizing and confiscation actions to ensure the full value chain of confiscation-related actions in predicate crime cases is captured accurately.
- E. The DMPC should receive significantly greater human and institutional resources to enable it to fully carry out its mandate of asset management and enforcement of confiscation orders and recovery of assets by the Government of Nepal.
- F. Nepal should provide targeted proceeds of crime seizing, freezing and confiscation training to DPMC, LEAs and Investigative Authorities and OAG.
- G. LEAs and Investigative Authorities and OAG should enhance their cooperation and coordination with DMPC for effective asset management, enforcement of confiscation orders and recovery of assets by the Government of Nepal.
- H. DOC should effectively implement Nepal's cash declaration system and should receive additional human and/or institutional resources to enable DOC to effectively identify non-compliance.

107. The relevant Immediate Outcomes considered and assessed in this chapter are IO6-8. The recommendations relevant for the assessment of effectiveness under this section are R.1, R.3, R4 & R29-32 and elements of R.2, 8, 9, 15, 30, 31, 34, 37, 38, 39 and 40.

### ***Immediate Outcome 6 (Financial intelligence ML/TF)***

108. *Overview of the FIU:* The FIU was established in 2008 and is housed within the NRB. It acts as the national centre to receive, analyse, and disseminate financial intelligence on ML, TF and other offences. The head of the FIU is appointed by the Governor, NRB with three Deputy Directors leading administration, policy and planning, and goAML implementation divisions. The FIU consists of a total of 25 staff with nine full time analytical staff responsible for operational analysis. Five staff from the goAML implementation division support these analysts. Strategic analysis is carried out by the policy and planning division. The organizational structure of the FIU as of December 16, 2022, is below in Image 1. The FIU is legally mandated to be operationally independent and autonomous (see c.29.7). FIU bylaws include provisions relating to the appointment of the Head of the FIU including eligibility criteria and qualifications are met.

109. *goAML<sup>49</sup> implementation:* goAML implementation commenced in 2018. At the time of the onsite visit, all commercial banks, all development banks, all finance companies, 29 of 41 insurance companies, and 16 of 42 remittance companies were reporting via goAML. Most other FIs were in the testing environment. On-boarding of DNFBPs was in the initial stages with four casinos in the

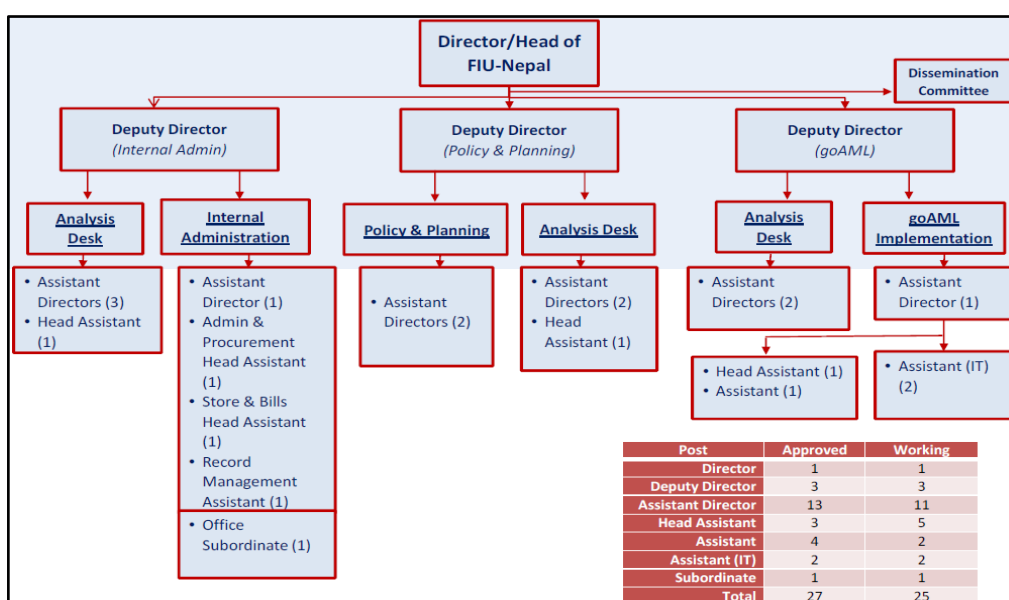
<sup>49</sup> goAML is an integrated database and intelligent analysis system developed by UNDOC with three primary functions: (i) Collection: data is submitted by FIUs from banks and other financial institutions, (ii) Analysis: rule-based analysis, risk-score, and profiling are performed by FIU analysts, and (iii) Data exchange: the exchange of data is: a) between the FIU and the intelligence agencies or juridical authorities (within the framework of the national coordination) and b) between the FIU and regional institutions (eg. through FIU.net) and international ones (eg. Egmont Secure web). More than 60 UNDOC member states are users of goAML. See <https://unite.un.org/goaml/> for additional detail.



production environment and two in the test environment. The FIU’s goAML FAQ webpage is a useful resource and tool to assist with ongoing on boarding of RES. The current allocated staffing for the implementation of goAML is five, with one staff level officer (see Image 1). Overall the implementation of goAML has been slow and given the benefits to all functions of the FIU additional staff may expedite implementation.

110. In FY2021/2022, 57.64% of TTRs and 90.61% of STRs were received through goAML. Reporting is received electronically through goAML from on-boarded FIs and DNFBPs and through the message board function from FIs and DNFBPs in the testing environment. The message board function is also available for the remaining FI and DNFBPs, who currently report manually, to manage security concerns with hard copy reporting. goAML is being used by FIU staff for operational and strategic analysis. NP, DMLI, CIAA, DRI and IRD are integrated into the goAML system for disseminations and information exchange.

**Image 1: Organisational Structure of the FIU**



*Use of financial intelligence and other information*

111. Overall key LEAs are making reasonable use of FIU financial intelligence and can develop their own financial intelligence and other information to establish evidence and trace criminal proceeds related to ML, higher-risk predicate crimes and TF.

112. DMLI conducts a preliminary investigation of all FIU disseminations in order to assess if it meets investigation threshold requirements and prioritisation. The FIU’s 197 proactive disseminations (see Table 10) have resulted in six ML investigations, all of which have resulted in a ML prosecution (see Case Example IO6-1). DMLI is actively requesting financial intelligence from the FIU to support ML investigations (See Table 11). The DMLI relies heavily on the FIU’s reactive disseminations to support their more limited capacity to develop their own financial intelligence. In addition, in Nepal’s two TF cases, the DMLI used FIU financial intelligence to develop the cases (see discussion at IO.9). Overall, the FIU’s financial intelligence is being used to initiate investigations and achieve operational outcomes in DMLI ML and TF cases.

**Case Example IO.6-1: FIU proactive dissemination to DMLI**

In 2018, the FIU proactively disseminated a report concerning forgery of official customs documents to the DMLI. Upon receipt, DMLI identified ML associated with the predicate offence of foreign exchange. Person A forged customs documents in order to establish a business and bank account in Nepal to facilitate transfers and exchange of Indian currency and NPR between India and Nepal. Person A was prosecuted and convicted of ML, resulting in one year imprisonment and a fine of NPR870 million (~USD 6.5 million).

113. NP is making reasonable use of FIU proactive financial intelligence disseminations, with a significant increase in use since 2020. Of the total 541 FIU proactive disseminations (see Table 10), 134 (~25% usage rate) have resulted in predicate crime investigations and 15 prosecutions for banking offences (see Case Example IO.6-2). NP is also using FIU reactive disseminations and developing their own financial intelligence and other information in their predicate crime investigations (Case Example IO.6-3).

114. NP's specialised investigation units namely the Central Investigation Bureau, Narcotics Control Bureau, Anti-Human Trafficking Bureau, Cyber Bureau and Special Bureau have specialized staff with experience and training in forensic accounting and financial investigation. These experienced personnel fuse human and financial intelligence to initiate cases and produce operational outcomes.

**Case Example IO.6-2: FIU proactive dissemination to Nepal Police**

In 2021, the FIU disseminated two STRs to NP relating to the opening of multiple bank accounts by Person A using forged citizenship details. The two STRs identified Person A as opening several bank accounts using the same photo with forged citizenship details of different persons. NP sourced intelligence and information for the case from NRB, Office of the Company Registrar, Tax Authority, Land Revenue Office and financial institutions. In 2022, two persons are currently under prosecution for banking and forgery offences.

**Case Example IO.6-3: Fraud and Organized Crime**

In 2021, NP conducted a fraud and organised crime investigation against a chairman and other members (total 40 persons) of a Cooperative for the embezzlement of funds. NP identified, through the use of other domestic agencies' data (such as NRB, FIU, Office of the Company Registrar, Tax Authority, Land Revenue Office, and FIs), the purchasing of real estate and investments with the Cooperative's funds. The ML investigation was referred to DMLI in late 2021, which is ongoing. In NP's investigation property worth approx. NPR 15 million (~USD 112,500) was seized and approx. NPR 1,517,800,000 (~USD 11.5 million) was frozen. The total claimed amount in the case was approx. NPR 5,675,524,379 (~USD 43 million).

115. CIAA is making reasonable use of FIU proactive financial intelligence disseminations in corruption-related offending with nine CIAA investigations initiated from the FIU's 40 proactive disseminations (~23% usage rate) (see Table 10). Two of these investigations have resulted in

prosecutions with one case involving the prosecution of seven defendants (see Case Example IO.6-4). The CIAA also uses financial information from sources such as the NVC<sup>50</sup> to initiate cases.

#### Case Example IO.6-4: FIU dissemination to CIAA

In 2018, the FIU disseminated financial intelligence to CIAA based on the suspicion of amassed property acquired from illegal activities. The CIAA's investigations concluded the amassed property was acquired and identified elements of ML. Seven defendants were prosecuted for corruption offences with a claimed amount of NPR 140 million (~USD 1 million). Post the onsite, the defendants were convicted with sentencing yet to be determined.

116. DRI is making limited use of FIU proactive financial intelligence disseminations and reactive disseminations in tax evasion and abuse of foreign exchange matters. DRI has conducted a preliminary investigation of all 688 FIU proactive disseminations; however, none have progressed to investigations. Whilst it is difficult for the DRI to identify the revenue leakage offence through FIU proactive and reactive disseminations, there is a continued increase in knowledge and understanding of financial intelligence amongst investigating officers. The DRI is using tax information (mainly from the IRD) to initiate its investigations and develop its cases.

117. Other LEAs and Investigative Authorities<sup>51</sup> primarily rely on human sources to initiate cases and develop evidence. Financial transactions and records obtained during investigations are rarely traced by other LEAs and Investigative Authorities to identify the movement of funds or to uncover the source and destinations of the funds. LEAs and Investigative Authorities request information from the FIU to inform their investigations on the predicate offence and secondly to identify associated financial crime activity if and when movement of funds are identified in the investigation (see Table 11). The other LEAs and Investigative Authorities lack capacity to develop and use financial intelligence and have not adopted a “follow the money approach”.

#### *STRs received and requested by competent authorities*

118. In the period under review, the FIU has received a total of 7,641 STR/SARs<sup>52</sup> with ~82% of all STRs from commercial banks (see Table 7). The high percentage of reporting by commercial banks is consistent with the materiality of Nepal's financial sector: commercial banks account for approx. 65% of financial sector assets and all transactions above NPR 1 million (~USD 7,500) are required to be conducted through banking channels. The increase in commercial bank STR/SARs reporting since 2020 is a direct result of the change to goAML reporting with 2021/2022 reporting more closely aligned to the risk profile of the sector. STR/SAR reporting by remittance companies and development banks is also increasing; however, reporting from all other FIs is low (or not at all) and not consistent with the risks of the individual sectors. There has been no STR/SARs reporting from DNFbps, which is not consistent with Nepal's ML/TF risks.

<sup>50</sup> National Vigilance Centre is responsible for monitoring and supervising property and income of individuals in public posts; technical auditing for maintaining quality of construction works; and conducts supervision to promote quality of services of government offices and public organisations.

<sup>51</sup> Of the 138 FIU disseminations to the IRD, only one has resulted in an investigation. As the IRD is focused on the administrative tax revenue/ collection, any criminal element is referred to the DRI.

<sup>52</sup> STRs include detailed information about transactions that are suspected to violate the law or appear to be suspicious. A SAR includes details on general behaviour of a customer that appear suspicious on an attempted or failed transaction. See <https://www.nrb.org.np/contents/uploads/2021/08/STR-SAR-Guidelines-July-2021.pdf> for additional detail.

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**Table 7 – STR/SARs Reporting**

	2017/18	2018/19	2019/20	2020/21	2021/22	Total	Total %
Commercial Banks	660	910	924	1403	2380	6277	82.29%
Remittance Companies	194	263	52	29	187	725	9.50%
Development Banks	23	135	93	64	119	434	5.69%
Insurance Companies	2	31	4	3	9	49	0.64%
Securities Companies	2	3	14	18	8	45	0.59%
Finance Companies	3	8	1	12	19	43	0.56%
Cooperatives	2	1	2	0	3	8	0.10%
Microfinance institutions	0	0	0	3	44	47	0.62%
All other FIs	0	0	0	0	0	0	0
All DNFBPs	0	0	0	0	0	0	0
<b>Total</b>	<b>886</b>	<b>1351</b>	<b>1090</b>	<b>1532</b>	<b>2769</b>	<b>7628</b>	<b>100%</b>

Note: In addition, two suspicious information reports provided by NRB Foreign Exchange Management Department and 11 from Land Revenue Offices.

119. While STR/SARs reporting has increased, the quality of STRs/SARs related to higher-risk predicate crimes is not fully commensurate with Nepal's risks. Data provided to the AT shows improvement in STR/SAR reporting on suspicion of some higher-risk predicate crimes, but also shows FIs are having challenges in identifying PEPs and corruption related reporting (see discussion in IO.4).

120. To improve STR/SAR reporting by FIs and DNFBPs, the FIU issued updated *Suspicious Transactions Reporting & Suspicious Activity Reporting Guidelines* in July 2021. These guidelines set out reporting requirements, and both general and sector-specific indicators. The FIU with AML/CFT supervisors has also undertaken various outreach sessions for FIs and DNFBPs focusing on reporting and use of goAML; feedback on quality of STRs/SARs received; and trend and typologies of ML and various predicate offences (see Table 8).

**Table 8- Feedback from FIU-Nepal on STR/SAR/TTR to REs**

Year	Message board communication	Feedback on Production Env.	Feedback on Test Env.	Phone call communication by Analyst to Compliance officers (approx.)	Individual meetings with compliance officers in special cases	Outreach program (general feedback)
2017/18	N/A	N/A	N/A	275	-	9
2018/19	N/A	N/A	N/A	250	-	6
2019/20	402	4315	0	260	-	2
2020/21	901	7948	3	215	-	6
2021/22	3428	5571	105	355	11	18
2022/2023	1392	5927	148	195	4	6
<b>Total</b>	<b>6123</b>	<b>23761</b>	<b>256</b>	<b>1550</b>	<b>15</b>	<b>47</b>

121. The FIU receives an annual average of 3,368,985 TTRs (see Table 9) with the vast majority received from the banking sector mainly from commercial banks. This is consistent with the materiality of Nepal's financial sector. The FIU and goAML break down TTR reporting into sectoral groups to assist with analysis and prioritisation for disseminations. The FIU manual provides guidance on how to conduct analysis in relation to both TTRs and STR/SARs, with TTRs regularly reviewed and analysed to inform STR/SAR, operational and strategic analytical reporting. Similar to STR/SARs, goAML reporting has positively impacted quantity of reporting from FI sectors. TTR reporting by remittance companies is not in line with Nepal's risks. The FIU issued *Guidelines for Threshold Transactions Reporting* in 2020, which has resulted in some DNFBPs submitting some TTRs.

**Table 9- TTR reporting**

	2017/18	2018/19	2019/20	2020/21	2021/22	Total
BFI*s*	4,452,585	5,181,200	2,256,163	1,292,625	1,384,728	<b>14,567,301</b>
Cooperatives	8,885	11,447	44,360	234,517	274,113	<b>573,322</b>
Insurance companies	89,966	1,24,789	139,015	155,344	195,305	<b>579,630</b>
Securities companies	34,783	33,912	32,846	306,643	532,343	<b>940,527</b>
Remittance Companies	-	-	-	-	36	<b>36</b>
Money Changer	-	-	-	-	3,939	<b>3,939</b>
Citizen Investment Trust	-	-	-	-	9,818	<b>9,818</b>
Others	7,598	13,601	12,977	9,917	1,468	<b>45,561</b>
<b>Total</b>	<b>4,593,817</b>	<b>5,240,160</b>	<b>2485,361</b>	<b>1,999,046</b>	<b>2,401,750</b>	<b>16,720.134</b>

Note: (i) 2020/21 production environment and electronic reporting via goAML begins and (ii) since BFIs have started reporting TTRs through goAML software, the way Nepal records linked TTRs has changed resulting in a decrease in the TTR count in 2020/21. This has not impeded the analysis capabilities of the FIU or use of TTRs. \*BFI includes commercial banks, development banks, finance companies and micro-finance institutions.

122. As discussed in IO.8, DOC is not systematically implementing Nepal's cash declaration system as the number of declarations in the period under review is very low. The 167 declarations made to DOC between 2017 and 2022 were reported to the FIU in seven tranches, which is not in accordance with the ALPA.

#### *Operational needs supported by FIU analysis and dissemination*

123. FIU operational analysis is conducted in accordance with its manual. Analysis is prioritised based on indicators of high risk predicate crimes, and searches of third party databases from Government and public sources are conducted as part of the analytical processes. Before the FIU disseminates financial intelligence to LEAs, a dissemination committee reviews (as required) and determines if the analysis meets a criteria for dissemination. The intent of the dissemination committee is to ensure actionable intelligence and relevant information on the criminal element are appropriately identified to support LEA investigations. The committee's procedures do not impede the FIU's ability to expeditiously disseminate its analysis based on circumstances that allow for the review to be conducted as required and for a call/ notification to be made for immediate release to investigators based on priorities and risks.

124. The FIU makes an annual average of 293<sup>53</sup> proactive disseminations to LEAs with the majority to NP, DRI and to a lesser extent DMLI (see Table 10). Most of these disseminations were associated with banking offences, fraud, tax offences and to a lesser extent ML. The FIU is focused on improving the quality of its proactive disseminations by; (i) upskilling analysis staff in accordance with its increasing analytical capability in goAML, (ii) enhancing STR/SARs reporting, and (iii) increasing cooperation with relevant Government agencies. However, the FIU is making very few proactive disseminations to the CIAA and/or on corruption. The FIU is also making very few proactive disseminations on environmental crime.

**Table 10- FIU-Nepal proactive disseminations**

Agencies	2017/18	2018/19	2019/20	2020/21	2021/22	Total
<b>LEAs</b>						
DMLI	44	27	39	26	61	<b>197</b>
NP	78	36	119	98	210	<b>541</b>
DRI	144	107	200	75	162	<b>688</b>
CIAA	8	2	15	2	13	<b>40</b>
<b>Other Authorities</b>						
IRD	51	42	26	3	16	<b>138</b>
Department of Co-operatives	0	0	18	1	2	<b>21</b>
Nepal Insurance Authority	0	0	0	0	3	<b>3</b>
SEBON	0	0	0	0	5	<b>5</b>
Social Welfare Council	0	0	0	0	3	<b>3</b>
NRB, BFIRD	0	0	0	0	11	<b>11</b>
NRB, BSD	0	0	0	0	29	<b>29</b>
NRB, FISD	0	0	0	0	9	<b>9</b>
NRB, Forex Dept. (FEMD)	0	0	0	0	2	<b>2</b>
NRB, PSD	0	0	0	0	30	<b>30</b>
NRB, NBFISD	0	0	0	0	4	<b>4</b>
Others**	19	2	2	7	-	<b>30</b>
<b>Total</b>	<b>344*</b>	<b>216*</b>	<b>419*</b>	<b>212*</b>	<b>560*</b>	<b>1751</b>

Note: One STR/SAR can be disseminated to more than one agency. Total number of STR disseminated to LEAs is 312 for 2017/18, 207 for 2018/19, 333 for 2019/20, 212 for 2020/21 and 560 for 2021/22 including multiple counting. \*\*Others include BSD- NRB, BFIRD- NRB, Social Welfare Council until FY 2020/21.

125. The FIU is actively supporting LEAs through reactive disseminations. The FIU has MOUs with LEAs and Investigative Authorities. Under these MOUs, the FIU shares all available requested information in line with security principles. The FIU has responded to all 435 LEAs' requests for information (RFIs) in the period under review (see Table 11).

**Table 11- Requests for Information sent to the FIU**

LEAs	2017/18	2018/19	2019/20	2020/21	2021/22	Total
<b>DMLI</b>	0	25	162	115	56	<b>358</b>

<sup>53</sup> Nepal averages 350 disseminations annually to all LEAs, other investigative authorities and other competent authorities.

<b>CIAA</b>	0	3	3	0	0	<b>6</b>
<b>NP</b>	0	9	21	14	16	<b>60</b>
<b>DRI</b>	0	1	2	0	0	<b>3</b>
<b>IRD</b>	0	3	1	1	0	<b>5</b>
<b>Ministry of Defence</b>	0	2	0	0	0	<b>2</b>
<b>OAG</b>	0	0	1	0	0	<b>1</b>
<b>Total</b>	<b>0</b>	<b>43</b>	<b>190</b>	<b>130</b>	<b>72</b>	<b>435</b>

126. Strategic analysis is conducted in accordance with the FIU's manual with two strategic analysis reports produced in the period under review. Both strategic analysis reports are exclusively focused on trend analysis of annual reporting to the FIU. The FIU has sought input on an informal basis and at bilateral meetings which it uses to inform its strategic report findings. All LEAs and supervisors are made aware of the contents of the reports (the reports are also published on the FIU's website) and some interaction programs are held on an ad hoc frequency to increase awareness of FIU analytical products.

127. The FIU has MOUs with all FI AML/CFT supervisors except the NIA. The FIU is supporting NRB's AML/CFT supervision activities by providing information that has triggered 'special inspections' of nine commercial banks (see Case Example IO.3-1), two finance companies, and one remittance company (see IO.3, Core Issue 3 for detailed discussion). All other AML/CFT supervisors' risk-based AML/CFT supervision functions are not sufficiently mature for the FIU to engage with in a similar way. The FIU's engagement with these supervisors has been focused on supporting them enhance reporting in their respective sectors (see IO.3 for detailed discussion).

#### *Cooperation and exchange of information/financial intelligence*

128. The FIU, together with the NCC, plays a significant role in providing momentum and drive for implementation of AML/CFT in Nepal including the FIU's active participation as a member of all AML/CFT cooperation and coordination mechanisms (see details in IO.1 and R.2). The FIU is actively supporting policy-related information exchange and cooperation in these mechanisms, but as discussed in IO.1, operational cooperation through these mechanisms is limited.

129. The FIU has 10 MOUs with LEAs and Investigative Authorities including NP, DMLI, DRI and DOC that are used as the basis for secure information exchange and cooperation. Operational cooperation and information exchange between the FIU, LEAs and Investigative Authorities is focused around FIU financial intelligence disseminations and responses to RFIs, including international cooperation requests (see IO.2 for detailed discussion).

130. The FIU has eight MOUs with AML/CFT supervisors including with all core principle FI supervisors and supervisors of the real estate, DPMS and casino sectors. These MOUs provide for secure information exchange and cooperation. The FIU has strong working relationships with NRB supervisors and is supporting NRB's AML/CFT outreach activities, particularly to commercial banks. As above, the FIU has provided information to the NRB that has triggered 'special inspections'. Information and cooperation with other AML/CFT supervisors is focused on supporting engagement with their sectors on FIU reporting obligations.

131. Physical and data security of the FIU is adequate in accordance with the FIU's and NRB's policies and procedures. goAML provides a secure electronic channel for delivery and storing of FIU data, maintaining confidentiality, and the integrity of the information. Disseminations to NP, DMLI, CIAA, DRI and IRD are made via goAML with these agencies able to securely engage with the FIU via the

goAML message board function. The implementation of goAML has significantly increased the trust and confidence of FIU and LEA information exchanges. Disseminations to agencies not on goAML are via encrypted email or “sealed” envelopes with controls in place to ensure the security and confidentiality of disseminations.

3

### *Overall conclusion on Immediate Outcome 6*

132. The FIU has good resources, strong operational independence, policies and procedures for all its functions and MOUs with relevant agencies. It is prioritising and making significant efforts to improve FI and DNFBP reporting and its financial intelligence analysis products, primarily through the on-going implementation of goAML. The implementation of goAML is the FIU’s strength which has positively impacted STR/SAR reporting with the high percentage of reporting by commercial banks consistent with the materiality of Nepal’s financial sector. Reporting by other key FIs is low but increasing. There has been no reporting from DNFBPs, which is not consistent with Nepal’s ML/TF risks. Overall, key LEAs make reasonable use of the FIU’s financial intelligence and develop their own financial information/intelligence for evidence and tracing of criminal proceeds related to ML, higher-risk predicate crimes and TF. The FIU’s financial intelligence is contributing to operational outcomes and has triggered NRB onsite inspections.

133. **Nepal has a moderate level of effectiveness for IO.6.**



### *Immediate Outcome 7 (ML investigation and prosecution)*

134. *ML investigation authority and overview of the DMLI:* DMLI is the sole ML investigator in Nepal and can delegate its ML investigative authority to other LEAs and Investigative Authorities. The headquarters is in Kathmandu and DMLI is staffed by personnel from across six different Government agencies, totalling approx. 37 investigators. DMLI has no regional offices. DMLI investigator positions are filled on a two-year rotational basis by staff from the NP, OAG, NID, and other LEAs and Investigative Authorities. ML preliminary investigations can be initiated upon a complaint from the public, a referral from any Government agency, FIU dissemination, internally generated information/intelligence, or a foreign request. Once an element of ML is identified by LEA investigators of the predicate offence, a referral is made to the DMLI that includes any evidence of the predicate offence. The agency conducting the predicate offence investigation has no further role in the ML investigation unless requested by the DMLI. Upon reasonable grounds of suspicion and approval from the DMLI Chief, an ML investigation is initiated. The DMLI has MOUs with all LEAs and Investigative Authorities and other relevant competent authorities, which facilitate cooperation and information exchange.

135. *ML prosecution and overview of OAG:* There are a total of 520 Government attorneys employed at the OAG. ML cases are prosecuted in the Special Court by the OAG's Special Government Attorney Office, which has a total of 20 prosecutors. Cases are assigned based on availability and previous experience with the ML-related skills and experience of prosecutors improving through some ongoing training.

### *ML identification and investigation*

136. The DMLI receives approx. 50 referrals per year from LEAs and Investigative Authorities mainly from NP with few referrals from DRI and in relation to environmental and border-related crimes. There have been 63 referrals from the CIAA in relation to corruption (see Table 12). Overall, referrals to the DMLI are not fully consistent with Nepal's ML risks. All LEAs and Investigative Authorities would benefit from enhanced policies/procedures and SOPs to assist them to identify ML elements in predicate crime cases, refer matters to DMLI, and coordinate ML and predicate crime investigations. LEAs and Investigative Authorities prioritise their own predicate crime actions. There are also gaps in some LEAs and Investigative Authorities' powers for the production of records and special investigative techniques (see R.31), which impacts on their ability to identify and refer complex ML cases. Ongoing ML training to all LEAs and Investigative Authorities would enhance their ability to identify elements of ML and increase the number and quality of referrals to the DMLI, in line with Nepal's risks.

137. The DMLI conducts a preliminary investigation of the vast majority of complaints/referrals and follows its guidelines to prioritise cases on the basis of risk and other factors. Of its 915 preliminary investigations, 58 ML investigations have been undertaken in the last 5 years. Preliminary investigations determine if complaints/referrals meet ML investigation threshold requirements and prioritisation. DMLI uses its internal guideline to prioritise complaints/referrals on the basis of risk; evidence and information provided by the referring agency including value of offending; and availability of resources to investigate. Six ML investigations were triggered by FIU disseminations, with the remaining investigations triggered by LEA referrals mainly from NP. These referrals largely relate to banking and foreign exchange offences, which are rated high risk in the 2020 NRA and are predicate crimes of focus in the National Strategy and Action Plan. There has been no ML cases triggered by international cooperation. While the overall number of ML investigations is low, the vast majority of investigations lead to ML prosecutions. DMLI's ML investigation procedures and manuals are currently

in development, and DMLI would benefit from additional human and institutional resources and ML training to increase its focus on complex ML cases of all high risk predicate crimes.

**Table 12: LEA referrals to DMLI**

	2017/18	2018/19	2019/20	2020/21	2021/22	Total
CIAA	7	15	18	3	20	63
Nepal Police	24	25	42	39	29	159
DRI and IRD	1	4	5	8	2	20
Environmental Crime related LEAs	1	-	0	0	0	1
Border Crime related LEAs (DOC and APF)	2	4	2	0	1	9
<b>Total</b>	<b>35</b>	<b>48</b>	<b>67</b>	<b>50</b>	<b>52</b>	<b>252</b>

138. The ICC supports a coordinated approach to financial crime (including ML) investigations and prosecutions. The ICC is chaired by the Chief of the Special Government Attorney Office, is attended by the relevant LEAs and Investigative Authorities, and meets on a bi-monthly basis to discuss cases. Limited detail was provided to the AT on the use of this committee with the AT's understanding that the ICC is primarily used for OAG to provide guidance to LEAs on their investigations.

*Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies*

139. ML activity is not investigated and prosecuted fully in line with Nepal's risk profile. As described in IO.1, Nepal's NRA 2020 identified corruption, tax evasion, and financial sector crimes (such as hundi, banking and foreign exchange offences) as high risk. The AT also views human trafficking as high risk, and narcotics, border-related offences and environmental crimes as higher-risk. Nepal has investigated 58 ML cases and prosecuted 45 cases (23 cases in the prosecution stage) in the period under review. Nepal is prioritising ML cases related to banking and foreign exchange offences. While banking and foreign exchange are identified by Nepal as high risk and are a priority focus under the National Strategy and Action Plan, DMLI's cases primarily relate to low value offending.

140. There are limited ML investigations and prosecutions of Nepal's other high-risk predicate crimes. Two current ML prosecutions are related to narcotics (see Case Example IO7-1), and four ML cases (three cases currently under trial and one conviction) relate to tax evasion. There are four ML cases (three cases currently under trial and one conviction) related to cash smuggling, and no ML investigations or prosecutions related to human trafficking and environmental crime.

**Case Example IO7-1: Current narcotics predicate ML case**

In 2020, OAG initiated a ML prosecution related to narcotics offences. DMLI were referred a case from the FIU for ML investigation based on suspicious bank transactions. The case involves two primary offenders and 5 ancillary offenders with ML via the use of accounts and land purchased in family members' names. DMLI's ML investigation identified approx. NPR 6.4 million (~USD 48,500) in proceeds from narcotics sales. The case is currently under prosecution.

141. There has been one ML corruption case. This is a significant case in the context of Nepal due to the number of defendants and the value of offending (see Case example IO7-2). However, given the corruption risks facing Nepal, Nepal does not pursue ML related corruption cases fully in line with its risks. The DMLI does not conduct an ML investigation into CIAA referrals where seizure of assets in the corruption predicate offence have already occurred due to the perception that there are no further assets left to target.

#### Case Example IO7-2: Corruption Case

In 2018 the defendant was charged with homicide, offences relating to arms and ammunition by Nepal Police and concurrently the CIAA also prosecuted the defendant for earning tainted property during the period of time as a member of constituent assembly and appointment as State Minister.

In 2018, the case was referred to DMLI for ML. In 2020, the Special Court convicted the primary defendant of ML with funds laundered through several companies. Six associates were convicted of ML ancillary offences. The primary defendant was fined NPR 280 million (~USD 2.1 million) and imprisoned for five years and confiscation of NPR 140 million (~USD 1.05 million relating to the ML, which has not been enforced). Sanctions applied to the six ML ancillary convictions range from 1.8 to 2.6 years imprisonment.

#### *Types of ML cases pursued*

142. Nepal is primarily pursuing natural person self-laundering ML cases. Nepal has investigated 58 ML cases and prosecuted 45 cases (23 cases in the prosecution stage) with 32 natural persons convicted of ML (10 convictions for ML ancillary offences) over the period 2017 to 2022 (5 in 2017, 12 in 2018, 3 in 2019 and 12 in 2020). Of these natural persons convicted of ML, 13 relate to self-laundering and one is for third party ML. Due to the structural arrangement of ML and predicate crime prosecutions in Nepal, the vast majority of ML and predicate offences are prosecuted independently.

143. Of the 23 prosecutions currently before the court dating back to 2019<sup>54</sup> (2 in 2019, 8 in 2020, 6 in 2021, and 7 in 2022), three cases relate to foreign predicates, four cases relate to third party ML and the remaining cases relate to self-laundering. Nepal has two cases involving legal persons currently under trial.

#### *Effectiveness, proportionality and dissuasiveness of sanctions*

144. Nepal's application of sanctions is not a fully effective deterrent to offenders. Of the 32 natural persons convicted of ML, the average term of imprisonment is 1.8 years and the average fine is approx. NPR 16,650,000 (~USD 124,875). All fines in ML cases have been enforced. The highest imprisonment term and fine is in Nepal's corruption case with the primary offender receiving 5 years and NPR 280 million fine (~USD 2.1 million). Prison terms imposed are at the low end of the ML sanctioning range, which is 2 to 10 years (see R.3)<sup>55</sup>. Fines are more dissuasive given the context of Nepal. Overall, sanctions applied are not dissuasive because of the type of offending prosecuted is of low value; gravity of the offences prosecuted is not largely significant; and ML specific knowledge and understanding of the judiciary is not expansive. No legal persons have been convicted of ML.

<sup>54</sup> The length of time to prosecute the cases is reflective of the general efficiency of Nepal's judicial system - As discussed in Chapter 1 there are structural challenges in Nepal's judicial system that impact on its efficiency.

<sup>55</sup> The average sanction is less than current imprisonment terms in the ALPA because it includes ancillary offences. Anti-money laundering and counter-terrorist financing measures in Nepal 2023

### *Use of alternative measures*

145. Nepal is successfully using non-conviction based confiscation as an alternative measure. Where the prosecution is unable to achieve an ML conviction, and where the assets held by the defendant are disproportionate to their source of income, non-conviction based confiscation is being sought. Nepal's 10 successful non-conviction based confiscation cases have resulted in the confiscation orders for a total of approx. NPR 44.3 million (~USD 332,000) with approx. NPR 40.1 million (~USD 301,000) recovered in the last five years.

### *Overall conclusion on Immediate Outcome 7*

146. The DMLI is the sole ML investigative agency in Nepal. Referrals to DMLI are not fully consistent with Nepal's risk profile, and DMLI would benefit from additional human and institutional resources to initiate and investigate more high risk predicate crime ML cases in line with Nepal's risks. Out of the 58 cases, the AT acknowledges that Nepal is converting a high percentage of ML investigations to prosecutions with 45 prosecution cases and 32 natural persons convicted of ML. The vast majority of these convictions are self-laundering related to banking offences, which are rated high-risk in the 2020 NRA and are predicate crimes of focus in the National Strategy and Action Plan. The AT has placed weight on these successful outcomes. However, Nepal has few ML investigations, prosecutions, and convictions for other high-risk predicate crimes. The AT acknowledges convictions in one ML corruption case, and that several higher value prosecutions related to tax evasion, fraud and foreign exchange are ongoing. Sanctions applied in the ML convictions are not a fully effective deterrent to offenders. Where Nepal is unable to obtain an ML conviction, Nepal is successfully using non-conviction based confiscation and has 10 successful cases resulting in confiscation orders for a total of approx. NPR 44.3 million (~USD 332,000).

147. **Nepal has a moderate level of effectiveness for IO.7.**

**Immediate Outcome 8 (Confiscation)***Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective*

148. Nepal is pursuing confiscation as a high-level policy objective, but this is yet to translate into institutional-level policies and procedures by all LEAs, and confiscation results in line with Nepal's risks. Nepal's National Strategy and Action Plan includes two objectives related to confiscation. Both objectives include several strategies with corresponding actions to be completed by relevant competent authorities. Progression on the confiscation-related activities by relevant competent authorities is slow.

149. In accordance with the National Strategy and Action Plan, a significant focus for Nepal is building the capacity of the DMPC within the Ministry of Home Affairs. The DMPC is responsible for the management of assets subject to freezing/seizure and enforcement of confiscation orders by the court. The DMPC has approx. 10 operational staff and would benefit from significant additional skilled resources; adequate internal policies/procedures/SOP covering all its functions; and enhanced operational cooperation from all LEAs and Investigative Authorities and OAG to effectively carry out its functions.

*Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad*

150. LEAs and Investigative Authorities can carry out provisional measures such as freezing and seizing under their prevailing/specific law(s) and POCA, or under NCrPC as a secondary option. While the POCA allows provisional measures related to proceeds of crime, in practice, most LEAs and Investigative Authorities (except DMLI, DRI and CIAA) are only freezing/seizing property generated from or used in the commission of the offence and items identified during the investigation of the offence (i.e. cash, real estate, bank accounts and narcotics). The DRI and CIAA pursue assets that are considered to be proceeds of crime for corruption and tax offending. LEAs' and Investigative Authorities' restricted abilities in identifying criminal proceeds, instrumentalities and property of equivalent value is attributable to the limited skilled capacity and availability of special investigative techniques (see R.31). Overall, LEAs and Investigative Authorities have not fully adopted a "follow the money approach" in their investigations and require greater skilled resources to identify assets for confiscation.

151. Nepal is focused on fines and does not pursue the full confiscation of assets related to ML, TF and predicate offences. Nepal has not demonstrated exercising powers for the freezing/seizing and confiscation of property of corresponding value. When ML, TF or the predicate offence is prosecuted, the details of any assets used in the commission of the offence, or any assets identified during the investigation are presented to the court. The court issues a confiscation order based on the value of the offending<sup>56</sup>.

152. Confiscation orders were previously enforced by the JED, but this function moved to the DMPC mid-2020<sup>57</sup>. There is very limited cooperation and coordination between LEAs, Investigative Authorities, OAG, JED and DMPC for the enforcement of confiscation orders. While the DMPC is empowered under the POCA to manage proceeds or instrumentalities seized/frozen, this function is being undertaken by LEAs and Investigative Authorities. LEAs and Investigative Authorities require

<sup>56</sup> As discussed in R.3 and R.4 Nepal refers to this as the 'Claimed Amount' but there is no definition of the term in the ALPA, POCA or other legislation.

<sup>57</sup> JED is now only responsible for the recovery of fines.

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adequate policies and procedures and/or skilled resources to manage frozen/seized property and property subject to confiscation.

153. In the last five years, Nepal has received in its consolidated revenue account approx. NPR 13 billion (~USD 97.7 million) as payment of fines and recovery of confiscation orders (see Table 13). Nepal indicated that more than 80% of this amount is the payment of fines. Therefore, approx. NPR 2,606,129,833 (~USD 19.5 million) relates to the recovery of confiscation orders, which is considered low and not consistent with the value of criminal offending in Nepal.

**Table 13: Value of deposits (fines and asset recovery) in Nepal's consolidated revenue account**

Year	Approx. Value NPR	Approx. USD Value
2017/2018	2,399,113,772.00	18 million
2018/2019	3,921,563,843.00	29.4 million
2019/2020	2,514,636,094.00	18.9 million
2020/2021	1,911,591,462.00	14.3 million
2021/2022	2,283,743,994.00	17 million
<b>Total</b>	<b>13,030,649,166.00</b>	<b>97.7 million</b>

154. Nepal has not confiscated any assets related to a foreign predicate offence or assets moved abroad.

155. *Non-conviction based confiscation*: Where the prosecution is unable to achieve an ML conviction, and where the assets held by the defendant are disproportionate to their source of income, non-conviction based confiscation is being sought (see Case Example IO8-1). The DMLI conducts the non-conviction based confiscation investigations and a reverse onus of proof is placed on the defendant. Nepal has ten non-conviction based confiscation cases in relation to ML. The total value of confiscation orders in these cases is approx. NPR 44.3 million (~USD 332,000) with approx. NPR 40.1 million (~USD 301,000) recovered.

#### **Case Example IO8-1: Non-conviction based confiscation**

In 2018, OAG brought an ML case related to banking offences. The prosecution failed to prove ML and the defendant failed to prove the funds seized by DMLI were from a legitimate source. The court imposed non-conviction based confiscation order for the value of ~NPR 5 million (~USD 37,500.00), which has been enforced.

156. LEAs' and Investigative Authorities' freezing and/or seizing actions are discussed below in detail. Except for ML, TF and non-conviction-based confiscation cases, Nepal does not maintain consolidated confiscation-related information and statistics that links LEAs' and Investigative Authorities' seizing/freezing actions, confiscation orders imposed by the court, and enforcement actions. Therefore, the full value chain of confiscation-related actions for predicate crimes is unclear.

157. DMLI's 37 ML investigators conduct all asset tracing and freezing/seizing actions during ML and TF investigations. DMLI requires enhanced policies, procedures and SOPs and adequately skilled human resources to trace, freeze/seize, and manage assets. DMLI is freezing/seizing cash, real estate, bank accounts, and vehicles during ML investigations. Over the period under review, DMLI froze/seized an estimated value of NPR 6.9 billion (~USD 52 million) in ML cases with confiscation orders equalling NPR 309 million (~USD 2.3 million) and NPR 56.1 million (~USD 531,000) recovered by the

enforcement of confiscation orders (see Table 14). The deficiencies highlighted above are the key factors for the low recovery rate.

**Table 14: DMLI's confiscation related actions in ML cases**

	Approx. and estimated value of freezing in NPR	Approx. and estimated value of seizing in NPR	Approx. value of Confiscation Orders in NPR	Recovered amount in NPR
2017-18	106,038,000.00 (~USD795 million)	44,900,000.00 (~USD337,000.00)	31,216,412.00 (~USD 234,000.00)	Nil
2018-19	1,235,6000,000.00 (~USD 93 million)	36,121,000.00 (~USD 271,000.00)	190,501,716 (~USD 1,429,000.00)	48,300,000.00 (~USD362,000)
2019-20	3,263,300,000.00 (~USD24 million)	30,600,000.00 (~USD230,000.00)	10,544,000 (~USD 79,080.00)	Nil
2020-21	2,006,656,015.00 (~USD15 million)	66,800,000.00 (~USD500,000.00)	1,800,050 (~USD 13,500)	2,000,000.00 (~USD15,000)
2021-22	75,176,720.00 (~USD564,000)	75,176,720.00 (~USD564,000.00)	75,176,720 (~USD 564,000)	20,538,195 (~USD154,000)
<b>Total</b>	<b>6,686,770,735.00</b> <b>(~USD50 million)</b>	<b>253,597,720.00</b> <b>(~USD1.9 million)</b>	<b>309,238,898.00</b> <b>(~USD2,319,291)</b>	<b>70,838,195</b> <b>(~USD531,000)</b>

158. NP's asset tracing, freezing and seizing actions are undertaken by the relevant investigation units by specialized staff who have training in forensic accounting and financial investigation experience. NP requires adequate policies, procedures and SOPs for asset tracing, freezing, seizing and asset management and enhanced specialised asset management systems or facilities.

159. NP has frozen/seized an estimated total value of NPR 4 billion (~USD 31 million) (see Table 15). This estimated value relates to property used in the commission of the offence, and items identified during the investigation of the predicate offence such as cash, real estate, bank accounts and illegal goods (see Case Example IO.6-3). For the value of seizures in narcotics cases, it also includes the value of the narcotics seized. Nepal could not provide data on related confiscation orders or their enforcement.

**Table 15: NP's freezing/seizing actions in predicate crime cases**

	Predicate Crime	Estimated value of freezing in NPR	Estimated value of seizing in NPR
2017-2022	Human Trafficking	50,000.00 (~USD375.00)	50,000.00 (~USD375.00)
	Narcotics	3,208,537.95 (~USD24,000.00)	3,597,496,668.98 (~USD27,000.00)
	Fraud	110,141,454.34 (~USD826,000.00)	21,346,833.05 (~USD 160,000.00)
	Bank Offences	Nil	98,874,055 (~USD 741,000.00)
	All other predicate crimes	82,837,954.00 (~USD 621,000.00)	178,880,515.62 (~USD1,341,603.00)
	<b>Total</b>	<b>196,237,946.29</b> <b>(~USD 1,471,784.00)</b>	<b>3,896,648,072.65</b> <b>(~USD29,614,525)</b>

160. CIAA's Division for the Investigation and Valuation of Property (Division 6) has approx. 14 specialised staff responsible for confiscation-related actions of CIAA, primarily in relation to amassed

property cases<sup>58</sup>. CIAA requires adequate policies, procedures and SOPs in relation to asset tracing, freezing, seizing and enhanced specialised asset management systems or facilities.

161. Over the period under review, CIAA has frozen a total of NPR 2,306,613,223 (~USD 17.5 million) in amassed property cases and is not freezing/seizing any property during its other corruption-related investigations (see Table 16). Nepal could not provide data on related confiscation orders or their enforcement.

**Table 16: CIAA's freezing actions in Amassed Property cases**

	Estimated value of freezing in NPR
2017-18	119,774,821 (~USD 900,000)
2018-19	574,041,255 (~USD 4.3 million)
2019-20	1,096,194,071 (~USD 8.2 million)
2020-21	275,104,289 (~USD 2 million)
2021-22	241,498,786 (~USD 1.8 million)
<b>Total</b>	<b>2,306,613,223 (~USD 17.3 million)</b>

162. DRI has approx. 145 staff in its Kathmandu headquarters and four regional offices. DRI requires adequate policies, procedures and SOPs in relation to asset tracing, freezing, seizing and asset management, and enhanced specialised asset management systems or facilities. DRI has frozen/seized a total of NPR 17,237,252 (~USD 129.27 million); however, DRI is only freezing/seizing in abuse of foreign exchange cases, which the AT assumes relate to bank accounts and cash (see Table 17). Nepal could not provide data on related confiscation orders or their enforcement.

**Table 17: DRI's freezing/seizing actions in foreign exchange cases**

	Estimated value of freezing and seizing in NPR
2017-18	4,223,918,000 (~USD 31.7 million)
2018-19	4,615,570,000 (~USD 34.6 million)
2019-20	1,229,792,008 (~USD 9.2 million)
2020-21	7,167,972,280 (~USD 53.7 million)
2021-22	Not provided
<b>Total</b>	<b>17,237,252 (~USD 129.27 million)</b>

163. The DOC and APF are seizing smuggled gold, silver and currency at Nepal's border, primarily Nepal's land border crossings with India (See Table 18 and 19). These actions are taken under their prevailing laws with the AT not considering them actions under Nepal's cash declaration system in the ALPA. For the vast majority of these seizures, any related criminal proceeding is under trial.

**Table 18: DOC Seizures from all border points in Nepal**

Year	Number of persons	NPR Currency seized	Approx. USD	INR Currency seized	Approx. USD
2019/2020	17	14,571,646.00	1,092,700.00	672,230.00	5,000.00
2020/2021	39	22,228,360.00	166,712.00	1,568,520.00	11,764.00
2021/2022	8	4,548,300.00	34,112.00	0	0

<sup>58</sup> Amassed property cases are where a public servant has not filed their asset declarations with the National Vigilance Centre (NVC). If no lodgement is made, the NVC alerts to the CIAA who consider whether to conduct an investigation or issue a fine. If CIAA commences an investigation into the assets, to determine whether there is unexplained wealth, this is called an amassed property investigation.



<b>Total</b>	<b>64</b>	<b>41,348,306</b>	<b>310,112</b>	<b>2,240,750</b>	<b>16,805</b>
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**Table 19: APF Seizures**

<b>Year</b>	<b>Value of Gold/Silver Seized</b>	<b>NPR Currency Seized</b>
2017/2018	10,468,771 (~USD 78,515)	16,008,373 (~USD 120,062)
2018/2019	6,126,589 (~USD 45,950)	35,674,894 (~USD 267,651)
2019/2020	9,075,432 (~USD 68,065)	55,930,677 (~USD 419,480)
2020/2021	9,677,037 (~USD 72,577)	47,949,895 (~USD 359,624)
2021/2022	5,165,979 (~USD 38,745)	36,694,903 (~USD 275,212)
<b>Total</b>	<b>40,513,808 (~USD 303,854)</b>	<b>192,258,742 (~USD 1,441,940)</b>

3

164. Department of National Parks and Wildlife Conservation seized an estimated value of NPR 151,892,629 (~USD1.13 million) in the period under review. Seizures mainly relate to goods (wildlife, timber, natural resource) and goods used in the commission of the offence, including assets that have been constructed with the illegally obtained resource, i.e. a renovation to a property, or a shed, using illegally felled timber. Nepal could not provide data on related confiscation orders or their enforcement.

#### *Confiscation of falsely or undeclared cross-border transaction of currency/BNI*

165. While the DOC and APF is seizing some smuggled cash and gold/silver at Nepal's border (see Table 19), DOC is not systematically implementing Nepal's cross-border cash declaration system, which requires a written declaration for amounts greater than USD 5,000 or NPR 5,000. The number of declarations in the period under review is very low even taking into consideration COVID-19 pandemic restrictions on the movement of people (see Table 20). All declarations are for incoming foreign currency with most declarations made by foreign tourists. It is apparent that the vast majority of declarations relate to Nepal's two international airports. At all border crossings, DOC requires additional human and/or institutional resources to effectively implement the declaration system and identify non-compliance. There has been no cash/BNI seizures related to non-declaration.

**Table 20: Number of Declarations**

<b>Year</b>	<b>Number of declarations</b>
2021/2022	3
2020/2021	2
2019/2020	15
2018/2019	124
2017/2018	23
<b>Total</b>	<b>167</b>

#### *Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities.*

166. The overall value of recovered confiscation orders is not in line with the level of proceeds generating criminal offending in Nepal with Nepal prioritising enforcement of fines rather than the recovery of confiscation orders. For higher risk predicate offences of corruption, tax evasion, and human trafficking (and narcotics, smuggling, and environmental crime offences) relevant LEAs are conducting limited freezing/seizing during investigations. Nepal could not provide data on related confiscation orders or their enforcement. Fines are generally required to be paid if the offender appears

the decision of the trial court to a higher court. Proceeds of crime are not forfeited to satisfy the payment of fines.

3

167. DMLI maintains consolidated confiscation-related information and statistics. Over the period under review, DMLI froze/seized an estimated value of approx. NPR 6.9 billion (~USD 52 million) in ML cases with approx. NPR 70.8 million (~USD 531,000) recovered. While the value of DMLI's freezing/seizing is somewhat in line with Nepal's ML risks, the total value of enforced confiscation orders is not. The vast majority of DMLI confiscation-related actions are for banking and foreign exchange offences with limited confiscations for other higher risk predicate offences.

168. Nepal's porous borders is a significant ML risk and there is a strong nexus between the border and predicate crime offending in Nepal. The DOC and APF are seizing smuggled gold, silver and currency with the total value of cash approx. NPR 86.9 million (~USD 652,139.00) and gold/silver approx. NPR 41.4 million (~USD 311,000.00). While these seizures are somewhat consistent with Nepal's risks, DOC's level of implementation of Nepal's cross-border cash declaration system is not.

169. For TF, DMLI seizing and freezing and confiscation in Nepal's two TF cases are discussed in detail under IO.9. In Nepal's convicted TF case a confiscation order of approx. NPR 5,100,000 (~USD 38,250) against the principal offender has not been enforced. There has been no funds frozen under Nepal's TFS-TF regime (see IO.10).

### *Overall conclusion on Immediate Outcome 8*

170. Nepal is pursuing some high-level confiscation-related policy objectives mainly focused on building the capacity of the DMPC; however, these high-level actions are yet to translate into confiscation results in line with Nepal's risks. Nepal is focused on the enforcement of fines rather than the recovery of assets. Overall, all relevant competent authorities require additional human and institutional resources to support freezing/seizing, asset management and confiscation actions. In the last 5 years, Nepal has only recovered approx. USD 20 million in total, which is not in line with the overall level of proceeds generating criminal offending in Nepal. With the exception of DMLI, Nepal does not maintain consolidated confiscation-related statistics, so the final confiscation outcome of LEA's freezing and seizing is unclear. Nepal's successes include ten non-conviction based confiscation cases and seizing of some smuggled gold, silver and currency at Nepal's border. The DOC is not systematically implementing Nepal's cash declaration system.

171. **Nepal has a low level of effectiveness for IO.8.**

## CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

### *Key Findings and Recommended Actions*

#### ***Key Findings***

##### ***TF investigation and prosecution (Immediate Outcome 9)***

1. In the period under review, there are two TF cases. Both cases were initiated by international cooperation and involved the movement of funds through the formal financial sector from regional jurisdictions into Nepal for planned terrorist activities outside Nepal. One TF case was investigated in 2011 with the final judgment in the Supreme Court convicting seven persons of TF offences in 2019. Nepal's other TF case is currently under prosecution since 2018 and involves two Nepali citizens and five foreign nationals.
2. These cases demonstrate that OAG and DMLI have some capacity to investigate and prosecute TF. However, these agencies require adequate human and institutional resources to undertake this function fully in line with Nepal's risk profile.
3. TF sanctions are not effective, proportionate and dissuasive as Nepal has not enforced the court's judgement on the seven persons convicted of TF.
4. Nepal has limited ability to identify potential TF in line with its risk profile as TF is not integrated into Nepal's broader counter-terrorism strategies, activities and investigations. There is a lack of operational-level cooperation through the CTM and Nepal's border security cooperation and coordination mechanism. Furthermore, Nepal's lack of a terrorism offence and non-recognition of the financing of domestic political activities having the elements of terrorism as TF under the ALPA impacts its ability to identify, initiate and investigate TF.

##### ***TF preventive measures and financial sanctions (Immediate Outcome 10)***

1. Nepal has a legal framework to implement TFS relating to UNSCR 1373. However, it has not designated any persons or entities, which is not fully consistent with Nepal's TF risk profile given Nepal has seven persons convicted of TF offences.
2. Nepal is not implementing TFS-TF pursuant to UNSCR 1267 and 1988 without delay due to a significant technical gap whereby the Freeze Order does not apply to new, or changes to, UNSCR 1267 and 1988 designations after 6 December 2013. There are other technical gaps that impact on Nepal's effectiveness.
3. FIs displayed a varying understanding of their TFS obligations with commercial banks, large development banks, large non-bank remitters, and other larger FIs conducting automated screening. Other FIs and all DNFBPs are not conducting adequate TFS screening.
4. Nepal is not depriving terrorists, terrorist organisations and terrorist financiers of assets as no funds have been frozen under UNSCR 1267 and 1988, and Nepal has not enforced the courts' judgments in one of its TF cases.
5. Nepal is not implementing a risk-based approach to preventing NPO TF abuse as it has not identified the NPOs that are at-risk of terrorist abuse. Competent authorities are supporting some

general control measures including accountability, governance and integrity measures. There has been no targeted CTF outreach to NPOs.

### ***PF Financial sanctions (Immediate Outcome 11)***

1. Nepal is not implementing TFS-PF without delay as its legal framework has major shortcomings. The fundamental gap is that there is no legal obligation to freeze funds without delay and without prior notice relating to PF designated persons and entities and pursuant to UNSCRs 1718 and 2231.
2. FIs, DNFBPs or competent authorities in Nepal have not identified or frozen any funds in connection to PF.
3. FIs displayed a varying understanding of their obligations regarding TFS-PF. FIs conduct some screening with the level of comprehensiveness dependant on their business scale, while DNFBPs show little awareness of PF obligations. No FI or DNFBP has had a positive match or frozen funds relating to PF designated persons or entities, which does not fully align to Nepal's PF risk profile based on past financial and economic ties with DPRK.
4. Nepal is not conducting any TFS-PF specific supervision activities.

### ***Recommended Actions***

#### ***TF investigation and prosecution (Immediate Outcome 9)***

- A. Nepal should adequately assess its TF risk (in line with the RA in IO.1) and use this enhanced understanding to improve its mechanisms to identify potential TF cases and integrate TF into its counter-terrorism/insurgency strategies, activities, and coordination and cooperation mechanisms.
- B. Nepal should pass the *Amendments to Some Laws relating to AML and Business Promotion Bill* which aims to give TF investigation authority to NP. When passed, Nepal should expedite implementation and enhance the capacity of impacted competent authorities to undertake their new/modified functions.
- C. Nepal should identify, investigate and prosecute TF cases in line with its TF offence set out in the APLA.
- D. Nepal should build the TF-related capacity of LEAs and prosecutors including by implementing on-going TF specific training and developing comprehensive TF policies, procedures, guidelines, and SOPs to assist in identifying, investigating, and prosecuting TF cases.
- E. Nepal should ensure proportionate and dissuasive sanctions are applied in TF convictions, and the court's judgments are enforced.

#### ***TF preventative measures and financial sanctions (Immediate Outcome 10)***

- A. Nepal should implement TFS-TF UNSCR 1267 and 1988 without delay<sup>59</sup>.

<sup>59</sup> Nepal informed the assessment team at the Face-to-Face Meetings that it had issued a new Freeze Order on 25 April 2023.

- B. Nepal should operationalise the new TFSC to improve domestic cooperation and coordination in the implementation of TFS-TF.
- C. Nepal should provide clear direction and outreach programs to the private sector regarding TFS-TF.
- D. Nepal's supervisors should conduct regular monitoring activities of FIs and DNFBPs to ensure compliance of TFS-TF obligations. Where non-compliance is identified, sanctions should be applied.
- E. Nepal should assess NPO's TF risks in accordance with R.8 and based on this review implement measures and provide appropriate TF-related outreach and targeted monitoring to at-risk NPOs.

#### ***PF financial sanctions (Immediate Outcome 11)***

- A. Nepal should establish a legal framework to implement TFS-PF without delay through setting procedures, measures, compliance and sanction mechanisms that give effect to TFS obligations.
- B. Nepal should consider its sanctions evasion risk and ensure it has the capability to identify, deprive and prevent the raising, moving and use of funds for the financing of proliferation through participating in capacity building and training programs for competent authorities.
- C. Nepal should operationalise the TFSC to enhance domestic cooperation and coordination in preventing PF sanctions from being evaded.
- D. Nepal should conduct outreach and support to ensure all FIs and DNFBPs are conducting adequate TFS-PF screening.
- E. Nepal supervisors should conduct regular monitoring activities of FIs and DNFBPs to ensure compliance of TFS-PF obligations. Where non-compliance is identified, sanctions should be applied.

172. The relevant Immediate Outcomes considered and assessed in this chapter are IO9-11. The recommendations relevant for the assessment of effectiveness under this section are R. 1, 4, 5-8, 30, 31 and 39, and elements of R.2, 14, 15, 16, 32, 37, 38 and 40.

#### ***Immediate Outcome 9 (TF investigation and prosecution)***

173. *Nepal's TF risk:* Nepal has not experienced any acts of international terrorism in the period under review; however, Nepal faces some domestic and regional TF risks. Primarily, Nepal's porous border region is a key risk factor in the nexus to regional terrorism and TF activities. Some reports indicate that Nepal may be used as a transit or staging point for regional actors to commit terrorist activities not targeted towards Nepal. Nepal's domestic terrorism and TF threat level has significantly declined in recent years, but there have been some small scale incidents (mainly involving small improvised explosive devices and/or small arms) directed at political targets in the period under review.

174. *Overview of TF investigation and prosecution:* DMLI is the sole investigator of TF with OAG’s Special Government Attorney Office prosecuting cases in the Special Court. Investigators and prosecutors are assigned based on availability and previous experience. DMLI and OAG do not have dedicated TF investigators or prosecutors due in part to limited cases. A more detailed overview of DMLI and OAG is included in IO.7.

4 *Prosecution/conviction of types of TF activity consistent with the country’s risk-profile*

175. In the period under review, there are two TF cases. One TF case was investigated in 2011 with three defendants facing trial and five defendants tried *in absentia* in the Special Court between 2015 and 2017. The final judgment in the Supreme Court was in 2019 (see Case IO.9-1). Nepal’s other TF case is currently under prosecution since 2018 and involves seven Nepali citizens (see Case IO.9-2).

176. Nepal’s two TF cases both involved the movement of funds through the formal financial sector from regional jurisdictions into Nepal for planned terrorist activities outside Nepal. These cases demonstrate OAG has some capacity to prosecute TF. However, OAG requires adequate policies, procedures and SOPs related to TF prosecutions, and ongoing and regular TF-related training due to the limited number of cases. The time to prosecute the TF cases is lengthy even taking into consideration the general efficiency of Nepal’s judicial system.

177. Both TF cases involved regional elements with funds intended to be used for terrorist activities not targeted towards Nepal. This is in line with Nepal’s risk profile. However, to date Nepal has not initiated, investigated, prosecuted or convicted any TF activities associated with its domestic terrorism/TF risks.

**Case Example IO.9-1: Nepal’s first TF case – TF Convictions**

Nepal’s first TF case to reach final judgement resulted in seven persons convicted of TF - one as a principal offender and six as accomplices. The case was initiated in 2011 via international cooperation with a neighboring jurisdiction and involved the movement of funds from a foreign jurisdiction into Nepal. In 2015, the trial proceeded in the Special Court with three defendants arrested who faced trial while five defendants were tried *in absentia*. Seven out of the eight accused were found guilty of TF (one was acquitted). During appeal in 2019, the Supreme Court affirmed the Special Court’s judgment upholding the seven convictions. The Supreme Court ruled and ordered confiscation of NPR 5 million (~USD 38,250.00) against the principal offender; however, this penalty/sanction remains outstanding as the principal offender and accomplices are foreign nationals and absconded to a neighbouring jurisdiction. To date, none of the sentences have been served, no fines paid, and confiscation orders have not been enforced.

*TF identification and investigation*

178. Nepal’s ability to identify TF is limited, which could result in potential TF cases not being identified, prioritised or initiated. While NP and APF demonstrated an understanding of Nepal’s terrorism/TF risks, overall competent authorities have a limited understanding of Nepal’s TF risks. Competent authorities primarily considered that TF involves the collection, raising or sourcing of funds through the formal financial sector. This limited understanding combined with Nepal’s lack of a

terrorism offence and under utilised domestic CTF coordination mechanisms and a lack of CFT training, significantly limits Nepal's ability to identify TF cases consistent with its risk profile.

179. Critically, the AT also considers that Nepal's potential to initiate, investigate and prosecute TF cases is hampered due to the government's policy not to pursue the financing of domestic political activities having the elements of terrorism as TF under the ALPA. This position is demonstrated in Nepal's accession, in 2011, to the International Convention for the Suppression of the Financing of Terrorism 1999, with reservations and notifications. These reservations and notification are not prescribed in Nepal's statutes and there is no case law or jurisprudence on the matter. Nepal's notification states "Nepal has acceded to the 'International Convention for the Suppression of the Financing of Terrorism, 1999' on 24 June 2011 according to the National Law. While presenting the proposal for accession to the said Convention in the Legislature Parliament, the Government of Nepal clarified the meaning of the word 'Terrorism' as mentioned in the 'International Convention for the Suppression of the Financing of Terrorism, 1999' that 'any acts which are related to political activities will not be considered as the acts of Terrorism". Consistent with this notification, Nepal does not initiate or investigate cases under the ALPA that relate to the financing of domestic political activities with elements of terrorism as TF. Nepal may instead investigate these cases under other offences in the Prevention of Organised Crime Act, the Arms and Ammunitions Act, Explosives Act, and the Criminal Code.

180. In the period under review, Nepal has investigated one TF case (refer Case IO.9-2), which is pending trial before the Special Court (the investigation of Nepal's other TF case was in 2011, which is outside the period under review). This case was initiated via informal international cooperation with a regional jurisdiction. There has been no other TF referrals to the DMLI from other LEAs, the FIU has not disseminated actionable TF related financial intelligence, and Nepal provided no evidence that the CTM is being actively used to identify potential TF cases.

181. Nepal's TF case does demonstrate DMLI has some capacity to investigate TF. However, DMLI requires adequate policies, procedures and SOPs to undertake TF investigations, and ongoing and regular TF-related training for DMLI investigators who are on a two-year rotational basis from other agencies.

#### **Case IO.9-2: Nepal's second TF case – TF investigation**

The case commenced in 2018 involving seven Nepali citizens and is still pending trial before the Special Court. This case was initiated via international cooperation with a neighboring jurisdiction with the alleged TF activity involving the movement of funds (NPR 545,000.00; ~USD 4,087.00) originating from a foreign jurisdiction into Nepal's formal banking system to be used for alleged terrorist activities outside of Nepal.

#### *TF investigation integrated with and supportive of national strategies*

182. Nepal's National AML/CFT Strategy and Action Plan includes an objective related to TF. As discussed in IO.1, the National Strategy and Action Plan is focused on strengthening AML/CFT legislative frameworks and institutions, and building the AML/CFT capacity of competent authorities.

The TF elements of the National Strategy and Action Plan would benefit from a greater focus on Nepal's specific TF threats and vulnerabilities.

4 183. TF is not adequately integrated into Nepal's broader counter-terrorism/insurgency strategies or investigations. NP is responsible for criminal investigations of terrorism like offences while the APF is responsible for border surveillance and control of armed rebellion and terrorist activities in the border area. These two LEAs have MOUs with DMLI and all three LEAs are members of the CTM. However, Nepal did not provide any examples where counter-TF activities supported counter-terrorism activities, or operational-level cooperation through the CTM. As discussed in IO.1, this mechanism is primarily used for policy cooperation and coordination.

184. Nepal's counter-terrorism/insurgency strategies strategy is focused on cooperation with neighbouring jurisdictions, primarily India. Nepal has a multi-level border security cooperation and coordination mechanism with India. The mechanism is used to combat border crimes including terrorism-related activities (see detailed discussion in IO.2); however, Nepal provided very limited evidence on DMLI's or any counter-TF activities (noting that there has been only two TF cases) involvement in supporting this cooperation mechanism. Nepal's TFS regime does not currently inform or support Nepal's counter-terrorism/insurgency strategies.

### *Effectiveness, proportionality and dissuasiveness of sanctions*

185. TF sanctions are not effective, proportionate or dissuasive. Nepal has prosecuted two TF cases with one case reaching final judgement (see Case IO.9-1). This case resulted in seven persons convicted in the Special Court with the principal offender receiving the minimum sentence of three years' imprisonment, a fine of NPR 25.5 million (~USD 192,000.00) and a confiscation order of NPR 5.1 million (~USD 38,250.00). Six other defendants were convicted as accomplices each receiving a prison sentence of 1.5 years and fines between ~NPR 1.7 million (~USD 13,125.00) and ~NPR 3.7 million (~USD 27,750.00). In acknowledgement of the lack of proportionality and dissuasiveness of the sanctions, the Government of Nepal appealed the ruling of the Special Court, but judgments were upheld by the Supreme Court. To date, no sentences have been served, no fines paid, and the confiscation order has not been enforced. Nepal has not sought any form of international cooperation to enforce the court's judgments. Nepal has not designated any of the convicted persons under its UNSCR 1373 TFS regime.

186. TF criminal liability of legal persons is covered under s30(8) of the ALPA. Nepal has not investigated, prosecuted or convicted a legal person of TF.

### *Alternative measures used where TF conviction is not possible (e.g. disruption)*

187. Nepal is not implementing other measures to disrupt TF activities where it is not practicable to secure a TF conviction.

### *Overall conclusion on Immediate Outcome 9*

188. While Nepal is not a high risk jurisdiction for TF, the AT placed weight on Nepal's limited ability to identify potential TF in line with its risks, as well as its non-integration of TF into Nepal's broader counter-terrorism/insurgency strategies, activities, or cooperation and coordination mechanisms. Weight was also placed on the non-recognition of the financing of domestic political



activities having the elements of terrorism as TF under the ALPA. Nepal has two TF cases in the period under review both initiated by informal international cooperation. One case has convicted seven persons of TF; however the sanctions were not effective, proportionate or dissuasive and the court's judgements have not been enforced. The second TF case is currently under prosecution.

189. **Nepal has a low level of effectiveness for IO.9.**

**Immediate Outcome 10 (TF preventive measures and financial sanctions)***Implementation of targeted financial sanctions for TF without delay*

190. Nepal has a legal framework pursuant to UNSCR 1373 under s.29F of the ALPA. However to date, Nepal has not designated any natural or legal persons pursuant to UNSCR 1373, which is not fully in line with Nepal's risk profile given there have been seven TF convictions in the period under review (see IO.9). Nepal has not initiated or received any formal designation requests from other jurisdictions.<sup>60</sup>

191. Nepal is not implementing TFS pursuant to UNSCR 1267 and 1988 without delay. Nepal's framework requires MoHA to issue a Freeze Order for all changes in UNSCR 1267 and 1988 designations. On 6 December 2013, Nepal issued a 'Standing Freeze Order' with the intent for this freeze order to apply to all future designations and changes under UNSCR 1267 and 1988. However, this Standing Freeze Order does not include a prospective clause to cover future changes in UNSCRs and the only reference to UNSCR 1267 and 1988 is via hyperlinks that were not valid at the time of the onsite. Therefore, the AT has concluded that all natural and legal persons in Nepal are not required to freeze funds or assets of new, or changes to, UNSCR 1267 and 1988 designations after 6 December 2013<sup>61</sup> (including funds or properties which are available for direct or indirect, wholly and joint benefits of designated persons or entities as discussed in R.6).

192. MoHA has recently established the TFSC made up of five representatives including two officials from the MoHA, one official from MoFA, one official from NP and one official from the FIU. The TFSC was established in recognition of the need to prioritise effective implementation of TFS. At the time of the ME onsite visit the Committee had not met.

193. FIs<sup>62</sup> displayed a varying understanding of their TFS obligations and implementation<sup>63</sup>. Commercial banks, large development banks, large non-bank remitters, and some other larger FIs are conducting automated screening against up-to-date UN sanction lists using third-party systems or consolidated in-house databases. Other FIs conduct manual screening to some extent with the level of comprehensiveness dependent on their business scale - some are screening using lists from the MoHA website, which are not accurate or up-to-date. Some smaller FIs are not conducting screening due to a misunderstanding that the obligations do not apply because they only have Nepali customers. The vast majority of DNFBPs have a limited understanding of their obligations and are not screening. To date, FIs or DNFBPs have had no positive match or frozen funds, which does not seem fully in line with Nepal's TF risk profile. Commercial banks have had some false positives. Further, most FIs and all DNFBPs are not aware of their full obligations if they were to have a positive match or a false positive.

<sup>60</sup> Nepal has published on the MOHA website a letter from Sri Lanka asking the MOFA to bring to the attention of all authorities recent changes to Sri Lanka's UNSCR 1373 designations. The AT does not consider this a formal request for designation.

<sup>61</sup> Nepal informed the assessment team at the Face-to-Face Meetings that it had reissued an 'Order to Freeze' on 25 April 2023.

<sup>62</sup> Nepal has sought to prohibit VASPs (see R.15) and no VASPs are licensed or accredited to operate in Nepal. Therefore, VASPs are not included in the analysis of IO.10.

<sup>63</sup> As discussed in IO.4, due to limited AML/CFT supervision of FI and no AML/CFT supervision of DNFBPs, the AT was only provided with limited information related solely to commercial banks' compliance AML/CFT obligations. Therefore, the analysis regarding implementation of preventative measures is based mostly on onsite meetings with private sectors entities.

Some limited supervision of TFS compliance has occurred for FIs but not DNFBPs (see detailed discussion in IO.3).

#### *Targeted approach, outreach and oversight of at-risk non-profit organisations*

194. Nepal does not have a targeted approach to prevent TF abuse of its NPO sector. To date, Nepal has not identified NPOs which may be at risk of terrorist abuse as it has not conducted a NPO risk assessment in accordance with R.8. The AT does not view NPO's to be at high risk of TF abuse in Nepal. However, there is little awareness by competent authorities or NPOs of TF risks. The AT notes that Nepal intends to conduct a sectoral risk assessment of the NPO sector in the future.

195. Nepal has more than 100,000 Associations and some non-profit distributing companies operating as NPOs in Nepal. The SWC oversees foreign NPOs operating (or providing funding) in Nepal and affiliated domestic NPOs. Through its mandatory registration/affiliation process for international NPOs, the SWC has General Agreements with 208 foreign NPOs and 54,015 voluntary affiliations with domestic NPOs. SWC's registration and affiliation requirements promote good governance, accountability, integrity and public confidence in the sector including the use of the formal banking system for receipt of foreign funding and delivery of projects. While these measures are not specifically TF-risk focused, they do assist in mitigating the potential for TF abuse of NPOs in Nepal.

196. The SWC is conducting outreach to the sector, but it is not TF-related or targeted to at-risk NPOs. International NPOs appear to have a general understanding of TF-related issues and risks due to guidance and training from their global headquarters. Nepal advises that an AML/CFT supervisory manual for NPOs is currently being developed; however, the AT is unaware when and how this manual will be shared with the NPO sector and how it will target NPOs at risk of terrorist abuse given Nepal has not completed a risk assessment of NPOs in accordance with R.8.

#### *Deprivation of TF assets and instrumentalities*

197. Nepal has not demonstrated that terrorists, terrorist organisations and terrorist financiers are deprived of assets. No funds have been frozen pursuant to UNSCR 1267 and 1988 or UNSCR1373 (noting that Nepal has not designated persons or entities pursuant to UNSCR1373). Also, Nepal has not deprived terrorists of their assets in criminal cases. As discussed in IO.9, Nepal has not enforced the courts judgements related to the seven individuals convicted of TF offences.

#### *Consistency of measures with overall TF risk profile*

198. Natural and legal persons in Nepal are not required to freeze funds or assets available for direct or indirect, wholly or joint benefits of persons or entities designated under UNSCR 1267 and 1988, and not required to freeze funds of designated (or changes to designation) persons or entities after 6 December 2013. Automated screening is conducted by commercial banks, large development banks, large non-bank remitters, and some other larger FIs; however, all DNFBPs and all other FIs are not conducting adequate TFS screening. This is not consistent with Nepal's TF risk profile.

199. Nepal has not used its UNSCR 1373 regime to support its TF cases (see IO.9). In addition, as Nepal does not recognise the financing of domestic political activities having the elements of terrorism as TF under the ALPA, Nepal is unlikely to use its UNSCR 1373 regime to support CTF or CT activities.

### *Overall conclusion on Immediate Outcome 10*

4 200. Nepal has a legal framework for TFS; however, natural and legal persons in Nepal are not required to freeze funds or assets of new, or changes to, UNSCR 1267 and 1988 designations after 6 December 2013 (including the freezing of funds or properties which are available for direct or indirect, wholly and joint benefits of designated persons or entities). Nepal has a legal framework for UNSCR 1373, but has not designated any persons or entities, despite seven TF convictions. FIs displayed a varying understanding of their TFS obligations with commercial banks, large development banks, large non-bank remitters, and other larger FIs conducting automated screening. Other FIs and all DNFBPs are not conducting adequate TFS screening. Nepal has not demonstrated that terrorists, terrorist organisations and terrorist financiers are deprived of their assets. Nepal has not conducted a sectoral risk assessment of the NPO sector to identify NPOs at risk of TF abuse and therefore is not applying focused and proportionate measures for at-risk NPOs.

201. **Nepal has a low level of effectiveness for IO.10.**

*Immediate Outcome 11 (PF financial sanctions)*

202. There is limited information available on Nepal's current trade relationship with DPRK. Nepal and DPRK have diplomatic relations<sup>64</sup> with the DPRK Embassy in Kathmandu holding associated bank accounts in accordance with the Vienna Convention on Diplomatic Relations. Nepal has had financial and economic ties to DPRK in the past; however, in 2019, the Nepali government, in line with relevant UNSCRs, banned all DPRK investments in Nepal and ordered all DPRK businesses operating in Nepal to cease trading.<sup>65</sup> Nepal states that no current business or investment activities related to DPRK are in violation of UNSCRs.

*Implementation of targeted financial sanctions related to proliferation financing without delay*

203. Nepal has sought to implement TFS-PF using the same framework as TFS-TF under Chapter 6B of ALPA and the ALPR-TFS. However, Nepal is not implementing TFS-PF without delay (see detailed discussion in R.7).

204. MoHA is the competent authority responsible for implementing and enforcing TFS-PF while MoFA is responsible for notifying and disseminating all UNSCRs notifications to the MoHA. According to s29E(2) ALPA, it is MoHA's responsibility to issue a Freeze Order pursuant to PF-related UNSCRs 1718 and 2231 and successor resolutions. However to date, no order has been executed. Nepal issued a Freeze Order on 6 December 2013; however, it does not relate to UNSCR 1718 or 2231 and successor resolutions. The lack of a legal obligation to freeze funds and assets without delay and without prior notice of PF designated persons and entities is a fundamental deficiency for the implementation of TFS-PF.

*Identification of assets and funds held by designated persons/entities and prohibitions*

205. Nepal has not proactively taken action to identify funds or other assets of designated persons and entities (and those acting on their behalf or at their direction) in relation to PF UNSCRs. In Nepal, there is no evidence that persons or entities have been prevented from operating or executing financial transactions relating to PF.

206. FIs<sup>66</sup>, DNFBPs or competent authorities have not identified or frozen any funds in connection to PF.

207. Nepal's National Strategy and Action Plan includes an objective related to implementation of TFS-PF. The CTM is the main mechanism to coordinate and discuss issues relating to TFS-PF. However, the AT is unclear on the degree of PF-related cooperation in the CTM, if any. To support implementation of TFS-PF, Nepal recently established the TFSC to improve implementation of TFS-PF and other

<sup>64</sup> Government of Nepal Ministry of Foreign Affairs, Nepal-DPRK Relations <https://mofa.gov.np/nepal-democratic-peoples-republic-korea-relations/> Date accessed 31 May 2023.

<sup>65</sup> Government bans N Korean investment in Nepal, 2019, The Himalaya Times, <https://thehimalayantimes.com/business/govt-bans-nkorean-investment-in-nepal>. Date accessed 30 May 2023

<sup>66</sup> Nepal has sought to prohibit VASPs (see R.15) and no VASPs are licensed or accredited to operate in Nepal. Therefore, VASPs are not included in the analysis of IO.11.

activities to prevent, suppress and disrupt proliferation of weapons of mass destruction and its financing. At the time of the ME onsite visit, the TFSC had not met.

*FIs and DNFBPs' understanding of and compliance with obligations*

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208. As discussed above and in R.7, Nepal is not implementing TFS-PF without delay. Critically, natural and legal persons are not required to freeze funds pursuant to UNSCRs 1718 or 2231 in Nepal. Further, no TFS-PF specific outreach or guidance has been provided to FI or DNFBPs.

209. Overall, FIs stated they would not accept customers from Iran or DPRK; however, they displayed a varying understanding of their obligations with regard to TFS-PF. Similar to screening for TFS-TF (see IO.10), commercial banks, large development banks, large non-bank remitters, and other larger FIs are conducting automated screening against up-to-date UN sanction lists using third-party software systems or consolidated in-house databases<sup>67</sup>. For FIs with strong international connections, the use of automated software is driven by an understanding to adhere to TFS global good practices. Other FIs conduct manual screening with the comprehensiveness of screening based on their business scale - some indicated that they are using lists from the MoHA website which do not cover TFS-PF. The vast majority of DNFBPs are not implementing the monitoring and screening requirements for TFS-PF and there appeared little awareness of PF obligations across the DNFBP sector.

210. To date in Nepal, no FIs or DNFBPs have had a positive match or frozen funds relating to PF designated persons or entities. If a situation arose where there was a match or false positive against a designated person or entity, FIs or DNFBPs have no legal obligation to freeze the property or asset due to the gap in Nepal's TFS-PF legal framework.

211. Some large banks stated they would not provide any financial services to DPRK or Iranian individuals and entities in line with the UN sanction list. If there was an attempted transaction relating to designated jurisdictions, most FIs would only reject the business with no further action, because reporting attempted transactions involving PF are not a legal obligation under the ALPA.

212. No specific TFS-PF supervision is being undertaken in Nepal. There is no TFS-PF compliance guidance or guidelines for FIs or DNFBPs, and authorities have not conducted specific outreach programs relating to TFS-PF; however, some coverage may be included in the general AML/CFT outreach programs. Where NRB's supervisory activities include coverage of TFS-TF screening, supervisors may also check compliance with TFS-PF. However, there is not a systematic approach, nor a mandatory requirement, and they have no legal basis to do so.

213. Nepal's FIU has produced some STR Guidelines, which include to a limited extent red flags for PF typologies. The STR Guidelines are published on the FIU's website.

*Overall conclusion on Immediate Outcome 11*

214. Nepal is not implementing TFS-PF as there is no enforceable obligation for all natural and legal persons in Nepal to freeze funds or assets of persons or entities designated under UNSCRs 1718 and

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<sup>67</sup> As discussed in IO.4, due to limited AML/CFT supervision of FI and no AML/CFT supervision of DNFBPs, the AT was only provided with limited information related solely to commercial banks' compliance AML/CFT obligations. Therefore, the analysis regarding implementation of preventative measures is based mostly on onsite meetings with private sectors entities.

2231. FIs displayed a varying understanding of TFS-PF with commercial banks, large development banks, large non-bank remitters, and other larger FIs conducting automated screening. Other FIs and all DNFBPs are not conducting adequate TFS-PF screening. Neither FIs, DNFBPs nor competent authorities have identified or frozen any funds related to PF and there is no legal obligation for them to do so. Specific TFS-PF supervision is not occurring.

215. **Nepal has a low level of effectiveness for IO.11.**

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## CHAPTER 5. PREVENTIVE MEASURES

### *Key Findings and Recommended Actions*

#### **Key Findings**

1. The understanding of ML/TF risks and AML/CFT obligations varies considerably among the FI sector – it is notably higher among banks and other larger FIs including those some exposure to group-wide internal AML/CFT policies. In line with this, the application of mitigating measures is not commensurate with risk across most FIs.
2. Banks and remitters are applying CDD and record keeping requirements. These FIs face challenges in; (i) linking the individual to their identity due to limitations in Nepal’s common identity documentation, and (ii) identifying BOs as they are fully reliant on self-declaration and information provided by the customer with limited avenues for information verification. All other FIs have more limited ability to overcome these challenges.
3. For enhanced due diligence banks and remittance are overly reliant on the National Bankers Association’s PEPs list, which may not be updated in a timely manner and does not cover family members, close associates or foreign PEPs. Banks and remitters seem to be applying other enhanced due diligence measures; however, given Nepal has technical shortcomings and limited supervision, it is difficult to fully ascertain the degree to which all other FIs are applying enhanced due diligence.
4. Banks continue an upward trend in STR reporting over recent years and submit almost 50% of TTRs. Overall, the number of STRs remains low and is not consistent with Nepal’s national ML/TF risks or sector specific risks.
5. Overall there has been very little interaction between AML/CFT supervisors and DNFBPs with the sectors having negligible understanding of their ML/TF risks and AML/CFT obligations, and are not applying mitigating measures commensurate with their risks. DNFBPs only undertake basic customer identification based on other regulatory requirements, and DNFBPs do not have effective measures for PEPs and TFS. DNFBPs are not submitting STRs.

#### **Recommended Actions**

- A. Nepal should address all preventive measures technical compliance gaps, particularly R.10, R.15, R.19 and R.22.
- B. Require and support all FIs and DNFBPs to enhance their understanding of ML/TF risks (including by conducting institutional risk assessments) and to take mitigating measures consistent with risk understanding.
- C. Enhance FIs and large DNFBPs use of AML/CFT independent audits to promote effective compliance with AML/CFT obligations focusing on higher risk issues and areas of lower compliance such as BOs, PEPs and TFS.
- D. Increase quality and quantity of FIU reporting. This should include supporting and encouraging FIs and DNFBPs to adopt automated AML/CFT systems for the identification of suspicious transactions and the submission of electronic reports to the FIU, taking into consideration their specific circumstances and ML/TF risks.



- E. Provide greater targeted and tailored outreach on sector-specific ML/TF issues to higher-risk sectors for effective implementation of preventive measures and adoption of the risk-based approach.
- F. Develop sector specific guidance on the detection and reporting of suspicious transactions such that the rate and quality of the STRs received by the FIU can be further improved.
- G. Expedite national identification roll-out to ensure robustness of documents used in the CDD process and provide access to the national ID or other similar government database for verification purposes.

216. The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The Recommendations relevant for the assessment of effectiveness under this section are R.9-23, and elements of R.1, 6, 15 and 29.

#### *Immediate Outcome 4 (Preventive Measures)*

217. Based on their relative importance and taking into consideration Nepal's risks, context and materiality, implementation issues were weighed most heavily on commercial banks followed by development banks, cooperatives, casinos, real estate and DPMS. The moderately weighted sectors include the money changers, remittance companies, securities and life insurance FIs, while for the DNFBPs, the lawyers and accountants are also moderately weighted. For others FIs and DNFBPs such as the Employee Provident Fund, Citizen Investment Trust, hire purchase providers, finance companies, micro-finance institutions, the Postal Savings Bank and pension funds are less weighted, similarly for notaries and TCSPs.

218. Nepal has sought to prohibit VASPs (see R.15). No VASPs are licensed or accredited to operate in Nepal. Therefore, VASPs are not included in the analysis of IO.4.

219. As discussed in Chapter 1, there are minor scope gaps in preventative measures for real estate agents and DPMS.

220. Due to limited AML/CFT supervision of FIs and no AML/CFT supervision of DNFBPs, the AT was only provided with limited information related solely to commercial banks' compliance with AML/CFT obligations. Therefore, the following analysis regarding implementation of preventative measures is based mostly on onsite meetings with private sector entities.

#### *Understanding of ML/TF risks and AML/CFT obligations*

221. There is variable understanding of ML risks in the FI sectors and negligible understanding in the DNFBP sectors. With the exception of commercial banks, TF risk understanding is negligible across all FIs and DNFBPs. While ALPA's AML/CFT obligations for FIs and DNFBPs have been in place for the full period under review, most FI and DNFBP supervisors have only recently introduced sector specific AML/CFT directives, and Hire Purchase Companies, Lawyers and Notary sectors are without any sector specific directives. Most FIs and DNFBPs consider these to be their "primary" obligations, with the recentness of these directives impacting entities understanding of their AML/CFT obligations.

### *Financial Institutions*

222. The level of understanding of ML/TF risks and AML/CFT obligations varies significantly among the FI sector. Commercial banks have the foundations of good understanding of ML/TF risks and a good understanding of their AML/CFT obligations. Most commercial banks have undertaken institutional risk assessments, which have obtained or are pending feedback from the NRB. However, commercial banks operating as part of a financial group do not have group-wide risk assessments and AML/CFT policies or procedures, and NRB supervision findings on risk assessments suggest commercial banks in general lack the capacity to adequately assess their ML/TF risks. Understanding of risk and AML/CFT obligations by large development banks is somewhat below commercial banks.

223. Cooperatives have negligible TF risk understanding, and limited understanding of their ML/TF risks and AML/CFT obligations under the ALPA and Directives issued by the DeoC. Large remitters, particularly those associated with large international remittance companies demonstrated some understanding of their ML/TF risks and strong understanding of AML/CFT good practice and by extension their AML/CFT obligations. Some entities noted challenges to the sector including the risk from the informal sector and agents not fully understanding AML/CFT requirements.

224. The securities sector has negligible TF risk understanding and some understanding of ML risks but this is not at par with commercial or large development banks. While insider trading and market manipulation are the issues of concerns for the sector, the sector is under the impression that their risks are low as many of the transactions are undertaken via intermediary banking channels and hence would not impact their sector to a large extent.

225. The insurance sector demonstrated and negligible TF risk understanding and some understanding of their ML risks. Some institutions within the sector have conducted an institutional risk assessment, which has been reviewed by the NIA. NIA's feedback has been provided to ensure that greater improvement is undertaken by the insurance sector in integrating risks and ensuring that it is reflective of Nepal's ML/TF risks.

226. All other FIs (like the pension funds, microfinance institutions, hire-purchase providers and the Postal Savings Bank) have limited understanding of their ML risks and AML/CFT obligations, and negligible TF risk understanding.

### *DNFBPs*

227. Overall there has been very little AML/CFT-focused interaction between supervisors and DNFBPs (see detailed discussion in IO.3) with the sectors having negligible understanding of their ML/TF risks and AML/CFT obligations. For example, some entities do not know the extent to which specific businesses or activities are captured within the AML/CFT obligations under the ALPA.

### *Application of risk mitigating measures*

228. Given the above finding on understanding of ML/TF risk, the application of mitigating measures is not commensurate with the risks across most FIs. In addition, with limited FI supervision across all sectors, it is difficult to fully ascertain whether FIs have adequate risk mitigation measures. DNFBPs are not applying mitigating measures commensurate with their risks.

*Financial Institutions*

229. Commercial banks and some larger development banks have some AML/CFT policies and procedures in place and some mitigation measures are applied. These mitigating measures are significantly more focused on ML than TF. These measures include CDD procedures and record keeping requirements, and mechanisms to conduct on-going monitoring, but mostly reflective of the requirements under the ALPA, ALPR, and Directives. This tends to lead to a more rules-based system. The AML/CFT policies and controls are approved by the Board of Directors and circulated to all the staff for implementation. The application of a risk-based approach is low in banks, and while the NRA provides some findings on the products and services that are more highly susceptible to ML/TF risks, these are not adequately translated into appropriate risk-mitigation measures for the banks. Representatives from the commercial banks informed the assessment team that they would like the NRB to give more information on how FIs can transition from applying a rules-based to a risk-based system.

230. All other FIs are yet to apply mitigating measures commensurate with their risks due to limitations in understanding of ML/TF risk and a risk-based approach. Remitters, particularly those associated with large international remittance, are applying mitigating measures commensurate with some risks but these risk settings are mostly aligned at the South Asia regional level.

*DNFBPs*

231. DNFBPs are not applying mitigating measures commensurate with their ML/TF risks and products and services they offer due to negligible understanding of their ML/TF risks and AML/CFT obligations, and a lack of guidance and AML/CFT supervision. Casinos for example, only have measures to detect cheating and not suspicious activity that may trigger requirements to submit an STR/SAR.

*Application of enhanced or specific CDD and record keeping requirements*

232. Commercial banks are implementing CDD and record-keeping requirements, with other FIs implementing requirements to a lesser extent. DNFBPs do not undertake CDD in accordance with the ALPA and ALPR. All FIs and DNFBPs face challenges linking the individual to their identity due to limitations in Nepal's common identity documentation (see discussion of Nepal's identity documentation in Chapter 1), and in identifying BOs.

*Financial Institutions*

233. Commercial banks are implementing CDD and record keeping requirements. Commercial banks conduct CDD as part of the customer on-boarding process and reject customers if CDD information is incomplete and submit an STR. Risk profiling of the customer is undertaken, which is the basis of enhanced CDD, ongoing monitoring, and updating of CDD with commercial banks having systematic policies and procedures and automated monitoring systems. However, rejections on the basis of CDD seems to be happening in a very limited number of cases. Large development banks have a similar level of implementation of CDD and record keeping requirements and systems in place to ensure CDD is up-to-date. It is noteworthy that Nepal's CDD requirements allow for delayed verification, but do not require that verification is completed as soon as reasonably practicable (see R.10).

234. Commercial and large development banks generally obtain the BO information during the CDD process with information focused on the natural person owning 10% or more of shares. However, these banks face challenges with verification of BO and control information due to the limited transparency of legal persons in Nepal and limited avenues for verification – these FIs are fully reliant on self-declaration and information provided by the customer (see IO.5 for detailed discussion). CDD on legal arrangements is also a challenge as trustees are not obliged to disclose their status to FIs (there are also technical gaps in the requirements for information required to be collected from trustees – see R.10 and R.25).

235. Large finance, remittance, securities and life insurance companies are implementing CDD and record keeping requirements, but have much less sophisticated measures (than commercial and large development banks) to verify CDD, risk profile customers, conduct ongoing monitoring, and update CDD information. These FIs also have more limited measures to identify and overcome challenges with BOs and Nepal’s identity documentation.

236. All other FIs including all cooperatives are conducting some basic CDD focused on the natural persons when on-boarding customers. These FIs have limited systems and procedures to verify CDD, risk profile customers, conduct ongoing monitoring, and update CDD information. These FIs are maintaining basic records but they are not at the level of detail required under R.11.

### *DNFBPs*

237. DNFBPs do not undertake risk-based CDD measures including on BOs or ongoing monitoring (where applicable). Some DNFBPs do however undertake some basic customer identification on the basis of other regulatory requirements or standard business practices – these measures are not risk-based and do not cover the BO or include ongoing monitoring. For example, casinos collect identification details at entry to ensure only foreigners enter the casino, but do not collect BO information or CDD information on junkets or seek information on the source of funds. For all other DNFBPs, tax reporting requirements are the main driver for any customer identification and record keeping.

### *Application of EDD measures*

238. Overall, FIs displayed a varying understanding and implementation of their EDD obligations. Commercial banks have the most advanced level of understanding and implementation, but it is noted that measures relating to screening mechanisms, EDD measures as well as monitoring mechanisms through red flags are still a concern of NRB supervisors, who have imposed some sanctions (see IO.3). DNFBPs have a limited understanding of EDD obligations and implementation of these measures is very limited.

### *Politically Exposed Persons (PEPs)*

239. FIs displayed a varying understanding and implementation of PEP obligations. Nepal defines foreign, domestic and international organisation PEPs consistent with the FATF Standards. Requirements on FIs are consistent with the FATF Standards including coverage of family members, but there are shortcomings in requirements covering life insurance policies (see R.12). Commercial banks and large development banks have systems to identify and monitor PEPs that are focused on use

of the PEPs list compiled and updated (on a semi-regular basis) by the National Bankers Association. The National Bankers Association PEP list does not include family members, close associates, or foreign PEPs, with commercial banks and large development banks facing some challenges in identifying these types of PEPs.

240. Large finance, remittance, securities and life insurance companies have some systems to identify and monitor PEPs but are overly reliant on the NBA PEPs list. Where these FIs are part of a commercial bank financial group, they can access an up-to-date NBA PEP list. For all other FIs, the NBA PEP list they use is unlikely to be up-to-date. These FIs also have more limited measures (than commercial banks and large development banks) to identify and overcome challenges with identifying family members, close associates, or foreign PEPs.

241. All other FIs including cooperatives rely on self-declaration information provided by the customer. These FIs, when met by the AT acknowledged that identification of PEPs presents a significant challenge.

#### *Correspondent Banking*

242. Only commercial banks in Nepal hold correspondent banking relationships with most commercial banks operating as respondent banks. Nepal has comprehensive correspondent banking requirements with the only minor shortcoming being a lack of a definition of pay-through account (see R.13). For those engaging in correspondent banking activities as a respondent, they are required to comply with Wolfberg's questionnaire. It is unclear if any commercial banks have ceased operations with a shell bank when identified.

#### *New Technologies*

243. FIs displayed a varying understanding of their new technologies obligations and implementation. Some commercial banks have AML/CFT Committees who review the new products and services prior to launching with compliance unit ensuring that adequate AML/CFT control measures are applied to mitigate risks. Across all other FIs, AML/CFT risks of new technologies are not assessed prior to introduction and specific control measures are not put in place.

#### *Wire Transfer Rules*

244. Commercial banks, development banks and remitters, particularly those associated with large international remittance, understand their obligations and appear to have functioning policies and procedures and automated systems in place to ensure originator and beneficiary information in accordance with the requirements of the ALPA and ALPR. Requirements under the ALPA and ALPR are comprehensive for ordering FIs with minor shortcomings related to requirements on intermediary and beneficiary FIs (see R.16). There is no distinction between domestic and cross-border wire transfer requirements under the ALPA, and it is unclear if the Postal Saving Bank is implementing wire transfer requirements for its domestic and cross-border wire transfers.

#### *Targeted Financial Sanctions Relating to TF*

245. FIs displayed a varying understanding of their TFS obligations and implementation. Commercial banks, large development banks, large non-bank remitters, and other larger FIs are conducting automated screening against up-to-date UN sanction lists using third-party systems or consolidated in-house databases. Other FIs conduct screening manually to some extent with the level of comprehensiveness dependent on their business scale - some are screening using lists from the MoHA website, which are not accurate or up-to-date. Some smaller FIs are not conducting screening due to a misunderstanding that the obligations do not apply because they only have Nepali customers. As discussed in R.6, Nepal has major technical shortcomings with its TFS requirements.

5

### *Higher-Risk Jurisdictions Identified by the FATF*

246. FIs displayed a varying understanding of their higher-risk jurisdictions obligations and implementation. Nepal advises FIs about weaknesses in jurisdictions' AML/CFT systems mainly through the FIU's website, which includes links to the relevant FATF webpages. There are no specific measures in place to ensure that FIs are advised of concerns about weaknesses in the AML/CFT systems on an on-going basis, and supervisors have not issued any guidance or conducted any specific outreach. During the onsite visit, commercial banks, large development banks and all remittance providers communicated that they have systems in place and do not accept customers or transactions from high-risk jurisdictions. All other FIs have limited understanding of their obligations and lack policies and procedures to support implementation. As discussed in R.19, Nepal has major technical shortcomings with regard to the application of countermeasures.

### *DNFBPs*

247. Overall DNFBPs are not implementing enhanced or specific measures for PEPs, TFS, new technologies, or higher-risk countries. DNFBPs have a limited understanding of these AML/CFT obligations and associated ML/TF risks, particularly for PEPs. Screening for TFS where it does occur, is an ad-hoc manual process using ad-hoc information sourced solely from Nepal Government websites (which may not be up-to-date or accurate) with no well-established policies and procedures to ensure systematic implementation. With regard to PEP screening, where it does occur, it is focused only on domestic PEPs with no well-established policies and procedures to ensure systematic implementation. Critically, casinos are not implementing measures to identify foreign PEPs.

### *Reporting obligations and tipping off*

248. Overall FIs displayed a varying understanding and implementation of their reporting obligations. With the exception of commercial banks, reporting by other FIs is low. DNFBPs are not submitting STRs/SARs.

### *Financial Institutions*

249. Commercial banks have systems, to an extent, to identify and report STRs/SARs and policies and procedures to prevent tipping-off. Table 21 shows an increase in STRs/SARs reporting over the period under review with the increase in reporting since 2020 a direct result of goAML implementation. 2021/2022 reporting is more closely aligned to the risk profile of the sector. Data provided by the FIU shows improvement in commercial banks' STR reporting on some higher-risk predicate crimes, but also shows commercial banks are having challenges in identifying PEPs and suspicion of corruption activity.

250. Other larger development banks and remitters are submitting some STRs/SARs (see Table 21), but rely on much less advanced systems for STRs/SARs detection and to prevent tipping-off. Smaller FIs have manual processes. Overall the number of STRs reported to the FIU remains low and is not fully consistent with Nepal's national ML/TF risks or sector specific risks.

251. In relation to tipping off, commercial banks, insurance companies, securities firms and remitters manage the risks of tipping off by ensuring that only certain officers within the compliance function have access to the STRs/SARs to maintain confidentiality. FIs commented that the electronic submission of STRs/SARs through goAML has had a positive impact on their ability to maintain confidentiality of reports.

252. The FIU receives an annual average of 3,368,985 TTRs (see Table 9) with the vast majority received from the banking sector mainly from commercial banks. This is consistent with the materiality of Nepal's financial sector. Similar to SAR/STRs, goAML reporting has positively impacted quantity of reporting from FI sectors; however, TTR reporting by remittance companies is not in line with Nepal's risks.

**Table 21- STRs/SARs Reporting**

	2017/18	2018/19	2019/20	2020/21	2021/22	Total	Total %
Commercial Banks	660	910	924	1403	2380	6277	82.29%
Remittance Companies	194	263	52	29	187	725	9.50%
Development Banks	23	135	93	64	119	434	5.69%
Insurance Companies	2	31	4	3	9	49	0.64%
Securities Companies	2	3	14	18	8	45	0.59%
Finance Companies	3	8	1	12	19	43	0.56%
Cooperatives	2	1	2	0	3	8	0.10%
Microfinance institutions	0	0	0	3	44	47	0.62%
All other FIs	0	0	0	0	0	0	0
All DNFBPs	0	0	0	0	0	0	0
<b>Total</b>	<b>886</b>	<b>1351</b>	<b>1090</b>	<b>1532</b>	<b>2769</b>	<b>7628</b>	<b>100%</b>

Note: In addition, two suspicious information reports provided by NRB Foreign Exchange Management Department and 11 from Land Revenue Offices.

#### DNFBPs

253. DNFBPs are not submitting STRs/SARs (see Table 21) and have no practical measures in place to prevent tipping-off. Minimal TTRs have been submitted by DNFBPs (see Table IO.6-2).

#### *Internal controls and legal/regulatory requirements impeding implementation*

254. The application of AML/CFT internal controls varies significantly across FI sectors with commercial banks having the most advanced and systematic application. DNFBPs do not have AML/CFT internal controls.

*Financial Institutions*

255. Commercial banks and large development banks have internal AML/CFT controls and procedures to support compliance with AML/CFT requirements though they are not at the financial group level and do not fully reflect their ML/TF risk profile due to limitations in risk identification and understanding. Commercial banks and large development banks have introduced AML compliance programs with compliance officers, compliance departments, internal AML policies and procedures and compliance management arrangements.

5

**Case Example IO.4 -1**

A commercial bank was notified during an onsite inspection on the abuse of financial services being provided by that institution, particularly on the abuse of credit cards by individuals in their own Merchant PoS on a regular basis. Such transactions were being done on a monthly basis and full utilisation of credit card limits were being done. The FI immediately added a red flag scenario to identify such abuse of financial service by creating a parameter of “90% and above utilisation of credit card limit for two consecutive months”.

256. The AT was informed that commercial banks and large development banks require new staff to complete basic AML training during their on boarding and all staff (including committee and board members) complete annual AML/CFT refresher training. These trainings also include modules on identifying suspicious behaviours of their customers. Some banks have e-learning exams to assess the level of AML/CFT knowledge of all staff as part of their job requirement.

257. Other larger FIs have policies and procedures covering customer identification and verification (noting that the requirements in the ALPR are very prescriptive), record keeping, transaction monitoring and are conducting some AML/CFT-related training of staff. However, these institutions are yet to systematically apply AML/CFT internal controls and procedures for all obligations. While the applications of internal controls and procedures in FIs reflect their business size to some degree, the internal controls and procedures do not adequately reflect the entities’ ML/TF risk due to limitations in risk identification and understanding. Smaller FIs, have less sophisticated structures and AML/CFT frameworks in place.

*DNFBPs*

258. DNFBPs do not have internal controls for AML/CFT purposes including designated compliance officers. DNFBPs have some internal procedures for other regulatory requirements and where these intersect with AML/CFT requirements they may support basic non-risk based compliance with AML/CFT preventive measures. For example, casinos have internal controls and procedures to ensure basic identification is undertaken to ensure only foreigners enter the casino.

259. There are no legal or regulatory requirements impeding implementation of AML/CFT programs among DNFBPs. However, the lack of AML/CFT directives for lawyers and notaries and the lack of clarity on AML/CFT supervisory functions (see IO.3) do not support implementation of AML/CFT internal controls.



*Overall conclusion on Immediate Outcome 4*

260. Implementation issues are weighed most heavily for commercial banks, followed by development banks, cooperatives, casinos, real estate and DPMS. Supervisory engagement is most advanced for commercial banks' with commercial banks' and to a lesser extent large development banks' implementation of preventative measures significantly more advanced than all other FIs. However, their implementation is not fully risk-based due to limitations in risk understanding, and there are limitations in CDD for BOs, some elements of EDD, and limited STR reporting from development banks. For all other FIs' understanding of their ML/TF risk is limited and implementation of preventative measures is basic. There has been very limited supervisory engagement with DNFBP sectors with all sectors having a negligible understanding of their ML/TF risks and AML/CFT obligations, and are not applying mitigating measures commensurate with their risks. Risk-based CDD is not being undertaken and, overall, EDD is not occurring. DNFBPs are not submitting STRs and do not have internal controls for AML/CFT purposes.

261. **Nepal has a low level of effectiveness for IO.4.**

## CHAPTER 6. SUPERVISION

### *Key Findings and Recommended Actions*

#### **Key Findings**

1. NRB implemented a new framework for the risk-based AML/CFT supervision of commercial banks in 2021 and is close to completing a second round of inspections. As a result, NRB is developing its risk-based supervision of commercial banks, including its understanding of risks at an institution level. For the other NRB supervised FI sectors, implementation of risk-based supervision is in its early stages. This is made more challenging because AML/CFT supervision is spread across five separate NRB departments and not fully resourced. This has resulted in a decision by NRB to form a new specialist Division in January 2023 to undertake AML/CFT supervision across all its FI sectors.
2. For DeoC (for cooperatives), NIA (for insurance FIs) and SEBON (for securities FIs), implementation of risk-based supervision is also in its early stages. Implementing risk-based supervision is particularly challenging in the large cooperative sector as the supervisory framework is across the national, seven provincial and 753 local bodies.
3. Nepal is not actively preventing criminals from holding or controlling FIs. While there are licensing or registration controls and fit and proper checks across all FI sectors, criminal history checks are largely based on self-declaration without verification. Additionally, there are deficiencies relating to the persons subject to these checks.
4. Sanctions imposed on FIs for AML/CFT non-compliance have been limited and not dissuasive.
5. The FI supervisors' identification and understanding of the ML/TF risks of their sectors is primarily derived from the NRA 2020. There has been limited analysis undertaken at a sector or cross-sector level to develop understanding of threats and vulnerabilities. No supervisor has undertaken a sector risk assessment since the NRA.
6. For IRD (for pension funds) the understanding of ML/TF risks is minimal and there has been no AML/CFT supervision to date.
7. As risk-based AML/CFT supervision of FIs is in its early stages overall, Nepal has not demonstrated impact of its supervisory actions. FI supervisors' actions to promote understanding of AML/CFT obligations and ML/TF risks have primarily focused on development of sector specific AML/CFT directives and STR reporting obligations.
8. Nepal is not actively preventing criminals from holding or controlling DNFBPs, including in the higher risk casino, DPMS and real estate sectors. For casinos (supervised by MoCTCA), the current fit and proper requirements and regulatory framework are unclear and ineffective. For DPMS (supervised by IRD) and real estate agents (supervised by DoLMA) and those professionals that do not have an AML/CFT supervisor, there are currently no market entry or fit and proper requirements.
9. For all DNFBP supervisors, understanding of sector specific ML/TF risks is in its very early stages, AML/CFT supervision has not yet commenced and there have been limited actions to promote understanding. For lawyers, notaries and TCSPs, implementation of AML/CFT supervision is

hindered by a lack of clarity regarding who the supervisor is (Notary Bar Council, Nepal Notary Public Council or OCR) where there is a crossover between the DNFBP activities undertaken.

10. Nepal has sought to prohibit VASPs under the FERA. However, the FERA only prohibits the exchange of fiat currency to virtual currency or vice versa. Limited enforcement action has been taken by LEAs against illegal VASPs.

### *Recommended Actions*

- A. NRB's new AML/CFT Supervision Division should be appropriately resourced to deliver supervision across all NRB supervised FI sectors. NRB should continue to embed and refine its risk-based supervision framework for commercial banks. This framework should also be leveraged to develop risk-based supervision across all NRB supervised sectors, with the frequency and intensity of offsite and onsite supervision determined on the basis of risk.
- B. For cooperatives, Nepal should increase AML/CFT supervisory resource and develop and expedite risk-based supervision. This should include:
  - Streamlining processes across DeoC, the seven provincial and 753 local regulatory bodies;
  - Increasing coordination with NRB, including considering whether AML/CFT supervision of materially significant and higher-risk cooperatives be transferred to NRB; and
  - To promote financial inclusion and a risk-based approach, determining if some types of cooperatives (other than savings and credit cooperatives) could be exempt as reporting entities and/or from some AML/CFT requirements on the basis of low risk.
- C. Risk-based supervision should be implemented for the DNFBP sectors. This should prioritise casinos and higher risk DPMS and real estate agents.
- D. Nepal should address legal/technical deficiencies relating to market entry and fit and proper requirements and actively prevent criminals and their associates from ownership or management of FIs or DNFBPs. This should prioritise higher risk sectors such as commercial and development banks and casinos, as well as higher risk cooperatives, DPMS and real estate agents.
- E. All supervisors should apply proportionate and dissuasive sanctions for AML/CFT non-compliance. Casinos should also be sanctioned for engaging in illegal foreign currency or MVTS transactions in violation of the FERA. Real estate agents operating illegally should be identified and sanctioned when necessary.
- F. For the MVTS sector, Nepal should continue to promote and incentivise remittance through formal channels, while identifying and applying proportionate and dissuasive sanctions to illegal MVTS providers/hundi.
- G. Sector and cross-sector vulnerability analysis should be undertaken to increase understanding of risks including with cash transactions, foreign currency transactions, legal persons and arrangements, hundi, casinos, real estate, precious metals or stones and cross-border activities.
- H. NIA and SEBON should further develop risk-based AML/CFT supervision, leveraging prudential supervision and data collected offsite from mandatory reporting and STRs/TTRs. IRD should implement risk-based AML/CFT supervision for pension funds.

- I. For lawyers, notaries, chartered accountants, registered auditors, TCSPs and other similar professionals, Nepal should:
- Designate a supervisor and ensure that all professionals undertaking DNFBP activities are supervised for AML/CFT compliance;
  - Determine the extent to which lawyers, notaries, chartered accountants, registered auditors and other similar professionals engage in DNFBP activities and develop understanding of the associated risks; and
  - Clarify who the supervisor is when there is a crossover between the DNFBP sectors and the activities subject to the ALPA.
- J. Nepal should remedy gaps in the VASP prohibition and apply proportionate and dissuasive sanctions to illegal VASPs.

262. The relevant Immediate Outcome considered and assessed in this chapter is IO.3. The recommendations relevant for the assessment of effectiveness under this section are R.14, 15, 26-28 & R.34 & 35 and elements of R.1 and 40.

263. Based on their relative importance and taking into consideration Nepal's risks, context and materiality, risk-based supervision was weighed most heavily for commercial banks followed by development banks, savings and credit cooperatives, casinos, real estate and DPMS. The moderately weighted sectors include the money changers, remittance companies, securities and life insurance FIs, while for the DNFBPs, the lawyers and accountants are also moderately weighted. Other FIs and DNFBPs, such as EPF, CIT, PSB, hire purchase providers, finance companies, micro-finance institutions, pension funds and other types of cooperatives, are less weighted, similarly for notaries and TCSPs.

### ***Immediate Outcome 3 (Supervision)***

#### *Licensing, registration and controls preventing criminals and associates from entering the market*

264. The ALPA empowers AML/CFT supervisors to develop and enforce fit and proper requirements for persons controlling, managing or owning FIs and DNFBPs, whether directly or indirectly. In practice however, FIs and DNFBPs are only subject to licensing or registration and fit and proper requirements if they exist under prevailing laws. While there are requirements for all FI sectors and some DNFBP sectors, there are deficiencies relating to the procedures applied and the persons subject to checks.

#### *Financial Institutions*

265. For commercial banks, development banks, finance companies, micro-finance institutions and infrastructure development banks, NRB only conducts checks on promoter shareholders with 2% or more shares (see c.26.3). This includes a self-declaration questionnaire regarding criminal history. There is no verification conducted by NRB of the self-declaration and no further information sought to identify potential criminal associations (e.g. from LEAs or FIU). There are no checks conducted by NRB on managers or directors, although FIs are required to undertake their own due diligence on chief executives and directors and notify NRB if any are ineligible. This has never occurred. Since December 2022, FIs have been required to obtain a police clearance certificate for the chief executive and directors

as part of this due diligence process. In the last five years, there have only been licence applications to NRB for micro-finance institutions. Of 110 applications, all were approved until licensing of these FIs was suspended in 2020. Across all types of FIs, there were applications for transfer of promoter shares above the 2% threshold. For example, in FY21/22, there were 17 applications for commercial banks, four for development banks, two for finance companies and 230 for micro-finance institutions.<sup>68</sup> All transfers of promoter shares were approved, except for one relating to a micro-finance institution. The reason for the decline was not due to concerns regarding criminal ownership or control.

266. For money changers (including hotels), international MVTS providers and payment service providers and operators (including domestic MVTS), the person subject to fit and proper requirements by NRB vary (see c.26.3). However, across all these FIs, there are the same procedural deficiencies as there are for the banking sector, with criminal history checks relying solely on self-declaration. In the last five years, there were no licence applications for money changers, ten for international MVTS providers and 38 for payment service operators or providers. All persons subject to checks as part of these licence applications were assessed fit and proper, with no licence application declined for concerns regarding potential criminal ownership or control.

267. For hire-purchase providers, the only requirement is for shareholders not to be credit blacklisted and so there is no criminal history self-declaration required. In the last five years, there were ten applications for approval as hire-purchase providers, with five approved, five pending and none declined. For government institutions EPF, CIT and the PSB, there are fit and proper requirements for directors and managers. For PSB, Nepal reports all managers are government officials (see c.26.3). No information was provided to the assessment team regarding how fit and proper procedures are conducted for EPF, CIT and PSB. In the last five years, there were ten directors appointed by Ministry of Finance for EPF and 21 for CIT, with none declined.

268. Providing a MVTS service without a licence (e.g. hundi) is an offence under the FERA. Investigation of this offence, including on referral from NRB, is the responsibility of the Nepal Police, or DRI in the case of abuse of foreign exchange restrictions. NRB made some referrals to the Nepal Police in the last five years but there were no prosecutions of illegal MVTS providers (see c.14.2). Despite this, Nepal has taken some steps to curtail illegal MVTS services. This includes education campaigns for the public. In March 2022, this also includes lowering the transaction limit from NPR 100,000 (~USD 750) to NPR 25,000 (~USD 187) for international MVTS providers, their agents or sub-agents engaging in domestic MVTS transactions, relating to both cash and electronic transfers.<sup>69</sup> These initiatives operate alongside broader measures intended to reduce the use of cash in the economy. Since 2017, there has been a NPR 1 million (~USD 7,500) maximum threshold for cash transactions, other than cash deposits to banks, for loan repayments or when the use of cash is reasonably necessitated.<sup>70</sup>

269. For cooperatives, applications are processed by DeoC or by the relevant provincial or local body depending on whether the cooperative will be operating at a national, provincial or local level. All that is required is a self-declaration that no applicants are credit blacklisted or been prosecuted for misappropriation of members' funds or money laundering. There is no verification of this information

<sup>68</sup> Information/data on the full period under review was not provided to the assessment team.

<sup>69</sup> Subsequently in January 2023, these transactions were prohibited entirely.

<sup>70</sup> In some circumstances, cash transaction thresholds are lower still, ranging from NPR 5,000 to NPR 100,000. This includes cash deposits and withdrawals to digital wallets, payments for expenses by legal persons, payments to beneficiaries from international MVTS and foreign currency exchange transactions by Nepalese.

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or wider information sought to identify criminal association. There are no checks or self-declarations required for managers of cooperatives (see c.26.3). In addition, cooperatives that accept deposits or provide loans do not require approval from NRB to do so.<sup>71</sup> This is despite s76 of the NRB Act anticipating that such a requirement could be prescribed. No information was provided by Nepal regarding the number or outcomes of applications to form cooperatives in the last five years. However, Nepal reports that twelve existing cooperatives were declared “problematic” for failing to act in a member’s interest, to discharge financial liability or for wider governance concerns. For most of the twelve cooperatives, the reason for “problematic” status relates to allegations of embezzlement of funds. There has also been one investigation of a cooperative for significant criminal activity – resulting in the chairman and employees being charged with fraud and misappropriation of members’ savings (See Case Example IO.6-3).

270. For insurance and securities FIs, the range of persons subject to fit and proper checks by NIA and SEBON respectively is more comprehensive. Again however, checks are primarily based on self-declaration of criminal history,<sup>72</sup> with no verification or wider information sought to identify criminal association (see c.26.3). Neither NIA nor SEBON have any ongoing checks or approval process, apart from for the transfer of promoter shares. However, insurance and securities FIs are required to undertake their own ongoing due diligence to ensure all persons meet character requirements. Since FY17/18 there were 22 applications for licences to NIA for insurance FIs. Of these, 14 were approved and the remaining eight rejected for reasons not related to criminal ownership or control. Since FY16/17 there were 53 applications for licences to SEBON for the securities sector. Of these, 41 were approved and the remaining twelve are pending. All persons subject to checks by SEBON so far as part of these applications were assessed fit and proper, with no licence applications declined.

271. For pension funds supervised by IRD, Nepal reports there are fit and proper requirements on directors and managers. However, no further information was provided to the assessment team.

#### *DNFBPs*

272. There is legal uncertainty about the regulatory framework for casinos (see c.28.1) and the fit and proper requirements for casinos only apply to the ‘operator’ which is not defined. In the last five years, 19 new casinos have been approved licences with none declined. Limited information was provided regarding the steps taken when considering applications. In addition, casinos engaging in foreign exchange (including international MVTs) must also be licensed by NRB under the FERA. Despite all casinos in Nepal undertaking foreign exchange transactions, only six casino operators (covering ten casinos) have obtained the required licence from NRB.<sup>73</sup> Of these, only two of the casinos have ever submitted a required monthly return to NRB for their foreign exchange transactions, which is a condition of the licence.

273. For real estate agents, DPMS and TCSPs, there are no market entry or fit and proper checks by DoLMA, IRD and OCR, respectively, to prevent criminal ownership or control. For lawyers, notaries, chartered accountants and registered auditors, fit and proper checks are conducted as part of

<sup>71</sup> Except for cooperative banks (there is one currently) that require NRB approval (s12, s21 Cooperative Act).

<sup>72</sup> Effective 22 November 2023, NIA introduced a requirement that police clearance certificate be provided for a chief executive or promoter shareholder.

<sup>73</sup> 18 of Nepal’s 28 casinos are near to the Indian border, the remaining ten are in Kathmandu. Casinos are prohibited from providing gambling activities to Nepalese citizens.

professional accreditation. Similar to the FI sectors, criminal history checks are largely based on self-declaration without verification. No persons subject to these professional accreditation checks in the last five years were declined due to potential criminal ownership, control or conviction. One person was declined a legal practitioner's licence by Nepal Bar Council due to a previous conviction for fraud. There have also been five revocations of legal practitioners' licences in the last five years, four upon conviction for forgery and one for drug offences.

274. For other similar professionals that undertake DNFBP activities, there are no market entry or fit and proper requirements.

#### *VASPs*

275. Nepal reports that VASPs are prohibited under the FERA. However, the FERA only prohibits the exchange of fiat currency to virtual currency or vice versa. There are no explicit legislative provisions to prevent other VASP activities. Nepal Police has taken some actions regarding persons carrying out VASPs activities; however, the full outcomes of these actions are unclear.

### *Supervisors' understanding and identification of ML/TF risks*

#### *Financial Institutions*

276. Overall, FI supervisors' identification and understanding of the ML/TF risks of and within their sectors is limited and primarily derived from the NRA 2020. This understanding does not typically differentiate TF vulnerabilities from ML vulnerabilities. There has been limited analysis of risks undertaken at a sector or cross-sector level, including risks associated with cash transactions, foreign currency transactions, legal persons and arrangements, hundi, casinos, real estate, precious metals or stones and cross-border activities. No supervisor has undertaken a sector risk assessment since the NRA, which has hindered development of understanding of sector and cross-sector risks.

277. Notwithstanding these limitations, NRB's understanding of the risks in the commercial banking sector has evolved at an institution level. This follows NRB's prioritisation of the implementation of a new AML/CFT supervision framework for commercial banks in January 2021, incorporating a ML/TF Vulnerability Tool. Under the new framework, findings from onsite inspections are used to develop a residual risk rating for each commercial bank, which is then updated after the next inspection. From the initial round of onsite inspections, 20 of 27 commercial banks were rated medium-high risk overall, six were rated medium risk and one medium-low risk. In addition, NRB now collects information half-yearly through an online portal, which breaks down a bank's products and services, including by type and customer, risk profile, PEPs, cross-border and occasional transactions. Banks must also complete an annual questionnaire, which is a comprehensive self-assessment of their AML/CFT programs. NRB is starting to embed and refine its use of this offsite data in the ML/TF Vulnerability Tool, as well as considering the ways it can better use FIU reporting and wider prudential information. The new ML/TF Vulnerability Tool replaces NRB's previous risk rating process for commercial banks which had been in place since 2014, but not properly utilised.

278. At a sector level, NRB has also undertaken one thematic review relating to cash transactions by commercial banks over NPR 700,000 (~USD 5,250) during a six-month period. This occurred during a period of Covid-19 lockdown when onsite inspections were not possible. This assisted NRB to

understand the flow of cash in the banking system, identifying various types of business and individuals engaging in large cash transactions.

279. DeoC's understanding of the risks across the large cooperative sector also remains primarily based on the NRA 2020. For the provincial and many of the 753 local regulatory bodies, understanding of sector risks is very limited. More positively, DeoC is starting to utilise its COPOMIS management information system to consider sector risks at the institution level. Each cooperative must update the COPOMIS system monthly. It has 51 self-reported data points of information, including relating to financial services and some basic AML/CFT compliance details. There are 75-80% of cooperatives now enrolled in the system, although only 55% of the local regulatory bodies currently have access. While the COPOMIS system offers potential to assist develop risk profiles and ratings across the cooperative sector, including to identify if some types of cooperatives are lower ML/TF risk,<sup>74</sup> its current use for this purpose is in its very early stages. Overall, the large cooperative sector and the complex supervisory framework at national, provincial and local levels poses significant challenges in developing understanding of the risks of and within the cooperative sector.

280. NIA undertook an insurance sector vulnerability assessment in 2019 together with the NRA 2020. Since then, NIA's development of its understanding of risks in its sector has also primarily occurred at the institution level. This follows implementation of a new AML/CFT supervision framework in 2020, from which NIA initiated specific AML/CFT inspections alongside its general prudential inspections. NIA is starting to use its findings and quarterly data collected offsite to develop risk profiles of insurance FIs and its overall understanding of its sector risks is developing.

281. For SEBON, development of understanding of securities sector risks since the NRA 2020 has also primarily been at the institution level. This follows implementation of a new AML/CFT supervision framework in 2021. Findings from data collected in half yearly offsite reports and an annual self-assessment questionnaire are starting to be used to develop a risk rating for securities FIs. Overall, SEBON's understanding of its sector risks is also developing.

282. For IRD, understanding of the extent to which there are risks in the pension fund sector is minimal.

### *DNFBPs*

283. For the DNFPB supervisors, the identification and understanding of risks of and within their respective sectors is in its very early stages. Only ICAN has commenced a program to identify and develop its understanding of the risks in its sectors. For MoCTCA, DoLMA, IRD, Nepal Bar Council, Nepal Notary Public Council and OCR, there has been no substantive progress made to develop an understanding of sector risks above that in the NRA 2020. For the Nepal Bar Council, Nepal Notary Public Council and OCR, whose sectors are not included in the NRA, the level of understanding of sector risks is minimal.

### *Risk-based supervision of compliance with AML/CFT requirements*

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<sup>74</sup> Of the over 30,000 cooperatives. 14,484 are savings and credit cooperatives. The remainder are predominantly production and multipurpose cooperatives whose core activities are not financial services.



*Financial Institutions*

284. Overall, implementation of risk-based AML/CFT supervision of FIs is under development with supervision of commercial banks being the most advanced.

285. NRB's AML/CFT supervisory function for commercial banks has evolved over the last five years. Prior to 2021, AML/CFT supervision was undertaken within NRB's wider prudential supervision. There were few specialist AML/CFT staff and AML/CFT compliance was examined as a component part of prudential supervision. NRB did have an AML/CFT risk rating system. However, as noted in core issue 3.2 above, this was not properly utilised. This meant that risk did not influence the scope and scheduling of inspections, which typically occurred only within the wider prudential work program. To enhance its AML/CFT supervision of commercial banks, NRB formed a specialist ML Monitoring Unit within its Bank Supervision Department in 2020. The unit has four staff responsible specifically for AML/CFT supervision, two deputy directors and two assistant directors. This unit was responsible for implementing the new AML/CFT supervisory framework in January 2021.

286. Under the new framework, NRB undertook an initial round of detailed AML/CFT specific onsite inspections of all commercial banks in 2021, known as "solitary" inspections (16 in FY20/21, eleven in FY21/22) (see Table 22). These inspections were comprehensive compared to earlier ones, carried out by two staff over six working days, although some banks required three staff and longer duration. Factors considered during the inspections included the adequacy of, and compliance with, AML/CFT policies and procedures and compliance with the ALPA, ALPR and AML/CFT directive. Compliance with TFS requirements relating to TF was also included within the inspection process. As discussed in core issue 3.2, the first round of solitary inspections was used to determine an initial risk rating. Other data collected offsite also contributed to the risk rating process, although not in significant detail. This is because NRB has prioritised embedding its onsite inspection risk rating processes under the new framework, as well as building its AML/CFT supervisory capability, over the use of offsite data and other offsite supervision tools. However, NRB is increasingly starting to incorporate data collected offsite into its supervision and is looking to develop its use of offsite supervision.

287. The risk rating under the framework then informs the type, schedule and scope of a bank's next inspection. Banks with 'medium-high' ratings or above are subject to further solitary inspections, while those with a 'medium' rating or lower only have AML/CFT compliance reviewed within the next general prudential inspection. The AML/CFT findings from the previous inspection are considered during scoping of the AML/CFT content for general inspections.<sup>75</sup> Any bank that has only been subject to general inspections for three consecutive years must be subject to a solitary inspection. After the initial round of solitary inspections resulted in 20 of the 27 commercial banks<sup>76</sup> rated medium-high risk, NRB determined the next round should review additional AML/CFT requirements. This includes governance, identification and mitigation of risks, evaluation of controls for products, services and delivery channels, transaction monitoring, STR/TTR reporting and training. In addition, the second round of inspections assessed the banks' remediation of deficiencies from the first round. NRB has almost completed the second round of inspections of commercial banks, having concluded 15 solitary

<sup>75</sup> While the ML Monitoring Unit assist with scoping the AML/CFT component of the general inspection, this is conducted by prudential regulatory staff.

<sup>76</sup> As at the date of the onsite visit, the number of commercial banks has reduced to 26 (due to a merger).

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inspections and seven general inspections (including an AML/CFT component). There are 5 solitary inspections still to be conducted.

**Table 22: AML/CFT onsite inspections of commercial banks**

	FY18/19	FY19/20	FY20/21	FY21/22	FY22/23
General prudential inspections (incl. AML/CFT) - Pre-2021 Framework	28	20	12	N/A	N/A
Solitary (AML/CFT) inspections <sup>77</sup>	N/A	N/A	16	22	4
General prudential inspections (incl. AML/CFT) - New Framework	N/A	N/A	-	4	3
Special AML/CFT inspections	N/A	N/A	-	-	9

288. NRB's new framework also includes the use of "special" AML/CFT onsite inspections to respond to specific issues or concerns identified from data collected offsite or from other competent authorities. In FY22/23, NRB carried out nine "special" inspections of commercial banks based on information received from the FIU. Overall, and while in the early stages of implementation, NRB is increasingly undertaking its AML/CFT supervision of commercial banks on a risk-sensitive basis.

**Case Example IO.3 - 1: Special AML/CFT inspections following information from FIU**

In 2022, NRB received information from the FIU that various accounts across five commercial banks had large volumes of linked transactions. This raised concerns about the level of AML/CFT compliance by the five banks in relation to these transactions. Special AML/CFT inspections were conducted at each bank, which identified CDD deficiencies across all five of them. Enforcement cases were pending as at the date of the onsite visit.

289. For development banks and finance companies, supervision is undertaken by the Financial Institutions Supervision Department. As discussed in core issue 3.2 above, NRB is in the early stages of implementing the same supervision framework that is in place for commercial banks. However, it has not been adapted to reflect the size, nature and complexity of these sectors and FIs. Ten comprehensive initial solitary inspections were conducted of development banks in FY21/22 (see Table IO.3-2), undertaken by two staff over four working days. Prior to 2021, AML/CFT compliance was only examined as a component part of general prudential inspections. This has continued despite the transition to the new framework and the initial round of solitary inspections of development banks that is underway. There have been no solitary inspections conducted of finance companies under the new framework. Again however, some general inspections have also continued for finance companies, involving some basic AML/CFT content. In FY22/23, there were also two special AML/CFT inspections of finance companies in response to information from the FIU. There has been minimal use of offsite AML/CFT supervision.

290. For the infrastructure development bank, EPF, CIT and PSB, AML/CFT supervision is undertaken by the Bank Supervision Department. NRB is also in the early stages of implementing the same supervision framework for these FIs. Again, this has not been adapted to reflect the size, nature

<sup>77</sup> Two of the solitary onsite inspections in FY20/21 could not proceed due to Covid-19 restrictions. Instead, the onsite inspection process was conducted virtually over 25 working days (instead of six days physically onsite).

and complexity of these FIs. In relation to PSB, the framework does not consider any impact on ML/TF risks associated with every PSB unit operating independently. Initial solitary inspections of the infrastructure development bank, EPF, CIT and the largest of 68 PSB units were conducted in FY21/22 or FY22/23 by staff from the ML Monitoring Unit. Similar to development banks, these inspections averaged two staff over four working days and were used to inform initial risk profiles. There has been minimal use of offsite AML/CFT supervision.

291. Supervision of money changers (including hotels), international MVTs providers, hire-purchase providers and the cooperative bank for AML/CFT compliance is undertaken by the Non-Bank Financial Institution Supervision Department. Supervision of payment service operators and providers is undertaken by the Payment Systems Department. Supervision of micro-finance institutions is undertaken by the Micro-Finance Institutions Department. Across all these FI sectors, NRB is only in the very early stages of implementing risk-based supervision, including for the cooperative bank. As at the date of the onsite visit, there has only been basic AML/CFT content within the wider work program of general inspections. Typically, this comprises one staff member for one day covering AML/CFT compliance, although for large MVTs providers this has been up to two or three staff for two days. In FY22/23, there was a solitary inspection of a payment service operator.

292. As at the date of the onsite visit, NRB's AML/CFT supervision function for its various FI sectors is spread across five separate departments. This has resulted in a lack of AML/CFT supervisory expertise and resource, which has hindered the implementation of risk-based supervision, other than relating to commercial banks. This is acknowledged by NRB and consequently, it is establishing a new AML/CFT Supervision Division in January 2023. Nepal reports the Division will have 18-20 specialist AML/CFT staff, who will be responsible for AML/CFT supervision across all NRB supervised FIs. Nepal reports that this is intended to streamline risk-based AML/CFT supervision across all NRB supervised sectors, including use of both offsite and onsite supervision. Nepal reports the new Division will leverage NRB's developing capability and the framework being implemented for commercial banks, adapting and applying it on the basis of risk across NRB sectors. This should also allow for financial group level supervision, which is not undertaken currently.

293. DeoC adopted written AML/CFT supervision procedures in 2018 and has conducted AML/CFT specific onsite inspections since then.<sup>78</sup> These inspections are supported by DeoC's wider prudential inspection program, although this only includes very basic AML/CFT content. Since 2020, AML/CFT supervision has been led by an AML/CFT supervision unit with four staff, one deputy registrar, two section officers and one non-gazetted staff. The unit is responsible for AML/CFT supervision of all cooperatives operating at national level, as well as liaison with provincial and local regulatory bodies who do not have specialist AML/CFT resource. DeoC's written procedures include a matrix for determining cooperatives for inspection based on risk rating, including from data held in the COPOMIS system (see R.26 and core issue 3.2 above). However, in practice, implementation of these procedures is in its very early stages. For the most part, DeoC prioritises and only inspects cooperatives that transact or have assets over NPR 100 million (~USD 750,000). An AML/CFT specific inspection typically takes three working days, with three or four staff attending. Inspections cover the range of AML/CFT requirements, including TFS relating to TF. While the breadth of these inspections is reasonable and the number of inspections increasing, there are only very few cooperatives that have ever been subject to inspection (see Table IO.3-2). There is also no coordination with NRB, who also have a prudential

<sup>78</sup> DeoC, NIA or SEBON do not use the term "solitary" (used by NRB) for inspections solely relating to AML/CFT. Anti-money laundering and counter-terrorist financing measures in Nepal 2023

regulatory function for approximately 350 cooperatives with a deposit liability of NPR 500 million (~USD 3.75 million) or more. Overall, DeoC's implementation of risk-based AML/CFT supervision of cooperatives is in its very early stages.

294. NIA adopted an AML/CFT supervision manual in 2020 with a framework for risk-based AML/CFT supervision. To implement the new framework, NIA established an AML/CFT supervision unit, with four staff within its wider supervisory team. This is contrasted to the years prior to 2020 when AML/CFT supervision was undertaken solely as part of prudential supervision, with only basic AML/CFT coverage during general inspections. Under the new framework, NIA commenced a program of AML/CFT specific onsite inspections. FIs are selected for inspection during annual planning based on the products provided and review of data collected offsite. The initial AML/CFT specific inspections were comprehensive and typically involved three staff over one or two working days. The inspections covered the range of AML/CFT requirements, including TFS relating to TF. An initial cycle of onsite inspections was completed in FY21/22 after delays due to the Covid-19 pandemic (see Table 23). A second round of AML/CFT specific inspections is now in progress. Since the new framework was introduced, NIA's general prudential inspections do not usually include an AML/CFT component. Overall, implementation of risk-based supervision of insurance FIs, including NIA's use of data collected quarterly, is progressing. While still in its early stages, the small number of FIs in the insurance sector, NIA's 2019 insurance sector vulnerability assessment and its wider prudential supervision framework provide a solid foundation for risk-based AML/CFT supervision.

295. SEBON adopted its AML/CFT supervision manual in 2021 setting out a supervisory framework for risk-based supervision. To implement the new framework, SEBON has also created a new unit, with five staff within its wider supervision team of 20 tasked with AML/CFT supervision. This is contrasted to the years prior to 2020 when AML/CFT supervision was undertaken solely as part of prudential supervision, was not risk based and comprised only basic AML/CFT coverage during general inspections. As discussed in core issue 3.2 above, the new framework sets out SEBON's risk rating process to inform the frequency of AML/CFT specific onsite inspections. These AML/CFT specific inspections are intended to operate alongside SEBON's wider program of general inspections. Implementation of SEBON's new framework was also delayed due to the COVID-19 pandemic. The first 15 AML/CFT specific onsite inspections occurred in FY22/23 and were comprehensive, averaging three staff over two days. FIs were selected on the basis of risk rating in accordance with the new framework. These inspections covered the range of AML/CFT requirements, including TFS relating to TF. Overall, implementation of risk-based supervision by SEBON is also in its very early stages, although the availability of offsite data and wider prudential supervision framework provide a solid foundation.

**Table 23: Onsite inspections of all other FIs**

	FY18/19	FY19/20	FY20/21	FY21/22	FY22/23
<b>Development Banks (17 total)</b>					
- General inspections (inc. AML/CFT) Pre-2021 Framework	28	16	8	16	N/A
- Solitary (AML/CFT) inspections	-	-	-	10	0
- General inspections (inc. AML/CFT) - New Framework	-	-	-	-	7
<b>Finance Companies (17 total)</b>					
- General inspections (inc. AML/CFT) Pre-2021 Framework	17	11	4	12	N/A
- Solitary (AML/CFT) inspections	-	-	-	-	0
- General inspections (inc. AML/CFT) - New Framework	-	-	-	-	2
- Special inspections	-	-	-	-	2

<b>All other NRB supervised (729 total)<sup>79</sup></b>					
- Solitary (AML/CFT) inspections	-	-	-	1	4
- General (inc. basic AML/CFT component)	170	132	101	146	92
<b>Cooperatives (30,879 total) – DeoC</b>					
- General inspections (inc. basic AML/CFT content)	20	44	13	55	46
- AML/CFT specific inspections	17	26	44	62	8
- Special inspections	-	-	-	-	2
<b>Securities FIs (180 total) – SEBON</b>					
- General inspections (inc. basic AML/CFT content)	28	10	12	16	N/A
- AML/CFT specific inspections	-	-	-	-	15
- Special inspections	-	-	-	-	0
<b>Insurance FIs (41 total) – NIA</b>					
- General inspections (inc. basic AML/CFT content)	-	10	-	-	5
- AML/CFT specific inspections	9	9	4	5	0
- Special inspections	-	-	-	-	9

296. IRD has undertaken no AML/CFT supervision of pension funds as at the date of the onsite visit.

297. None of the FI supervisors have cooperated internationally with foreign counterparts or undertaken any joint supervision.

#### *DNFBPs*

298. For the DNFBP sectors, there has been no risk-based AML/CFT supervision with minimal AML/CFT related engagements by supervisors. MoCTCA has undertaken some initial engagement with casinos regarding AML/CFT obligations as part of wider regulatory inspections. However, there has been minimal coordination with NRB, who also have a regulatory function for casinos in relation to foreign exchange transactions. For the DPMS sector, IRD has undertaken some initial engagements regarding AML/CFT obligations as part of wider tax compliance inspections.

299. For real estate agents, chartered accountants, registered auditors, and TCSPs, the relevant supervisors have taken some initial actions to identify the number of entities in the sector and/or which entities in its sector undertake activities subject to the ALPA. These processes were ongoing at the time of the ME onsite visit.

300. Neither the Nepal Bar Council nor the Nepal Notary Public Council has undertaken any engagement with their sectors regarding AML/CFT requirements. Implementation of AML/CFT supervision is further hindered because all notaries are also lawyers and it is unclear whom the responsible supervisor is. There is a further lack of clarity regarding who the supervisor is if a lawyer or notary engages in TCSP services. This lack of clarity around supervisor is delaying implementation of AML/CFT supervision for lawyers and notaries, including those providing TCSP services.

301. In addition, there are other professionals in Nepal (such as providers of taxation, consultancy or non-chartered accountancy/ book-keeping services) that are DNFBPs under the ALPA, but for whom there is no current supervisor.

#### *Remedial actions and effective, proportionate, and dissuasive sanctions*

##### *Financial Institutions*

<sup>79</sup> A cooperative bank, infrastructure development bank, EPF, CIT, PSB, 10 hire-purchase loan providers, 64 micro-finance institutions, 571 money changers (incl. 218 hotels), 42 international MVTS and 37 payment providers.

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302. Supervisors monitor the progress of action plans to address deficiencies, including at the next inspection. In addition, there are a range of sanctions available under the ALPA or prevailing laws (see R.35). This commences with remedial instructions and formal warnings for minor deficiencies, with graduated and increasing penalties for more serious or further/ repeated non-compliance.

303. All FI supervisors, apart from IRD, have issued remedial instructions and formal warnings. Since 2019, only NRB has taken enforcement action resulting in administrative penalties (see Table 24). This related to four commercial banks, with penalties imposed ranging from NPR 1 to 3 million (~USD 7,500 to USD 22,500). There have been no suspensions, restrictions or withdrawal of licences by any FI supervisor for AML/CFT non-compliance. While noting that Nepal's sanctions framework anticipates graduated and increasing penalties, the sanctions imposed are limited and not dissuasive.

**Table 24: Remedial action and sanctions by FI supervisors for AML/CFT non-compliance**

	FY18/19	FY19/20	FY20/21	FY21/22	FY22/23
<b>NRB - commercial banks</b>					
- Warnings / Remedial Instructions	2	2	4	0	12
- Administrative penalties	-	1 (NPR 3M)	2 (NPR 3M)	-	1 (NPR 2M) <sup>80</sup>
<b>NRB - other FIs</b>					
- Warnings / Remedial Instructions	0	0	0	5	5
<b>DeoC - cooperatives</b>					
- Warnings / Remedial Instructions	16	18	44	7	0
- Administrative penalties	1 (NPR 1M)	-	-	-	-
<b>NIA - insurance FIs</b>					
- Warnings / Remedial Instructions	0	10	19	30	0
<b>SEBON - securities FIs</b>					
- Warnings / Remedial Instructions	7	1	1	14	0

304. There have been no sanctions applied for illegal MVTS providers or online casinos. Nor have there been any sanctions applied or prosecutions for breaches of the NPR 1 million (~USD7,500) cash transaction threshold that is applied to all goods and services transactions.

#### **Case Examples IO.3-2: Administrative penalties by NRB for commercial banks**

Bank 1 (FY 19/20) – NPR 3 million (~USD 22,500) - Inadequate account monitoring, with red flag alerts not resolved or not in place. Other deficiencies relating to enhanced CDD.

Bank 2 (FY 20/21) – NPR 2 million (~USD 15,000) - Inadequate account monitoring, with red flag alerts not resolved or not in place. Other deficiencies relating to enhanced CDD.

Bank 3 (FY 20/21) – NPR 1 million (~USD 7,500) - Deficiencies relating to enhanced CDD.

Bank 4 (FY 22/23) – NPR 2 million (~USD 15,000) - Inadequate account monitoring, with red flag alerts not resolved or not in place.

<sup>80</sup> Subsequently to the onsite visit, and following special inspections conducted in FY22/23 (see Case Example IO3.2) four commercial banks were each fined NPR 5 million (~USD 39,750) and another issued a formal warning.

*DNFBPs*

305. There have been no remedial actions or sanctions imposed on DNFBPs for non-compliance with AML/CFT requirements.

*Impact of supervisory actions on compliance**Financial Institutions*

306. All FI supervisors, apart from IRD, demonstrated they are developing mechanisms to monitor and follow up on remediation plans imposed on FIs following the identification of AML/CFT non-compliance. These processes are becoming increasingly systematised as FI supervisors implement their AML/CFT supervision frameworks. Most FIs report that supervision is having a positive impact on AML/CFT compliance. This includes the commercial banks, although NRB's second round of inspections under the new framework has not demonstrated significant improvement to risk ratings from the first round. Overall, the application of risk-based preventive measures is limited in all FIs except for commercial banks (see IO.4 for detailed discussion).

*DNFBPs*

307. For the DNFBP sectors, there has been minimal AML/CFT supervision to date and there has been no effect on compliance.

*Promoting a clear understanding of AML/CFT obligations and ML/TF risks**Financial Institutions*

308. All FI supervisors (apart from NRB for hire-purchase providers) have issued AML/CFT directives to their respective sectors. While these directives are enforceable, they contain significant additional provisions and detail as guidance to comply with AML/CFT requirements. Most FIs report that these directives are useful and form the basis of their AML/CFT programs. While the prescriptive nature of the directives is inconsistent with a risk-based approach, they provide a useful framework for FIs in the early stages of implementing mitigating measures. Some FIs, particularly commercial banks, understand that their AML/CFT programs need to evolve beyond strict adherence to the directives and advised this is in progress. Guidance and feedback are also provided by NRB, DOC, SEBON and NIA as part of their on-site inspection processes. Most FIs report that this is useful.

309. Additionally, the FIU issued Threshold Transaction Reporting Guidelines in January 2020 and updated its Suspicious Transactions Reporting & Suspicious Activity Reporting (STR/SAR) Guidelines in July 2021. These guidelines set out FIU reporting requirements, and both general and sector-specific indicators. The FIU (with NRB, DOC, NIA and SEBON participating) has also undertaken various outreach sessions for FIs as part of its implementation of goAML, focussing on reporting and use of the platform. Most recently, NRB has also published risk assessment guidance to assist bank and non-bank FIs undertake institutional risk assessments. However, there has been no additional guidance published

on other AML/CFT requirements, such as relating to beneficial ownership, legal persons and arrangements, PEPs, enhanced CDD and TFS relating to TF.<sup>81</sup>

310. NRB, DeoC, NIA and SEBON have also run training, education and outreach sessions intermittently for their respective sectors. DeoC ran twelve workshops from May 2019 to May 2022, attended by 682 persons in total. SEBON held eight AML/CFT seminars from September 2018 to September 2022, attended by 329 persons. NIA held six AML/CFT seminars from December 2020 to June 2021, attended by 166 persons. Training and education are most evolved by NRB, particularly for commercial banks. This includes a group messaging system that has been set up for compliance staff and day long programs held in December 2020, January 2022 and November 2022 to present and discuss common deficiencies across the banking sector, attended by 259 bank staff. In November 2022, NRB held a similar program for development banks, finance companies and micro-finance institutions, attended by 75 senior staff. In March and June 2022, there were events for the payment systems sector, attended by 84 staff from these FIs.

### *DNFBPs*

311. The AML/CFT directives issued by MoCTCA, IRD and ICAN also contain additional provisions and detail as guidance to their respective sectors to comply with AML/CFT requirements. The directives issued by DoLMA and OCR do not. The FIU (with DNFBP supervisors participating) has undertaken two initial outreach sessions on AML/CFT, with a focus on goAML and reporting. There has been no wider outreach or engagement by supervisors (apart from ICAN) to clarify how and when the ALPA applies to the DNFBP sectors, which some DNFBPs advised was necessary. Without any supervision of the DNFBP sectors, there is no feedback or guidance provided as part of supervisory processes.

### *Overall conclusion on Immediate Outcome 3*

312. Nepal is not actively preventing criminals or their associates from ownership or holding management functions in FIs and DNFBPs. Nepal has focused its AML/CFT supervisory resource on developing its risk-based supervision of the commercial banking sector, which is consistent with its materiality and ML/TF risks. In 2021, NRB implemented a new supervisory framework for risk-based AML/CFT supervision of commercial banks and is close to completing its second round of inspections. These inspections and the new framework, combined with the NRA, are supporting NRB to develop a reasonable understanding of the ML/TF risks for commercial banks at an institution level. For most other FI sectors, the implementation of risk-based supervision is only in its very early stages. Overall, sanctions imposed by FI supervisors have been limited and not dissuasive. FI supervisors' actions to promote understanding of AML/CFT obligations and ML/TF risks have focused on development of sector specific AML/CFT directives and STR reporting obligations. For the DNFBP sectors, risk-based AML/CFT supervision has not yet commenced. There have been very limited actions to promote understanding of ML/TF risks and AML/CFT obligations in DNFBP sectors.

313. **Nepal has a low level of effectiveness for IO.3.**

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<sup>81</sup> Nepal reports that guidance on beneficial ownership, TFS and enhanced CDD are all under development.



## CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

### *Key Findings and Recommended Actions*

#### ***Key Findings***

1. Private companies are the primary form of limited liability for-profit legal person in Nepal formed under the Companies Act. Nepal has not assessed the ML/TF risks of companies or the other types of legal persons that can be created in Nepal. Authorities did not demonstrate an awareness of ML/TF risks associated with legal persons.
2. Nepal has implemented limited measures to prevent the misuse of legal persons, which are not based on ML/TF risks and focused on company formation and registration requirements. Nominee shareholders and directors are not prohibited and it was evident that company service providers were in some instances presenting themselves as directors. There is an additional approval process for foreign companies.
3. The OCR holds basic information on companies with LEAs and Investigative Authorities and the FIU making some use of this information. However, OCR has no proactive mechanisms to ensure basic information is accurate or up-to-date including that OCR has imposed limited sanctions for non-compliance. There are similar concerns for other registrars (across the federal, provincial and local level) of Associations, Cooperatives, and other legal entities formed in Nepal.
4. Nepal relies upon information collected by commercial banks and some other large FIs in the course of implementing CDD requirements for BO information. LEAs and Investigative Authorities and the FIU are making some use of this information. However, information sought by commercial banks and some other large FIs is focused on the natural person owning 10% or more of shares (as controlling ownership interest in the legal person) and fully reliant on self-declaration and information provided by the customer. In addition, LEAs have deficiencies in powers for compulsory production of records.
5. Trusts can be created under the NCivC, the common law, and settled in Nepal under foreign laws. Public trusts are required to be registered and private trusts are required to notify the Registrar of their existence. Trustees are required to maintain records, but relevant authorities have little information on trusts in Nepal. Nepal has not implemented mitigating measures to prevent the misuse of trusts including that trustees are not obliged to disclose their status to FIs and DNFBPs. Therefore, where LEAs may seek information on legal arrangements from commercial banks or some other large FIs, the information is unlikely to be accurate or current.

#### ***Recommended Actions***

- A. Nepal should pass the *Amendments to Some Laws relating to AML and Business Promotion Bill*, which aims to enhance BO requirements for companies and other legal persons and entities in Nepal by introducing a BO registry. When passed, Nepal should expedite implementation and significantly enhance the capacity of impacted competent authorities to undertake their new/modified functions.

- B. Nepal should identify and assess the vulnerabilities, and the extent to which legal persons and other entities created in Nepal can be, or are, being misused for ML/TF, and enhance competent authorities' understanding of these risks.
- C. Based on an accurate understanding of ML/TF risks of legal persons and other entities, Nepal should implement measures to prevent their misuse for ML/TF purposes including measures relating to nominee shareholders and directors.
- D. Based on an accurate understanding of ML/TF risks of legal persons and other entities, Nepal should enhance the human and/or institutional resources of relevant registrars to enable them to proactively identify non-compliance with filing requirements. Proportionate and dissuasive sanctions should be imposed for non-compliance (to achieve this, amendments to relevant laws may be required).
- E. Nepal should enhance the availability of accurate and up-to-date BO information from all FIs and DNFBPs by providing targeted guidance and outreach, enhancing supervision of BO CDD requirements across all FI and DNFBP sectors, and imposing proportionate and dissuasive sanctions for non-compliance (see also RAs in IO.3 and IO.4).
- F. Nepal should enhance the availability of accurate and up-to-date information on legal arrangements by ensuring compliance with the NCivC, and require trustees to disclose their status to FI, DNFBPs and the district-level Land Revenue Offices. Nepal should also strengthen capabilities (human and institutional) to ensure that sanctions for non-compliance with requirements of the NCivC regarding legal arrangements are applied.
- G. Nepal should provide further training to all LEAs and Investigative Authorities and prioritise the development of adequate policies/procedures and SOPs to assist them enhance their use of basic and BO information in ML/TF and all higher risk predicate crime investigations.

314. The relevant Immediate Outcome considered and assessed in this chapter is IO5. The recommendations relevant for the assessment of effectiveness under this section are R24 & 25, and elements of R.1, 10, 37 and 40.<sup>82</sup>

### ***Immediate Outcome 5 (Legal Persons and Arrangements)***

315. Companies, corporations<sup>83</sup>, associations, cooperatives, and unlimited liability private and partnership firms can be formed in Nepal. Companies are the primary form of limited liability for-profit legal person<sup>84</sup> in Nepal with the vast majority of companies in Nepal being private companies. See Chapter 1 for an additional overview of these entities.

#### *Public availability of information on the creation and types of legal persons and arrangements*

<sup>82</sup> The availability of accurate and up-to-date basic and beneficial ownership information is also assessed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the FATF and Global Forum's respective methodologies, objectives and scope of the standards.

<sup>83</sup> Throughout the assessment process Nepal provided limited detail to the AT on Corporations

<sup>84</sup> 'Company not Distributing Profits' can also be formed under the Companies Act.

*Legal Persons*

316. Companies are formed under the Companies Act as either a public company, private company, or foreign company. Only limited liability companies (by shares) can be formed in Nepal. Company formation and registration is at the federal level under the OCR, Ministry of Industry, Commerce and Supplies with relevant rules and regulations and a manual on company creation available on the OCR's website (<https://www.ocr.gov.np>).

317. Associations are required to be registered at the local level District Administration Office under the Associations Registration Act 1977 and National Guidance Act 1961. Some information on creation of associations is also available on the SWC's website (<https://www.swc.org.np>) mainly focused on foreign NPOs and in the statutes.

318. Cooperatives are formed under the Cooperatives Act 2017 with registration at the federal, province and local level in accordance with Act and Cooperatives Regulation (see See Chapter 1 for an additional overview of these entities). There is information on the formation of cooperatives on the Department of Cooperatives website (<https://www.deoc.gov.np>).

*Legal Arrangements*

319. Trusts can be created under the NCivC, the common law, and settled in Nepal under foreign laws. Information in relation to creation of trusts is limited to information contained in statutes. Nepal does not hold information on how many trusts exist in Nepal. Authorities indicate that there has been a slow move to comply with registration notification requirements of the NCivC.

*Other forms of legal entities in Nepal*

320. Unlimited liability Partnership Firms are formed under the Partnership Act, 1964. Unlimited liability Private Firms are formed under the Private Firm Registration Act 1958. Registration is at the federal and provincial level. At the federal level, under Ministry of Industry, Commerce and Supplies, registration is via the Department of Commerce, Supplies and Consumer Protection in relation to commercial matters and Department of Industry for all other industry-related matters. At the provincial level, registration would be via the department or office of provincial government in regard to commercial matters and matters related to small and cottage industries. Some information on creation of partnership and private firms is publicly available through the relevant website as well as through the statutes.

*Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities*

321. Nepal has not identified or assessed the ML/TF risks arising from the features of the different types of legal persons that can be created in Nepal. The NRA 2020 does not examine how the structure of specific legal persons impact ML/TF vulnerability, and no other evidence was provided to the AT that shows Nepal has adequately identified and assessed ML/TF vulnerabilities of legal persons.

322. All competent authorities did not demonstrate an understanding of risks associated with legal persons and the extent to which legal persons created in Nepal can be, or are, misused for ML.

Understanding is even more limited in regards to TF. For example, OCR and other federal level registrars know the legal person registration processes and related legislation, but were unable to discuss ML/TF issues associated with legal persons in detail including how legal persons in Nepal may be misused for ML or TF.

### *Mitigating measures to prevent the misuse of legal persons and arrangements*

323. Nepal has implemented limited structural measures to prevent the misuse of legal persons and arrangements, and measures that are in place do not appear to be informed by an understanding and appreciation of ML/TF risk. Mitigating measures are focused on formation and registration requirements<sup>85</sup> and collection of BO information by FI and DNFBPs (collection of BO information is discussed in detail in the next core issues).

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324. *Companies:* As identified in R.24, there are laws in place to ensure that creation of companies is regulated and measures to ensure that there is recording of basic information including identification of natural persons at the time of registration. However, there is no verification of documents provided to OCR at the time of registration. OCR may conduct some verification if suspicions arise, but this is not a systematic process with clear policies and procedures.

325. While not mandatory, lawyers and accountants seem to be commonly involved in company formation. However, Nepal has not established clear and systematic measures for these entities to prevent the misuse of legal persons. While lawyers and accountants are DNFBPs and are required to implement AML/CFT preventative measures, the recentness of DNFBP sector specific directives and the lack of AML/CFT supervision means that any implementation of preventive measures is very recent and basic (see detailed discussion in IO.4).

326. Nominee shareholders and directors are not expressly prohibited under the law though Nepali authorities claim that it is not allowed by law. No evidence was provided to the AT on how the law prohibited nominee arrangements. Lawyers and accountants may be acting as directors during company registration, but do not seem to be acting as nominee shareholders due to professional obligations. While there is no evidence that the practice of nominee shareholders and directors is being commonly used, it cannot be ruled out and Nepal has not assessed the risks. At the onsite, some company service providers did indicate that they would in some instances list themselves as directors for the companies they were incorporating. There have been cases of nominee shareholders and directors (see Case Example IO.5-1). There is also no provision for a natural person being appointed by a legal person to respond to any queries by the competent authorities.

327. There are some limited controls on foreign companies. Foreign companies are required to obtain investment approval from the Investment Board of Nepal (investment exceeding NPR 6 billion ~ USD 4.5 million) or Department of Industry, Ministry of Industry Commerce and Supplies (investment below NPR 6 billion ~ USD 4.5 million). The approval processes are focused on the basic legal structure of the foreign company and availability of funds. NRB approval is also required for the remittance of

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<sup>85</sup> As discussed in R.24, while there is no express dematerialisation of bearer shares or prohibition of bearer shares/ warrants by Nepal, in practice, bearer shares cannot be held as all shares have to be registered in either the name of a legal person or natural person.

funds. There has been no cases where foreign company registration has been denied due to suspicion of criminal association or activity.

328. *Other forms of legal persons:* besides formation requirements, Nepal has no other mitigating measures to prevent their misuse.

329. *Legal arrangements:* The NCivC includes a range of obligations on trustees to maintain information on parties to a trust and trust property and gives an option of registration of private trusts and associated trust property. Nepal has not implemented any other mitigating measures to prevent the misuse of legal arrangements for ML/TF. Registration is mandatory for public trusts and private trusts are required to notify the registrar of their existence, which adds to transparency to some degree. It is not clear what information is provided to the registrar when a private trustee 'notifies' their existence. It appears from the onsite interviews that there has been a reluctance to register trusts in general and competent authorities have not encouraged registration or enforced compliance.

330. Usufruct settled under the NCivC are required to be certified by the court (s166 NCivC); however, the details of this process are unclear. Nepal has no other mitigating measures for trusts created or settled in Nepal.

331. *Other forms of legal entities:* besides formation requirements, Nepal has no other mitigating measures to prevent their misuse.

#### Case Example 10.5-1

A private firm was registered in the name of a woman who was illiterate. Over the course of a few months, several remittance transactions were made to the bank account of the firm. LEAs were later able to establish through the FI and questioning the owner that the firm's beneficial owner was actually a Customs agent who was using the firm and its account. Charges were laid against the Customs agent and firm's legal owner.

#### *Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons*

##### *Basic Information held by registrars*

332. Company name, registration number and date, company type (private, public, or foreign), company address, and date of recent communication with OCR is publically available on OCR's website by search of the company registration number. Other basic information on public companies is available from OCR upon request. The OCR holds other basic information on companies mostly in electronic form, which is available to competent authorities upon request. In 2020/2021 LEAs and Investigative Authorities made approx. 115 requests to the OCR for basic information and approx. 306 requests in 2021/2022. Where this information is in electronic form it can be provided in a timely manner. However, OCR has no proactive mechanisms to ensure basic information is accurate or up-to-date.

333. The registrars for other legal persons and entities operate at the federal, provincial and local level. With the exception of federal-level cooperative registrar to some extent (see detailed discussion of the COPOMIS information management system in IO.3), records are manual and are unable to be provided to LEAs in a timely manner, if requested. All registrars lack proactive mechanisms to ensure

basic information is accurate or up-to-date. For Associations and 'Company not Distributing Profits' that are affiliated with the SWC, some additional information on structure and management of the NPO may be available (see detailed discussion in R.8).

### *Beneficial ownership information held by legal persons, FIs, DNFBPs and other competent authorities*

334. Nepal relies upon information collected by FIs and DNFBPs in the course of implementing CDD requirements for BO information. LEAs and Investigative Authorities also have a limited understanding of BO, which in combination with some limitations in their powers (see R.31) impacts on their ability and capacity to seek BO information in their investigations. To assist in overcoming this, DMLI recently issued internal investigation guidance on BO of legal persons.

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335. LEAs and Investigative Authorities and the FIU are requesting CDD BO information from FIs and DNFBPs. FIs and DNFBPs are required to collect BO information as outlined in R.10; however, besides commercial banks and some other large FIs, it is unlikely that BO information is collected during CDD (see IO.4 for detailed discussion of CDD implementation). As discussed in IO.4, commercial banks and some other large FIs obtain the BO information during the CDD process with the information sought focused on natural person directly or indirectly owning 10% or more of shares (as controlling ownership interest in the legal person). However, these FIs face challenges with verification of BO and control information due to the limited publicly available basic information and limited avenues for verification – FIs are fully reliant on self-declaration and information provided by the customer. FIs face similar verification challenges for other legal persons and entities operating in Nepal. Commercial banks and some other large FIs can provide this CDD information in a timely manner, but it is unlikely to be accurate or up-to-date.

336. LEAs and Investigative Authorities make limited requests, if any, to the Investment Board of Nepal and/or Department of Industry, Ministry of Industry Commerce and Supplies relating to foreign companies; the SEBON for public companies; and SWC for affiliated Associations and for companies not distributing profits.

### *Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements*

337. Private trusts must notify the Registrar of their existence and may register their deeds and trust property (as discussed in R.25 there are gaps in the information required to be maintained by the trustee on the legal arrangement). Public trusts must be registered. Nepal has not had much success in ensuring that trusts register and comply with these requirements in the NCivC. This means that there is very limited information held on legal arrangements by local level Land Revenue Offices, if any. If information on legal arrangements is held by the Land Revenue Office, it could not be provided to competent authorities in a timely manner as records are paper based and are unlikely to be adequate or current. All searches for required information are carried out physically. During the onsite, the Land Revenue Office provided limited information and stated that they had not conducted any outreach or awareness on the requirements of registering trusts in Nepal. LEAs and other relevant competent authorities are not requesting information from Land Revenue Offices.

338. Nepal relies upon information collected by FIs and DNFBPs in the course of implementing CDD requirements for BO information. LEAs and the FIU can access (see above regarding gaps in LEAs and

Investigative Authorities ability to obtain information from FIs and DNFBPs) basic and BO information on legal arrangements from FI and DNFBPs. FIs and DNFBPs are required to collect BO information as outlined in R.10 (as discussed in R.10 there are gaps in the information required to be obtained on the legal arrangement); however, besides commercial banks and some other large FIs, it is unlikely that any BO information is available (see IO.4 for detailed discussion of CDD implementation). In addition, CDD BO requirements for legal arrangements are based on self-declaration by the customer during onboarding with Nepal having no measures to ensure trustees disclose their status to FIs and DNFBPs when forming a business relationship or carrying out the occasional transaction. Therefore, where CDD BO information is collected it is unlikely to be accurate or current.

### *Effectiveness, proportionality and dissuasiveness of sanctions*

339. While Nepal has sanctions for non-compliance with relevant laws and regulations covering obligations on legal persons and arrangements (See R.24 and R.25), overall, Nepal is not imposing effective, proportionate and dissuasive sanctions. The sanctions are in comparison with the breaches considered low and inadequate in serving as a deterrence. As discussed in IO.3, Nepal did not demonstrate effective, proportionate, and dissuasive sanctioning of FI and DNFBP for non-compliance with CDD BO requirements.

340. As discussed in R.24, the Companies Act includes a general fine (NPR 5,000.00 to NPR 20,000.00; ~USD 40.00 to ~ USD 160.00), which the OCR uses for all breaches of filing requirements. OCR informed the AT that it has an automated system that generates fines for breaches. Table 25 includes the number of companies fined, which the AT assumes is for non-compliance with requirements covering basic information. The value of the fines and details on percentage of fines paid is unclear (the authorities were unable to differentiate between the revenue collected as fines and registration renewals). OCR has no mechanism to enforce payment of fines, and companies cannot be fined for failure to provide updated information on shareholders and directors, and there are no BO information requirements under the Companies Act.

341. Sanctions for non-compliance with registration requirements for other legal persons and other entities in Nepal are very limited and unclear.

**Table 25 – Total Companies Fined**

Financial Year	Total Companies fined
2022-2023	30,341
2021-2022	26,845
2020-2021	34,899
2019-2020	55,061
2018-2019	15,393

342. While there are some sanctions for non-compliance with requirements of the NCivC regarding legal arrangements, they are not being applied.

### *Overall conclusion on Immediate Outcome 5*

343. Information on the creation of legal persons is publicly available. Nepal has not assessed the ML/TF risks associated with legal persons and all competent authorities did not demonstrate an

awareness of ML/TF risks associated with legal persons. Nepal has implemented limited structural measures to prevent the misuse of legal persons and arrangements, and measures that are in place are not informed by ML/TF risks. Companies are required to register basic information with OCR with LEAs making some use of it, but the information is unlikely to be accurate or up-to-date. Nepal relies upon information collected by commercial banks and some other large FIs in the course of implementing CDD requirements for BO information, which competent authorities are making some use of. However, information sought by commercial banks is focused on the natural person owning 10% or more of shares (as controlling ownership interest in the legal person) and fully reliant on self-declaration and information provided by the customer.

7 344. Trusts can be created under the NCivC, the common law, and settled in Nepal under foreign laws. Public trusts are required to be registered and private trusts are required to notify the Registrar of their existence. Trustees are required to maintain records, but relevant authorities have little information on trusts in Nepal. Nepal has not implemented other mitigating measures to prevent the misuse of trusts including that trustees are not obliged to disclose their status to FIs and DNFBPs.

345. Nepal does not impose effective, proportionate and dissuasive sanctions for legal persons and arrangements for failure to comply with reporting and information requirements.

346. **Nepal has a low level of effectiveness for IO.5.**



## CHAPTER 8. INTERNATIONAL COOPERATION

### *Key Findings and Recommended Actions*

#### **Key Findings**

1. Nepal can provide MLA based on a bilateral treaty or reciprocity with the MLA Central Authority coordinating responses. Nepal averages 10 incoming request per year with an execution rate of approx. 37%. The lack of a clear prioritisation mechanism and streamlined processes contribute to low execution rate and lengthy response times.
2. Nepal averages 12 outgoing MLA per year with approx. 75% of requests still in progress. Most MLA requests relate to predicate offences of drug smuggling, illegal trade in foreign currency and forgery. There has been one ML MLA request in 2021, which is currently outstanding, and none for TF. This is not fully consistent with Nepal's risk profile. In addition, majority of these requests are made by the court in proceedings and not by LEAs and Investigative Authorities as part of their investigation.
3. Nepal's ability to engage in extradition is limited by the legal requirement for a treaty with Nepal only having one extradition treaty with India.
4. In line with Nepal's risk and context, Nepal has a well-established five-level border security cooperation and coordination mechanism with India. This mechanism is actively used to coordinate and exchange information on criminal activity. Nepal also has a two-level border security mechanism with China.
5. The FIU and NP are actively seeking and providing other forms of international cooperation mainly through ESW and INTERPOL. All other LEAs and Investigative Authorities are using other forms of international cooperation to a much lesser extent and rely on NP and the FIU.
6. FI AML/CFT supervisors have MOUs with some foreign counterparts and/or are members of relevant international bodies, but are not using these mechanisms for AML/CFT-related international cooperation.
7. Nepal is not actively exchanging basic and BO information of legal persons or arrangements.

#### **Recommended Actions**

- A. Nepal should pass the *Amendments to Some Laws relating to AML and Business Promotion Bill*, which aims to rectify technical gaps in the MLA Act including removing the treaty requirement for enforcement of foreign judgments and removal of dual criminality for search and seizure.
- B. Nepal should streamline and enhance its MLA response coordination mechanisms to ensure incoming requests are prioritised and expeditiously transmitted to the operational level.
- C. Nepal should implement policies and procedures including a vetting process to ensure appropriateness and completeness of information in outgoing MLA to improve execution by requested jurisdictions.

- D. To significantly increase their ability to provide and seek extradition, Nepal should, in line with its risk and context consider, either removing the treaty requirement in the Extradition Act or enter into more treaties with other jurisdictions.
- E. Nepal should enhance LEAs and other Investigative Authorities' use of MLA in applicable ML, TF and higher-risk predicate crime investigations including by implementation of policies, procedures and SOPs, and providing training.
- F. DMLI, DRI, CIAA and other LEAs and Investigative Authorities should continue to establish and strengthen their individual mechanisms for international cooperation with important regional counterparts and other jurisdictions who share risks and a criminal nexus.
- G. Core principle AML/CFT supervisors should strengthen mechanisms for international cooperation on AML/CFT matters and increase cooperation and information sharing with regional partners with close economic and financial sector connections.
- H. Nepal should enhance international cooperation on BO including coordinating and consolidating information on legal persons and arrangements with jurisdictions that have similar shared risks.

347. The relevant Immediate Outcome considered and assessed in this chapter is IO2. The recommendations relevant for the assessment of effectiveness under this section are R.36-40 and elements of R.9, 15, 24, 25 and 32.

### *Immediate Outcome 2 (International Cooperation)*

348. Nepal has a legal framework in place to provide a range of constructive MLA and extradition under the MLA Act and Extradition Act for ML, TF and predicate offences. Nepal provides MLA on the basis of a bilateral treaty or reciprocity on any particular judicial proceedings in relation to ML, TF and predicate offences except for the execution of foreign judgements, which require a bilateral treaty. This impacts Nepal's ability to provide MLA on confiscation. Extradition can also only be completed with a bilateral treaty. Nepal has a MLA treaty with China and an extradition treaty with India.

#### *Providing constructive and timely MLA and extradition*

349. Nepal's MLA central authority (MoLJPA) handles all MLA requests including those received via diplomatic channels, which is done jointly with the MoFA. The central authority's MLA coordination committee meets as required to review incoming requests and decides whether to grant or deny the request before referral to the relevant LEA or Investigative Authority or a Government attorney for execution. In accordance with the MLA Act, a decision to grant or deny the request must occur within 15 days, which is viewed as generally timely. However, there are no other timeframes to ensure other steps in the MLA process are completed in a timely manner. Improved mechanisms to prioritise requests on the basis of urgency or risk would enhance the timeliness of Nepal's responses.

350. Nepal averages 10 incoming MLA requests per year (see Table 26) with approx. 37% of all requests executed. The requests are from a range of jurisdictions and are associated with corruption, ML (see Case Example IO2-1), paedophilia, drug smuggling, suspicious death, cheating, organised crime and kidnapping. There were four incoming MLA requests for ML, all of which are executed. Nepal has

not received any incoming TF-related MLA requests. The lower execution rate is due to insufficient documentation, irrelevant requests, no reciprocity or the matters were under adjudication in Nepal. Where appropriate, Nepal has taken some steps to request additional information and facilitate the execution of requests. MLA requests have been refused in line with the MLA Act, which is not unreasonable or overly restrictive.

**Table 26: Incoming MLA requests**

	2018	2019	2020	2021	2022	Total
Number of MLA requests	12	15	8	9	2	46
Number of MLA Denied	0	2	0	3	0	5
Number of MLA in process	5	8	8	3	0	24
Total number of MLA Executed	7	5	0	3	2	17

351. Regarding timeliness, the approx. average time for executed requests is a year. The response time appears to be lengthy<sup>86</sup> in view of the low number of incoming requests. Nepal does not seek, nor has received feedback from foreign jurisdictions regarding processing time and quality of the information and/or assistance provided.

352. Nepal has not received a MLA request for execution of a foreign restraining or confiscation order. The MLA Act allows for identification, freezing, seizing; however, confiscation (enforcement of foreign judgements) would require a MLA treaty with the requesting jurisdiction.

**Case Example IO2-1: Incoming MLA request – ML and fraud**

Jurisdiction X requested MLA on a ML and fraud case being investigated by the National Prosecutor's Office. The request was received by Nepal in early January 2022. The request was related to the provision of statements from victims. More than 1,400 bank accounts were opened with the use of false, stolen or lost identity documents by members of an organized criminal syndicate. These bank accounts were used for ML. The perpetrators scammed at least 1000 natural persons and legal entities from all over the world by offering the sale of a variety of products. The perpetrators did not provide any such products and became contactless after the funds were received. Two Nepali enterprises had sent money from their bank accounts to the bank accounts opened by the group. NP took the statements of those two Nepali enterprises with the response sent to Jurisdiction X in early May 2022.

353. Nepal can only provide extradition by treaty and only has an extradition treaty with India. Nepal has not received any incoming extradition requests from India. Nepal has no central authority for extradition, but the Extradition Act includes clear processes, outlines agencies responsible and timelines for each step (including MoFA, MoHA, Chief District Office and District Attorney's Office). There is no system of prioritisation of extradition requests and no processes for streamlining or simplifying measures. Without multiple treaty jurisdictions, Nepal is not able to effectively provide constructive and timely assistance to extradition requests. Nepal did not demonstrate it can negotiate an extradition treaty in a timely manner.

<sup>86</sup> This view is consistent with some international cooperation responses from the Global Network. Anti-money laundering and counter-terrorist financing measures in Nepal 2023

354. Nepal cannot extradite its own nationals (s5, s16(2) Extradition Act); however, it is required to prosecute offenders within Nepal. In the case of other nationals where Nepal chooses not to or cannot extradite the offender, it is required to prosecute the persons within Nepal (s17 Extradition Act). Nepal has two cases where it is seeking to prosecute Nepali nationals for offences in Thailand and India.

*Seeking timely legal assistance to pursue domestic ML, associated predicates and TF cases with transnational elements*

355. Nepal averages 12 outgoing MLA per year with approx. 75% of all outgoing MLA requests still in progress with further information requested or waiting for a response (See Table 27). Nepal can request for MLA from non treaty jurisdictions for confiscation provided that there is a court order (s13, s14(n) MLA Act). Nepal conducts limited actions to facilitate a response to their outstanding requests. Most MLA requests relate to predicate offences of drug smuggling, illegal trade in foreign currency and forgery. There has been one ML MLA request in 2021 (see Case Example IO2-2), which is currently outstanding. There are no MLA requests for TF. Overall, outgoing MLA requests are not in line with Nepal's ML risk profile. In addition, over 50% of outgoing MLA requests are initiated by the court during prosecution (see Table 28) and relate to summons of persons. Together, this demonstrates that LEAs and Investigative Authorities are not using MLA as an investigative strategy in line with Nepal's risk profile.

**Table 27: Outgoing MLA requests**

	2018	2019	2020	2021	2022	Total
<b>Number of requests</b>	11	16	10	13	10	<b>60</b>
<b>Number of responses</b>	0	1	0	5	2	<b>8</b>

**Table 28: Outgoing MLA requests by competent authority**

Requesting competent authority	Total
Court	<b>35</b>
Nepal Police	<b>15</b>
MoHA	<b>4</b>
CIAA	<b>3</b>
DMLI	<b>1</b>
DoC	<b>1</b>
Office of High Government Attorney	<b>1</b>
<b>Total</b>	<b>60</b>

### Case Examples IO2-2: Outgoing MLA

*Case 1:* In a current ML case under investigation by DMLI, Nepal requested jurisdiction X to provide certified copies of CDD, details on suspects and details on deposited funds into bank accounts in jurisdiction X in 2021. Nepal is yet to receive a response from the jurisdiction.

*Case 2:* In a cyberattack case, NP identified that the attackers attempted to transfer NPR 46,560,000.00 (~USD 349,200.00) to foreign bank accounts in six jurisdiction out of which NPR 33,690,000.00 (~USD 252,675.00) was transferred. Nepal has sought MLA with all six jurisdictions requesting CDD documents, statements of transactions, and the return of funds to Nepal. Nepal is yet to receive a response from all six jurisdictions.

*Case 3:* Using FIU intelligence, NP investigations revealed several suspicious bank transactions of five suspects. It was discovered that there was a substantial amount of inward remittance to two suspects, which was then transferred to other suspects and associated relatives' accounts. NP requested MLA from jurisdiction X in August 2019 and received jurisdiction X's response in November 2019.

356. The AT was not provided with information to determine if outgoing MLA requests are made in a timely manner. There is no involvement of a Government Attorney Committee during the request for MLA, which indicates that proper legal guidance on MLA requests to meet both Nepal's and the requested jurisdiction's legislative conditions is not readily available to the requesting agency. Based on the information available to the AT, Nepal is not seeking MLA in an appropriate and timely manner and at a level fully consistent with Nepal's ML/TF risks.

357. In the period under review, Nepal made one request for freezing of money (USD 9,000.00), which was paid as ransom in another jurisdiction by a Nepali citizen. The request was not successful.

358. Extradition is restricted to treaty jurisdictions with Nepal only having an extradition treaty with India. Nepal has one successful extradition case with India during the reporting period, which is not consistent with Nepal's ML/TF risks. There are 11 potential NP extradition cases that cannot proceed as they are with non-treaty jurisdictions. The domestic legal requirement for extradition with only treaty jurisdictions does not avail Nepal to multinational conventions. The treaty requirement is the key factor impacting Nepal's ability to seek extradition.

*Providing and seeking other forms of international cooperation for AML/CFT purposes*

359. Nepal is making reasonable use of other forms of international cooperation for AML/CFT purposes. Competent authorities provide and seek cooperation with foreign counterparts through a range of mechanisms, and Nepal is making active use of its formal border security cooperation mechanisms with India and China.

360. *Border Security Cooperation:* Nepal's border region is a significant risk, having a strong nexus to domestic predicate offending, ML and terrorism/insurgency and TF. Because of these risks, Nepal (led by APF under the MoHA) and India have a five-level border security cooperation and coordination mechanism. This mechanism is actively used to coordinate and exchange information on border-related criminal activity. In the period under review, 347 meetings took place (see Table 29).

361. Nepal also has a two-level border security cooperation and coordination mechanism with China, which is used to coordinate and exchange information of all border related criminal activity. In the period under review, 11 meetings at the district level and two at the local level took place.

362. At these meetings, approaches to investigations, information on suspected criminals, and illegal activities are shared between counterparts (see Case Example IO2-3). As NP and DOC are part of these meetings information in relation to drugs, human trafficking, terrorism/insurgency, and smuggling of money and precious metals is shared and later used to investigate the alleged offending. The meetings are assisting Nepal to locate and arrest suspects and mitigate ML/TF risks linked to Nepal's border.

**Table 29: Nepal and India Border-related meetings**

Year	Meeting Types					Total
	DIG Level	District level	Battalion Level	Company Level	Local level	
2019/2020	5	10	35	7	9	<b>66</b>
2020/2021	1	16	64	1	36	<b>118</b>
2021/2022	5	21	93	6	39	<b>163</b>
<b>Total</b>	<b>11</b>	<b>47</b>	<b>192</b>	<b>14</b>	<b>84</b>	

**Case Example IO2-3: Nepal and India Border-related Cooperation**

During border related meetings, discussions identified four persons suspected of murder. At the time, Nepal asked India for assistance in the form of information regarding possible location of the suspects. Using the information provided by India, NP were able to locate and arrest the four suspects.

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363. *FIU's use of other forms of international cooperation:* The FIU is actively seeking and providing other forms of international cooperation for AML/CFT purposes through ESW. The FIU is seeking international cooperation for its own AML/CFT purposes or on behalf of LEAs and Investigative Authorities. The FIU has MOUs with 16 foreign FIU counterparts and made 86 requests to foreign FIUs (see Table 30), including requests on behalf of LEAs and Investigative Authorities. In the last two fiscal years, the majority of the 35 outgoing requests were associated with tax evasion, fraud and smuggling, with no requests for ML or corruption. This is not fully consistent with Nepal's risk profile. The response rate to Nepal's requests is high.

**Table 30: FIU-Nepal outgoing international cooperation requests and disclosures**

	2018	2019	2020	2021	2022	Total
<b>Requests made to foreign FIU</b>	11	16	24	17	18	<b>86</b>
<b>Requests completed</b>	11	16	24	16	17	<b>84</b>
<b>Spontaneous disclosure made to foreign FIU</b>	1	5	1	0	0	<b>7</b>

364. The FIU received 56 incoming requests and 37 spontaneous disclosures from foreign FIU's during the reporting period (see Table 31). Nepal prioritises responding to ESW requests with all requests executed within an average response time of 26 days (see Case Example IO2-4). The majority of the incoming requests and disclosures relate to fraud, banking fraud and forgery and TF<sup>87</sup>.

**Table 31: Incoming international cooperation requests and disclosures to FIU-Nepal**

	2018	2019	2020	2021	2022	Total
<b>Requests received</b>	12	20	4	5	15	<b>56</b>
<b>Requests executed</b>	12	20	4	5	15	<b>56</b>
<b>Spontaneous disclosures received</b>	1	13	10	4	9	<b>37</b>

<sup>87</sup> The TF requests are seeking to know if the FIU had intelligence holdings on known entities from foreign jurisdictions.

**Case Example IO2-4: FIU's response to ESW request**

In 2021, FIU-Jurisdiction X sent FIU-Nepal a request via ESW regarding bank details and STR/SAR history of three Nepalese persons who were linked to seven suspicious transactions related to banking fraud in Jurisdiction X. Upon receipt of the request, FIU-Nepal immediately sent a request via goAML to multiple FIs for bank details and KYC information of suspected persons. It also checked its goAML database as well as other databases of FIU-Nepal. After receiving responses from four Banks, FIU-Nepal analysed all information available and replied to FIU-Jurisdiction X with analysis and all details/information available. Nepal's response took 37 days.

365. *LEA's use of other forms of international cooperation:* NP is seeking and providing other forms of international cooperation including in support of other LEAs and Investigative Authorities in Nepal. All other LEAs including DMLI, DRI and CIAA are seeking and providing other forms of international cooperation to a much lesser extent and not consistent with Nepal's risk profile.

366. NP has made a total of 472 requests (see Case Example IO2-5) over the reporting period and received a total of 352 incoming requests, the vast majority of which are through INTERPOL. The majority of both incoming and outgoing requests are requests for information. Nepal reports all requests have been responded to with the majority of incoming requests from India. Outgoing requests have been made to 16 jurisdictions on a range of predicate offences including higher-risk predicate crimes. Data provided to the AT showed a significant drop in outgoing requests since 2019, which is not consistent with Nepal's risks.

367. NP also has a police attaché in the Nepal Embassy, New Delhi. NP holds regular meetings with counterparts from India (449 meetings over the period under review) and China (50 meetings over the period under review).

**Case Example IO2-5: Nepal Police**

In August 2022, NP sent a message to Police in Jurisdiction X with a request to arrest and extradite a Nepalese person (Red Notice) accused of Murder. In September 2022, Police in Jurisdiction X deported the person to Nepal with an escort from their side.

368. *Supervisors use of other forms of international cooperation:* While some FI AML/CFT supervisors have MOUs with some foreign counterparts (NRB has MOUs with counterparts in India, China, Bangladesh, and Pakistan) and are members of relevant international bodies, AML/CFT supervisors are not using these MOUs or other forms of international cooperation for AML/CFT purposes.

*International exchange of basic and beneficial ownership information of legal persons and arrangements*

369. Nepal is not actively exchanging basic and BO information of legal persons or arrangements. The OCR has not received any requests for international cooperation, but could provide basic information on legal persons, if required. The OCR does not collect BO information on legal persons.

## CHAPTER 8. INTERNATIONAL COOPERATION

370. If requested, Nepal could provide BO information on legal persons or arrangements obtained by commercial banks and some large FIs through CDD. However, this information is unlikely to be accurate or up-to-date. Regarding legal arrangements, Nepal has no measures to ensure trustees disclose their status to FIs and DNFBPs (see detailed discussion in IO.5 and IO.3).

371. Nepal has not had much success in ensuring that public and private trusts comply with the requirements in the NCivC. This means that there is very limited information held on legal arrangements by local level Land Revenue Offices, if any. If information on legal arrangements is held by the Land Revenue Office, it could be shared.

### *Overall conclusion on Immediate Outcome 2*

372. Nepal provides MLA in response to incoming requests; however, the lack of a prioritisation mechanism and a streamlined decision process contribute to low execution rate and lengthy response times. Nepal averages approx. 12 outgoing MLA requests per year with the overall number and type of offending demonstrating outgoing MLA is not fully consistent with Nepal's risk profile. In addition, the majority of these requests are made by the court in proceedings and not by LEAs and Investigative Authorities as part of their investigation. Nepal's ability to engage in extradition is limited by the legal requirement for a treaty. Nepal is actively using other forms of international cooperation for AML/CFT purposes primarily the FIU and NP. In line with Nepal's risk and context, the AT has placed weight on the Nepal and India five-level border security cooperation and coordination mechanism. Over the last three years, 347 meetings have taken place with the mechanism actively used in relation to Nepal's higher risk predicate crimes. Nepal has a similar border cooperation mechanism with China. Nepal is not actively exchanging basic and BO information of legal persons or arrangements.

373. **Nepal has a moderate level of effectiveness for IO.2.**



## TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis concerning the level of technical compliance with the FATF 40 Recommendations in their numerical order. It does not include descriptive text on the member's situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

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

2. This is a new Recommendation, which was not assessed in the previous MER.

### *OBLIGATIONS AND DECISIONS FOR COUNTRIES*

#### *Risk assessment*

3. *Criterion 1.1* - Nepal has completed two NRAs in 2016 and 2020 with the data collection period of the 2020 NRA being 2015 to 2018. The AT was provided an April 2020 an English draft of the full NRA and the June 2020 English version of the sanitized public NRA. The sanitized public version was adopted by the Nepal Cabinet. The draft full NRA identifies threats and vulnerabilities as follows.

4. *ML threats:* The draft full version of the NRA assesses the overall ML threat level as medium. The analysis includes 19 predicate offences based on 300 STRs and 57 prosecutions related to ML and TF and also taking into consideration other data on occurrence of offences, proceeds generated and general public perception. Corruption, tax evasion, and financial sector crimes (such as banking offences and hundi) are identified as high threat. Drug trafficking, organized crime, extortion, arms related offences, domestic terrorism, fraud, counterfeiting of currency, environment related crime, robbery (theft), smuggling (including black marketing) and forgery are identified as medium threat. Counterfeiting and piracy of products is identified as medium low threat. Insider trading and market manipulation, trafficking of stolen goods, kidnapping, illegal restraint and hostage taking is identified as low threat.

5. The AT's view is that the threat level of banking offences is not at the same level as corruption and tax evasion (due to these offences mainly relating to low value misuse and non-repayment of loans), and that drugs trafficking and environmental crime may be higher than medium threat. There is an over reliance in the NRA on STRs and investigation/prosecution data which contributes to these findings. Nepal informed the AT that human trafficking and sexual exploitation is considered medium threat<sup>88</sup>. The AT's view is that the threat level of human trafficking (including sexual exploitation) is high.

6. The ML threat assessment includes a limited analysis of cross border threats with the analysis focusing on Nepal's porous border, and there is no analysis of risks associated with legal persons or arrangements. The NRA also includes limited discussion of ML typologies and is impacted by several common limitations including: (i) availability of data and statistics from competent authorities, (ii) challenges in cooperation and coordination between agencies, and (iii) subjective judgments to supplement analysis where data and statistics may not be available.

<sup>88</sup>The full NRA identifies human trafficking and sexual exploitation is high ML threat. The public version of the NRA however does not identify human trafficking and sexual exploitation as a major threat (the public NRA uses major as the highest threat category)

7. *ML Vulnerabilities:* The draft full version of the NRA assesses the overall level as medium-high. The analysis includes a detailed discussion on some key national cross-cutting vulnerabilities (e.g., comprehensiveness of the AML legal framework, availability of BO information, and quality of FIU intelligence gathering and processing). In general, the AT considers Nepal’s findings regarding national vulnerabilities as reasonable.

8. The draft full version of the NRA assesses individual FI and DNFBP sectors as outlined in the below table. The analysis of the banking, cooperative, securities, and insurance sectors is comprehensive with the overall findings being reasonable. The analysis of other FIs is far less comprehensive, combines diverse FIs and is focused on money changers and international remittance (there is almost no analysis of Postal Savings Bank, Employees Provident Fund, Citizen Investment Trust and other pension funds). The analysis of real estate, casino, DPMS and accounting is limited, but the overall sector vulnerability findings are reasonable. The NRA does not cover payment service operators and providers, including domestic MVTs providers, lawyers, notaries, and company/trust service providers. Micro-finance institutions are only included in the analysis of financial inclusion.

**Table 1: FI and DNFBP Vulnerability Rating**

Sector	Rating
<b>FIs</b>	
Banking and FI Sector (commercial banks, development banks, and finance companies)	Medium High
Cooperatives	Medium High
Securities	Medium
Insurance	Medium
Foreign exchange and MVTs	Low but when combined with Hundi rated as High
Other FIs (Postal Savings Bank, Employees Provident Fund, Citizen Investment Trust and other pension funds)	Low
<b>DNFBPs</b>	
Real Estate	High
Casino	Medium High
DPMS	Medium High
Accounting	Medium

9. *TF threat and vulnerabilities:* Overall, the TF assessment is very limited with the analysis and discussion focused on Nepal’s legal framework for terrorism, TF and TFS. The analysis includes some discussion of some terrorist incidents, but it does not cover the financing. The assessment concludes that Nepal’s terrorism risk as Medium for domestic threat and Low for international threat. There is no TF risk rating – Nepal identified this as a translation error. The analysis of TF vulnerabilities is far less comprehensive than for ML with NPOs, Nepal’s porous border, the informal economy, and innovations/trends in information technology acknowledged as TF vulnerabilities but without sufficient depth of analysis.

10. *Criterion 1.2 -* The Deputy Governor, NRB, chairs the twenty six-member inter-agency IC designated to assess Nepal ML and TF risks (s35 ALPA). The IC is empowered to form sub-committees, as required, to assist in its functions. The committee comprises of members from relevant agencies.

11. *Criterion 1.3* - The IC is required to assess Nepal's ML and TF risk "periodically and as per necessity" (s35 ALPA). Nepal's first National ML/TF NRA was initiated in 2012 and completed in 2016. The 2nd NRA was completed in 2020. It is unclear if the frequency of updates is based on consideration of changing ML/TF risk.

12. *Criterion 1.4* - The OPMCM distributed the full NRA to all government agencies. The sanitised public version of the NRA is available to SRBs, FI and DNFBPs from several government websites including the OPMCM and the FIU.

#### *Risk mitigation*

13. *Criterion 1.5* - Nepal's National Strategy and Action Plan is being implemented. The National Strategy and Action Plan is informed by the 2016 NRA, a 2018 self-assessment and was updated with supplementary activities based on the 2020 NRA findings. While the National Strategy and Action Plan sets national-level priorities, it is not fully translated into institutional-level resource allocation across all agencies involved in Nepal's AML/CFT regime.

14. *Criterion 1.6* - Nepal does not exempt FIs or DNFBPs from compliance requirements on the basis of risk. However, some DNFBPs are not required to implement AML/CFT measures (see Chapter 1 and R.22 for discussion of DNFBP scope gaps).

15. *Criterion 1.7* - FI and DNFBPs are required to take EDD measures for identified high risks (s7E(1)(a) ALPA) and to incorporate Nepal's NRAs or other risk assessments into their risk assessments (s7D(2) ALPA).

16. *Criterion 1.8* - As outlined in c.10.18 and c.22.1, FIs and DNFBPs are permitted to apply simplified CDD (SCDD) where risks of ML/TF are identified as lower (s7F(1) ALPA) and not in relation to high-risk activities (s7F(2) ALPA). As outlined in c.1.7, FIs and DNFBPs are required to incorporate Nepal's NRAs or other risk assessments into their risk assessments (s7D(2) ALPA). Therefore, SCDD must be consistent with Nepal's assessment of its ML/TF risks.

17. *Criterion 1.9* - As outlined in R.26, the NRB is ensuring commercial banks are implementing their obligations under R.1. For all sectors a risk-based AML/CFT supervision is either in its very early stages or not yet commenced. As outlined in R.28, across all DNFBPs, risk-based AML/CFT supervision has not yet commenced.

### *OBLIGATIONS AND DECISIONS FOR FINANCIAL INSTITUTIONS AND DNFBPS*

#### *Risk assessment*

18. *Criterion 1.10* - FIs and DNFBPs are required to identify and assess their ML and TF risks on the basis of country, geographical area, business or profession, scope of work, customers, products or services, transactions and delivery channels (s7D(1) ALPA) and are required to: (i) document the assessment (s7D(4) ALPA), (ii) determine the risk level by analysing all relevant risk factors (s7D(3) ALPA), and (iii) keep the assessment up-to-date (s7D(5) ALPA). FIs and DNFBPs are required to provide all documentation to AML/CFT supervisors, if required (s7D(6) ALPA). There is no explicit requirement for FI and DNFBPs to understand their ML/TF risks. There are minor scope gaps for DNFBPs (see Chapter 1 and R.22).

#### *Risk mitigation*

19. *Criterion 1.11* - FIs and DNFBPs are required to have policies, controls and procedures to manage and mitigate identified risks and monitor their implementation (s7D(7) and (8) ALPA). There is no explicit requirement for senior management approval and there are minor scope gaps for DNFBPs (see Chapter 1 and R.22).

20. *Criterion 1.12* - As outlined in c.1.8, FI and DNFBPs can take simplified measures to manage and mitigate risks, if lower risks have been identified and where there is no suspicion of ML/TF ((s7F(2) ALPA). However, criteria 1.9 to 1.11 are not all met.

### *Weighting and Conclusion*

21. Nepal completed its second NRA in 2020. While the identification of corruption, tax evasion and hundi as high threat is reasonable, The AT's view is that the threat level of banking offences is not at the same level as corruption and tax evasion, and that drugs trafficking and environmental crime may be higher than medium threat. The identification of human trafficking as medium is not reasonable. The identification of banking, real estate, cooperative, DPMS and casino as Nepal's most vulnerable sectors is reasonable; however, the assessment does not include some FIs and DNFBPs. Other shortcomings include no analysis of ML/TF risks associated with legal persons and more limited analysis of cross-border issues. While the AT acknowledges that Nepal is not a high-risk TF jurisdiction, the TF assessment is very limited and lacks sufficient analysis. Nepal is applying a national-level risk-based approach through its National Strategy and Action Plan but it is not fully clear how risk-based institutional-level allocation of resources is occurring. Obligations on FIs and DNFBPs are in place noting some minor DNFBP scope gaps.

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

### *Recommendation 2 - National Cooperation and Coordination*

23. In its last MER, Nepal was rated partially compliant with former R.31, as policy level coordination mechanisms were not being used to effectively develop and implement AML/CFT policies, and operation-level coordination mechanisms for AML/CFT were not effectively utilised.

24. *Criterion 2.1* - Nepal is implementing its second<sup>89</sup> National Strategy and Action Plan. This National AML/CFT Strategy and Action Plan is informed by the 2016 NRA and a 2018 Self-Assessment. In addition, as a result of the 2020 NRA findings, supplementary elements were added to the National Strategy and Action Plan. The NRC is responsible for reviewing the ongoing implementation of the National Strategy and Action Plan and Nepal's overall AML/CFT activities.

25. *Criterion 2.2* - Nepal has designated the National Coordination Committee (NCC) comprising members from all relevant agencies, coordinated by Secretary, OPMCM, with powers to frame and recommend national AML/CFT policies (s8 ALPA).

26. *Criterion 2.3* - Nepal has three primary mechanisms for AML/CFT cooperation and coordination as follows.

27. The RCM coordinated by Governor, NRB is responsible for coordinating FI and DNFBPs implementation of AML/CFT requirements, supporting FIU for resources and developing related

<sup>89</sup> Nepal's first National AML/CFT Strategy and Action Plan was 2011-2016.

AML/CFT policies and procedures. The RCM meets on average every four months and includes representation from all FI supervisors with DNFBP supervisors invited, if necessary.

28. The ICM headed by Deputy Attorney General coordinates with law enforcement in regards to investigation, prosecution and adjudication of ML, prescribing national investigation strategies against financial crimes on the basis of risk. While other investigating bodies can be invited to the ICM on an as required basis, it is unclear if and how often Customs and Nepal Police are involved in the work of the ICM. Nepal reports previously Customs have participated. The Investigation Coordination Committee (ICC) under the chairmanship of Attorney General is an additional mechanism for cooperation and coordination on ML investigations and prosecutions.

29. The CTM is headed by Secretary, Ministry of Home Affairs and is responsible for controlling, combatting and executing responses to terrorism and TF.

30. The above mechanisms are being used for policy-related cooperation and coordination. With the exception of the ICC, the above mechanisms are not used to cooperate on operational issues.

31. *Criterion 2.4* - Nepal advised the NCC and CTM are the mechanism for cooperation and coordination on PF. However, as outlined in R.7, Nepal has no implementation of TFS and it is unclear what, if any, cooperation and coordination on PF is occurring. Just before the onsite visit, Nepal established a Joint Committee on TFS Implementation under the CTM. At the time of the onsite, the committee had not met.

32. *Criterion 2.5* - Nepal has cooperation and coordination mechanisms through the NCC (see c.2.3). While Nepal has confidentiality obligations, there do not appear to be specific data protection obligations on competent authorities or privacy obligations that impede the AML/CFT requirements. However, as discussed, operational cooperation and coordination is very limited.

### *Weighting and Conclusion*

33. The NCC is responsible for national AML/CFT policy including Nepal's risk-based National Strategy and Action Plan. Nepal has a range of committees supporting the NCC and implementing Nepal's AML/CFT policies. While these committees are cooperating on AML/CFT policy, operational cooperation and coordination is limited. Due to the large number of LEAs and Investigative Authorities and AML/CFT supervisors, the AT has placed weight on the limited operational cooperation and coordination. There is no cooperation and coordination on PF.

34. **Recommendation 2 is rated partially compliant.**

### *Recommendation 3 - Money laundering offence*

35. In its last MER, Nepal was rated partially compliant with former R.1 as ML was not criminalised in keeping with international standards. Since then, Nepal has criminalised ML under s3 ALPA. The Act has undergone multiple amendments (2011, 2013 and 2014) and the criminalisation of ML has changed since the last mutual evaluation took place to incorporate the Vienna and Palermo conventions.

36. *Criterion 3.1* - ML is criminalized on the basis of the Vienna and Palermo Convention. The offence of ML under s3 ALPA covers converting, transferring any property known to be or having reasonable grounds to believe is the proceeds of crime, the purpose of which is to conceal,

disguise the illicit origin of such property or assist any person involved in the offence to evade legal consequences in compliance with the Vienna and Palermo Convention. Definitions of 'property' and 'proceeds of crime' are in keeping with the international standards (s2 ALPA).

37. Concealment, disguising or changing the true nature, source, location, disposition, movement or ownership of, or the right in any property knowing or having reasonable grounds to believe it is proceeds of crime is also criminalised (s3(1)(b) ALPA).

38. Acquiring, using or holding any property knowing or having reasonable grounds to believe is proceeds of crime is also criminalised (s3(1)(c) ALPA). Proceeds of crime is defined in s2(h) ALPA as including the property derived from money laundering or from predicate offences which Nepal has listed in a schedule of offences.

39. Conspiracy, aiding, abetting, facilitating, counselling, participation, association and attempts to commit ML are also criminalised (s3(2) ALPA).

40. *Criterion 3.2* - Nepal uses the list approach for predicate offences. The Predicate Offences Schedule (s2(ad) ALPA) prescribes predicate offences criminalised under both general and specific laws as all the offences prescribed under the designated categories of offences in the Recommendations. There is a reasonable range of offences within each category of predicate offences. Despite listing the offences, Nepal has failed to criminalise adequately piracy, human smuggling, and terrorism. Piracy is given limited weight due to Nepal's risk and context. Nepal has adequately criminalised human trafficking (s3 and s4 Human Trafficking and Transportation (Control) Act 2007) providing some coverage of human smuggling. Regarding the criminalisation of legal persons for corruption, sanctions are only applicable to the natural person that committed the act and persons acting as the "Principal Official".

41. s2 of the Schedule includes the offence of terrorist financing; and s3 includes any other offence as designated by the Government of Nepal by a notification in the Nepal Gazette. To date Nepal has not designated any additional offences.

42. *Criterion 3.3* - Nepal does not apply a threshold approach or combined approach.

43. *Criterion 3.4* - Through the definition of proceeds of crime (s2(h) ALPA) and property (s2(ae) ALPA), Nepal's ML offence extends to any type of property regardless of value that directly or indirectly represents the proceeds of crime.

44. *Criterion 3.5* - s29 of the ALPA states that if property is the proceeds of crime then prosecution in relation of the property can be undertaken for ML regardless of whether the predicate offence has been prosecuted or not.

45. *Criterion 3.6* - s4 of the Predicate Offences Schedule ALPA includes predicate offences as any offence that occurred internationally, which is deemed a predicate offence in the schedule if it is also an offence in a country abroad. In addition, for predicate crimes included in the Penal Code, extra-territorial application is ensured through s2.

46. *Criterion 3.7* - There is nothing prohibiting the prosecution of self-launderers for ML. In practice, the majority of ML convictions have been for self laundering.

47. *Criterion 3.8* - The *mens rea* for the offence of ML under the ALPA can be actual knowledge or having reasonable grounds of belief that property is the proceeds of crime. This

indicates that the ML *mens rea* can be proved from objective factual circumstances. This is further reinforced by s42 ALPA which states that “[k]nowledge, intent or purpose of the person accused of the offence of money laundering and terrorist financing shall be inferred from objective factual circumstances.”

48. *Criterion 3.9* - The penalty for natural persons for ML (s30(1) ALPA) is a fine that is two times the “Claimed Amount” and imprisonment for a term of two to ten years. Where a public servant or employee of an FI or DNFBP commits ML, the natural person is liable for an additional 10% sanction (s30(7) ALPA). The “Claimed Amount” is not defined in the ALPA or other legislation with Nepal authorities’ indicating it is the equivalent to the amount or value of property involved in the offence.

49. The combination of Nepal’s concurrent sentencing regime (s36(3) Criminal Offences (Determination of Sentence and Execution) Act 2017) and wide range of discretion in terms of the fine and imprisonment means the lower end of the sentence of 2 years is not fully dissuasive. In comparison, the offence of theft incurs a minimum sentence of 2 years to 7 years. Fraud incurs a sentence of 3 years imprisonment and corruption incurs a sentence of 3 months to 10 years imprisonment.

50. *Criterion 3.10* - The criminal liability of legal persons, under s30(8) ALPA for ML, are:

- Imposing a fine up to five times of the fine imposable for a natural person, which means up to ten times the “Claimed Amount”.
- Prohibiting from participating in public procurement for a certain period to be specified.
- Prohibiting from procuring goods or services for a certain period to be specified.
- Getting recovered damages for loss and damage.
- Revoking the license or permit, or
- Dissolving such legal person.

51. The maximum fine imposable is dependent on the amount or value of property involved in the offence, which may result in very low fines. The other sanctions in relation to prohibition from public procurement participation may be dissuasive to legal persons who are engaged in the public sector but not those who are not reliant on the public sector. Overall, sanctions are not fully dissuasive.

52. *Criterion 3.11* - Under s3(2) ALPA no “person shall conspire to, aid, abet, facilitate, counsel, attempt to commit, or associate with, or participate in,” the commission of money laundering. The Penal Code also criminalises conspiracy (s33), attempt (s34), and aiding (s36(2)) and abetting (s35). Since the Penal Code or ALPA do not define facilitating and counselling as an offence, it is unclear how facilitating ML and counselling ML is defined and criminalised.

### *Weighting and Conclusion*

53. Nepal criminalizes ML under s3 ALPA on the basis of the Vienna and Palermo Conventions. There are minor shortcomings in relation to the designation of predicate offences and also in ancillary offences of ML. The sanctions for ML for both natural and legal persons are not fully dissuasive.

54. **Recommendation 3 is rated largely compliant.**

**Recommendation 4 - Confiscation and provisional measures**

55. In its last MER, Nepal was rated Non-Compliant with former Recommendation 3 as (i) confiscation of proceeds was limited to ML, corruption, drugs offending and human trafficking, (ii) no capacity to comprehensively confiscate instrumentalities or intended instrumentalities or property of corresponding value, and (ii) no capacity to comprehensively seize or freeze proceeds, instrumentalities or intended instrumentalities. Mechanisms for the protection of bona fide third parties were onerous.

56. *Criterion 4.1* - Nepal's confiscation regime is primarily conviction based with Nepal's primary crimes confiscation regime under the Criminal Proceeds and Instruments of Offence (freezing, controlling and confiscation) Act 2013 (POCA)<sup>90</sup>. s34 ALPA provides for ML and TF confiscation including a reverse onus of proof and non-conviction based confiscation (s28 ALPA).

57. (a) - s34(1)(a) ALPA mandates confiscation of property laundered regardless of the person who holds, owns, possesses or has any kind of interest in it. There is a reverse onus of proof and non-conviction based confiscation regime (s28 ALPA).

58. (b) - s11(1) POCA mandates confiscation of proceeds (including derived income or other benefit) and instrumentalities (used for intended to be used). s34(b) ALPA mandates confiscation of instrumentality (used or intended to be used) for ML<sup>91</sup>.

59. (c) - s34(1)(c) and (d) ALPA mandates confiscation of property that is the proceeds of, or used in, or intended to be used, or allocated for use in the financing of terrorism, terrorist acts or terrorist organisations.

60. (d) - s11(2) POCA and s34(2) ALPA provide for the confiscation of other property of a corresponding value if it is not possible to take control of property or instrumentalities.

61. *Criterion 4.2* -

62. (a) - s3 POCA and s16 ALPA (in relation to ML and TF) provide overarching powers for all LEAs and Investigating Authorities to identify, trace and evaluate property or instruments subject to confiscation in ML, TF and predicate crime cases.

63. (b) - s4 POCA and s18(2) ALPA (in relation to ML and TF) provide for freezing and seizing measure to prevent dealing, transfer and disposal of property subject to confiscation.

64. (c) - s4(6) POCA and s18(10) ALPA (in relation to ML and TF) enable all LEAs and investigating authorities to prevent or void actions that would prejudice Nepal's ability to freeze, seize property subject to confiscation.

65. (d) - All LEAs and Investigating Authorities are authorised to search for and detect property or instruments that they have reasonable grounds to believe are property or instrumentalities of crime liable to confiscation (s3 POCA and s16f ALPA). As per R.31, some LEAs lack compulsory measures for the production of records and there are major shortcomings in special investigative techniques.

<sup>90</sup> The National Penal Code 2017 and other specific laws also provide for confiscation to some offences.

<sup>91</sup> Proceeds of ML are confiscated under s11 POCA.



66. *Criterion 4.3* - Provisions in POCA (s12) and ALPA (s34) provide protection for the rights of *bona fide* third parties.

67. *Criterion 4.4* - The DMPC is mandated to manage and auction properties acquired from offences and instrumentalities (s13 POCA). Its powers, functions and duties are provided in s14 of the POCA. Requirements exist for the auctioning of properties and instrumentalities after the order or judgement of a court is final (s17 POCA). The details of the auction of perishable goods as per s21 of POCA are to be forwarded to the relevant court within 7 days and 3 days to the person concerned (r10 Criminal Proceeds and Instruments of Offence (freezing, controlling and confiscation) Rule 2021 (POCR)). The frozen property or instrumentality are to be kept safe to preserve value (s11 POCA). If the property or instrumentality could not be auctioned it is to be disposed in view of public interest or public health or it can be retained in the name of the Government of Nepal (s12 and s13 POCA). Nepal advised that disposal of properties before a court action is finalised can occur if the assets were to decay. Procedures and details of the circumstances of this type of situation are not clear and have not been observed in policy or legislation by the AT as they are still in draft form. In addition, mechanisms are not in place for cooperation between DMPC and all LEAs and Investigative Authorities.

### *Weighting and Conclusion*

68. Nepal's all crimes confiscation regime is under the POCA and its ML and TF confiscation regime is under the ALPA and provides full coverage of c.4.1. The DMPC is responsible for asset management with minor shortcomings relating to disposal of properties before a court action is finalised and cooperation with all LEAs and Investigative Authorities. LEAs and Investigative Authorities also have minor shortcomings relating to investigative measures.

69. **Recommendation 4 is rated largely compliant.**

### *Recommendation 5 - Terrorist financing offence*

70. In its last MER, Nepal was rated non-compliant with former SR.II, as terrorism financing was not criminalised. Post MER 2011, Nepal acceded the International Convention for the Suppression of the Financing of Terrorism on 23 Dec 2011. Nepal was removed from ICRG review in March 2014, after FATF concluded that Nepal had made significant progress to improve its AML/CFT system by *inter alia* adequately criminalising ML and TF.

71. *Criterion 5.1* - Nepal criminalises TF on the basis of the TF Convention (s4 ALPA). s4 ALPA prohibits the provision and collection by any means directly or indirectly, willingly and with illegal intention to fund or intend to fund a terrorist act or a terrorist organisation.

72. s2(c) (1) and (2) ALPA explicitly describes a terrorist act as an act which is defined as an offence by Article 2 of the International Convention for the Suppression of the Financing of Terrorism 1999 (TF Convention). A terrorist person/individual is defined in s2(d) ALPA and terrorist organisation is defined in s2(e) ALPA.

73. *Criterion 5.2* - s4(1) ALPA provides that "no person shall wilfully and with illegal intention, provide or collect money or funds (defined in accordance with the Glossary term 'funds and other assets'), by any means directly or indirectly, despite knowing that such money or funds, are used or intended to be used, in whole or in part by any person in terrorist acts or by a terrorist organisation". The offense of terrorist financing is committed even if the money or funds are linked or not linked to a specific terrorist act (s4(5)(c) ALPA).

74. *Criterion 5.2<sup>bis</sup>* - There is no specific provision in the ALPA particularly in s4 that criminalises or prohibits the financing of travel of individuals who travel to a State other than their State of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.

75. *Criterion 5.3* - The TF offence extends to funds or other assets whether from legitimate or illegitimate sources (s4(5)(f) ALPA). Definitions of 'funds' is in keeping with the international standards (s2(m) ALPA).

76. *Criterion 5.4* - s4(5)(b) ALPA states that the offence of terrorist financing is committed even if the money or funds were not actually used to commit or attempt to commit the terrorist act. s4(5)(c) ALPA states that the offence of terrorist financing is committed even if the money or funds are linked or not linked to a specific terrorist act.

77. *Criterion 5.5* - Intent and knowledge required to prove the offence can be inferred from objective and factual circumstances (s42 ALPA).

78. *Criterion 5.6* - The sanctions for a natural person convicted of TF are imprisonment and fine (s30(3),(4)(5) & (7) ALPA). The term of imprisonment is between 3 to 20 years. The fine is five times the 'Claimed Amount' if set out or to a maximum of NPR10 million (~USD 75,000) if the 'Claimed Amount' is not set out (s30(3) ALPA). Further under s30(7) ALPA, where a public servant or employee of a reporting entity commits a TF offence, the natural person is liable for an additional 10% sanction in addition to the sentence set out in ALPA s.30(1),(2),(3) or (4). The 'Claimed Amount' is not defined in the ALPA or any other legislation however Nepal authorities' indicate the 'claimed amount' is equivalent to the amount or value of property involved in the offence.

79. The combination of Nepal's concurrent sentence regime (s36(3) of the Criminal Offences (Determination of Sentence and Execution) Act 2017) and wide range of discretion in terms of the fine and imprisonment means the lower end of the sentence of 3 years is not fully proportionate or dissuasive for TF offences.

80. The sanction for ancillary TF offences, in accordance with requirements under c.5.8, is half the sentence of s30(3) ALPA (s30(4) ALPA), which is not dissuasive.

81. *Criterion 5.7* - The criminal liability for a legal person is under s30(8) ALPA as follows:

- Imposing a fine up to five times of the fine for a natural person, which means up to 25 times the "Claimed Amount";
- Prohibiting from participating in public procurement for a certain period to be specified;
- Prohibiting from procuring goods or services for a certain period to be specified;
- Getting recovered damages for loss and damage;
- Revoking the license or permit; or
- Dissolving such legal person.

82. These sanctions for legal persons are not deemed fully dissuasive or proportionate, as the maximum fine imposable is dependent on the Claimed Amount, which may result in very negligible fines to a maximum fine of NPR 250,000,000 (~USD 1,875,000). The other sanctions in

relation to prohibition from public procurement participation may be dissuasive to legal persons who are engaged in the public sector, but not those who are not reliant on the public sector.

83. *Criterion 5.8 -*

84. (a) - Under s4(2) ALPA, it is an offence to attempt to commit a terrorist financing act. Under s5(a) a terrorist financing offence is committed even if the terrorist act does not occur or is not attempted.

85. (b) - Under s4(4)(a) ALPA, no person shall act as an accomplice in a terrorist financing act and s4(2) includes attempts to commit a terrorist act.

86. (c) - Under s4(4)(b) ALPA, it is an offence to organise or direct other persons to commit a terrorist act.

87. (d) - Under s4(4)(c) ALPA, it is an offence to encourage a group of persons to commit or wilfully contribute to the TF criminal act.

88. *Criterion 5.9 -* TF is designated as an ML predicate offence (Predicate Offences Schedule) (s2(ad) ALPA)).

89. *Criterion 5.10 -* s4(5-6) ALPA states that a terrorist financing offence is committed regardless of whether the person or terrorist organisation (s4(5)(e) ALPA) is alleged to have committed the offence in the same country or a different country from where the terrorist act or intended act occurred (s4(5)(d) ALPA).

### *Weighting and Conclusion*

90. Nepal has criminalised TF in the ALPA on the basis of the TF Convention. Nepal's TF offence does not cover c5.2<sup>bis</sup>; however, Nepal is not identified as a major source or route jurisdiction for foreign terrorist fighters. TF sanctions for natural and legal persons are not fully proportionate or dissuasive.

91. **Recommendation 5 is rated largely compliant.**

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

92. In its last MER, Nepal was rated non-compliant in former SRIII with deficiencies in most criteria. Since Nepal's 2011 MER, the ALPA has been amended to include a separate chapter on TFS and the Asset (Money) Laundering Prevention (Freezing of Properties and Funds of Designated Person, Group and Organisation) Regulation (ALPR-TFS) 2013 was introduced.

93. *Criterion 6.1 -* Nepal has a legal framework to identify and designate pursuant to UNSCR 1267/1989 and 1988 (Chapter 6B of the ALPA). Nepal has also issued ALPR-TFS 2013.

94. (a) - s29F(2) ALPA identifies the Ministry of Home Affairs (MoHA) as the competent authority to conduct necessary inquiries into persons, groups or organisations involved in, or suspected to be involved in TF in accordance with UNSCRs 1267/1989/1988 Committees for designation. Under s29F(3) ALPA and r4(3)(a) ALPR-TFS, when the Government of Nepal, Council

of Ministers decides to enlist a person, group or organisation, MoHA forwards the proposal to the UN through the Ministry of Foreign Affairs (MoFA).

95. (b) - MoHA on *suo motu* (on its own motion/initiative) or upon receipt of a request from a foreign country, conducts the necessary inquiry into the person's, group's or organization's involvement in suspected terrorist or terrorist financing activities (s29F(2) ALPA). r4 ALPR-TFS provides mechanisms to identify targets for designation including that r4(3) sets out the process once the decision has been made to enlist a person, group or organisation dependent on the relevant UNSCR. However, there is no explicit requirement for the designation criteria to be in accordance with relevant UNSCRs.

96. (c) - s29F(2),(3) ALPA and r4(1) of the ALPR-TFS provides an evidentiary standard of proof or "reasonable grounds" when deciding whether to make a proposal for designation. Nepal states that these provisions are independent of criminal proceedings involving investigation and prosecution; however, this is not explicit in the ALPA or ALPR-TFS.

97. (d) - There are no clear provisions in the ALPA or ALPR that provide for this criteria, and Nepal has not proposed any designation pursuant to UNSCR 1267/1989 and 1988.

98. (e) - There are no clear provisions in the ALPA or ALPR that provide for this criteria, and Nepal has not proposed any designation pursuant to UNSCR 1267/1989 and 1988.

99. *Criterion 6.2* - Nepal's legal framework to identify and designate pursuant to UNSCR 1373 is set out under Chapter 6B of the ALPA.

100. (a) - As identified in c.6.1(a), s29F(2) ALPA identifies the Ministry of Home Affairs (MoHA) as the competent authority to conduct necessary inquiries into persons, groups or organisations involved in, or suspected to be involved in TF. s29F(3) sets out the authority for designations pursuant to UNSCR 1373 and has the legal basis for designation based on its own motion or upon request of another country (s29F(2)(3)(4)(5) ALPA). While r4(3)(c) ALPR-TFS provides for MoHA with approval from the Council of Ministers, to designate persons or organisations to the 'domestic designation list', there is no explicit requirement for this to be done in accordance with the criteria of UNSCR1373.

101. (b) - s29F(3) ALPA provides the mechanism for identifying targets for designation under UNSCR 1373. r4(1) and (3) ALPR-TFS provides further requirements on this mechanism; however there is no explicit requirement for the designation criteria to be in accordance with UNSCR 1373.

102. (c) - s29F ALPA provides the legal basis for the designation pursuant to UNSCR1373. r3(4) requires the MoHA to complete its enquiry within three days upon receipt of the request. This is considered to be a prompt determination.

103. (d) - s29F(2) and (3) ALPA and r4(1) of the ALPR-TFS provides an evidentiary standard of proof or "reasonable grounds" when deciding whether or not to make a proposal for designation. Nepal states that said provisions are independent of criminal proceedings involving investigation and prosecution however, this is not explicit in the ALPA or ALPR-TFS.

104. (e) - The legal basis for requesting another country give effect to a domestic listing is under s29F and s29I(1) ALPA and r4 ALPR-TFS. However, it is unclear what information is required to accompany such a request.

105. *Criterion 6.3 -*

106. (a) - s29(F)(2) and r3 and r4 ALPR-TFS provides the legal basis for the MoHA to conduct 'inquiry into such person, groups or organization'. However, there is no procedure or mechanism for the collection and solicitation of information to identify persons and entities based on reasonable grounds, or who are suspected or believe to meet the criteria for designation.

107. (b) - *Ex parte* proceeding is allowed in Nepal when provided under the relevant laws or rules; however, there are no explicit provisions in the ALPA or ALPR that allow competent authorities in Nepal to operate *ex parte* against a person or entity who has been identified and whose (proposal for) designation is being considered.

108. *Criterion 6.4 -*

109. *For implementation of TFS related to UNSCR 1373:* once Nepal makes the decision to designate an individual/entity pursuant to UNSCR 1373, an order to freeze the property or funds is issued (s29F(3) of the ALPA). In accordance with r3(7) ALPR-TFS, MoHA is required to immediately issue the freeze order. s29G(1) ALPA requires all natural and legal persons in Nepal to immediately freeze property or funds of designated persons/entities under s29F ALPA. However, the ALPA does not define 'immediately' and as Nepal has not designated an individual/entity pursuant to UNSCR 1373, the AT cannot confirm that a freeze could be completed within 24 hours.

110. *For implementation of TFS related to UNSCR 1267 and 1988:* ALPA s29E requires:

- The MoFA must publish 'without delay' on its website any changes to the listing and electronically inform the Ministry of Home Affairs (MOHA) (s29E(1) ALPA).
- MOHA must then issue a Freeze Order that requires the immediate freezing of the property or funds of designated persons or entities (s29E(2) ALPA), and publish the UNSCR list and Freeze Order 'without delay' on its website (s29E(2) ALPA).

111. As legislated in ALPA s29E(2), Nepal issued a Freeze Order on 6 December 2013. Nepal sought to apply this freeze order to all future new and changes to designations under UNSCR1267 and 1988; however, there is no prospective clause to cover future changes and amendments to designations. Consequently, natural and legal persons in Nepal are not required to freeze funds or assets of persons or entities designated (or changes to designations) under UNSCR1267 and 1988 after 6 December 2013. Further, the Freeze Order dated 6 December 2013 includes hyperlinks to UNSCR 1267 and 1988 sanction list on the UN website; however, at the time of the ME onsite visit the hyperlinks were no longer valid. The hyperlinks are the only explicit references to UNSCR1267 and 1988 as there is no reference to these UNSCRs in the text of the Order. Therefore, Nepal is not implementing TFS pursuant to UNSCR 1267 and 1988 without delay.

112. *Criterion 6.5 -*

113. (a) - All natural and legal persons in Nepal are required to immediately freeze and without prior notice the funds or property of designated persons and entities (s29G(1) ALPA).

114. (b) - The obligation to freeze extends to, and includes properties or funds (i) solely owned or jointly owned (s29G(2)(a) ALPA). (ii) possessed or controlled, directly or indirectly (s29G(2)(a) ALPA). (iii) generated or accrued (s29G(2)(b) ALPA). (iv) of any person, group or

organisation acting on behalf of, or at the direction of, such person, group or organisation (s29G(2)(c) ALPA).

115. (c) - s29G(4) ALPA states that a natural person, legal person, concerned body and FI and DNFBP shall make provisions so that the properties and funds, economic resources, financial or other associated benefits frozen become incapable of being used, directly or indirectly, solely or jointly by or yielding benefit to the persons, groups or organizations mentioned in s29E and 29F. However, this provision (s29G(4) ALPA) does not explicitly prohibit all types of persons under the FATF requirement i.e. both nationals and foreigners or foreign entities or individuals with no nationality. While s29G.(2)(a) of ALPA states that all properties and funds are subject to freezing without delay, this provision does not specifically include funds or other assets, economic resources, or financial or other related services available directly or indirectly, wholly or jointly, for the benefit of designated persons and entities.

116. (d) - Nepal's mechanism to communicate designations to the FIs and DNFBPs requires MOHA to publish a freeze order on its website (s29E(2) & (3) ALPA) with natural persons, legal persons and FIs and DNFBPs required to regularly and proactively access the website (s29E(4) ALPA). r3(2),(7) ALPR-TFS has similar requirements. FI and DNFBPs Directives (where issued for specific sectors) include some general guidance. However, Nepal doesn't have any mechanism to provide clear guidance to FI or DNFBPs that may be holding targeted funds or other assets.

117. (e) - FI and DNFBPs are required to report to their regulatory body, within three days of executing a freeze (s29G(5) ALPA). Under s29G(6) ALPA the regulatory body must report to the MoF within three days. However, only properties or funds frozen are required to be reported - there is no requirement to report compliance actions. Further, the provision does not explicitly include attempted transactions.

118. (f) - s29H(5) ALPA enables Nepal to frame rules with regard to multiple matters including protection of the rights of *bona fide* third parties. Protecting the rights of *bona fide* third parties is covered under r10 of ALPR-TFS with regard to unfreezing the funds of *bona fide* third parties through a review process by the MoHA. The ALPA and ALPR-TFS have no explicit provisions covering compensation and protection against arbitrary deprivation/seizure of property or in an oppressive manner to those *bona fide* third parties 'acting in good faith' when implementing the obligations under R.6.

119. *Criterion 6.6 -*

120. (a) - Persons and entities listed pursuant to Chapter 6B. ALPA can submit an application to the MoHA if referring to s29F or MoFA if referring to s29E. The process for de-listing is outlined in ALPA s29H and ALPR-TFS r5(1). However, the procedures, mechanics and standards required for the submission of a request for de-listing is not outlined.

121. (b) - The legal basis for de-listing designated persons or entities regarding UNSCR 1373 is under s29H ALPA and r5 ALPR-TFS also outlines this requirement.

122. (c) - s29H ALPA enables MoHA to conduct an enquiry or review of a designation decision.

123. (d) - s29H ALPA does not provide a mechanism to facilitate the review in accordance with any applicable guidelines or procedures adopted by the 1988 Committee, including those of the Focal point mechanism established under UNSCR 1730.

124. (e) - There is no evidence shown with respect to designation on the Al-Qaida Sanctions List, procedures for informing designated persons and entities of the availability of the United Nations Office of the Ombudsperson, pursuant to UNSCRs 1904, 1989, and 2083 to accept de-listing petitions.

125. (f) - While MOHA may order property and funds to be unfrozen (r8 ALPR-TFS), the procedures for unfreezing false positives is unclear and is not publically available.

126. (g) - Provisions relating to de-listing is limited to s29H(1) to (3) ALPA and r5 and 12 ALPR-TFS. r5(6) requires the MoHA to publish a notice of delisting on its website. However Nepal does not have any mechanism to provide clear guidance to FI or DNFBPs on their de-listing obligations.

127. *Criterion 6.7 - s29H(5)* ALPA empowers the Government of Nepal to enable access to frozen funds or other assets for basic expenses in accordance with procedures set out in UNSCR1452. r11 ALPR-TFS 2013 provides access to frozen funds to cover basic expenses (r1(1)) and certain expenses (r11(2)) through a request to MoHA. The request should also be sent to the concerned UN agency prior to providing access to funds (r11(3)). If no confirmation is received from the UN within ten days, MoHA can release the appropriate amount as it deems fit for meeting the expenses (r11(5)).

#### *Weighting and Conclusion*

128. Nepal has a legal framework to implement TFS under Chapter 6B ALPA. However, TFS pursuant to UNSCRs 1267 and 1989 are not being implemented without delay as Nepal's current Freeze Order does not apply to designations and amendments issued after 6 December 2013. Consequently, natural and legal persons in Nepal are not currently required to freeze funds or assets of persons or entities designated under UNSCR1267 after 6 December 2013. The AT has placed weight on this deficiency. In addition, Nepal does not specifically provide for the freezing of funds or properties which are directly or indirectly, wholly or jointly benefits designated persons and entities. There are other shortcomings in the requirements covering identifying and designating, de-listing, unfreezing and providing access to frozen funds.

129. **Recommendation 6 is rated partially compliant.**

#### ***Recommendation 7 – Targeted Financial sanctions related to proliferation***

130. The financing of proliferation is a new Recommendation added in 2012.

131. *Criterion 7.1* - Nepal is not implementing targeted financial sanctions related to TFS-PF without delay. Nepal has sought to implement TFS-PF using the same framework as TFS-TF under Chapter 6B of ALPA and the ALPR-TFS. As discussed in detail in R.6, for the freeze (under s29G(1) ALPA) to be in force and effect, the following steps must occur:

- The MoFA must publish 'without delay' on its website any changes to the listing and electronically inform the MOHA (s29E(1) ALPA).
- MOHA must then issue an 'order to immediately freeze' the property or funds of the 'terrorist persons, groups or organizations enlisted' (s29E(2) ALPA) and publish the list and freeze order 'without delay' on its website (s29E(3) ALPA).

132. For the full period under review, Nepal has not issued an ‘order to immediately freeze’<sup>92</sup> pursuant to UNSCRs 1718 or 2231 and successor resolutions. Further, the Standing Order discussed in R.6 makes no reference to UNSCRs for PF. As no freeze order has been issued in relation to UNSCR 1718 or 2231, Nepal is not implementing TFS-PF without delay.

133. *Criterion 7.2* - Nepal has sought to implement TFS-PF under Chapter 6B of ALPA and the ALPR-TFS. However, the deficiency at c.7.1 is applicable i.e. no freeze order has been issued in relation to UNSCR 1718 or 2231, therefore Nepal is not implementing or enforcing TFS-PF without delay. As TFS-PF uses the same legal framework as TFS-TF, the detailed analysis under R.6 is used to support the more streamlined analysis of this criterion.

134. (a) - s29G ALPA establishes the legal basis for all natural and legal persons to freeze ‘without delay’ and ‘without prior notice’ the funds or other assets of designated persons, groups or organisations involved in terrorist activities while s29F ALPA is the legal basis for Nepal to issue the freeze order. However, in addition to the deficiency highlighted above in c.7.1 i.e. that Nepal had no current standing order at the time of the onsite visit to immediately freeze properties or funds, there is also ambiguity in s29G whereby only TFS-TF appears to be covered under this provision. The assessment team has sought clarification from Nepal to ascertain whether this is a translation issue or a legal deficiency but the current understanding is that TFS-PF is not covered under ALPA s.29G. Therefore Nepal is not implementing TFS-PF without delay.

135. (b) - s29G(1) covers requirements under (i), (ii), (iii) and (iv). However, the deficiencies identified at c.7.1 and c.7.2(a) are applicable.

136. (c) - s29G(3) and (4) cover this criterion. However, the deficiencies identified at c.7.1 and 7.2(a) are applicable.

137. (d) - As outlined above, MOHA is required to publish a freeze order on its website (ALPA s.29E(2) & (3)) to communicate designations to FIs and DNFBPs immediately with natural persons, legal persons, FIs and DNFBPs required to regularly visit the website (s29E(4)). r3 ALPR-TFS has similar requirements. However, the deficiency identified at c.7.1 is applicable, and Nepal doesn’t have any other mechanism for providing clear guidance to FIs or DNFBPs that may be holding targeted funds or other assets.

138. (e) - FI and DNFBPs are required to report to their regulatory body, within three days of executing a freeze (s29G(5) ALPA). However, the deficiencies identified in c.7.1 and c.7.2(a) are applicable.

139. (f) - s29H(5) ALPA enables Nepal to frame rules with regard to multiple matters including protection of the rights of *bona fide* third parties. Protecting the rights of *bona fide* third parties is covered under r10 of ALPR-TFS with regard to unfreezing the funds of *bona fide* third parties through a review process by the MoHA. However, r10 only covers de-freezing of *bona fide* third parties’ funds and not *bona fide* third parties acting in good faith when implementing the obligations. In addition, the deficiency identified at c.7.1 is applicable.

140. *Criterion 7.3* - Nepal has measures in place for monitoring and ensuring compliance by FIs and DNFBPs as set out in 29J(1) of the ALPA and r9 of ALPR-TFS (see R.26 and R.28 for detailed discussion on supervisory jurisdiction for FIs and DNFBPs). Non-compliance for FI and

<sup>92</sup> Nepal informed the assessment team at the Face-to-Face Meeting that it had reissued an ‘Order to Freeze’ on 25 April 2023.



DNFBPs is sanctionable under s7V of ALPA. In addition s29K(3) ALPA sets out sanctions for non-compliance of NPR 1,000,000.00 (~USD 7,500) for non-reporting entities or person. However, the sanctions applies to FI and DNFBPs that violate s29G of the ALPA, which does not include PF activities (see deficiency at c.7.2(a) above).

141. *Criterion 7.4* - s29H of ALPA provides the legal basis for de-listing a designee and unfreezing, which is supported by procedures and forms under the ALPR-TFS. It is unclear whether the ALPR-TFS is publically available.

142. (a) - s29H of ALPA and ALPR-TFS r5(1) provide for de-listing applications to the MoHA through the MoFA, but do not allow the listed persons or entities to petition the Focal Point or allow for informing the designated persons or entities to petition the Focal Point.

143. (b) - While MoHA may order property and funds to be unfrozen (r8 of ALPR-TFS), the procedures for unfreezing false positives is unclear and is not publically available.

144. (c) - The legal basis for accessing funds is s29H(5) in ALPA while r11 of the ALPR-TFS provides additional detail – refer to c.6.7 for further details.

145. (d) - Provisions relating to de-listing is limited to s29H(1) to (3) of the ALPA but does not require delisting to be communicated to FIs and DNFBPs. ALPR-TFS r5(6) is not applicable as it is pursuant to R4(b) and (c) only. Nepal doesn't have any other mechanism for providing clear guidance to FIs or DNFBPs on their de-listing obligations.

146. *Criterion 7.5* -

147. (a) - Nepal does not permit interest or earnings to accounts frozen pursuant to UNSCR 1718 or 2231 as the deficiency highlighted at criterion 7.2(a) is applicable.

148. (b) - Nepal reports that s29H(5) of ALPA and r10 of ALPR-TFS are applicable for not preventing a designated person or entity from making any payment due under a contract entered into prior to the listing of such person or entity. However: (i) as it is not clearly identified nor the prohibitive items demarcated by Nepal in its Rules nor in the ALPA, (ii) as there is no specific reference in the ALPA nor the ALPR-TFS, and (iii) as there is no specific reference being made to the provisions entailed under Rec 7.5(b) and no time period is mentioned as prior notice being given to UNSC of the intention to make such payment to the payment or release of funds.

### *Weighting and Conclusion*

149. Nepal is not implementing TFS for PF without delay as Nepal has not issued a Freeze Order pursuant to UNSCRs 1718 and 2231 and successor resolutions. In addition, there is ambiguity as to whether FIs' and DNFBPs' freeze obligation under ALPA s29G only applies to TFS-TF and not PF. Nepal has some measures to give effect to de-listing and unfreezing requirements.

150. **Recommendation 7 is rated non-compliant.**

### *Recommendation 8 – Non-profit organisations*

151. In its last MER, Nepal was rated non-compliant with the requirements of former SR.VIII with deficiencies across most requirements of the Recommendation.

152. *Criterion 8.1* - The IC is required to periodically and as necessary assess Nepal's risk with respect to ML, TF and predicate offences (s35 ALPA). Nepal's most recent NRA in 2020 assesses the NPO sector as medium risk recognising the lack of laws on AML/CFT measures and national statistics as key challenges.

153. (a) - Nepal has not identified the subset of organisations falling within the FATF definition of an NPO or identified NPOs that are likely to be at risk of TF abuse.

154. (b) - Nepal has not identified the nature of threats posed by terrorist entities to at-risk NPOs.

155. (c) - Nepal has not reviewed the adequacy of measures related to at-risk NPOs. The assessment team acknowledges that Nepal's NRA assesses the vulnerability of the NPO sector as medium; however, this assessment considers the sector as a whole and is not focused on at-risk NPOs. Nepal's NRA acknowledges the sector overall requires specific legislation obligating NPOs to apply AML/CFT measures. Nepal also recognises that its authorities responsible for registration and affiliation of the NPO sector require more regulatory and supervisory powers. Consistent and accurate NPO national statistics are also a key challenge.

156. (d) - Nepal has not periodically reassessed the NPO sector to review potential vulnerabilities related to terrorist activities.

157. *Criterion 8.2* -

158. (a) - Nepal has some policies/guidelines that promote accountability, integrity and public confidence in the administration and management of NPOs under the Social Welfare Act 1992 (SWA) and Social Welfare Regulation 1993 (SWR).

159. Associations and 'Company not Distributing Profits' (see R.24 for detailed discussion on formation requirements including basic information maintained on the legal person) can choose to be affiliated with the SWC (s13 SWA) i.e. on a voluntary basis, while foreign NPOs must obtain approval from the SWC and enter into an agreement with the SWC to operate in Nepal (s12 Social Welfare Act; r12(4) SWR) i.e. on a mandatory basis.

160. Affiliation with the SWC includes an obligation to submit an annual report along with an audit report outlining work undertaken throughout the year (s23(2) SWA, r12 and r13 SWR). Affiliated NPOs must also meet high-level principles of financial management and good governance (r15 and r20 SWR). There are additional requirements on registered foreign NPOs (r15a SWR). However, it is unclear how these policies promoting accountability, integrity and public confidence in the administration and management of NPOs are being applied to NPOs at risk of TF abuse. It is also unknown whether administrative and management requirements promoting accountability and integrity apply to domestic NPOs that are not affiliated with SWC.

161. (b) - Nepal has not undertaken targeted outreach and awareness programs addressing the potential vulnerabilities of NPOs to TF abuse. The AT notes that the SWC has conducted some general outreach and supervisory programs to some NPOs although these are not TF focused.

162. (c) - While included as an objective in the National Strategy and Action Plan (Objective 10.1.3), Nepal has not worked with NPOs to develop and refine best practices to address TF risks and vulnerabilities.

163. (d) - Nepal has some mechanisms to encourage NPOs to conduct transactions via regulated financial channels. For example, a foreign organisation must provide financial assistance to an approved NPO project in Nepal through a commercial bank operating within Nepal (s16(5) Social Welfare Act). SWC affiliated domestic NPOs must have a bank account (r15(k) SWR) and financial resources received from foreign organisations are required to 'follow through' the NPOs bank account (r18 SWR). These mechanisms do not apply to all NPOs.

164. *Criterion 8.3* - While included as an objective in the National Strategy and Action Plan (objective #5.3.4, 5.3.5 and 5.3.6), Nepal has not applied risk-based measures to NPOs at-risk of TF.

165. *Criterion 8.4* -

166. (a) - SWC is conducting some monitoring of registered foreign NPOs and affiliated domestic NPOs, but this is not risk-based.

167. (b) - SWC can impose sanctions on registered foreign NPOs and affiliated domestic NPOs, which include suspension or dissolution, or cessation of economic assistance (s20(1) SWA). The local level District Administration Office can impose fines of up to NPR 2,000 (~USD 15) for failing to register a NPO, not submitting a statement of accounts, not submitting documents required or answering questions (s12 Association Registration Act 1977). These sanctions are not fully proportionate or dissuasive.

168. *Criterion 8.5* -

169. (a) - Nepal has multiple authorities and organisations that hold relevant information on NPOs including the SWC, MoHA, local level District Administration Offices and MoWCSC. Nepal reports that its Counter Terrorism Mechanism (CTM) (see R.2) is used for cooperation and coordination of the NPO sector; however, the AT is unaware of any procedures or SOPs to support this coordination in practice. Nepal has advised that a draft NPO Supervision Manual 'Assessing AML/CFT Compliance' is currently under consultation requiring some coordination amongst the relevant authorities, however, the extent of cooperation, coordination and information sharing among government agencies is unclear given it has been in draft form since 2020. It is also unknown when the NPO Supervision Manual will be implemented.

170. (b) - DMLI is the agency responsible for investigating TF activities, which would include abuse of NPOs for TF. DMLI can also delegate the investigation of TF cases to the NP. DMLI and NP have limited investigative expertise and capability to examine NPOs if they are suspected of either being exploited by, or actively supporting terrorist activities or terrorist organisations. Nepal advises that the SWC and MoHA have the authority to conduct an "administrative examination" of NPOs; however, it is not clear whether this is legally binding and unknown what these examinations would include given there is no reference in the Directives for Monitoring, Supervision and Evaluation of Social Organisations and Institutions 2014.

171. (c) - As discussed in R.31, DMLI and NP have a range of powers that could be used to access and obtain information on an NPO during an investigation; however, there are gaps in NP's powers which are outlined in R.31. The SWC also has access and can obtain information on the administration and management of registered foreign NPOs and affiliated domestic NPOs including financial and programmatic information; however, access to information related to non-affiliated domestic NPOs is not available.

172. (d) - While Nepal reports that it is the duty of every agency to share information with other competent authorities in the circumstances outlined in c.8.5(d), the mechanisms, if any, to ensure that this information is promptly shared with competent authorities to take preventive or investigative action is not known.

173. *Criterion 8.6* - Nepal has identified SWC, MoWCSC and MoHA as the three key authorities to respond to international requests for information regarding particular NPOs suspected of TF or involvement in other forms of terrorist support. The AT is unclear on; (i) the exact mechanisms under which these authorities are identified, (ii) specific contact points in each authority, and (ii) whether they have procedures to respond to international requests.

*Weighting and Conclusion*

174. Nepal does not have a targeted approach to preventing TF abuse of its NPO sector. Nepal has not conducted a risk assessment of the NPO sector to identify NPOs at risk of TF abuse and therefore has not applied risk-based measures to NPOs identified as being vulnerable to TF. Nepal has some policies/guidelines that promote accountability, integrity and public confidence in the administration and management of NPOs through SWC's registration of foreign NPOs and affiliation requirement for domestic NPOs, which includes encouragement to use regulated financial channels. SWC has conducted some monitoring of requirements on foreign NPOs and affiliated domestic NPOs but this is not risk-based and available sanctions are not fully proportionate or dissuasive. Nepal has major shortcomings in information sharing and investigation of NPOs as well as in responding to international requests.

175. **Recommendation 8 is rated non-compliant.**

***Recommendation 9 – Financial institution secrecy laws***

176. In its last MER, Nepal was rated largely compliant with former R.4, as there were no explicit provisions enabling FIs to share customer information with other FIs to meet the requirements of R.7 and SR.VII, and no legal basis for lifting bank secrecy for information sharing between competent authorities domestically or internationally. Since the last MER, Nepal's preventative measures obligations in the ALPA were amended and the ALPR and sector specific directives was passed.

177. *Criterion 9.1* - Despite FI secrecy and confidentiality provisions in different laws (such as s109 BAFIA, s21(1) Securities Act, s37(4) Corporate Governance Directives (Insurance Sector), s61(1) Cooperatives Act, and s109(c), and the Individual Privacy Act), s37(1) and (2) ALPA provide a general confidentiality overriding provision for FIs and their employees when carrying out obligations in accordance with the ALPA, which includes sharing of information as required under R.13, R.16, and R.17.

178. There are specific provisions that lift FI secrecy and confidentiality and ensure competent authorities are not liable for any civil, criminal, administrative actions or punishment when implementing the FATF Recommendations including accessing and sharing information. s37(2) ALPA provides a general confidentiality overriding provision for government agencies and employees acting in good faith in accordance with the ALPA with FI supervisors, DMLI and the FIU having the power to order FIs to provide information and documentation (s7U(1)(j) and 44B(2)). s44B ALPA also states no information or document shall "be deemed confidentiality for the [DMLI] or [FIU] for the purpose of its function under the [ALPA]".

179. For other LEAs and Investigative Authorities, there are overriding provisions applicable in the course of an investigation (of all criminal offences) and court proceeding in the (i) Individual Privacy Act (s3(5)(c), s5(c), s7(c), s10(4), s13(3), s19(4) and s34, (ii) BAFIA (s109c) in regards to commercial banks, development banks, finance companies and micro finance institutions and the Infrastructure Development Bank, (iii) Securities Act (s21(2)c) for all securities companies, and (iv) Cooperatives Act (s61(2)(a)) for cooperatives. There are no overriding provisions that would cover access to information and documentation for insurance companies in a predicate crimes investigation.

### *Weighting and Conclusion*

180. FI secrecy and confidentiality laws do not inhibit the FIs and competent authorities' ability to undertake their AML/CFT functions and implement the FATF Recommendations with the exception that there is no overriding provisions that would cover access to information and documentation from insurance companies in predicate crime investigations.

181. **Recommendation 9 is rated largely compliant.**

### *Recommendation 10 – Customer due diligence*

182. In its last MER, Nepal was non-compliant with former R.5 with deficiencies in most criteria. Since the last MER, Nepal's preventative measures obligations in the ALPA were amended and the ALPR and sector specific directives were passed.

183. As outlined in Chapter One, preventive measures are primarily set out in the ALPA and ALPAR. These primary instruments are supported by sector specific enforceable by-laws and directives issued pursuant to the ALPA by the regulating authority as outlined in Table 2. In the majority of cases, these by-laws and directives provide additional detail to support sector-specific implementation. Where these by-laws and directives extend the requirements of the ALPA and ALPR and enhance compliance with relevant preventative measures, they are explicitly included in the analysis of R.10 (to R.19).

### *Detailed CDD requirements*

184. *Criterion 10.1 - s6 ALPA* prohibits the opening of an anonymous or fictitious account, or make or cause to be made, any type of transaction anonymously or fictitiously. The prohibition also extends to the opening of account in a fictitious name.

### *When CDD is required*

185. *Criterion 10.2 - FI* are required to undertake CDD (s7A(1) ALPA) when:

186. (a) - Establishing a business relationship (s7A(1)(a) ALPA).

187. (b) - Carrying out occasional transaction (s7A(1)(c) ALPA) above a prescribed threshold of NPR 100,000 or equivalent in foreign currency (~USD 750), which is prescribed under r3 ALPR (. This requirement does not include situations where several operations appear to be linked as required under the standards.

188. (c) - Making wire transfers by electronic means (s7A(1)(d) ALPA). The ALPA and ALPR do not include a definition of wire transfers and 'by electronic means' is not used in connection

with wire transfers elsewhere in the ALPA or ALPR. Therefore, fully manual processing of wire transfers that do not have any electronic processing may not be covered.

189. (d) - There is suspicion of ML/TF (s7A(1)(f) ALPA). However, this does not extend to situations where there are existing exemptions or thresholds under the ALPA.

190. (e)- The FI has doubts about the veracity or adequacy of previously obtained customer identification data (s7A(1)(e) ALPA).

*Required CDD measures for all customers*

191. *Criterion 10.3* - FIs are required to use reliable and independent source documents, data or information for customer identification and verification purposes (s7A(3) ALPA). Measures to identify and verify customers using reliable and independent sources are further detailed in s7A(4) ALPA and r4 and r5 ALPR. Customer covers legal and natural persons when establishing a business relationship or conducting transactions (r2(b) ALPR and s2(z) ALPA). r4 ALPR provides further details on the information that needs to be obtained while conducting CDD on natural persons and legal persons.

192. The definition of Customer does not clearly cover legal arrangements. r2(b) ALPR defines Customer as 'person' or 'entity' with the person defined in s2(z) ALPA as both a natural and legal person. There is no definition of entity and entity is not a common term used to describe legal arrangements in Nepal. Notwithstanding, there are several places in the ALPA and ALPR where legal arrangements are clearly anticipated as customers. For example, r4(c) ALPR provides details on the information that needs to be obtained while conducting CDD of legal arrangements; r5 provides details on documents to be verified to identify customers that are legal arrangements; and the definition of BO (s2(u) ALPA) includes explicit reference to legal arrangements.

193. *Criterion 10.4* - FIs are required to verify persons purporting to act on behalf of the customer is authorised, and identify and verify the identity of that person (s7C(2) and (3), and s7A(4)(d) ALPA). This obligation does not clearly apply to customers that are legal arrangements (see above discussion of definition of Customer).

194. *Criterion 10.5* - FIs are required to identify the BOs and take reasonable measures to verify their identity when establishing a business relationship or conducting transactions (s7C(1) ALPA). However, there is no explicit requirement to use the relevant information or data obtained from a reliable source.

195. *Criterion 10.6* - FIs are required to obtain appropriate information and details on the objective or intended nature of the business relationships (s7A(4)(a) ALPA). This obligation does not clearly apply to customers that are legal arrangements (see above discussion of definition of Customer).

196. *Criterion 10.7* - FIs are required to conduct ongoing due diligence on the business relationship (s7I ALPA), including:

197. (a) - to scrutinise transactions throughout the course of the business relationship to ensure consistency with the FI's knowledge of the customer, business and risk profile, including source of funds (s7I(a) and (b) ALPA). This obligation does not clearly apply to customers that are legal arrangements (see above discussion of definition of Customer).

198. (b) - to ensure that documents and information is kept up-to-date by reviewing existing records, particularly for higher risk categories of customers (s71(c) ALPA). This obligation does not clearly apply to customers that are legal arrangements (see above discussion of definition of Customer).

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

199. *Criterion 10.8* - For customers that are legal persons or legal arrangements, FIs are required to understand the customer's business (s7A(4)(a) ALPA) and verify the ownership and control structure ((s7A(4)(c) ALPA). r4 ALPR provides details on the information that needs to be obtained.

200. *Criterion 10.9* - For customers that are legal persons or legal arrangements, FIs are required to identify and verify the customer (s7A(1) to (4) ALPA). The information that is required to identify and verify legal person or legal arrangements customer is prescribed in r4(1)(b) and r4(1)(c) ALPR, respectively, and covers all elements of c.10.9(a) to (c).

201. *Criterion 10.10* - FIs are required to identify and verify the identity of BOs of legal persons (s7C(1) ALPA). Detailed requirements are set out in r6(1) ALPR, which requires FIs to identify of BOs of legal persons using language that closely matches the requirements set out in c.10.10(a) to (c). Further detail to support implementation of these requirements is included in r6(2)(4) and (5) ALPR.

202. *Criterion 10.11* - FIs are required to identify and verify the identity of BOs of legal arrangements (s7C(1) ALPA). r6(3) ALPR requires FIs when "identifying the control over a legal arrangement like a trust, identify the setter, trustee, guardian<sup>93</sup>, beneficiaries, and natural persons controlling thereof". It is noted that the ALPA defines "legal arrangement" to mean a "trust (express trust) or other legal arrangement of similar nature" (s2(k) ALPA), and 'beneficial owner' to mean "a natural person who, as the ultimate beneficiary or owner thereof, directly or indirectly, owns or controls or directs or influences a customer, transaction (account), property, legal person or legal arrangement" (s2(u) ALPA). r6(4) ALPR also requires FIs while measuring the effectiveness of indirect ownership and control of a legal arrangement to consider proportional ownership of family members, shareholders, partners and beneficiaries. There is no explicit requirement to identify persons in equivalent or similar positions or via class of beneficiaries.

#### *CDD for Beneficiaries of Life Insurance Policies*

203. *Criterion 10.12* - Additional CDD measures for the Insurance Sector are set out in r7 ALPR. r7(1) ALPR includes requirements to examine and inquire, and identify the beneficiary while making payment or providing any amount, benefit or facility to the beneficiary in consideration of the insurance. There are no requirements covering beneficiaries that are designated by characteristics, class or other means such that the identity of the beneficiary can be established at the time of payout, and there are no explicit requirement for verification of beneficiary details obtained under r7(1) ALPR. NIA's Directive 2019 at section 4(3) only provides a general requirement for the insurer to identify beneficial owner if the insurer suspects that there remains other persons in the transaction and this does not extend to verification. The

<sup>93</sup> Different English translations of relevant legislation use 'guardian' and/or 'custodian' to refer to protector.

AML/CFT Directive on Insurance Sector of 22 November 2022 to sector do not extend the requirements under the ALPA or ALPR.

204. *Criterion 10.13 - r7(1)(c) ALPR*, requires insurance agents to “take necessary measures by identifying risk level of the beneficiary and to carry out risk management including EDD”. The Nepal Insurance Authority AML/CFT Directive has broad examples of customer risk factors and ECDD is required for higher risk customers (s8(1)(2)). Nepalese legislation includes no explicit requirement to undertake EDD in high-risk scenarios where the beneficiary is a legal person or legal arrangement. There is also no requirement to adopt reasonable measures to identify and verify the BO of the beneficiary at the time of the payout in such circumstances.

### *Timing of verification*

205. *Criterion 10.14 - FIs* are required to identify and verify the identity of a customer and BOs before or during establishment of a business relationship or transaction (s7H(1) ALPA). s7H(2) ALPA allows verification after the establishment of a business relationship if “(a) the reporting entity is confident that the identity can be verified practically at any time, (b) where it is not possible to verify the identity of a customer due to practical reasons and the verification of the identity can create interruption in the normal course of business, and (c) where the risks of ML/TF are effectively managed.” While c.10.14(b) and (c) are covered, there is no requirement that delayed verification must be completed as soon as reasonably practicable. Furthermore, obligations do not clearly apply to customers that are legal arrangements (see above discussion of definition of Customer).

206. *Criterion 10.15 -* There is no express provision within the ALPA or ALPR to require FIs to adopt risk management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification.

### *Existing customers*

207. *Criterion 10.16 - FIs* are required to apply CDD to existing (at the time of the commencement of the ALPA in 2008) customers and BOs on a risk-sensitive basis (s7G(1) ALPA). However, the risk-sensitive basis doesn’t include when previous CDD measures were undertaken and adequacy of data obtained, and obligations do not clearly apply to customers that are legal arrangements (see above discussion of definition of Customer).

### *Risk-based approach*

208. *Criterion 10.17 - FIs* are required to perform EDD establishing a business relationship or conducting a transaction where ML/TF risks are higher (s7E(1) ALPA). r8 ALPR provides minimum measures that must be undertaken for EDD.

209. *Criterion 10.18 - FIs* are permitted to apply SCDD where risks of ML/TF are identified as lower (s7F(1) ALPA) and there is no suspicion of ML/TF or specific higher risk scenarios apply (s7F(2) of the ALPA). r9 of the ALPR provides further requirements on the circumstance of SCDD.

### *Failure to satisfactorily complete CDD*

210. *Criterion 10.19 - FIs* are prohibited from establishing an account, maintaining a business relationship or carrying out a transaction when CDD requirements cannot be met (s7O ALPA), and required to file an STR (s7O(2) ALPA).



*CDD and tipping off*

211. *Criterion 10.20* - There is no clear provision(s) under the ALPA, ALPR or other directives to give effect to the requirements of this criterion. There are only general obligations to preserve secrecy and prevent tipping-off under s44A of the ALPA<sup>94</sup>.

*Weighting and Conclusion*

212. FIs are required to conduct CDD generally consistent with the requirements of R.10 including specific requirements for legal persons and arrangements. However, the definition of Customer does not clearly cover legal arrangements and there are gaps in the information required to identify BOs of trusts. Shortcomings include CDD for beneficiaries of life insurance, and tipping-off. The ALPA allows for delayed verification but there is no requirement for verification to be completed as soon as reasonably practicable or for FIs to have risk management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification. In the context of Nepal where FIs face challenges linking the individual to their identity due to limitations in Nepal's common identity documentation, these deficiencies have been significantly weighted.

213. **Recommendation 10 is rated partially compliant.**

*Recommendation 11 – Record-keeping*

214. In its last MER, Nepal was partially compliant with former R.10, as Nepal law did not explicitly require banks or NBFIs to maintain records after termination, FIs were not specifically required to maintain records on business correspondence, and effective implementation had not been established by supervision. Since the last MER, Nepal's preventative measures obligations in the ALPA were amended and the ALPR and sector specific directives were passed.

215. *Criterion 11.1* - FIs are required to maintain all necessary records on domestic and international transactions for at least five years following the transaction (s7R(1) ALPA).

216. *Criterion 11.2* - FIs are required to keep all records obtained through CDD measures, account files and business correspondence, and results of any analysis undertaken, for at least five years following the termination of the business relationship or after the date of the occasional transaction (s7R(1)(a) – (f) ALPA).

217. *Criterion 11.3* - FIs are required to keep all transaction records in a way that permits reconstruction of individual transactions so as to provide evidence of criminal activity (s7R(3) ALPA).

218. *Criterion 11.4* - All records under s7R ALPA must be maintained such that they can be provided swiftly to the competent authorities (s7R(4) ALPA).

*Weighting and Conclusion*

219. **Recommendation 11 is rated compliant.**

<sup>94</sup> Nepal has sought to cover this requirement for Class A to C FIs through amendments Unified Directive 19(16)(8); however, the document provided to the AT did not have a clear link back to the Unified Directive 19.

**Recommendation 12 – Politically exposed persons**

220. In its last MER, Nepal was non-compliant with former R.6, as: (i) the limited PEP provisions were unenforceable, (ii) foreign PEPs were not considered high-risk, (iii) no reference to beneficial owners, (iv) no guidance to financial industry on development of PEPs policies and procedures, (v) no senior management approvals required on PEP accounts, (vi) no specific mandates on sources of funds or wealth for PEPs, (vii) absence of effective PEP procedures at all financial institutions. Since the last MER, Nepal's preventative measures obligations in the ALPA were amended and the ALPR and sector specific directives were passed.

221. *Criterion 12.1* - Nepal uses the term high-level official for PEP, which refers to a foreign high-level official, domestic high-level official, or high-level official for an international organisation (s2(f) ALPA). Foreign high-level official is defined consistent with the FATF definition of foreign PEP (s2(x) ALPA). In addition to performing CDD, for foreign PEPs, FIs are required to:

222. (a) - Put in place risk management systems to determine whether a customer or the beneficial owner is a PEP (s7B(1) ALPA).

223. (b) - Obtain senior management approval before establishing (or continuing, for existing customers) such business relationships (s7B(2)(a) and (b) ALPA).

224. (c) - Take reasonable measures to establish the source of wealth and the source of funds of the customer or BO identified as the PEP (s7B(2)(c) ALPA).

225. (d) - Conduct enhanced ongoing monitoring on the relationship (s7B2(d) and (e) ALPA).

226. *Criterion 12.2* - Domestic high-level official is defined consistent with the FATF definition of domestic PEP (s2(ag) ALPA) including that Under the Order of Precedence, military officials are included within the scope of domestic high-level official. High-level official for an international organisation is defined consistent with the FATF definition of domestic PEP (s2(a) ALPA). In addition to performing CDD, for domestic and international organisation PEPs, FIs are required to:

227. (a) - comply with s7B(1) ALPA in relation to making provisions for risk management systems to identify if a customer, a beneficial owner or a person seeking to be a customer is a high-level official.

228. (b) - Adopt measures in c.12.1(b) to (c) for domestic high-level officials and high-level official for an international organisation (s7B(2)(a) – (e) ALPA).

229. *Criterion 12.3* - FIs are required to apply requirements of c.12.1 and c.12.2 to family members and associated persons of high-level officials (7B(3) ALPA).

230. *Criterion 12.4* - There are some additional measures in the Nepal Insurance Authority's AML/CFT Directive on methods to identify PEPs and EDD in accordance with the ALPA (s5 and s8 of the directive) including broad examples of customer risk factors for risk management purposes (s7). However, these provisions do not explicitly require insurance providers to take reasonable measures to determine whether the beneficiaries and/or, where required the beneficial owner of the beneficiary, are PEPs in relation to a life insurance policy. The NIA had recently issued a directive requiring insurers to identify whether the beneficiary of an insurance

policy is a PEP. However, this also does not include the requirement that where higher risks are identified, FIs are required to inform the senior management before the payout of the policy proceeds, conduct enhanced scrutiny on the whole business relationship and consider making an STR.

### *Weighting and Conclusion*

231. Nepal defines foreign, domestic and international organisation PEPs consistent with the FATF Standards. Requirements on FIs are consistent with the FATF Standards including coverage of family members, but there are shortcomings in requirements covering life insurance policies.

232. **Recommendation 12 is rated largely compliant.**

### *Recommendation 13 – Correspondent banking*

233. In its last MER, Nepal was non-compliant with former R.7, as: (i) FIs were not required to gather sufficient information on correspondents, (ii) there were no obligation on FIs to examine respondent's AML/CFT controls, (iii) absence of senior management approval mandate, and (iv) no requirement to document respective AML/CFT responsibilities of each institution. Since the last MER, Nepal's preventative measures obligations in the ALPA were amended and the ALPR and sector specific directives were passed.

234. *Criterion 13.1* - FIs entering into a cross-border correspondent banking relationships or transactions itself or on behalf of customers (s7M(1) and (2) ALPA) are required to:

235. (a) - Gather sufficient information to understand the nature of the respondent's business, reputation of the institution and quality of supervision including ML/TF investigation or regulatory action (s7M(1)(a) – (d) ALPA).

236. (b) - Assess the respondent's AML/CFT controls (s7M(1)(e) ALPA).

237. (c) - Obtain approval from senior management before establishing a correspondent banking relationship (s7M(1)(f) ALPA).

238. (d) - Clearly understand their respective AML/CFT responsibilities (s7M(1)(g) ALPA).

239. *Criterion 13.2* - FIs are required to ensure that respondents have complied with customer identification and verification of customers using payable-through accounts, has implemented mechanisms for ongoing monitoring, and can provide the necessary information and details upon request (s7M(1)(h) ALPA). Nepal has not defined payable-through accounts.

240. *Criterion 13.3* - FI are prohibited from entering into or continuing correspondent banking relationship with a shell bank (s7M(1)(i) ALPA), and required to ensure that the respondent financial institution does not permit its account to be used by a shell bank (s7M(1)(j) ALPA).

### *Weighting and Conclusion*

241. Nepal has comprehensive correspondent banking requirements with the only minor shortcoming being a lack of a definition of pay-through account.

242. **Recommendation 13 is rated largely compliant.**

***Recommendation 14 – Money or value transfer services***

243. In its last MER, Nepal was non-compliant with former SR.VI, as deficiencies were found in financial sector regulations or other measures in the areas of CDD, reporting of suspicious transactions, and other sanctions were not applicable to MVTS. Since the last MER, Nepal's preventative measures obligations in the ALPA were amended and the ALPR and sector specific by-laws and directives were passed.

244. *Criterion 14.1* - As outlined in c.26.2, natural or legal persons that provide MVTS are required to be licensed by the NRB as foreign exchange providers (international MVTS) or payment service providers and operators (domestic MVTS) s3 FERA and s5 Payment and Settlement Act (PASA), respectively.

245. *Criterion 14.2* - s17(1) FERA enables actions to be taken against natural persons who carry out MVTS without a licence. The penalty is forfeiture of related funds and a fine of three times the amount in question, or if the amount in question cannot be set, a fine of up to NPR 200,000 (~USD 1,500) (s17(1) and (2) FERA). An employee in contravention of the Act, can also be liable to punishment of up to NPR 100,000 (~USD 750) (s17(3) FERA), or if it is committed by a firm, company or body, the responsibility of the offence lies with the director, office bearer (s17(4) FERA). s17(8) of the FERA states that in the event of failure to pay the fine imposed, a natural person can be liable to punishment for a term not exceeding four years (s17(7) FERA). These sanctions are not fully proportionate and dissuasive, particularly for international MVTS who are legal persons.

246. The sentence for operating as a payment service providers and operators without a licence is imprisonment up to 5 years and/or a fine up to NPR 10,000,000 (~USD 75,000) (s36 PASA). This sanction is proportionate and dissuasive. It is unclear how these sanctions would be applied for legal persons.

247. Nepal has taken limited actions to identify natural persons who carry out MVTS without a licence. NRB sent information to the Nepal Police on four MVTS who were found to be operating payment related services without obtaining a licence on the internet. Nepal Police investigated these cases but offenders were not prosecuted and no information was provided as to whether any sanctions were imposed. Nepal has taken some additional steps to curtail illegal MVTS services. For example, education campaigns for the public and lowering the domestic MVTS transaction limit, both cash and non-cash, from NPR 100,000 (~USD 750.00) to NPR 25,000 (~USD 187.50) in March 2022.

248. *Criterion 14.3* - Foreign exchange providers and payment service providers and operators are subject to monitoring for AML/CFT compliance (s12 and s14 FERA and s42 PASA, respectively) with NRB as the regulatory body responsible for regulating and supervising with AML/CFT requirements (s7T(1) and (3) ALPA).

249. *Criterion 14.4* - MVTS providers are required to maintain an up-to-date information on their agents and ensure access by regulatory bodies (p61 of the AML/CFT Directive no 27 to MVTS and Money Changers). Payment service providers and operators that use agents are required to register the agent with the NRB and publish agent details publically (s40(2) and (4) Payment and Settlement By-laws 2020).

250. *Criterion 14.5* - FIs that provide MVTS are required to enforce a program on prevention of ML/TF with regard to its agents and monitor them for compliance (s7L(15) ALPA). Foreign exchange providers that use agents are required to include them in their AML/CFT programmes and monitor their compliance (p59 of the AML/CFT Directive no 27 to MVTS and Money Changers). According to Nepal, there are no agency relationship maintained for payment service operators. For payment service providers, general requirements of agency relationship and selection/criteria process are provided in section 5 of Unified Directive 8 relating to Payment Systems and section 4 of the Branchless Banking Services, however this is not specific on AML/CFT programmes.

### *Weighting and Conclusion*

251. MVTS are required to be licenced by NRB; however, sanctions are not fully dissuasive nor proportionate. Nepal has only taken limited actions to identify natural persons who carry our MVTS without a licence and there was no follow up on cases referred to the Nepal Police.

252. **Recommendation 14 is rated largely compliant.**

### *Recommendation 15 – New technologies*

253. In its last MER, Nepal was non-compliant with former R.8 as there was no requirements on non-face-to-face transactions and technological developments to prevent the misuse of TF and ML, and no mandates that FIs should be required to have policies and procedures in place on risks of non-face-to-face business. The recommendation has changed significantly since 2011 and new criteria have been assessed in this MER.

254. *Criterion 15.1* - FIs are required to identify and assess risk associated with new technology, products/services and delivery mechanisms (s7K(1) ALPA). s35 of ALPA requires a national risk assessment to be conducted periodically. However, there is no explicit provision in the ALPA or ALPR requiring the Nepal Government to identify and assess risks arising from new technologies, and there is no detailed coverage of new technologies in the 2020 NRA.

255. *Criterion 15.2* - FIs are required to undertake risk assessments prior to the launch or use of new products, practices and technologies (s7K(2) ALPA); and take appropriate measures to manage and mitigate the risks (s7K(3) ALPA).

256. *Criterion 15.3* -

257. (a) - Nepal has not identified and assessed the ML/TF risks emerging from VA activities and the activities or operations of VASPs. The 2020 NRA does not include coverage of VA/VASPs and at the time of the onsite there was no other risk assessments covering risks associated with VA/VASPs.

258. (b) - Nepal has sought to prohibit VA and VASPs. Nepal has a limited prohibition on dealing with VA based on existing legal provisions. This is not a risk-based approach to ensuring that measures to prevent or mitigate ML/TF are commensurate with identified risks. The approach is based on Nepal's monetary policy and foreign exchange control measures. s51 and s95 of the NRB Act establishes the Nepal Rupee as sole legal tender within Nepal, and s9C of the FERA requires NRB approval for 'payment of any kind' to persons outside of Nepal. This prohibits VA as a form of payment in Nepal and to persons outside Nepal, but does not prohibit trading, transferring or investment in VA.

259. Natural and legal persons which accept ‘any type of deposit’ or ‘provide loans’ are required to obtain approval from the NRB (s76 NRB Act). Deposit is defined in s2(t) of the BAFIA and there is no definition of loan<sup>95</sup>. Using the widest possible interpretation this would cover the exchange between VA and fiat currencies. The other limbs of the FATF definition of VASPs are not captured by the prohibition. Nepal is not registering or licensing VASPs.

260. (c) - VASPs are not a FI or DNFBP under the ALPA. As such, there is no specific provision for VASPs to take appropriate measures to identify assess, manage and mitigate their ML/TF risks.

261. *Criterion 15.4* - Nepal has sought to prohibit VASPs, however the prohibition only covers one limb of the FATF definition. Notwithstanding, natural and legal persons which accept ‘any type of deposit’ or ‘provide loan’ are required to obtain approval from the NRB (s76 NRB Act). Deposit is defined in s2(t) of the BAFIA and there is no definition of loan. Using the widest possible interpretation this would cover the exchange between VA and fiat currencies. Nepal has no fit and proper requirements specific for VASPs.

262. *Criterion 15.5* - Nepal has undertaken some actions to identify natural and legal persons carrying out VASP activities. Nepal issued a several notices and press release outlining their intent to target persons using VA and/or operating VASPs. NP has investigated nine VA/VASP cases involving 20 individuals. Five individuals from one case in 2018/19 were found guilty and fined (under s96 NRB Act; amount unknown) while all other individuals have been released on bail while the cases are ongoing. One case involved a legal person. No further information on these cases was provided to the AT.

263. *Criteria 15.6* - There is no legal provision identifying a supervisory authority for VASPs and requiring VASPs to be subject to adequate regulation and risk-based supervision or monitoring.

264. *Criteria 15.7* - Nepal has not developed guidelines or provided feedback to VASPs in accordance with R.34.

265. *Criteria 15.8* - There is no proportionate and dissuasive sanctions available for failure to comply with AML/CFT requirements, nor to the directors and senior managers of VASPs.

266. *Criteria 15.9* - There are no provisions requiring VASPs to comply with the required preventive measures set out in R.10 to R.21, including with the travel rule requirements.

267. *Criteria 15.10* - Nepal’s legal framework to give effect to TFS for TF is set out in Chapter 6B of the ALPA and ALPR-TFS. Communication of designations and de-listing under TFS for TF are made via the MOHA website to the general public; however, there is no mechanism for communicating designations and de-listing guidance to VASPs that may be holding targeted funds. s29G(5) ALPA requires all natural and legal persons report funds frozen pursuant to UNSCR 1267/1988 and 1373 to the MOHA within three days, but this does not include compliance actions or attempted transactions. Deficiencies discussed in c.7.1 and c.7.2 mean there is no communication mechanisms, reporting obligations and monitoring applicable to VASPs in relation to TFS-PF.

<sup>95</sup> Credit is defined in s2(h) BAFIA.

268. *Criterion 15.11* - Nepal could provide MLA on ML, predicate offences and TF relating to VA, however it is noted that deficiencies exist in relation to Nepal's MLA framework (see R.37 and R.38). Extradition on ML, predicate offences and TF relating to VA could be provided with Nepal's sole treaty jurisdiction of India. As Nepal has sought to prohibit VA/VASPs, LEAs would be required to exchange VA/VASPs information. As discussed in c.40.20 it is unclear if LEAs can exchange information with non-counterparts.

### *Weighting and Conclusion*

269. FIs are required to assess ML/TF risk relating to new technologies and apply measures to manage and mitigate risks. Nepal has not assessed its ML/TF risks associated with new technologies or VA/VASPs. Nepal has sought to prohibit VA/VASPs; however, the prohibition does not cover all elements of the FATF definitions of VA or VASPs. Nepal has taken some actions to identify "illegal" VASPs activities. VASPs are not a FI or DNFBP under the ALPA, no preventative measures obligations apply, and there is no designated AML/CFT supervisor. Shortcomings outlined in R.6, R.7 and R.37 to R.40 apply.

270. **Recommendation 15 is rated non-compliant.**

### *Recommendation 16 – Wire transfers*

271. In its last MER, Nepal was non-compliant with former SR.VII, as there was no enforceable means covering wire transfers. Since the last MER, Nepal's preventative measures obligations in the ALPA were amended and the ALPR and sector specific directives were passed.

272. *Criteria 16.1* - FIs are required to comply with the detailed obligations on wire transfers (s7L(1) and s7L(6) ALPA) before undertaking any wire transfer through accurately identifying and verifying the identity of customers:

273. (a) - FIs are obliged to obtain the name of the originator, account number of the originator and address, or in the absence of an account number, a separate source number identifying the transaction and address of the originator. In the absence of an address, the FI is required to obtain the date and place of birth, citizenship number, national identity number or customer identification number (s7L(1)(a), (b) and (c) ALPA).

274. (b) - FIs are required to obtain the name and account number of the beneficiary and in the absence of an account number, a separate source number identifying the transaction (s7L(1)(d) of the ALPA).

275. *Criterion 16.2* - The obligations on FIs under section s7L(1) ALPA are applicable to batched wire transfers and are applicable for transmission to beneficiaries (s7L(2) ALPA).

276. *Criterion 16.3* - FIs are not required to obtain information set out in s7L(1)(c) of the ALPA for transactions equal to or below NPR 75,000 (~USD 562.50) (s7L(5) ALPA).

277. (a) - FIs are obliged to obtain the name of the originator, account number of the originator or in the absence of an account number, a separate source number identifying the transaction (s7L(1)(a) & (b) ALPA).

278. (b) - FI are obliged to obtain the name and account number of the beneficiary and in the absence of an account number, a separate source number identifying the transaction (s7L(1)(d) ALPA).

279. *Criterion 16.4* - Nepal requires that a customer be accurately identified and verified in a wire transfer, and this applies irrespective of the NPR 75,000 threshold (~USD 562.50) (s7L(1) ALPA).

280. *Criterion 16.5* - The obligations relating to information to accompany a wire transfer (s7L(1) and (6) of the ALPA) all wire transfers. The law is silent on differences between a cross-border and a domestic wire transfer.

281. *Criterion 16.6* - As above, the obligations relating to information to accompany a wire transfer (s7L of the ALPA) apply to all transfers.

282. *Criterion 16.7* - Ordering FIs are required to maintain all originator and beneficiary information collected (s7L(13) ALPA) for five years, which is consistent with the general record keeping requirement (s7R(1)(d) ALPA) relating to domestic and foreign transactions under R.11.

283. *Criterion 16.8* - FI are prohibited from carrying out a wire transfer with a customer who's identification and verification can not be made pursuant to requirements for wire transfers under s7 (s7O ALPA and r11 ALPR).

284. *Criterion 16.9* - Intermediary FIs are required to ensure all originator and beneficiary information is received (s7L(7) ALPA). However, there is no explicit requirement to ensure that the information is retained with the wire transfer. General record keeping requirements are applicable and discussed under R.11.

285. *Criterion 16.10* - Intermediary FIs are required to keep records in accordance with c.16.7 regardless of technical limitations.

286. *Criterion 16.11* - Intermediary FIs are required to identify wire transfers that lack originator or required beneficiary information (s7L(11) of the ALPA).

287. *Criterion 16.12* - Intermediary FIs are required to have risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking beneficiary information (s7L(10) ALPA). However, this requirement does not cover originator information and the appropriate follow up action.

288. *Criterion 16.13* - There are requirements to conduct the necessary monitoring to ascertain whether the transaction conforms to requirements under s7L(11) ALPA. p40 of the AML/CFT Directive no 27 to MVTS and money changers states that institution making payment of remittance without complete information should consider the ML/TF risks and ask for the missing details from the ordering institution. If such cannot be obtained, the institution can consider the transactions as suspicious and making a report to the FIU. In addition, they can also deny the transactions, impose restrictions or end the relationship.

289. *Criterion 16.14* - FI that deals with a wire transfer equal to or above NPR 75,000 (~USD 562.50) are obliged to identify the beneficiary accurately, when making payment of that amount (s7L(12) of the ALPA); however, there are no explicit requirements to verify the beneficiary if the identity has not been previously identified. Record keeping requirements outlined in c.16.7 apply.



290. *Criterion 16.15* - Beneficiary FIs are required to have risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking beneficiary information (s7L(10) ALPA). However, this requirement does not cover originator information and the appropriate follow up action.

291. *Criterion 16.16* - The definition of FI (s2(w) ALPA) includes MVTs providers.

292. *Criterion 16.17* - Directive #27 for Money Changers and Remittance Companies at s40A requires an MVTs provider that controls both the originator and beneficiary side of a wire transfer to take into account the information from both the ordering and beneficiary side of a wire transfer to determine whether an STR should be filed and second, to file an STR in any country affected by the suspicious wire transfer and making the relevant transaction information available to the Financial Intelligence Unit. Nepal has general STR/SAR requirements (s7S of the ALPA).

293. *Criterion 16.18* - FIs conducting wire transfers are required to comply with freezing obligations set out in Chapter 6B of the ALPA when executing payment through wire transfer or when acting as an intermediary (s7L(14) ALPA).

#### *Weighting and Conclusion*

294. Nepal has comprehensive requirements for ordering FIs. There are minor shortcomings related to requirements on intermediary and beneficiary FIs.

295. **Recommendation 16 is rated largely compliant.**

#### *Recommendation 17 – Reliance on third parties*

296. In its last MER, former R.9 was not applicable, as Nepal's law was silent on reliance on third parties in CDD process with authorities and the private sector agreeing that intermediaries or other 3rd parties are not used in Nepal. Since the last MER, Nepal's preventative measures obligations in the ALPA were amended and the ALPR and sector specific directives were passed.

297. *Criterion 17.1* - FIs are permitted to rely on a third-part to perform CDD (s7J(1) ALPA) if specific requirements are met (s7J(1)(a)-(c) ALPA). The ultimate responsibility relating to customer identification and verification remains with the entity relying on the third party (s7J(3) ALPA), and:

298. (a) - Can immediately obtain all documents and information used for customer identification and verification (s7J(1)(b) ALPA).

299. (b) - Must ensure that all documents, description and information used for customer identification and verification will be provided upon demand without delay (s7J(1)(c) ALPA).

300. (c) - Satisfy itself that the third party is regulated and supervised for AML/CFT and measures are in place for CDD and record-keeping (s7J(2)(b) and (c) ALPA).

301. *Criterion 17.2* - FIs are prohibited from using third parties from a jurisdiction identified as non-compliant or partially compliant with the international standards relating to the prevention of ML/TF (s7J(2)(a) ALPA). Consistent with the analysis of R.19, the AT interprets this to mean high-risk and other monitored jurisdictions by the FATF. It is unclear whether there are

other information relating to the level of country risk that Nepal FIs are required to take into consideration, if the third party is from a jurisdiction that is not in the high risk and other monitored jurisdictions by the FATF.

302. *Criterion 17.3* - The ALPA, ALPR or Directives do not have specific requirements covering reliance on a third party that is part of the same financial group. The requirements under s7J ALPA apply to FIs that rely on a third-party that is part of the same financial group.

*Weighting and Conclusion*

303. FIs are permitted to rely on third-parties to perform CDD with ultimate responsibility remaining with the entity relying on the third-party. FIs are prohibited from using third-parties from a jurisdiction identified high-risk and other monitored jurisdictions by the FATF but there are no other conditions to covering other country risks.

304. **Recommendation 17 is rated largely compliant.**

***Recommendation 18 – Internal controls and foreign branches and subsidiaries***

305. In its last MER, Nepal was non-compliant with former R.15, and R.22 was not applicable. Deficiencies in former R.15 include no mandatory obligation to establish AML/CFT internal controls, no requirement for an independent audit, and most FIs lack AML/CFT policies, procedures and controls to prevent ML and TF. Since the last MER, Nepal’s preventative measures obligations in the ALPA were amended and the ALPR and sector specific directives were passed.

306. *Criterion 18.1* - FIs are required to implement programmes against ML/TF having regard to ML/TF risk and size of the business (s7P(1) ALPA), which includes the following:

307. (a) - Compliance management arrangements including appointment of a compliance officer at management level (s7P(3) ALPA).

308. (b) - Procedures to ensure high standard when hiring employees (s7P(2)(d) ALPA).

309. (c) - Ongoing employee training programme (s7P(2)(e) ALPA).

310. (d) - Independent audit function (s7P(2)(f) ALPA).

311. *Criterion 18.2* - Financial groups are required to implement group wide programmes against ML/TF applicable to all branches and majority-owned subsidiaries including the measures set out below (s7Q ALPA). Nepal defines “majority ownership” as ownership of fifty percent or more.

312. (a) - Sharing of information required for CDD and ML/TF risk management (s7Q(1) ALPA).

313. (b) - s7Q(2)(b) ALPA requires FIs to have policies and procedures including for intra-group exchange of information relating to customers, transactions, accounts, audit, group compliance and programmes on ML/TF. However, it is unclear on the scope and extent of the information to be shared based on its relevance to AML/CFT risk management, and if this also includes information and analysis of transactions or activities which appear unusual, if such

analysis was done. There are also no requirements that branch or subsidiaries should receive information from group-level functions where appropriate to risk management, based on the sensitivity of the information.

314. (c) - FIs must have adequate safeguard on confidentiality of and use of information exchanged pursuant to criteria (a) and (b) (s7Q(2)(c) ALPA. However, this does not explicitly cover specific financial group safeguards to prevent tipping-off. General requirement on tipping off would be applicable (see R.21).

315. *Criterion 18.3* - Foreign branches and majority-owned subsidiaries are required to apply AML/CFT measures of the ALPA and other enforceable means under the act (s7Q(1) ALPA). Where the host jurisdiction does not permit proper implementation of AML/CFT measures consistent with the ALPA, FIs are required to apply appropriate additional measures (s7Q(3) ALPA).

#### *Weighting and Conclusion*

316. FIs are required to implement programmes against ML/TF. Financial groups are required to implement group wide programmes against ML/TF. However, the scope of intra-group information is unclear and confidentiality safeguards do not explicitly extend to tipping-off.

317. **Recommendation 18 is rated largely compliant.**

#### ***Recommendation 19 – Higher-risk countries***

318. In its last MER, Nepal was non-compliant with former R.15, as: (i) FIs were not required to give special attention to business relationships and transactions with persons from countries that do not adequately apply FATF recommendations, (ii) no existing system existed for Nepal authorities to ensure that FIs are aware of countries with weak AML/CFT regimes, (iii) no mandate for FIs to identify background and purpose of transactions with no apparent economic or visible purpose, and (iv) no system to employ countermeasures against countries that insufficiently apply FATF recommendations. Since the last MER, Nepal's preventative measures obligations in the ALPA were amended and the ALPR and sector specific directives were passed.

319. *Criterion 19.1* - FIs are required to take appropriate EDD for customers from a jurisdiction which are "internationally identified as a non-compliant or partial compliant with international standards on prevention of ML/TF" (s7E(1)(c) ALPA). This obligation does not clearly apply to customers that are legal arrangements (see above discussion of definition of Customer in c.10.3).

320. p6(1)d of The AML/CFT Directive 19 for A, B and C Class Banking Institutions requires that this obligation applies when called for by the FATF. p16 of the AML Directive no 27 to MVTS and Money Changers also requires that this obligation applies when called for by the FATF. While there are some other directives (e.g., for the insurance, securities and pension sectors) that provide additional coverage of c.19.1, no other directives issued to other FIs explicitly state EDD should be applied when called for by the FATF.

321. *Criterion 19.2* - Nepal can not apply countermeasures proportionate to the risks when called upon by the FATF, or independent of any call by the FATF.

322. *Criterion 19.3* - Nepal FIU advises FIs about weakness in the AML/CFT systems through a link to the relevant FATF webpages on high-risk and other monitored jurisdictions. However, there are no specific measures in place to ensure that FIs are advised of concerns about weaknesses in the AML/CFT systems of other countries on an on-going basis.

#### *Weighting and Conclusion*

323. Nepal FIU advises FIs about weakness in the AML/CFT systems via its website and FIs are required to apply EDD on customers (applies to natural and legal persons but not legal arrangements) from jurisdictions which are “internationally identified as a non-compliance or partial compliant with international standards on prevention of ML/TF”. Only commercial banks, development banks, finance companies, MVTS and money changers have explicit requirements to apply EDD when called for by the FATF. Nepal cannot apply countermeasures.

324. **Recommendation 19 is rated partially compliant.**

#### *Recommendation 20 – Reporting of suspicious transaction*

325. In its last MER, Nepal was partially compliant with former R.13, and non-compliant with former SR.VI/V as (i) not all FIs were required to file STRs, (ii) and there were no requirements to report attempted transactions, (iii) deficiencies in the criminalisation of ML and TF undermined the STR reporting obligations, (iv) and there were low rates of STR reports overall. Since the last MER, Nepal’s preventative measures obligations in the ALPA were amended and the ALPR and sector specific directives were passed.

326. *Criterion 20.1* - FIs are required to submit STRs to the FIU on reasonable grounds of suspicion that property is the proceeds of ML, TF and all other offences in Nepal (s7S(1)(a-b) ALPA). Property is defined consistent with the FATF definition of funds. Nepal requires the STR to be sent promptly but not later than three days (s7S(1) ALPA).

327. *Criterion 20.2* - FIs are required to submit reports of attempted transactions or activity to the FIU (s7S(1)&(2) ALPA). The ALPA’s requirement for FIs to submit STRs on ‘any...transaction’ is deemed to be reflective of a requirement for STRs to be reported irrespective of the amount of the transaction.

#### *Weighting and Conclusion*

328. **Recommendation 20 is rated compliant.**

#### *Recommendation 21 – Tipping-off and confidentiality*

329. In its last MER, Nepal was non-compliant with former R.14, as (i) immunity under ALPA only applicable in case where “loss” occurs, (ii) immunity only applied against civil action (not criminal liability), (iii) tipping off prohibitions did not apply to the fact that a STR is being reported or has been reported, (iv) tipping off prohibition were not applicable to attempted suspicious transactions, (v) tipping off prohibitions were not enforceable - no penalty provisions for breach. Since the last MER, Nepal’s preventative measures obligations in the ALPA were amended and the ALPR and sector specific directives were passed.

330. *Criterion 21.1* - FIs and their director, officers and employees are provided immunity from any criminal, civil, disciplinary, or administrative actions when they act in good faith to

submit reports in accordance with the ALPA (s37(2) ALPA). Such immunity is extended to professional and financial norms as prescribed under any law in Nepal (s37(1) ALPA).

331. *Criterion 21.2* - FIs and their directors, officers and employees are prohibited from disclosing the fact that an STR or related information is being filed with the FIU (s44A ALPA). Administrative and criminal sanctions for non-compliance are outlined in R.35.

### *Weighting and Conclusion*

332. **Recommendation 21 is rated compliant.**

### *Recommendation 22 – DNFBPs: Customer due diligence*

333. In its last MER, Nepal was rated non-compliant with former R.12, as (i) preventative measures in the ALPA did not apply to all DNFBPs, (ii) the scope of preventative measures applicable to casinos and other DNFBPs were narrow and did not address many of the measures required under the standards, (iii) enforceability of ALPA measures was limited and the only other instruments for casinos were not enforceable, and (iv) extension of the FIU AML Directives to the casino sector were very recent and there was insufficient evidence of effective implementation. Since the last MER, Nepal's preventative measures obligations in the ALPA were amended and the ALPR and some sector specific directives were passed.

334. The definition of DNFBP in the ALPA (s2(n) and (af)) includes all sectors required by the FATF standards with scope gaps for real estate agents and DPMS – see description under Background and Other Contextual Factors in Chapter 1.

335. *Criterion 22.1* - The CDD requirements set out in the ALPA apply to DNFBPs as follows:

336. (a) – Casinos are required to comply with the same CDD requirements as FIs under the ALPA (as set out in R.10). This includes when establishing business relationships with customers, opening accounts and undertaking occasional transactions of NPR 100,000 (~USD 750) or more in respect of betting, games of chance or foreign exchange. This includes both cash and non-cash transactions (s2(j), s7A(1) ALPA, r3 ALPR). Casinos are exempt from conducting CDD in relation to customers who engage in transactions equal to or below NPR 200,000 (~USD1,500) in a day (s7A(5)(a) ALPA). This exemption is lower than the applicable casino transaction threshold for c.22.1(a). In combination, these provisions ensure that CDD is applied in the circumstances required by c.22.1(a), including that casinos are able to link CDD information for a particular customer to the transactions they conduct in the casino. However, the other deficiencies identified in R.10 apply to casinos.

337. (b) – Real estate agents are required to comply with the same CDD requirements as FIs under the ALPA (as set out in R.10). However, the AML/CFT directive issued by DoLMA for real estate agents restricts the application of the ALPA (and CDD requirements) to the sale and purchase of a house or land of NPR 10 million (~USD75,000) or more (s1, directive issued 7 June 2022). This is a scope gap and does not comply with the requirements of c.22.1(b). It is also unclear in the directive whether real estate agents are required to comply with CDD requirements for both buyer and seller. This does not comply with the requirements of c.22.1(b), which require CDD to be conducted at all times on both buyer and seller. The other deficiencies identified in R.10 also apply to real estate agents.

338. (c) – DPMS are required to comply with the same CDD requirements as FIs under the ALPA (as set out in R.10).<sup>96</sup> This includes when establishing a business relationship with a customer or engaging in transactions, cash or non-cash, of over NPR 1 million (~USD7,500) per day (s7A(1), s7A(5)(b) ALPA; s5(b) AML/CFT directive by IRD issued 2020). This exemption is lower than the applicable DPMS transaction threshold for c.22.1(c). However, IRD AML/CFT directives only applies to importers, distributors, including wholesale traders, but not to retailers of precious metals or stones (s2(c), AML/CFT directive). While this is a scope gap, it is reduced to some extent because since 2017, Nepal has had a wider prohibition on cash transactions pursuant to a directive issued under the s44C ALPA. This prohibits cash transactions over NPR 1 million (~USD7,500) to buy or sell any goods or services other than where there are reasonable grounds necessitating the use of cash on application. The other deficiencies identified in R.10 also apply to DPMS.

339. (d) – Notaries, auditors, accounting or other similar professionals (including lawyers) are required to comply with the same CDD requirements as FIs (as set out in R.10) when undertaking the activities specified in s2(n)(4) ALPA.<sup>97</sup> The specified activities in s2(n)(4) meet all requirements of c.22.1(d). CDD is required for these specified activities when establishing a business relationship or undertaking a transaction of NPR 100,000 (~USD750) for any agreement made, or an act for the purchase, sale, distribution, transfer, investment or purchase of any property, or the conduct of any business or economic activity, or establishing a fiduciary relationship, incorporating or registering a legal person or arrangement and any payment of funds, cash or non-cash, including foreign currency (s2(j), s7A(1) ALPA, s3 ALPR). In combination, these provisions ensure that CDD is applied in all circumstances required by c.22.1(d). However, the deficiencies identified in R.10 also apply to lawyers, notaries, auditors, accounting or other similar professionals.

340. (e) – TCSPs are required to comply with the same CDD requirements as FIs (as set out in R.10) when undertaking the activities specified in s2(n)(5) ALPA. The specified activities in s2(n)(5) meet all requirements of c.22.1(e). CDD is required in the same broad range of circumstances set out for c.22.1(d) above (s2(j), s7A(1) ALPA, r3 ALPR). In combination, these provisions ensure that CDD must be applied by TCSPs in all circumstances required by c.22.1(e). However, the deficiencies identified in R.10 also apply to TCSPs.

341. *Criterion 22.2* - DNFBPs are required to comply with the same record keeping requirements in the ALPA as FIs (as set out in R.11). In addition, these record keeping requirements are supported by the AML/CFT directives for casinos (s16), for DPMS (s11) and chartered accountants or registered auditors (s15). Deficiencies in the situations set out in c.22.1 apply.

342. *Criterion 22.3* - DNFBPs are required to comply with the same PEPs requirements in the ALPA as FIs (as set out in R.12). In addition, these PEPs requirements are supported by the AML/CFT directives for casinos (s5), DPMS (s6) and chartered accountants or registered auditors (s5). Deficiencies in the situations set out in c.22.1 apply.

<sup>96</sup> Prescribed precious metals and stones are gold, silver, platinum, iridium, osmium, palladium, ruthenium, diamond, sapphire, ruby, emerald, jadeite, pearl, corundum, aquamarine, any jewellery made from these metals and stones, and any other metal or commodities including 2% or more of gold, silver, platinum, iridium, osmium, palladium, iridium, or ruthenium and its ore (s14A schedule 1 ALPR; s2(d) AML/CFT directive for DPMS).

<sup>97</sup> Lawyers are not specifically listed in the definition of DNFBP. However, the inclusion of “other similar professionals” is sufficient to ensure a lawyer is a DNFBP if the lawyer undertakes any of the specified activities.

343. *Criterion 22.4* - DNFBPs are required to comply with the same new technologies requirements in the ALPA as FIs (as set out in c.15.1 and c.15.2 of R.15). Deficiencies in the situations set out in c.22.1 apply.

344. *Criterion 22.5* - DNFBPs are required to comply with the third-parties' requirements in the ALPA as FIs (as set out in R.17). The deficiencies identified in R.17 and in the situations set out in c.22.1 apply.

### *Weighting and Conclusion*

345. DNFBPs are subject to the same requirements in the ALPA as FIs. There are scope gaps for real estate agents and DPMS. For real estate agents, the ALPA only applies to the sale and purchase of a house or land of NPR 10 million (~USD 75,000) or over, and it is unclear whether real estate agents are required to comply with CDD requirements for both buyer and seller. These gaps are compounded by an informal and unregulated real estate sector. For DPMS, the ALPA and AML/CFT directives do not apply to transactions by retailers of precious metals or stones (in cash at the threshold USD/EUR 15,000 or over). However, the scope gap is reduced to some extent because of Nepal's wider prohibition on cash transactions of NPR 1 million (~USD 7,500) in the economy other than when use of cash is reasonably necessitated. The deficiencies identified in R.10, and R.17 apply.

346. **Recommendation 22 is rated partially compliant.**

### *Recommendation 23 – DNFBPs: Other measures*

347. In its last MER, Nepal was rated non-compliant with former R.16, as (i) STR reporting obligations in the ALPA did not apply to all DNFBPs, (ii) only the basic requirements of the ALPA and the AML Rules applied to casinos, and these did not address much of the issues required under the standards, (iii) protection for STR reporting and prohibitions of tipping-off were not fully incorporated, and (iv) no effective implementation of AML/CFT controls by DNFBPs sector for STR reporting and internal controls. Since the last MER, Nepal's preventative measures obligations in the ALPA were amended and the ALPR and some sector specific directives were passed.

348. *Criterion 23.1* - DNFBPs are required to comply with the same STR/SAR reporting requirements in the ALPA as FIs (s7S, as set out in R.20). In addition, these STR reporting requirements are supported by the AML/CFT directives for casinos (s11), for real estate agents (s2), for DPMS (s15) and for chartered accountants or registered auditors (s11). The scope gaps for real estate agents and DPMS apply.

349. For lawyers, legal professional privilege applies only to those services subject to a legal practitioner's licence – representing, pleading, advocacy and counselling services (s45 Evidence Act, s22 Nepal Bar Council Act). These services are not subject to AML/CFT requirements under the ALPA. In practice, this means that to the extent a lawyer carries out, prepares for, or engages in transactions subject to the ALPA for a client or party (see c.22.1(d) above), full STR/SAR reporting obligations apply.

350. *Criterion 23.2* - DNFBPs are required to comply with the same internal controls requirements in the ALPA as FIs (as set out in R.18). In addition, these internal controls requirements are supported by the AML/CFT directives for casinos (s14), for DPMS (s18) and for

chartered accountants or registered auditors (s14). The deficiencies identified in R.18 apply. The scope gaps for real estate agents and DPMS also apply.

351. *Criterion 23.3* - DNFBPs are required to comply with the same higher risk countries requirements in the ALPA as FIs (as set out in R.19). The deficiencies identified in R.19 apply. The scope gaps for real estate agents and DPMS apply.

352. *Criterion 23.4* - DNFBPs are required to comply with the same tipping off and confidentiality requirements in the ALPA as FIs (as set out in R.21). In addition, these tipping off and confidentiality requirements are supported by the AML/CFT directives for casinos (s13), for DPMS (s17) and for chartered accountants or registered auditors (s12). The scope gaps for real estate agents and DPMS apply.

### *Weighting and Conclusion*

353. DNFBPs are subject to the same requirements in the ALPA as FIs. There are scope gaps for real estate agents and DPMS (see R.22 above). The deficiencies identified in R.18 and R.19 apply.

354. **Recommendation 23 is rated partially compliant.**

### *Recommendation 24 – Transparency and beneficial ownership of legal persons*

355. In its last MER, Nepal was rated non-compliant with former R.33 with deficiencies in most criteria.

356. See overview of legal persons under Nepal Chapter 1. In addition to the legal persons described below unlimited liability Partnership Firms and unlimited liability Private Firms can be formed in Nepal. These are not considered legal persons for R.24.

357. *Criterion 24.1* - Nepal's NCivC (Chapter two) provides for legal persons, with a variety able to be formed in Nepal under different laws as follows. The statutes describe the forms and basic features of the legal persons.

358. *Companies:* The Companies Act 2006 regulates companies including Public Companies, Private Companies (including 'Company not Distributing Profits') and Foreign Companies. Only limited liability companies (by shares) are able to be formed in Nepal (s8 Companies Act). The process for creation of companies and obtaining basic ownership information is publically available on the OCR website (<https://www.ocr.gov.np>). With the exception of published versions of the ALPA and ALPR (for example, on the FIU's website) there is no publically available information on the process for obtaining BO information (Nepal relies upon information collected by FIs and DNFBPs in the course of implementing CDD for BO information).

359. *Associations:* Associations can be registered under s4 of the Associations Registration Act 1977. Upon registration, at the District Administration Office, all associations acquire the features of "autonomous corporate body". Some information on creation of associations is available on the Social Welfare Councils website (<https://www.swc.org.np>) mainly focused on foreign NPOs and also in the relevant statutes.



360. Basic information is obtained during registration but there is no requirement for BO details to be provided except details of its members. It is unclear if information on the creation of associations is publicly available apart from what is already stated in the law.

361. *Corporations:* Corporations can be established by the Government of Nepal through statutes<sup>98</sup> and public notice.

362. *Cooperatives:* Cooperative Associations registered under Chapter 2 of the Cooperatives Act 2017. Upon registration, the cooperative association becomes a body corporate with liability limited to subscribed or agreed share of capital. Registration is at the federal, province and local level in accordance with the Act and Cooperatives Regulation. There is information on the formation of cooperative and obtaining basic ownership and BO information on the Department of Cooperatives website (<https://www.deoc.gov.np>).

363. *Criterion 24.2* - Nepal has not assessed the ML/TF associated with all types of legal persons created in Nepal. Cooperatives are included in the NRA 2020; however, the analysis focuses on the business practices of Savings and Credit Cooperatives rather than the ML/TF risks associated with the legal structure. There is passing reference to legal persons being used for tax evasion and loan scams but it is not analysed thoroughly. Risks associated with other forms of legal persons are not included in the NRA or in any risk assessment.

364. *Criterion 24.3* - Companies are required to register with OCR and submit all basic information during registration (s4(2)(a)-(i) Companies Act) including company name, director's names, basic regulating powers and list of promoters. The articles of association and memorandum of association is also required with detailed requirements included in s20 and s18, respectively. The memorandum of association requires the details of the directors and company address. The OCR maintains records of status, legal form and incorporation certificate within the registry along with the information required during registration. Company name, registration number and date, company types (private, public, or foreign), company address, and date of recent communication with OCR is publicly available on OCR's website by search of the company registration number. All other information held by the OCR on private companies and held by the company itself is not publicly available.

365. For public companies, the public can make an application to OCR via hardcopy for information in relation to public companies, and the Memorandum of Association and Articles of Association are required to be kept at the registered office and is available for view (s22 Companies Act).

366. As above, foreign companies are required to be registered with OCR and submit all basic information during registration (s155 Companies Act). OCR is required to maintain a separate register for a foreign company, which is available to be viewed by the public upon payment of a fee (s154(10) Companies Act). It is unclear what information is required to be maintained in the register. All other information held on foreign companies is not publicly available.

367. In relation to Associations and Cooperatives, applicable basic information is obtained during the registration process including on members (s4 of the Associations Registration Act

<sup>98</sup> For example, Nepal Airline Corporation Act; Communication Corporation Act; Gorkhapatra Corporation Act; Communication Corporation Act; Nepal Drinking Water Corporation Act; Nepal Electricity Authority Act; Rastriya Beema (Insurance) Sansthan Act; Deposit and Credit Guarantee Fund Act.

1977; Chapter 2 of the Cooperatives Act 2017). There is no provision for this information to be made publicly available.

368. *Criterion 24.4* - Companies are required to keep their memorandum of association and articles of association at their registered office (s22 Companies Act). The memorandum of association must include “types of shares of the company, the rights and powers inherent to such shares, value of each share and number of different shares” (s18(f) Companies Act), “restrictions, if any, on the purchase or transfer of shares” (s18(g) Companies Act), “number of share which the promoters have undertaken to subscribe for the time being” (s18(h) Companies Act), and “terms of payment of share amount” (s18(i) Companies Act).

369. Companies are required to maintain a share register of all its shareholders including name and address of shareholder, and number of shares (s46 Companies Act). There is no requirement to maintain in the register the category of share that are held. The share register is required to be kept at the registered office of the company (s46 Companies Act). Companies with more than fifty shareholders are required to keep an index of shareholders (s49 Companies Act). There is no requirement in the Companies Act to maintain in the index the category of share that are held.

370. For foreign companies, the proof of incorporation, memorandum of association, articles of association, name, address and description of the citizenship of directors and main company officers, registered office (not required to be within Nepal) address are mandatory (s155 Companies Act). Details of shareholders are not required to be maintained. Foreign company are required to notify the Department of Industry and Investment Board Nepal of any change in details of change in ownership and shares within 30 days (s19 of the Foreign Investment and Technology Transfer Act).

371. For Cooperatives and Associations, basic information on members is obtained during registration.

372. *Criterion 24.5* - In relation to companies, updating of information on directors and shareholders is required to be done at least once a year prior to holding an annual general meeting (s51 Companies Act). In relation to name change and changes to the MOA and AOA, the OCR must be notified within 30 days after the change (s21 Companies Act). In relation to changes in details of shareholders addresses, OCR is to be notified immediately (s48 Companies Act). In relation to director details, OCR is to be notified by 15 days (s107 (2) Companies Act). The above requirements also apply to foreign companies.

373. For Associations, there is a requirement for annual renewal during which all the information is updated (s4(5) of Association Registration Act and r5 of Association Registration Rules)

374. For Cooperatives, there is a requirement of annual updates of the information on directors, and loan amount of directors and members (s73 of Cooperative Act). s73(f) requires update on “numbers of share holder and share capital”. However, it is unclear whether this would require an update of members’ details or just the number of individual divisions of the cooperatives capital.

375. *Criterion 24.6* -

376. (a) and (b) - companies are required to keep shareholder register. They are however not required to obtain and hold BO apart from recording shareholders. There is a provision permitting a company to ask a shareholder to provide “information as to in what capacity he has obtained the shares with full voting rights registered in his name or whether any other person has investment in the shares registered in the name of the shareholder and, where there is another person as the beneficiary of such shares, as to the identity and nature of the title of that person, it shall be the duty of the shareholder to provide such information to the company within 30 days” (s47 Companies Act). This is then to be updated on the share register and the OCR is notified of the change. (s47 Companies Act). The register is required to be kept at the registered office. It is not clear on what circumstances a company is required to ask for this information with the AT of the view that this is not regularly occurring in Nepal.

377. For Cooperatives and Associations there is no measures to give effect to c.24.6 (a) or (b).

378. (c)(i) - Nepal relies upon information collected by FIs/DNFBPs in the course of implementing CDD requirements, set out in the ALPA and ALPR, to ensure beneficial ownership information can be determined by competent authorities. s7C of ALPA requires FIs and DNFBPs to obtain beneficial ownership information when establishing a business relationship with companies, associations and cooperatives. Specific CDD measures required for legal persons and legal arrangements closely match the requirements of c.10.8 to c.10.11; however, R.10 is rated partially compliant. The key R.10 deficiency (that delayed verification is allowed but there is no requirement for verification to be completed as soon as reasonably practicable or for FIs to have risk management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification), impacts Nepal’s ability to obtain or determine BO in a timely manner from FIs or DNFBPs (R.10 deficiencies cascade into c.22.0).

379. (c)(ii) – Nepal did not provide any information on other competent authorities that hold BO information on legal persons in Nepal.

380. (c)(iii) – LEAs can use search and seizure provisions to obtain information held by the company as required by c.24.3 (see c.31.1). This would not be timely and production of records compulsory measures are only available to the DMLI for ML/TF and NP in relation to narcotic, banking and organised crime offences. CIAA has general powers to search and collect evidence relating to corruption offences.

381. (c)(iv) – Companies listed on the stock exchange are required to notify SEBON on special events and circumstances which includes changes in the company structure, changes to directors and high level managers (including name and addresses of the directors and high level managers), changes to ownership and capital structure (if the shareholder owns 5% or more shares), changes in control of body corporate (identity of person/ entity which acquired control) (Securities Registration and Issue Regulation, 2016 – Schedule 16).

382. *Criterion 24.7* - There is no requirement for OCR or company BO information (see is 24.5(a) and (b)) to be accurate or up-to-date. In a limited circumstance a company may ask its shareholders for beneficial information but the requirements for doing so is not clear. Similarly, for other legal persons such as associations, corporations, and cooperatives, there is no requirement to keep beneficial ownership information.

383. BO information obtained by FIs and DNFBPs as part of CDD is required to be accurate or up-to-date. FIs and DNFBPs are required to exercise ongoing due diligence, including maintaining

current information and records relating to the beneficial owner (s7I ALPA). However, the update procedure is triggered only when the customer's business activities no longer matches their risk profile. The CDD regime might result in FIs and DNFBPs only updating BO information after a number of years unless there is a risk event to trigger an update.

384. *Criterion 24.8* - Nepal does not require a natural person resident in Nepal to be authorised and accountable to competent authorities for providing all basic information and available beneficial ownership information and giving further assistance to the authorities. Similarly, there is no requirement for DNFBP's to be accountable to competent authorities to provide basic information and BO information and give further assistance to authorities. Nepal has no comparable other measures to give effect to c.24.8(c).

385. *Criterion 24.9* - While there is a requirement to maintain records in the Companies Act (s172), there is no explicit timeframe for maintaining the records. FI and DNFBPs are required to keep information obtained for CDD for at least 5 years (s7R of ALPA). It is unclear if there are record keeping requirements for Cooperatives and Associations besides those covering CDD in the ALPA.

386. *Criterion 24.10* - The FIU is empowered to obtain and use additional information from FIs, DNFBPs and registrars that may hold information on legal persons (s10(6) ALPA). LEAs can use search and seizure provisions to obtain information (see c.31.1). In relation to OCR documents, LEA's can access information in a short span of time; however, in relation to other legal persons due to manual recording as well as having local and provincial level of registrations means that the information can not be accessed in a timely matter. However, compulsory measures for production of records are only available to the DMLI for ML/TF and Nepal Police in relation to narcotics, banking and organised crime offences. The FIU can access information kept at OCR. CIAA has general powers to search and collect evidence relating to corruption offences. Due to deficiencies identified in maintaining BO information, LEA's access to BO is limited.

387. *Criterion 24.11* - Bearer share are not explicitly prohibited by the Companies Act. Companies are required to record shares in the register containing the name and address of each shareholder (see c.24.4) so bearer shares cannot be issued by companies. There is a requirement for shareholders with controlling interest to notify the company if they find out that they are a substantial shareholder under s50 of the Companies Act.

388. For Cooperatives and Associations, there is no provision for prohibiting bearer shares and share warrants; however, during registration details of the members are obtained, which indicates that bearer shares and warrants can not exist for these entities.

389. *Criterion 24.12* - Legal persons in Nepal are not explicitly prohibited from having nominee shares and nominee directors. There is no requirement for shareholders and directors to disclose their nominee status to the company or registry. There is no licensing requirement for nominee shareholders and directors. No other mechanism has been identified by Nepal to mitigate nominee shareholders and directors.

390. *Criterion 24.13* - There is a term of imprisonment for 2 years or fine of 50,000 NPR (~USD400.00) or both if a director, officer or employee of a company does not provide accurate records to the registry or shareholder (s160(b) Companies Act). Similarly, a shareholder can also face the same penalties if they make false statements (s160(h) Companies Act). Whilst there are no specific offences created for failure to update OCR of changes in share register and directors,

s162 creates a general offence of failure to carry out duties prescribed by the Act. The penalty 5,000 NPR (~USD 40.00) to 20,000 NPR (~USD 160.00). Companies cannot be charged for failure to provide updated information on shareholders and directors. Overall sanctions for requirements under R.24 are not proportionate or dissuasive.

391. For Associations and Cooperatives there are some sanctions for failing to comply with registration and filing requirements under the Acts (s12 Associations Registration Act; s125 Cooperative Act). These sanctions are not proportionate and not fully dissuasive.

392. *Criterion 24.14* - Nepal can provide international cooperation in relation to basic and BO information on the basis set out in Recommendation 37 and 40. However, given the deficiencies identified in relation to holding of BO information it is unclear how Nepal would be able to provide assistance to obtain/provide BO information of legal persons.

393. *Criterion 24.15* - Nepal does not have a mechanism for monitoring the quality of assistance it receives from other countries in response to requests for basic and BO information or requests for assistance in locating beneficial owners residing abroad.

### *Weighting and Conclusion*

394. Nepal has basic mechanisms to identify and describe its different types of legal persons, but has not assessed its ML/TF risks. There has been measures to ensure that bearer shares and warrant do not exist. There are major shortcomings in relation to basic and BO information, and there are no mechanisms to ensure the misuse of nominee arrangements. There are major shortcomings in relation to dissuasiveness of sanctions.

395. **Recommendation 24 is rated partially compliant.**

### ***Recommendation 25 - Transparency and beneficial ownership of legal arrangements***

396. In its last MER, Nepal was rated non-compliant with former R.34 with deficiencies in most criteria.

397. *Criterion 25.1* - The NCivC regulates public and private trusts (s314 and 315).

398. (a) - Under the NCivC, public trusts are required to be registered (s318) with the memorandum of incorporation containing the details of the trust including details of trustee, beneficiary, trust property, nature and object of the trust, but not the class of beneficiaries and any other natural or legal persons exercising ultimate effective control over the trust (s317). Private trusts may exist without registration (s318 (3) of NCivC) as long as the Registrar is notified. The trustee is obliged to keep records of trust property updated with trustees of public trusts required to submit the records to the registrar yearly (s333).

399. Trustees of private trusts are required to keep the memorandum of incorporation of the trust, the deeds, documents of the ownership and possession of the trust property and other proofs and evidences pertaining thereto (s339 NCivC). As above, this would cover much of the required information on the identity of the settlor, the trustee(s), the protector (if any) and the beneficiaries, but not the class of beneficiaries and any other natural or legal persons exercising ultimate effective control over the trust. In addition, it is not clear if this covers accurate and

current information in all circumstances. It is not clear that usufructs are required to keep all the required details.

400. Usufruct settled under the NCivC is required to be certified by the court (166 NCivC). It is unclear what information is required under this process and/or how the information is maintained.

401. Trust service providers acting as trustees are required to identify the control over a legal arrangement like a trust (this would capture both trusts and usufructs), identify the settler, trustee, guardian, beneficiaries, and natural persons thereof (s7C(1) ALPA and r6(3) ALPR). This would apply to trusts and usufructs settled under the Code, as well as common law trusts and foreign trusts. However, non-professional trustees are not required to keep the same information.

402. (b) - there is no requirement that trustees or usufructs hold basic information on other regulated agents of, and service providers to the trust.

403. (c) - DNFBPs acting as professional trustees are required to keep records for 5 years; however, there are deficiencies in the scope of the CDD obligation as outlined in R.22.

404. *Criterion 25.2* - Trustees of private and public trusts are required to maintain information (s339 NCivC) through the memorandum of incorporation of the trust, the deeds, documents of the ownership and possession of the trust property and other proofs and evidences pertaining thereto. However, it does not require information to be accurate and as up to date as possible, and to be updated on a timely basis. For public trusts the update of information to the Registrar happens yearly, which is not timely (s333 NCivC).

405. DNFBPs acting as professional trustees are required to keep CDD information on legal arrangements accurate and up-to-date as outlined in R.22.

406. *Criterion 25.3* - There are no obligations on trustees to disclose their status to FIs and DNFBPs when forming a business relationship or carrying out an occasional transaction. FI's and DNFBP's as part of CDD requirements ask for declarations if a person is a trustee (see c.10.11).

407. *Criterion 25.4* - There are no explicit laws or enforceable means which would prevent trustees from providing information relating to the trust to competent authorities, FIs and DNFBPs. There appears to be no confidentiality or secrecy obligations afforded to trustees as they are regulated under the NCivC and have to provide the necessary information to the Registrar if they are a public trust. Similarly, private trust must notify the Registrar of their existence.

408. *Criterion 25.5* - The FIU is empowered to obtain and use additional information from FIs, DNFBPs or competent authorities that may hold information on trusts (s10(6) ALPA). LEAs can use search and seizure provisions (see c.31.1) to obtain information held by the trustees, FI and DNFBPs and the district-level Land Revenue Offices. This would not be timely, and production of records compulsory measures on FIs and DNFBPs is only available to the DMLI for ML/TF and Nepal Police in relation to narcotics, banking and organised crime offences. However, as highlighted in 25.1 there are certain information such as natural person who holds the ultimate control over a trust which is not maintained. Therefore, LEAs and other Investigative Authorities would not be able to access such information. The information obtained by FI's is applicable to trustees with which there is business relationship or for which there is an occasional transaction. FI's are required to maintain information on the trust property they hold.

409. *Criterion 25.6* - Nepal is able to provide international cooperation and BO information on the basis set out in Recommendation 37 and 40. The limitation to this cooperation is the information held by the district-level Land Revenue Offices. Information held by FIs and DNFBPs is accessible to LEA's and in turn can be shared with their foreign counterparts. Assistance cannot be provided rapidly.

410. *Criterion 25.7* - Under s338 of NCivC trustees who do not perform their duties are liable for loss and damage to the beneficiaries of a trust. It is unclear how sanctions would be imposed.

411. *Criterion 25.8* - There are no proportionate and dissuasive sanctions for failing to grant competent authorities timely access to information regarding the trust. There is a general provision for prohibiting obstructing an investigation but this does not appear to cover failure to grant timely access.

### *Weighting and Conclusion*

412. The NCivC regulates public and private trusts. There are major shortcomings in how BO information on the trust is required to be collected, maintained and updated. Sanctions are not dissuasive and proportionate. Trustees are not obliged to disclose their status to FI's and DNFBP's.

413. **Recommendation 25 is rated partially compliant.**

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

414. In its last MER, Nepal was rated partially compliant with former R.23, as (i) the ALPA did not apply to commodity brokers and there was no supervisory regime for Postal Savings Banks, (ii) 'Fit and Proper' test were not available with respect to persons acquiring managerial positions and controlling interests in financial institutions, (iii) no eligibility criteria and 'fit and proper' test on applicants who are natural persons in securities sector, (iv) lack of fitness test on the beneficial owners or controlling interests at the time of entry or at the time of renewal of licence of insurers, and (v) ineffectiveness due to lack of use of AML/CFT powers of regulators and supervisors. Since the last MER, the ALPA were amended and the ALPR and sector specific directives were passed.

415. *Criterion 26.1* - Regulatory bodies established under prevailing laws are responsible for regulating and supervising FIs in the relevant sector for compliance with AML/CFT requirements (s7T(1) and (3) ALPA). This includes supervision of TFS obligations (s29J(3) ALPA). For those sectors without a regulatory body under a prevailing law, another body or organisation may be appointed as the AML/CFT supervisor (s7T(2) ALPA).

416. NRB is the AML/CFT supervisor for commercial banks, development banks, finance companies, micro-finance institutions, infrastructure development banks and hire-purchase loan providers. This is due to its prevailing regulatory powers under the NRB Act (s79) and the BAFIA (s99, s129). NRB is also the AML/CFT supervisor for any other FI that provides foreign exchange, MVTs or payment services. For foreign exchange providers, which includes money changers (including hotels) and international MVTs providers, this is due to prevailing regulatory powers under the FERA (s12, s14). For payment service providers and operators, which includes domestic MVTs providers, this is due to prevailing regulatory powers under s42 PASA.

417. NRB is designated the AML/CFT supervisor for EPF, CIT and PSB under s7T(2) of the ALPA (Council of Ministers decision gazetted 11 November 2018). The EPF, CIT and PSB are government institutions established under the EPF Act, CIT Act and the Postal Act respectively.

418. DeoC is the AML/CFT supervisor for the cooperative sector due to its prevailing regulatory powers under s151 Cooperative Act. DeoC is responsible for AML/CFT supervision of those cooperatives operating in two or more provinces or nationally. For cooperatives operating at the provincial or local level, AML/CFT supervision is designated to the relevant provincial or local regulatory authority (s150 Cooperative Act). NRB also has a prudential regulatory mandate under the Cooperative Act for savings and credit cooperatives that have a deposit liability of NPR 500 million (~USD3.75 million) or more (s95(2) Cooperative Act; Rule 71 Cooperative Rules 2019). However, NRB only supervises the National Cooperative Bank for AML/CFT compliance.

419. NIA is the AML/CFT supervisor for the insurance sector due to its prevailing regulatory powers under s3 Insurance Act 2022.

420. SEBON is the AML/CFT supervisor for the securities sector due to its prevailing regulatory powers under s3 Securities Act.

421. IRD is designated the AML/CFT supervisor for pension funds under s7T(2) of the ALPA (Council of Ministers decision gazetted 11 November 2018).

422. *Criterion 26.2* - Commercial banks, development banks, finance companies, micro-finance institutions and infrastructure development banks must be licensed under the NRB Act (s78). Hire-purchase loan providers must be approved under s76 NRB Act. Foreign exchange providers, which includes money changers, hotels undertaking currency exchange and international MVTS providers, must be licensed under the s3 FERA.<sup>99</sup> Payment service providers and operators, which includes domestic MVTS providers, are required to be licensed under the s5 PASA.<sup>100</sup> EPF, CIT and PSB are government institutions and not subject to licensing requirements.

423. Cooperatives must be approved and registered by DeoC or by the applicable provincial or local regulatory authority (s13-16 Cooperative Act; Rule 9 Cooperative Rules 2018). For savings and credit cooperatives, the approval and registration from DeoC (or the provincial or local authority) enables them to accept savings of members and to provide credit to members (s50 Cooperative Act). A group of cooperatives may also form a cooperative bank with the approval of NRB and accept the savings of cooperatives or provide loans to cooperatives (s12, s21(2) Cooperative Act).

424. Insurance FIs must be licensed by NIA (s24 Insurance Act). Securities FIs must be licensed under s56 Securities Act or s3 Commodities Exchange Market Act. Pension funds must be approved by IRD (s63 Income Tax Act).

<sup>99</sup> The definition of foreign exchange transaction in the FERA includes the purchase or sale of foreign exchange (s2(d1)). A transaction involving international MVTS meets this definition. Therefore, providing an international MVTS service is subject to the requirements of the FERA.

<sup>100</sup> Commercial banks, development banks, finance companies and micro-finance institutions must also be licensed under the FERA or PASA to undertake foreign exchange/international MVTS or payment services. However, for these FIs, the FERA or PASA licences are secondary to their licences under the NRB Act.



425. Establishing and operating a shell bank in, or through the territory of, Nepal is prohibited (s7(1) ALPA).

426. *Criterion 26.3* - A function of the applicable AML/CFT supervisor is to develop and enforce fit and proper requirements for persons controlling, participating in, or owning FIs, directly or indirectly, and for beneficial owners, beneficiaries and managers of FIs (s7U(e) ALPA). This is supported by regulatory powers under prevailing laws as detailed below.

427. For commercial banks, development banks, finance companies, micro-finance institutions, infrastructure development banks, fit and proper requirements are set out in the BAFIA. There are prohibitions if the chief executive, a director or a person with significant ownership (or a family member) has been subject to regulatory action, or convicted of offences such as banking, cheating, fraud, forgery, money laundering, terrorist financing or corruption (s4(3), s18(1), s29(5) BAFIA). Significant ownership is defined as a situation where any person has, solely or jointly in association with another person or institution, subscribed two percent or more shares (s2(f) BAFIA).

428. The licensing policies for commercial banks, development banks, finance companies, micro-finance institutions and infrastructure development banks only require NRB to conduct fit and proper checks on promoter shareholders<sup>101</sup> of 2% or more. These promoter shareholders, including upon transfer of promoter shares, are required to provide documents to NRB that show proof of income for the amount to be invested and a tax clearance certificate. They must also provide a self-declaration questionnaire about criminal history, although there is no verification of this information by NRB (Annexure 3 BFI Licensing Policy, Unified Directives 10(2) issued 2021; Annexure 3, 6 2017 Licensing Policy). There are no equivalent initial or ongoing fit and proper checks conducted by NRB on the chief executive or directors. However, FIs are required to undertake their own due diligence on these persons to meet requirements of the BAFIA. Effective 15 December 2022, this includes a requirement that a police clearance certificate be obtained as part of this process. FIs are required to notify NRB of any change of director and also if they deem a director ineligible under character requirements (s18(2), s24-25 BAFIA, Annexure 6 and 7 BFI Licensing Policy). There are no fit and proper checks by NRB relating to character requirements for other management positions.

429. For hire-purchase loan providers, fit and proper requirements are mandated under policy and procedures (updated 2018, s76 NRB Act). The only fit and proper checks are that shareholders, or companies of shareholders, have not been credit blacklisted in the last three years (s8).

430. For money changers, hotels undertaking currency exchange and international MVTs providers, fit and proper procedures and contained in respective bylaws issued under the FERA. For money changers, checks are conducted on the persons seeking to establish and manage the business, shareholders and other officials. Licences are valid for three years. These persons must not be credit blacklisted in the past three years, have outstanding tax liability, been convicted of money laundering or terrorist financing ever, or in the last five years, convicted of corruption or fraud or of any other offence involving moral turpitude. Applications for a licence only require self-declaration that requirements are met, accompanied by submission of credit history information and a tax clearance certificate (s4(3), Annexure 1-1A Money Changer Licensing and

<sup>101</sup> Promoter is defined in s2(ccc) of the BAFIA as a person who, having undertaken to subscribe at least one share, signs the Memorandum of Association and the Articles of Association in the capacity of Promoter for establishment of a bank or financial institution pursuant to this Act.

Inspection Bylaws 2020). Licences are renewed based on self-declaration that requirements are still met (Annexure 11). Hotels undertaking currency exchange are subject to the same requirements, but the fit and proper requirements are only applied to directors and officials (s8, Annexure 4 Foreign Exchange Transaction and Inspection Bylaws 2020). For inbound international MVTs providers, there are similar fit and proper requirements applied only to directors and shareholders, with licences valid for one year. Applications are solely based on self-declaration and renewed on the same basis (s4, schedule 1 Remittance Bylaws 2010).

431. For payment service providers and operators, which includes domestic MVTs providers, which are not licensed under the NRB Act, there are fit and proper requirements for promoter shareholders, directors and the chief executive. These persons must not have been credit blacklisted in the past three years, have outstanding tax liability, been convicted of corruption, fraud, moral turpitude or of any banking or money laundering offence in the last three years. Fit and proper checks for a licence application are again based on a self-declaration form, other than the submission of a tax clearance certificate for promoters (Section C, D, Annex 8-10, Licensing Policy for Payment Related Activities, 2016). Licences may be renewed every five years without further or ongoing checks, other than for transfers of promoter shares (Unified Directive 11(5)). There are no initial or ongoing requirements in relation to other management positions.

432. The EPF, CIT and PSB are government institutions. For the EPF, a government employee is appointed as the administrator of the fund. In addition, there must be at least seven directors, who are ineligible if insolvent or convicted of an offence moral turpitude and sentenced to imprisonment for six months or more are ineligible to be a director (s4, s5, s6A EPF Act). For the CIT, there must be at least nine directors, who are ineligible if insolvent or convicted of theft, fraud or any kind of embezzlement or misuse of asset they are responsible for (s25, s26 CIT Act). These requirements are also contained in the Standards for Appointment for the Ministry of Finance (s4, 2016), which also apply to other officials. For the PSB, Nepal reports that government officials are deployed as managers by the Ministry of Communication and Technology. No information has been provided regarding fit and proper requirements or procedures for these persons.

433. For cooperatives, fit and proper requirements are set out in the Cooperative Rules 2019. “Applicants” to form a cooperative must not be blacklisted or convicted of crimes of misappropriation of funds or money laundering. This is based only on a self-declaration form that must be submitted with an application (Rule 6(3)(e), Schedule 7 Cooperative Rules). Nepal reports that the “applicant” and the self-declaration applies to all prospective members of the cooperative. Applications are submitted to and reviewed by DeoC, or by the relevant provincial or local regulatory authority depending if the cooperative will be operating at a national, provincial or local level (s13-16 Cooperative Act; Rule 9 Cooperative Rules). There are no ongoing or updated checks, nor checks on new members, documented in the Cooperative Rules, although Nepal reports that new members are required to submit the same self-declaration to DeoC (or the provincial or local body). There are no checks or self-declarations required for managers of cooperatives.

434. For the insurance sector, fit and proper requirements for FIs apply to the chief executive officer, department heads, directors and promoter shareholders. The circumstances in which approval to operate as an insurer will not be granted include where a person is bankrupt, blacklisted, has outstanding tax liability or has been convicted of theft, cheating, fraud, forgery, money laundering, corruption or any offence involving moral turpitude in the last five years. Fit and proper checks are primarily based on self-declaration to NIA, apart from the chief executive officer who must submit a police clearance certificate, and promoter shareholders who must

submit proof of income of investment, a tax certificate and a police clearance certificate. There are no ongoing checks by NIA on these persons or for new or existing directors or department heads, but FIs are required to undertake their own due diligence. Effective 22 November 2022, this includes a requirement to obtain a police clearance certificate for directors (s27, s50, s57 Insurance Act; s7, s28 Insurer's Corporate Governance Directive 2018; s13(c), schedule 4, schedule 5 Insurer Registration and Insurance Business Directive 2016; s4-5, directive 22 November 2022).

435. For the securities sector, an application for a licence must include consideration of the character of the chief executive, director, concerned officers and agents (s58(2) Securities Act). The requirements are prescribed in various regulations (s116 Securities Act). For stockbrokers, securities dealers and market makers, there are requirements for the chief executive, directors, promoters and authorised representatives. These persons must not be of unsound mind, bankrupt, credit blacklisted, or convicted or sentenced of a criminal offence. These are ongoing requirements that must be adhered to by FIs. Fit and proper checks for a licence application are based on self-declaration only, along with submission of credit history information and tax clearance certificate. Licences are renewed annually without further or ongoing checks, other than for transfer of promoter shares (S61 Securities Act; s12(5), s13-25, Schedule 3 Securities Businessperson Regulations 2008).

436. For merchant bankers, there are similar fit and proper requirements prescribed for the chief executive, directors and promoter shareholders only. These are ongoing requirements that must be adhered to by FIs. In addition, transfers of merchant banker promoter shares must be approved by SEBON (s10(6), s11, s14-15, s28 Securities Businessperson (Merchant Banker) Regulations, 2008). For fund manager and depository services, there are similar fit and proper requirements prescribed for the chief executive, directors and any fund supervisor. These are also ongoing requirements that must be adhered to by FIs (s3, s7, s14-18, Schedule 2 Mutual Fund Regulations 2010). For central deposit services, similar fit and proper requirements are applied to the chief executive and directors only (s19, Schedule 3, Securities' Central Depository Services Regulation 2010). Fit and proper checks for a licence application are based solely on self-declaration, apart from for central deposit services, who must submit a tax clearance certificate. Licences are renewed annually without further or ongoing checks by SEBON.

437. For commodities exchange markets, commodities trading, clearing and settlement, and commodities warehouses, fit and proper requirements for licences may be prescribed (s31 Commodities Exchange Markets Act). No requirements have been prescribed yet. There are currently no FIs licensed under the Commodities Exchange Market Act. Nepal reports that fit and proper requirements will be developed once the licensing process commences.

438. For pension funds, Nepal reports there are fit and proper requirements on directors and management. However, no further information was provided to the assessment team.

439. *Criterion 26.4 -*

440. (a) – All supervisors have functions and powers under the ALPA to undertake AML/CFT supervision. Functions of AML/CFT supervisors include identifying, evaluating and monitoring the risks of their supervised FIs and undertaking supervision periodically, or as required, to manage those risks (s7U(1)(a) ALPA).

441. The most recent Financial Sector Assessment Program (FSAP) of Nepal was jointly undertaken by the IMF and the World Bank in 2014. This determined that NRB's regulation and supervision of the banking sector was materially non-compliant with most Basel Core Principles (BCPs). This included risk-based supervision (BCP 8) and supervisory tools and techniques (BCP 9). Since 2014, NRB's supervision of the banking sector has evolved and a framework for the risk-based supervision of commercial banks been developed. In 2021, this was implemented for commercial banks and NRB is in the process of doing so for development banks. NRB reports that it has continued to adopt and implement other BCPs to its regulation and supervision where relevant for AML/CFT purposes. Nepal plans to conduct a self-assessment of its compliance with BCP in 2023. For cooperatives that provide banking services, supervision by DeoC is not in accordance with BCP. DeoC also has written procedures developed in 2018 for its AML/CFT supervision framework.

442. NIA is member of IAIS. An external assessment of Nepal's compliance with IAIS core principle 18 was conducted in 2016, which determined this partly observed. Nepal reports that its supervision and regulation of the insurance sector has been developing in line with IAIS core principles, where relevant to AML/CFT. This is further assisted by the new Insurance Act effective November 2022. NIA developed a framework for risk-based AML/CFT supervision of insurance FIs in 2020.

443. SEBON has been an associate member of IOSCO since 2016. No external assessment of Nepal's compliance with the IOSCO core principles has been conducted. Developing a regulatory framework in line with IOSCO core principles and obtaining ordinary membership of IOSCO are objectives in SEBON's 2021-24 Strategic Plan.<sup>102</sup> SEBON developed a framework for risk-based AML/CFT supervision of securities FIs in 2021.

444. While financial groups are not prevalent in Nepal, there are some FIs that are owned by commercial banks, including in the insurance and securities sector. There is no consolidated group supervision for AML/CFT purposes of these FIs.

445. (b) – All other FIs, including MVTS providers and foreign exchange providers, have regulatory bodies to supervise and monitor compliance with the ALPA (see c.26.1). Functions of regulatory bodies include identifying, evaluating and monitoring the risks of FIs, and undertaking supervision periodically or as per necessity to manage those risks and ensure FIs comply with AML/CFT requirements (s7U(1)(a)-(c) ALPA). Implementation of this supervision and monitoring having regard to the ML/TF risks in the relevant sectors is in its early stages.

446. *Criterion 26.5* - As per c.26.4 above, functions of AML/CFT supervisors include identifying, evaluating and monitoring the risks of their supervised FIs and undertaking supervision periodically, or as required, to manage those risks (s7U(1)(a) ALPA). To support implementation of risk-based supervision, several regulatory bodies have completed manuals.

447. For commercial banks, NRB's risk-based AML/CFT supervision framework includes off-site and on-site examinations and a ML/TF Vulnerability Assessment Tool. This is used to determine the overall vulnerability of a bank based on various factors and inform NRB's inspection plan. Off-site supervision includes collecting data from banks through an online platform and an annual AML/CFT self-assessment compliance questionnaire. On-site supervision includes both "solitary" inspections, which are AML/CFT specific, and "general" inspections,

<sup>102</sup> [SEBON Strategic Plan 2021-2024](#)

which include AML/CFT within a wider general prudential inspection. A “special” inspection may also be undertaken based on intelligence from the FIU or LEAs, complaints or adverse media reporting. Commercial banks are now under their second round of inspections under this framework since January 2021. NRB is in the process of implementing the same framework for development banks, finance companies, the Infrastructure Development Bank, EPF, CIT and PSB. Risk-based supervision by NRB of micro-finance institutions, hire-purchase loan providers, the cooperative bank, foreign exchange providers (including money changers, hotels and international MVTs providers) and payment service operators and providers (including domestic MVTs providers) is in its very early stages or has not yet commenced.

448. For cooperatives, DeoC completed its Procedures for AML/CFT Monitoring and Supervision in 2018. This sets out DeoC’s risk matrix for determining, prioritising and scheduling on-site inspections based on risk rating, cooperative audits, information from other sources and findings of previous inspections. The manual also includes provisions for a “special inspection” to be conducted if required and the use off-site supervision, including clarifying information submitted through mandatory reporting through the COPOMIS database system. The manual also states that DeoC will conduct a sector risk assessment every three years, although no sector risk assessment has been completed yet. Overall, implementation of a risk-based AML/CFT supervision is in its very early stages, particularly for those cooperatives where supervision is delegated to provincial or local regulatory bodies.

449. For the insurance sector, NIA completed a Supervision Manual in 2020 setting out a framework for risk-based AML/CFT supervision. This includes NIA’s AML/CFT inspection procedures, its use of data collected quarterly from offsite reporting to plan an annual inspection program and an ability to undertake a “special” inspection as necessary. For the securities sector, SEBON completed a Supervision Manual in 2021 setting out its framework for risk-based AML/CFT supervision. This includes use of off-site and on-site supervision, a risk assessment process and matrix, the use of onsite inspections and special inspections if required. Implementation of these supervision frameworks by NIA and SEBON is in its early stages.

450. Risk-based supervision by IRD of pension funds has not yet commenced.

451. *Criterion 26.6* - For commercial banks, NRB’s supervisory framework enables the risk profile to be reviewed periodically. In addition, as noted in c.26.5, a “special” inspection (and update of the risk profile) may also be undertaken. Effective December 2022, an additional requirement was included in the framework to undertake a solitary inspection (and update the risk profile) after a merger or acquisition, or after material non-compliance on reporting, operations or management related issues or other operational risk is identified. NRB is in the process of implementing the same supervisory framework for development banks, finance companies, the infrastructure development bank and EPF, CIT and PSB. NRB does not have procedures to review the risk profile of other FIs except during the onsite inspection process.

452. For cooperatives, DeoC’s supervision framework also includes provisions for the risk profile of cooperatives to be reviewed. However, this only occurs every three years based on data received from off-site reporting through DeoC’s COPOMIS database system, which is measured against various risk indicators. A three yearly review is insufficient noting the large number of cooperatives and the risks and complexity of the sector. While DeoC’s procedures do include provisions for “special” inspections (and review of risk profile) to be undertaken, the basis on which a special inspection could be triggered is not clear.

453. NIA's AML/CFT supervision framework contains provisions for the risk profile of insurance FIs to be reviewed during annual work program planning. The framework includes review of data collected off-site during quarterly reporting and the ability to undertake a "special" inspection (and review of risk profile) if necessary, based on risks or supervisory concerns. SEBON's AML/CFT supervision framework also contains provisions for reviews of the risk profile of securities FIs on a periodic basis following inspections and qualitative and quantitative information. There is also an ability to undertake special inspections (and review of risk profile) on the basis of information received off-site and/or an unanticipated change in risk assessment.

454. IRD has not commenced AML/CFT supervision of pension funds and does not currently review their risk profiles. None of the FI supervisors have provisions in their frameworks to review financial group risk profiles periodically or following major events or developments in management and operations.

#### *Weighting and Conclusion*

455. There are moderate shortcomings in R.26 including the fit and proper checks across all FIs, which often rely on self-declaration of criminal history and are not applied consistently across all relevant persons. For core principles FIs, NRB, DeoC, SEBON and NIA have functions and powers for AML/CFT supervision, but this is not fully in line with the core principles where relevant for AML/CFT purposes. For all sectors (other than commercial banks) implementation of a risk-based approach to AML/CFT supervision is only in its very early stages or not yet commenced. In addition, Nepal does not conduct consolidated group supervision and reviews of risk profiles of financial groups are not undertaken, although this deficiency is given minimal weighting as financial groups are not prevalent in Nepal.

456. **Recommendation 26 is rated partially compliant.**

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

457. In its last MER, Nepal was rated non-compliant with former R.23, as (i) the ALPA did not apply to commodity brokers, (ii) lack of supervisory regime for Postal Savings Banks, (iii) the Insurance Board (now known as NIA) lacked power to call for information and records, (iv) an insufficient and ineffective supervisory regime in securities sector and cooperatives and foreign exchange dealers, and (v) no supervision and inspection of any financial institutions with respect to AML/CFT standards. Since the last MER, the ALPA were amended and the ALPR and sector specific directives were passed.

458. *Criterion 27.1* - Supervisors have powers to issue guidelines and directives, conduct on-site inspections, off-site supervision and monitoring of compliance with AML/CFT requirements, require reporting entities to provide information and documents, and to render assistance in the investigation of offences (s7U(1) ALPA). Powers also include cooperating, jointly regulating, supervising and exchanging information with other domestic and international regulatory bodies (s7U(3) ALPA, r16 ALPR). This is supported by regulatory powers under prevailing laws (s79(4a), s84, s85 NRB Act; s14 FERA; s42 PASA; s95 Cooperative Act; s84 Securities Act; s31-32 Commodities Exchange Market Act; s5 Insurance Act, Rule 38 Insurance Rules).

459. *Criterion 27.2* - Supervisors have the authority to conduct on-site inspections of FIs (s7U(1)(g) ALPA). This is supported by regulatory powers under prevailing laws (see c.27.1 above). On-site inspections may be conducted without notice.

460. *Criterion 27.3* - Supervisors have *ex-parte* authority to order FIs to provide information, records or documents of whatever type held to cause compliance with AML/CFT requirements, including compliance with rules, guidelines or directives issued (s7U(1)(j) ALPA). A court order is not required. This is supported by regulatory powers under prevailing laws (s73 NRB Act; s14 FERA; s27 PASA; s95 Cooperative Act; s86 Securities Act; s32 Commodities Exchange Market Act; Rule 38 Insurance Rules).

461. *Criterion 27.4* - Supervisors are authorised to apply administrative sanctions for non-compliance with AML/CFT requirements. This includes a written warning, imposing full or partial restrictions on a FI or its transactions, suspending or revoking a permit, licence or registration (s7V(1) ALPA).

### *Weighting and Conclusion*

462. **Recommendation 27 is rated compliant.**

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

463. In its last MER, Nepal was rated non-compliant with former R.24, as (i) ALPA did not apply to all DNFBPs, (ii) no supervisory/regulatory regime for dealers in precious metals and dealers in precious stones, (iii) no statutory “fit and proper” tests for owners/controlling interests, operators and managers, (iv) insufficient range of sanctions available to the MoT to enforce supervisory powers, and (v) lack of proportionate and dissuasive sanctions for failure in filing reports. Since the last MER, the ALPA were amended and the ALPR and some sector specific directives were passed.

464. *Criterion 28.1* -

465. (a) – Casinos are required to be licensed under Rule 3 of the Casino Regulations 2013. A casino is defined in the Regulations as a game for the entertainment of tourists in a traditional way or through modern machines or equipment by placing a bet at a venue (s2(c)). The Regulations also state a casino must be established as a company (s4). These regulations purport to be issued under s56 of the Tourism Act 1978. This is despite the Tourism Act containing no definition or reference to the regulation of casinos. This creates legal uncertainty about the enforceability of the casino regulatory framework and has previously been the subject of legal challenge in the Supreme Court. This occurred when MoCTCA terminated the licences of casinos for non-payment of taxes. This was appealed by the casinos and orders were granted for them to remain open.

466. Any casino engaging in foreign exchange (including international MVTs) transactions must also be licensed and regulated by NRB (s12, s14 FERA). This is secondary to the licence issued by MoCTCA and relates only to the regulation of foreign exchange transactions. Only six of the 28 casinos in Nepal hold licenses under the FERA to engage in foreign exchange transactions.

467. An “internet casino” is also included in the ALPA as a type of DNFBP. An internet casino does not meet the definition of casino in the Casino Regulations and is not separately defined in any legislation in Nepal. While Nepal reports that internet casinos are currently prohibited, there is no explicit legislative provision for this.

468. (b) – Requirements for approval of a casino licence from MoCTCA are contained in the Casino Regulations 2013, which are issued pursuant to the Tourism Act. As above, the

enforceability of these regulations has previously been subject to legal challenge. Notwithstanding, the regulations include fit and proper requirements for a proposed “operator” of a casino. They state only that a licence shall not be approved if the operator is blacklisted in relation to any transaction as per prevailing laws, has dues of payments to a government body, is insolvent, mentally unstable or convicted of a criminal offence of moral turpitude (s7). However, there is no definition of an “operator” of a casino or prescribed process for these fit and proper requirements to be considered. The validity of a licence is one year and can be renewed annually (s12-13).

469. (c) – MoCTCA is designated the regulatory body for casinos under s7T(2) of the ALPA. Under s7U and s7V of the ALPA regulatory bodies have the powers and functions to supervise compliance with AML/CFT requirements, including TFS obligations (s29J(3) of the ALPA). This includes supervision of AML/CFT requirements for a casino that engages in foreign exchange transactions, even though the licence to undertake foreign exchange transactions is issued by NRB. Implementation of AML/CFT supervision of casinos by MoCTCA has not commenced.

470. *Criterion 28.2* - Regulatory bodies established under prevailing laws are responsible for regulating and supervising DNFBPs in the relevant sector for compliance with AML/CFT requirements (s7T(1), s7T(3) ALPA). This includes supervision of TFS obligations (s29J(3) ALPA). For those sectors without a regulatory body under a prevailing law, another body or organisation may be designated as the AML/CFT supervisor (s7T(2) ALPA). Nepal has designated a regulatory body as AML/CFT supervisor under s7T(2) of the ALPA (Council of Ministers decision gazetted 11 November 2018) as follows.

471. DoLMA is designated the AML/CFT supervisor for real estate agents (powers and functions variously under the Lands Act 1964). IRD is designated the AML/CFT supervisor for DPMS (powers and functions under s72 of the Income Tax Act 2002). Nepal Bar Council is designated the AML/CFT supervisor for lawyers (the council is established under s3 with powers and functions under s8 of the Nepal Bar Council Act 1993). Nepal Notary Public Council is designated the AML/CFT supervisor for notaries (the council is established under s3 with powers and functions under s6 of the Notary Public Act 2007). ICAN is designated the AML/CFT supervisor for chartered accountants and registered auditors (the institute is established under s3 with powers and functions under s11 of the Nepal Chartered Accountants Act 1997). OCR is designated the AML/CFT supervisor for TCSPs (powers and functions under s16 of the Companies Act 2006).

472. There is no AML/CFT supervisor designated for other professionals (that are not lawyers, notaries, chartered accountants or registered auditors) that undertake the activities defined in c.22.1(d) and s2(n)(4) of the ALPA.

473. *Criterion 28.3* - For real estate agents, DPMS, lawyers, notaries, chartered accountants, registered auditors and TCSPs, the relevant AML/CFT supervisor (see c.28.2 above) is responsible for monitoring compliance with AML/CFT requirements (s7T(3) ALPA).

474. *Criterion 28.4* -

475. (a) – Under s7U(1) of the ALPA, regulatory bodies (see c.28.2 above) have adequate powers to perform their functions. This includes issuing guidelines and directives, conducting on-site inspections, off-site supervision and monitoring of compliance with AML/CFT requirements, requiring reporting entities to provide information and documents, and rendering assistance in



the investigation of offences. This also includes cooperating, jointly regulating, supervising and exchanging information with other domestic and international regulatory bodies (s7U(3) ALPA, s16 ALPR).

476. (b) - A function of the relevant DNFBP supervisor is to develop and enforce fit and proper requirements for persons controlling, participating in, or owning reporting entities, directly or indirectly, and for their beneficial owners, beneficiaries and managers (s7U(e) ALPA). However, for real estate agents, DPMS and TCSPs, no market entry or fit and proper requirements have been developed or are in place under prevailing laws. For TCSPs, the AML/CFT directive issued by OCR states that TCSPs must be accredited by OCR (s11(a)). Nepal reports that an accreditation process is in the process of being developed.

477. For lawyers, market entry controls and fit and proper requirements are contained in the Nepal Bar Council Act 1994, the Registration and Operation of Law Firms Regulations 2014 and the Code of Conduct for Legal Practitioners 1994. All lawyers must complete the relevant professional qualifications and be registered and licensed with the Bar Council. There is a prohibition if the person has been convicted of any criminal offence involving moral turpitude (s17 Bar Council Act). Applications are based only on self-declaration of criminal history. This information is not verified. Registrations and licences are valid for nine years and may be cancelled if a person no longer meets the requirements (s18-19 Bar Council Act). Lawyers must also abide by the code of conduct, which contains various prohibitions, including engaging in acts against the basic principles of morality and offences of corruption or moral turpitude (s3 Code of Conduct). Upon complaint, the Bar Council may investigate and impose punishment, including suspension or revocation of licence (s6-7 Code of Conduct). In addition, all sole or partnership law firms must be registered with the Bar Council. Only a licensed legal practitioner may register a law firm and is required to ensure the law firm complies with the code of conduct. Registrations are valid for five years and details of all staff must be provided and kept current with the Council. Revocation of the licence of an individual lawyer at the law firm may result in the law firm's registration also being revoked (s7-12 Registration and Operation of Law Firms Regulations 2014).

478. For notaries, market entry controls and fit and proper requirements are contained in the Notary Public Act 2006. All notaries must be certified by Nepal Notary Public Council (s10). Only legal practitioners of at least seven years or officers of the Nepal Judicial Service (gazetted at least second class) are eligible to be a notary (s12). There is a prohibition on certification if the person has been declared bankrupt, failed to pay debts, does not have good character or been convicted of an offence involving moral turpitude. Moral turpitude includes offences of murder, theft, dacoit, fraud, forgery, corruption, rape, consumption and trafficking of narcotic drugs, human trafficking or serious offence of similar nature (s13). Applications for certification are based only on self-declaration of criminal history and this information is not verified. Certification is valid for five years and may be cancelled if a person no longer meets the requirements (s16, s18).

479. For chartered accountants and registered auditors, market entry controls and fit and proper requirements are contained in the Nepal Chartered Accountants Act 1997. Only persons that have completed the relevant professional qualifications may be a member of ICAN and certified to engage in chartered accountant or registered auditor services (s6, s16, s29). There is a prohibition on membership and certification by ICAN if a person has been declared bankrupt, failed to pay debts or been convicted of an offence involving moral turpitude (s18). Applications for certification are based on self-declaration of criminal history and this information is not verified. Certification may be cancelled if a person did not or no longer meets the requirements

(s22-23). This includes following a complaint and investigation in accordance with ICAN disciplinary process, including if persons were ineligible for certification or for violations of ICAN code of ethics (s35). Membership is renewed annually.

480. Overall, the market entry controls for lawyers, notaries, chartered accountants and registered auditors are not sufficient to prevent criminal ownership, control or management of these DNFBPs. For other professionals that undertake the activities in c.22.1(d) and s2(n)(4) of the ALPA, there is no designated competent authority or SRB. For these DNFBPs, there are no provisions to prevent ownership, control or management by criminals.

481. (c) – DNFBP supervisors are authorised to apply administrative sanctions for non-compliance with AML/CFT requirements. This includes a written warning, imposing full or partial restrictions on a FI or its transactions, suspending or revoking a permit, licence or registration (s7V(1) ALPA).

482. No sanctions may be imposed on professionals (that are not lawyers, notaries, chartered accountants or registered auditors) undertaking activities set out in c.22.1(d) and s2(n)(4) of the ALPA, who have no designated regulatory body.

483. *Criterion 28.5* - Functions of the AML/CFT supervisors include identifying, evaluating and monitoring the risks of their supervised DNFBPs and undertaking supervision periodically, or as required, to manage those risks (s7U(1)(a) ALPA).

484. Nepal reports that MoCTCA (for casinos), DoLMA (for real estate agents), IRD (for DPMS), Nepal Bar Council (for lawyers), Nepal Notary Public Council (for notaries), ICAN (for chartered accountants and registered auditors) and OCR (for TCSPs) are developing AML/CFT supervisory manuals, forms and formats to conduct supervision on the basis of risk. Implementation of AML/CFT supervision and a risk-based approach to determining the frequency and intensity of AML/CFT supervision has not commenced. Only ICAN has commenced engagement to determine which chartered accountants and registered auditors are DNFBPs under the ALPA, to understand the associated risks and develop a supervisory program.

485. For any other professionals that undertake the activities in c.22.1(d) and s2(n)(4) of the ALPA, there is no AML/CFT supervision, risk-based or otherwise.

### *Weighting and Conclusion*

486. There are various shortcomings in R.28. There are no fit and proper requirements for real estate agents, DPMS or TCSPs. For casinos, the licensing and fit and proper requirements are derived from an uncertain regulatory framework and are not sufficient to prevent criminal ownership or management. For the other DNFBP sectors, the fit and proper requirements are not sufficient. Across the casino, DPMS, lawyer, notary, chartered accountant, registered auditor and TCSP sectors, risk-based supervision has not yet commenced. For professionals (other than lawyers, notaries, chartered accountants or registered auditors) that undertake the activities in c.22.1(d), there are no fit and proper requirements, no designated competent authority or SRB, no AML/CFT supervision and no available sanctions.

487. **Recommendation 28 is rated partially compliant.**

### *Recommendation 29 - Financial intelligence units*

488. In its last MER, Nepal was rated partially compliant with former R.26 as the FIU (i) did not properly undertake analysis of STRs and TTRs, (ii) did not have access to additional LEA or administrative information in order to properly undertake its functions, (iii) did not have access to additional information from reporting entities, (iv) lacked operational independence, (v) required further security to protect the information, (vi) did not publish statistics, typologies or trends in ML and TF, (vii) did not have a comprehensive data management system, (viii) STR dissemination to LEA was not effective. Nepal has since implemented the recommendations via amendments to the ALPA and Financial Information Unit Bylaw of 2020.

489. *Criterion 29.1* - Nepal established the FIU as a functionally autonomous and independent unit within the NRB in 2008 (s9 ALPA). The FIU functions as a national centre for receipt and analysis of STRs/SARs and other information relevant to ML, TF and other offences, and dissemination of the results of its analysis (s10 ALPA).

490. *Criterion 29.2* - The FIU is the central agency for receipt of the following disclosures from FIs and DNFBPs:

491. (a) - STRs/SARs as required by R.20 and R.23 (s10(1)(b) ALPA).

492. (b) - TTRs pursuant to the ALPA and specified sector regulators in their Directives (s10(a) ALPA); details and declarations under Nepal's cross-border cash declaration system (s10(c) ALPA); and other information and details pursuant to the ALPA (s10(d) ALPA).

493. *Criterion 29.3* -

494. (a) - 10(6) ALPA empowers FIU to obtain and use additional information from FI and DNFBPs as needed to perform its analysis properly.

495. (b) - The FIU is authorised to 'get access' and obtain such information or documentation from any databases, or administrative, financial or law enforcement related information maintained by any relevant public or private bodies (s10(6)(b) ALPA). This provision allows the FIU to have access to the widest possible range of financial, administrative and law enforcement information for it to undertake its functions. Furthermore, s10(6) is enforceable on FIs and DNFBPs by way of a monetary penalty up NPR 1,000,000.00 (~USD 7,500.00)(s10(7) of ALPA).

496. *Criterion 29.4* -

497. (a) - Nepal FIU is required to "analyse suspicious transaction reports, including other reports and information obtained pursuant to ALPA" (s10(1)(e) ALPA); and provide conclusions of their analysis to LEAs and Investigative Authorities in accordance with their duties (s10(1)(f) ALPA). The FIU Manual of Procedures 2021 (updated in October 2022) clearly shows FIU analysis must cover the functional scope of operational analysis.

498. (b) - The FIU is required to provide an annual report on typologies, methods, techniques, and trends of the offence of ML/TF (s10(1)(i) ALPA) and has published two Strategic Analysis reports (2021 and 2022). The FIU Manual of Procedures 2021 (updated in October 2022) has detailed the process for strategic analysis to be carried out.

499. *Criterion 29.5* - The FIU has the power to disseminate spontaneously and upon request, information and the results of its analysis to LEAs and Investigative Authorities if it suspects ML/TF or other offence in its analysis (s10(1)(f) ALPA). Rule 17 of the ALPR refers to FIU's ability to disseminate information or analysis to competent authorities.

500. *Criterion 29.6* -

501. (a) - s10(b) read together with s44 ALPA, provides for the security and confidentiality of information, and the authority to develop procedures for handling, storage, dissemination, and protection of, and access to, information, and enforcement of such steps.

502. (b) - The law also requires that FIU staff members, present and past, to maintain confidentiality on the information obtained within the scope of the staff's duties during his/her service with the FIU. Staff security clearance requirements and responsibilities for handling and disseminating of sensitive and confidential information are documented in procedural manuals. The manuals do have specific provisions for goAML related reporting and STR/SAR.

503. (c) - Access to the FIU's premises and systems are required to be limited under the Security Manual. The handling of transaction reports and information are guided by the Nepal Rastra Bank bylaws on Document Disposal, 2008.

504. *Criterion 29.7* - The FIU is operationally independent and autonomous from the NRB:

505. (a) - The FIU is ensured operational autonomy and independence via s9 and s10 ALPA. The FIU bylaws provide for the operational aspects in relation to the FIU and its staffing, including resource allocation. The FIU is located within the NRB as a department, with the Head of FIU being appointed by the Governor of the NRB. The law confers the responsibility of providing budgetary resources to the NRB.

506. (b) - The FIU can independently engage with foreign counterparts for the exchange of information (r17(d)(f)(g) ALPR 2016). The FIU is also enabled to independently engage and make arrangements with domestic competent authorities for exchanging of information (s10(1)(f) ALPA), including establishing MOUs (s4(2) FIU Bylaws).

507. (c) - As indicated by s9(1) ALPA, the FIU is functionally autonomous despite establishment in the NRB. Core functions are laid out in s10 ALPA, as well as reemphasized within the NRB issued FIU bylaws 2020 in paragraph 4. Provisions detail dealing with organization, human resources management, staff training, budgetary and auditing requirements.

508. (d) - The ALPA (s9(2) (3) and (4)), NRB Bylaws and FIU Bylaws provides for the FIU to manage its resourcing and staffing including the removal, transfer and qualification requirements of employees without undue influence or interference.

509. *Criterion 29.8* - FIU-Nepal is a member of the Egmont Group of FIUs.

### *Weighting and Conclusion*

510. **Recommendation 29 is rated compliant.**

### **Recommendation 30 – Responsibilities of law enforcement and Investigative Authorities**

511. In its last MER, Nepal was rated partially compliant with former R.27 as (i) in the absence of TF offences, there was no clear designation of an investigation authority, (ii) no proper investigation of ML & TF cases and a focus on revenue leakage cases, (iii) lack of specialized investigative techniques, (iv) DRI did not have any legal authority to postpone or waive the arrest of persons or seizure of money for the purpose of identifying persons involved in ML, and (v) DRI lacked sufficient resources to properly undertake its ML and TF investigation function.

512. *Criterion 30.1* - The DMLI is the sole agency to conduct investigations into ML and TF (s11 ALPA) with other LEAs and Investigative Authorities responsible for the investigation of predicate offences in accordance with their respective legislations. NP are responsible for the investigation of the majority of predicate crimes including the human trafficking offences (Nepal Police and Province Police (Operation, Supervision and Coordination) Act, 2020; Schedule 1 NCrPC). Public sector corruption and bribery offences are investigated by CIAA (Article 239 Nepal Constitution and s4 CIAA Act). Tax crimes are investigated by the DRI (s131 Income Tax Act and s8 Revenue Leakage (Investigation and Control) Act, 1996). Smuggling offences are investigated by Nepal Customs (s60b Customs Act and s12 Excise Duty Act). Insider trading and market manipulation are investigated by SEBON (s103 Securities Act and s54 of Commodities Exchange Market Act). Environmental crime offences are investigated by Department of National Parks and Wildlife Conservation (DoNPWC) and Department of Forest and Soil Conservation (DoFSC) (s30 National Parks and Wildlife Conservation Act and s23 Act Regulate and Control International Trade in Endangered Wild Fauna and Flora). Judicial Council has mandate to investigate corruption issues relating to incumbent judges, and Nepali Army has a similar mandate with regard to army personnel..

513. *Criterion 30.2* - All LEAs and Investigative Authorities responsible for predicate offences are able to refer the investigation to DMLI upon identifying ML/TF elements regardless of where the predicate offence occurred (s25(2) ALPA and s29 NCrPC). The referral to the DMLI can occur at any stage of the predicate offence investigation or prosecution.

514. *Criterion 30.3* - There is no single agency designated to identify, trace and initiate freezing, seizing and confiscation of property. The DMLI is designated to identify, trace and initiate freezing and seizing of property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime in ML and TF cases (s18 ALPA). For all other LEAs investigating predicate offences, they are mandated to pursue the property and instrumentalities as per s3 and s4 POCA. It is not clear that these actions can be undertaken expeditiously.

515. *Criterion 30.4* - Under relevant legislation there are a range of competent authorities, that are not LEAs *per se*, responsible for some investigation activities including APF, DoFE; DoFSC, Department of Environment; Department of Commerce, Supplies and Consumer Protection; IRD; NIA; Judicial Council; and the Nepal Army. For all serious crimes, including ML and TF, case files are referred to the relevant Investigative Authority (s25(2) ALPA and s29 of the NCrPC). With the exception of ML and TF under s25(2) ALPA, the referring of cases is not mandatory.

516. *Criterion 30.5* - The CIAA is not designated to investigate ML/TF.

### **Weighting and Conclusion**

517. The role of LEAs in Nepal is clearly defined with the DMLI responsible for conducting ML and TF investigations, and other LEAs and Investigative Authorities responsible for conducting the predicate offence investigation. These agencies refer ML/TF cases to DMLI. DMLI and other LEAs and Investigative Authorities can identify, trace and initiate freezing and seizing but not expeditiously. Competent authorities responsible for some investigation activities refer cases to the LEAs or Investigative Authority. Referral of cases is not mandatory except for ML and TF offences. CIAA is not designated to investigate ML/TF.

518. **Recommendation 30 is rated largely compliant.**

***Recommendation 31 - Powers of law enforcement and Investigative Authorities***

519. In its last MER, Nepal was rated largely compliant with former R.28. The only deficiency was the power of seizing and searching of the financial records were not applicable for all the predicate offences.

520. *Criterion 31.1* - All LEAs and Investigative Authorities may use powers under the NCrPC, if such powers are not available in the prevailing laws. Powers under prevailing laws are specific to individual LEAs and Investigative Authorities, and/or predicate offences.

521. (a) - There are no compulsory measures in the NCrPC for the production of records from FI, DNFBPs and other natural and legal persons. DMLI is authorised under the ALPA to order documents, records, statement notices and or information related to the ML or TF offence held by a government entity, regulatory body, RE or concerned person (s16(a) ALPA). NP has powers to demand the particulars of bank accounts and other documents of any bank or financial institution, in relation to narcotic offences (s8A NDCA), banking offences (s19B Banking Offence and Punishment Act 2008) and Organised Crime (s16 OCPA). All other LEAs and Investigative Authorities for all other predicate offence rely on search and seizing powers.

522. (b) - LEAs and Investigative Authorities have powers to search the person or premises (s18 NCrPC) and specialised legislation exists for some high risk predicates such as drugs, corruption and human trafficking (s8 NDCA, s28(4) Prevention of Corruption Act 2002 and s7 Human Trafficking and Transportation (Control) Act 2007).

523. (c) - LEAs and Investigative Authorities have the power to take witness statements in the presence of a government attorney (s16 of the NCrPC ). Taking deposition from a person who has or is likely to have information concerning the ML/TF offence is carried out by the DMLI (s16(1)(d) ALPA).

524. (d) - LEAs and Investigative Authorities have the power to seize and obtain evidence (s8(5) NCrPC). DMLI's powers allow seizing and control of any document, deed, exhibit, evidence or instrument relating to the ML/TF offence that the body, entity, person or place has in their possession (s16(b) ALPA).

525. *Criterion 31.2* - There are no powers related to special investigative techniques in the NCrPC. There are some powers under the ALPA and other specific/prevaling laws:

526. (a) - DMLI has the power to conduct undercover operations (s19C ALPA) for ML and TF. LEAs investigating organised crime offences under the OCPA have the power to conduct undercover operations (s13 OCPA).

527. (b) - Telephone intercept is only available in the investigation of the predicate offences of narcotics (s10A NDCA) and Organised Crime (Ch 5 OPCA).

528. (c) - s44E ALPA allows DMLI in ML and TF cases to collect evidence processed or developed by electronic means, which includes accessing of computer systems. s82(1)(b) of the Income Tax Act allows DRI access to 'an electronic copy' of documents. The Evidence Act seems to allow for electronic documents as evidence, but Nepal did not clearly demonstrate legislative provisions allowing other LEAs and Investigative Authorities access to computer systems.

529. (d) - DMLI for ML and TF (s19C ALPA) and LEAs responsible for investigating organised crime offences (s13 OPCA) can conduct controlled deliveries. For narcotic offences, controlled delivery is defined; however, it does not have an operative provision to permit the use of such a special technique (s3(j)(1) NDCA).

530. *Criterion 31.3 -*

531. (a) - For ML and TF, DMLI is authorised to obtain records from government entity, regulatory body, FIs, DNFBPs, or concerned person (s16(1)(a)(b) ALPA) and can monitor transactions, for a maximum of 3 months (s19A ALPA). Nepal does not have other mechanisms in place to allow for the timely identification of accounts.

532. (b) - Prior notice is not required to freeze accounts (s18(3)(b) ALPA). There is no evidence of processes that allows LEAs or DMLI to identify accounts, without notice to the owner, outside of DMLI compelling production powers (s16(a) ALPA).

533. *Criterion 31.4 -* While the FIU can supply, with or without request, conclusions of analysis of suspicious transaction reports to LEAs and Investigative Authorities (s10(1)(f) ALPA), not all LEAs and Investigative Authorities have statutory powers that allow them to ask for all relevant information held by the FIU. DMLI is authorised to order documents, records, statement notices and or information related to the ML or TF (s16(1)(a) ALPA).

### *Weighting and Conclusion*

534. There are compulsory measures under the NCrPC for search of persons and premises, witness statements and seizing and obtaining evidence. Production of records compulsory measures are only available to the DMLI for ML and TF and respective LEAs for corruption, narcotics, banking and organised crime offences. There are major shortcomings in regards to special investigative techniques and mechanisms to identify accounts. All LEAs and Investigative Authorities are not able to ask for all information held by the FIU.

535. **Recommendation 31 is rated partially compliant.**

### *Recommendation 32 – Cash Couriers*

536. In its last MER, Nepal was rated non-compliant with former SR IX. The deficiencies were centred around the implementation of the declaration system which lacked legal basis; only applied to incoming passengers at the one international airport; did not cover all entry points; did not cover BNI; did not cover Nepali currency; only covered foreigners; DPMS was not covered; declaration information was not shared by Customs to the FIU; no effective monitoring was implemented and no system in place for confiscating currencies pursuant to UNSCRs sanctions list. Since the last MER, the ALPA were amended.

537. *Criterion 32.1* - Nepal has a declaration system for incoming and outgoing cross-border transportation of currency and BNIs covering passenger cargo, courier and postal service. The ALPA requires a declaration for all physical cross border transportation of NPR in an amount equal to or above that specified by the NRB, or foreign currency, or BNI, whether by travellers or through mail/ cargo (s29A of ALPA). Statistics provided show declarations are predominantly occurring at the international airport in Kathmandu, with only few declarations received from Nepal's other international airport or land ports.

538. *Criterion 32.2* - Travellers are required to declare in writing before the Customs officer, the NPR or foreign currencies or BNIs above the limit specified by the NRB (s29A ALPA). The NRB has specified the minimum limit of NPR 5,000.00 and USD 5,000.00 or equivalent in other currencies with effect from 17 July 2018. A person who arranges for the transportation by cargo, courier, postal service or other means is required to declare such amount to the Customs officer, or concerned cargo, postal or courier service officer (s29A ALPA).

539. *Criterion 32.3* - Nepal has adopted a declaration system and not a disclosure system.

540. *Criterion 32.4* - Customs officers are empowered to inquire about the source and intended purpose of the currency or BNI intended to be transported when entering or leaving Nepal if they suspect the currency or BNI has not been declared; has been falsely declared or if there are reasonable grounds for suspecting that it is related to any predicate offence (s29B (1) ALPA).

541. *Criterion 32.5* - In cases where currency or BNI have been undeclared, falsely or wrongly declared, or are related to an offence, Customs officers can confiscate all currency or BNI and impose a fine equal to the claimed amount (s29B(2) ALPA), and refer the seizure to the appropriate Investigative Authority (s29C(1) ALPA). Those sanctions are considered generally proportionate and dissuasive, but the "Claimed Amount" is not defined in the ALPA with Nepal authorities' indicating it is equivalent to the amount or value of currency or BNI involved.

542. *Criterion 32.6* - All currency and BNI declarations are required to be shared with the FIU on a monthly basis in a specified format as detailed in the FIU and Customs MOU (s29C(2) ALPA). Customs is required to immediately provide the FIU with the details when it makes inquiries or imposes sanctions for undeclared/falsely declared currency or BNI (s29C(1) ALPA).

543. *Criterion 32.7* - The FIU and Customs have an MOU which supports the implementation of Nepal's declaration system. Nepal advises there is adequate co-ordination among customs, immigration and other related authorities. Internal arrangements are in place in Nepal to discuss issues relating to suspicious transportation of currency and BNI at a regular interval among the Director Generals' of DOC, IRD, DRI and DMLI. These meetings occur at least every four months. Inter-departmental meetings between the FIU and DOC have been held on 4/5 occasions in 2021 and 2022, in which operational and interagency cooperation issues have been discussed.

544. *Criterion 32.8* - Cash and BNI are deemed as 'Goods' under the Customs Act. The provisions for inquiry, search, seizure, confiscation, action or appeal under the Customs Act are applicable to Nepal's declaration system under the ALPA (s29D(1) and (2) ALPA). DOC is empowered stop or restrain currency and BNI for a reasonable time to ascertain whether evidence of ML/TF may be found upon suspicion or where there was a false declaration (s34 and s40 Customs Act).



545. *Criterion 32.9* - DOC can not engage in exchange of information with foreign counterparts (see also R.40). The FIU can provide international cooperation on the declaration, which it receives; however, the FIU has limited because declarations are not provided to the FIU in a timely manner. MLA can be provided on smuggling offences but this is not rapid.

546. *Criterion 32.10* - Customs officers must keep secret information collected (S65(1)(c) Customs Act), and the FIU has safeguards to ensure proper use of its information. All civil servants are prohibited from disclosing information received in the course of their employment, except as required by law (s46 Civil Service Act). These do not restrict trade or capital movements.

547. *Criterion 32.11* - Currency and BNI related to ML/TF would be subject to confiscation (See R.4) with the offender subject to sanction under R.3 and R.5, which are not fully dissuasive. Currency and BNI under Nepal's declaration system are deemed 'goods' under the Customs Act (s29D(1)(2) ALPA). These 'goods' are liable for confiscation upon conviction of smuggling offences (s57 Customs Act); a fine equal to the amount in the dispute; or imprisonment to a maximum of five years depending on the value of the offending (s57 Customs Act). The imprisonment sanction is not fully dissuasive.

### *Weighting and Conclusion*

548. A declaration system exists in Nepal for amounts exceeding NPR 5,000 and USD 5,000 or equivalent. Statistics provided show declarations are predominantly occurring at the international airport in Kathmandu, with only few declarations received from Nepal's other international airport or land ports. There are minor shortcomings in sanctions and moderate shortcomings related to international cooperation.

549. **Recommendation 32 is rated largely compliant.**

### *Recommendation 33 – Statistics*

550. In its last MER, Nepal was rated partially compliant with former R.32, as Nepal did not maintain comprehensive statistics including that there were inconsistencies between the data provided by the different agencies involved in AML/CFT.

551. *Criterion 33.1* - The NCC in accordance with the National Strategy and Action Plan, introduced AML/CFT Record Keeping Manual in 2020 that outlines comprehensive AML/CFT related record keeping for all related agencies.

552. (a) - FIU maintains statistics on STRs received and disseminated. The comprehensiveness of statistics has increased since the FIU began using goAML.

553. (b) - DMLI and OAG maintain statistics on ML/TF investigations, prosecutions and convictions.

554. (c) - While the AML/CFT Record Keeping Manual outlines record keeping requirements, these are for the individual agencies/activities. Nepal does not maintain consolidated confiscation-related information and statistics that links LEAs seizing/freezing actions, court judgements, and enforcement actions by JED or DMPC.

555. (d) - Nepal maintains statistics on MLA and extradition relevant to the efficiency of its AML/CFT system. For other forms of cooperation, FIU and NP maintain statistics at a similar level;

however, for all other LEAs and supervisors, comprehensive statistics are not maintained noting that the majority of these agencies engage in limited other forms international cooperation.

### *Weighting and Conclusion*

556. In accordance with the AML/CFT Record Keeping Manual, statistics related to FIU functions, and ML/TF criminal justice measures are maintained. International cooperation statistics are less comprehensive, and Nepal does not maintain consolidated confiscation-related information and statistics that links LEAs seizing/freezing actions, court order, and enforcement actions.

557. **Recommendation 33 is rated largely compliant.**

### *Recommendation 34 – Guidance and feedback*

558. In its last MER, Nepal was rated non-compliant with former R.25, as (i) no guidance was provided to the casinos, Chartered Accountants and Lawyers, and (ii) no guidance was provided to assist with the implementation of the ALPA, AML Rules and FIU AML Directives to any other sector where they have been applied. Since the last MER, the ALPA were amended and the ALPR and some sector specific directives were passed.

559. *Criterion 34.1 - Supervisors' guidance and feedback to FIs and DNFBPs:* A function of an AML/CFT supervisor is, as is necessary, to issue orders or directions to prevent ML/TF and comply with relevant international standards (s7U(2) ALPA).

560. For FIs, all supervisors (apart from NRB for hire-purchase providers) have issued AML/CFT directives to their respective sectors. While the directives are enforceable, they contain various provisions and additional detail as guidance to the respective sectors to comply with the requirements of the ALPA and ALPR. NRB has also published guidance to assist commercial banks, development banks, finance companies, micro-finance institutions and the infrastructure development bank to undertake institutional risk assessments. No further guidance has been published by DeoC, NIA, SEBON or IRD to assist FIs understand and assess their risks and implement national AML/CFT measures. However, NRB, SEBON, NIA and DeoC all provide feedback to reporting entities as part of their on-site inspections. NRB has also held programs for all compliance officers of commercial banks to present and discuss common deficiencies identified across the sector.

561. For DNFBPs, MoCTCA (for casinos), IRD (for DPMS) and ICAN (for chartered accountants and registered auditors) have issued AML/CFT directives to their respective sectors. While these directives are enforceable, they contain various provisions and additional detail as guidance for the respective sectors to comply with the requirements of the ALPA and ALPR. DoLMA (for real estate agents) and OCR (for TCSPs) have also issued directives for their sectors. However, these directives only reference the requirements of the ALPA and state it must be complied with. These directives contain no further provisions or detail to assist their sectors comply with AML/CFT requirements. Nepal Bar Council (for lawyers) and Nepal Notary Public Council (for notaries) have not issued AML/CFT directives. No other guidance has been published by any DNFBP supervisors to assist their respective sectors assess risks and implement AML/CFT measures.

562. For any other professionals (other than lawyers, notaries, chartered accountants and registered auditors) that undertake the activities in c.22.1(d) and s2(n)(4) of the ALPA, there is no supervisor and no AML/CFT directive or guidance issued.

563. *FIU's guidance and feedback to FIs and DNFBPs:* A function of the FIU is to provide necessary feedback and guidance to reporting entities relating to the identification of suspicious transactions, suspicious transaction reports and information (s10(1)(h) ALPA). The FIU issued updated Suspicious Transactions Reporting & Suspicious Activity Reporting (STR/SAR) Guidelines in July 2021. These guidelines are applicable for FIs and DNFBPs and set out reporting requirements, and both general and sector-specific indicators. The FIU also provides feedback to individual reporting entities if following up on a STR. The FIU also undertakes various training and events for reporting entities relating to use of goAML and wider STR reporting obligations.

### *Weighting and Conclusion*

564. For FIs, all supervisors (apart from NRB for hire-purchase providers) have issued AML/CFT directives to their respective sectors that contain various provisions and additional detail as guidance to the respective sectors. The AML/CFT directives issued by DoLMA for real estate agents and by OCR for TCSPs do not include any provisions or guidance to assist reporting entities to comply with AML/CFT requirements. For hire-purchase providers, lawyers, notaries and other similar professionals (that undertake c.22.1(d) activities), there are no directives or guidance at all. Noting the risks associated with the real estate sector and that lawyers, notaries and TCSPs are not included in the NRA 2020, this is a moderate deficiency.

565. **Recommendation 34 is rated partially compliant.**

### *Recommendation 35 – Sanctions*

566. In its last MER, Nepal was rated non-compliant with former R.17, as (i) there were no sanctions for breaches of AML Rules and FIU AML directives, (ii) the ALPA did not provide for criminal sanctions for non-compliance with all AML/CFT requirements and civil sanctions were limited with respect to TTRs/ STRs, (iii) there was no sanctions available under ALPA against natural persons, (iv) sanctions prescribed in the governing legislation and applied were not effective, proportionate or dissuasive, and (v) no sanctions were applied for AML/CFT deficiencies across all sectors. Since the last MER, the ALPA were amended and the ALPR and some sector specific directives were passed.

567. *Criterion 35.1* - A range of sanctions may be imposed for failing to comply with AML/CFT requirements:

568. *Sanctions relating to preventive measures and TFS by FIs and DNFBPs (R6, R9-23)* – For failures to comply with the ALPA, its rules, guidelines or directives, a supervisor may take one or more available administrative sanctions against a FI or DNFBP. This includes a failure to comply with TFS obligations. Available sanctions are a written warning, full or partial restrictions on a reporting entity or its transactions, or suspending or revoking a permit, licence or registration. Fines may also be imposed from NPR 1,000,000 (~USD 7,500) to NPR 50,000,000 (~USD 375,000) for a FI or a casino, or from NPR 100,000 (~USD 750) to NPR 10,000,000 (~USD 75,000) for any other DNFBP, based on the gravity of the violation (s7V(1), s29K(1) ALPA). The ALPA requires these sanctions to be imposed in a way that is effective, proportionate and preventive (s7V(3)). Most regulatory bodies have issued directives to support implementation of administrative sanctions under the ALPA.

569. In addition, regulatory bodies may impose administrative sanctions under their prevailing laws for AML/CFT if the sanction available under ALPA is not sufficient (s7V(2) ALPA).

There is also a criminal offence for non-compliance with the ALPA (in addition to the offences of ML and TF). Any person, including a reporting entity, may be investigated and prosecuted for an offence of violating an AML/CFT requirement. The penalty is a fine of the amount transacted or confiscation of the amount, and a further fine of up to NPR 1,000,000 (~USD 7,500) (s30(9) ALPA). This penalty may be imposed per violation with no maximum limit, which is proportionate and dissuasive. In addition, failing to comply with TFS requirements under the ALPA with the intention of assisting the commission of TF, or aiding a terrorist, may be investigated and prosecuted as a TF offence (s29K(4)). There are also various criminal offences that could be applied under prevailing laws for failing to comply with AML/CFT requirements.

570. For commercial banks, development banks, finance companies, micro-finance institutions and infrastructure development banks, the unified AML/CFT directives issued by NRB (see c.26.1 above) set out graduated, proportionate and dissuasive administrative sanctions for AML/CFT violations in accordance with the ALPA. Sanctions may be imposed for failing to appoint a compliance officer or implement an AML/CFT program, failing to conduct CDD, identify PEPs or beneficial owners, or to conduct monitoring, failing to implement a framework to report STRs, comply with wire transfer or TFS obligations. Sanctions may be imposed per violation, with the first instance resulting in either a request for clarification or a lower penalty. For second and further instances, the available penalty increases up to NPR 50,000,000 (~USD 375,000) per instance depending on the severity and type of FI (Unified Directives 17, 18, 19). Available administrative sanctions under the NRB Act and BAFIA for AML/CFT violations include suspending or terminating services, imposing full or partial restrictions on transactions or business, or suspending or revoking licences (s95-101 NRB Act; s99-100 BAFIA). In addition, there is a criminal offence for failing to comply with an AML/CFT directive. This is punishable by a fine of up to three times the value of the violation or if this cannot be determined, a fine of up to NPR 1,000,000 (~USD 7,500) per violation (s95(2), s96 NRB Act; s103-104 BAFIA).

571. For hire-purchase loan providers, no AML/CFT directive has been issued by NRB (see c.26.1 above). However, this does not preclude sanctions being imposed under the ALPA. In addition, the hire-purchase loan providers' policy and procedures (s11, issued 2014, amended 2018) states that sanctions may be imposed under the NRB Act. This includes the proportionate and dissuasive administrative sanctions and criminal offence provisions under the NRB Act, as set out for banks above.

572. For foreign exchange providers, including money changers, hotels and international MVTs providers, the unified directive issued by NRB (see c.26.1 above) states that the administrative sanctions under s7V may be taken for AML/CFT violations. In addition, there are both administrative sanctions and criminal offences under the FERA for violations of an AML/CFT directive. Available administrative sanctions under the FERA include warnings, limits on transactions or cancellation of licence (s3A). For violation of an AML/CFT directive that is a criminal offence, this is punishable by a fine of up to three times the value of the violation or if this cannot be determined, a fine of up to NPR 200,000 (~USD 1,500) per violation (s17 FERA).

573. For payment service providers and operators, including domestic MVTs providers, the unified directive issued by NRB (see c.26.1 above) includes administrative sanctions for AML/CFT violations. This sets out graduated, proportionate and dissuasive sanctions per violation similar to those set out for banks above. Available administrative sanctions under the PASA include limits on transactions, partial or full restrictions on operations or cancellation of licence (s35). There is also an offence under the PASA for failing to comply with an AML/CFT directive, which is punishable by a fine of up to NPR 500,000 (~USD 3,750) per violation (s36(g), s37(2) PASA).

Nepal reports that this can be imposed as an administrative sanction. There are also administrative sanctions and criminal offences under the NRB Act as set out for banks above.

574. For the EPF, CIT and PSB, the directive issued by NRB (see c.26.1 above) includes administrative sanctions for AML/CFT violations. This sets out graduated, proportionate and dissuasive sanctions (s17) per violation similar to those set out for banks above. There are no sanctions available against EPF, CIT or PSB under prevailing laws.

575. For cooperatives, the directive issued by DeoC (see c.26.1 above) includes available administrative sanctions for AML/CFT violations. This sets out graduated, proportionate and dissuasive sanctions (s32(3)) per violation similar to those set out for banks above. Available administrative sanctions under the Cooperative Act for violations of the AML/CFT directive are a fine of up to NPR 300,000 (~USD 2,250) per violation (s125(2)(a) Cooperative Act). It is not clear if there are criminal offences in the Cooperative Act for violations of an AML/CFT directive.

576. For the insurance sector, the directive issued by NIA (see c.26.1 above) includes available administrative sanctions for AML/CFT violations. This sets out graduated, proportionate and dissuasive sanctions (s22) per violation similar to those set out for banks above. Available administrative sanctions under the Insurance Act include a warning, suspension or termination of licence or penalty from NPR 200,000 (~USD 1,500) for a first instance up to NPR 5 million (~USD 37,500) for a third or further instance (s134, s136, s138(4)). It is not clear if there are criminal offences in the Insurance Act for failing to comply with an AML/CFT directive.

577. For the securities sector, the directive issued by SEBON (see c.26.1 above) includes available administrative sanctions for AML/CFT violations. This sets out graduated, proportionate and dissuasive sanctions (s21) per violation similar to those set out for banks above. The only available administrative sanctions under the Securities Act are suspending or revoking a licence (s88-89). However, there is a criminal offence for failing to comply with the AML/CFT directive, which is punishable by a fine of up to NPR 75,000 (~USD 562.50) per violation (s101(7) Securities Act). Under the Commodities Exchange Markets Act, available administrative sanctions are suspending or terminating services, imposing full or partial restrictions on transactions or business, or suspending or revoking licences (s36). It is not clear if there are criminal offences under the Commodities Exchange Markets Act for failing to comply with an AML/CFT directive.

578. For pension funds, the directive issued by IRD (see c.26.1 above) includes available administrative sanctions for AML/CFT violations. This sets out graduated, proportionate and dissuasive sanctions (s16) per violation similar to those set out for banks above. IRD is not able to apply sanctions under prevailing laws.

579. For casinos and DPMS the respective directives issued by MoCTCA (s18) (see c.28.1(c) above) and IRD (s16) (see 28.2 above) include available administrative sanctions for AML/CFT violations. The directives set out graduated, proportionate and dissuasive sanctions per violation similar to those set out for banks above. For real estate agents and TCSPs, there are no sanctions provisions included in the relevant AML/CFT directives issued by DoLMA and OCR (see c.28.2 above). However, this does not preclude sanctions being imposed under the ALPA. Across all these DNFBP sectors, it is not clear that sanctions are available under prevailing laws for

AML/CFT violations.<sup>103</sup> This is particularly so for the casino sector, noting the underlying legal uncertainty about the prevailing casino regulatory framework (see c.28.1 above).

580. For chartered accountants and registered auditors, the directive issued by ICAN (see c.28.2 above) states that penalties based on gravity and severity may be imposed under s7V of the ALPA, or by disciplinary action under the Nepal Chartered Accountants Act 1997 (s16(2)). For lawyers and notaries, sanctions under the ALPA may be imposed despite no AML/CFT directive being issued by Nepal Bar Council or Nepal Notary Public Council. The availability of sanctions under prevailing laws is not clear.

581. No sanctions may be imposed on any other professionals that undertake activities set out in c.22.1(d) and s2(n)(4) of the ALPA, for whom there is no designated regulatory body.

582. *Sanctions by FIU relating to STR reporting by FIs and DNFBPs (R20)* - In addition to the above, the FIU may impose a fine of up to NPR 1 million (~USD 7,500) on a FI or DNFBP for failing to submit a STR, comply with any order issued, or failing to provide any document or information required (s10(7) ALPA). As this sanction can be imposed per violation, it is proportionate and dissuasive.

583. *Sanctions relating to TFS by legal and natural persons (R6)* - For a natural or legal person (other than a reporting entity) that fails to comply with TFS requirements, MoHA may impose a fine up to NPR 1,000,000 (~USD 7,500) per violation (s29K(3) ALPA). While this may not be proportionate or dissuasive for large legal persons, in the context of Nepal with a per capita GDP of around \$1,208 USD, in the majority of cases it is considered by the AT as dissuasive. Failing to comply with TFS requirements with the intention of assisting the commission of TF, or aiding a terrorist, may also be investigated and prosecuted as a TF offence (s29K(4) ALPA).

584. *Sanctions for NPOs (R8)* - As set out in c.8.4(b) above, available sanctions for NPOs include suspension or dissolution, or cessation of economic assistance for registered foreign NPOs and affiliated domestic NPOs (s20(1) SWC Act). Fines of up to NPR 2,000 (~USD 15) may also be imposed for failing to register a NPO, not submitting a statement of accounts, not submitting documents required or answering questions (s12 Association Registration Act 1977). These sanctions are not proportionate or dissuasive for violations of the requirements of R.8 relating to TF activities.

585. *Criterion 35.2* - Administrative sanctions under the ALPA can only be taken against FIs and DNFBPs and not against their directors or senior managers (s7V(1) ALPA). However, a natural person, including a director or senior manager, may be prosecuted for the criminal offence of violating a requirement of the ALPA (s30(9)). The penalty is a fine of the amount transacted, or confiscation of the amount, with an additional penalty of up to NPR 1,000,000 (~USD 7,500) (s30(9) ALPA). This penalty may be imposed per violation with no maximum limit, which is proportionate and dissuasive.

586. For failing to comply with TFS requirements with the intention of assisting the commission of TF, or aiding a terrorist, a director or senior manager responsible for this may be investigated and prosecuted for a terrorism financing offence (s29K(4)). Additionally, for situations where ML or TF has occurred but the person, office-bearer or employee responsible

<sup>103</sup> As noted in R.28, this is due to the designation of all DNFBP supervisors under s7T(2) of the ALPA. The ALPA states that supervisors may be designated under s7T(2) in circumstances when there is no regulatory body under a prevailing law.

cannot be identified, the chief executive at the time of the offence may be liable to action under prevailing laws (s30(6) ALPA).

587. *Sanctions against directors or senior managers under prevailing laws* – Administrative sanctions may be imposed under prevailing laws against directors or senior managers in some sectors. Directors or managers may also be prosecuted for criminal offences under prevailing laws in some circumstances, as set out below.

588. For commercial banks, development banks, finance companies, micro-finance institutions, infrastructure development banks, hire-purchase providers, administrative sanctions may be imposed under the NRB Act or the BAFIA on directors or senior managers for AML/CFT non-compliance. The penalty is a fine of up to NPR 1,000,000 (~USD 7,500) per violation depending on nature and severity (s99(2), s100(2) NRB Act; s99(3)-(5), s99(6), s100(2) BAFIA). There are also criminal offences for violations of AML/CFT requirements, punishable by a fine of up to NPR 1,000,000 (~USD 7,500), three times the value of the transaction or imprisonment up to three years (s95(2), s96 NRB Act; s103-104 BAFIA). These sanctions are proportionate and dissuasive.

589. For foreign exchange providers, including money changers, hotels and international MVTs providers, the AML/CFT directive issued by NRB allows sanctions to be imposed on any person (including a director or senior manager) under the FERA for failing to comply with AML/CFT requirements (s64-65 Directive 27 updated 8 June 2022). Available administrative sanctions for natural persons are limited to warnings (s3A FERA). However, the criminal offence under the FERA (as set out above) is also applicable to directors and senior managers (s17 FERA). For payment service providers and operators, including domestic MVTs providers, the offence under the PASA (as set out above) is also applicable to directors and senior managers (s36(g), s37(2) PASA). Nepal reports that this can also be imposed as an administrative sanction. There are no available administrative sanctions under the PASA against directors or senior managers. There are no administrative sanctions or criminal offences available under prevailing laws against directors or senior managers of EPF, CIT or PSB.

590. For cooperatives, the administrative sanctions under the Cooperative Act (as set out above) are also applicable to directors and senior managers (s125(2)(a)). There are no criminal offences under the Cooperative Act for violation of the AML/CFT directive. For the insurance sector, administrative sanctions in the form of warnings, suspensions or fines to the amount of the breach of the AML/CFT directive may be taken against directors and senior managers under the Insurance Act (s134). For the securities sector, the criminal offence under the Securities Act (as set out above) is also applicable to directors or senior managers (s101(7)). There are no administrative sanctions under the Securities Act available for directors or senior managers.

591. For pension funds, IRD is not able to apply sanctions under prevailing laws for violation of an AML/CFT directive.

592. For DNFBPs, the AML/CFT directive issued by ICAN for chartered accountants and registered auditors enables disciplinary action under the Nepal Chartered Accountants Act 1997 to be applied to directors or senior managers. For casinos, DPMS, lawyers, notaries or TCSPs, it is not clear that there are available sanctions against directors or senior managers under prevailing laws. This is particularly so for the casino sector, noting the wider legal uncertainty about the prevailing casino regulatory framework (see c.28.1 above).

593. Without a designated regulatory body, no sanctions may be imposed on directors or senior managers of other similar professionals undertaking activities set out in c.22.1(d) and s2(n)(4) of the ALPA, who have no designated regulatory body.

### *Weighting and Conclusion*

594. There are a range of proportionate and dissuasive administrative and criminal sanctions available under the ALPA for FIs and DNFBPs. These are supported by sanctions under prevailing laws. For commercial banks and other FIs subject to the NRB Act and BAFIA, this includes directors and senior management, which is given significant weighting. For FIs subject to other prevailing laws and the DNFBP sectors, there are shortcomings. For payment service operators and providers, securities FIs, pension funds and DNFBPs (other than chartered accountants and registered auditors), there are no clearly available administrative sanctions for directors and senior management under their prevailing laws. For those professionals undertaking c.22.1(d) activities that have no regulatory body, there are no available sanctions at all. Administrative sanctions for NPOs and other non-reporting entities relating to TFS obligations may not always be proportionate or dissuasive.

595. **Recommendation 35 is rated largely compliant.**

### *Recommendation 36 – International instruments*

596. In its last MER Nepal was rated non-compliant with former R.35 and SRI having only acceded to the Vienna Convention with significant deficiencies in implementation, and not ratifying Palermo Convention and TF Convention.

597. *Criterion 36.1* - Nepal is a party to the Vienna Convention, the Palermo Convention, the United Nations Convention against Corruption (the Merida Convention) and the Terrorist Financing Convention.

598. *Criterion 36.2* - In relation to implementation of the Vienna convention most of the requirements have been implemented via the NDCA (s4), Extradition Act and MLA Act (s5). Nepal does not have an offence of “manufacture, transport or distribution of equipment that are to be used in or for the cultivation, production or manufacture of narcotic drugs”.

599. For Palermo Convention most of the convention has been implemented via the OCPA (s3,4,5,7, and 8), ALPA (s3(1)(a) (b), s3(2), s6, s7, s7A, s7U (3), (4), s 10(1)(k), s10(2), s29K, s30(8)), POCA (s3, 4, s10 and s11), and MLA Act as a whole.

600. In relation to Merida Convention, most of the provisions have been implemented in the ALPA (s3, s7A, s7C, s7U(4), s7L, s10) Prevention of Corruption Act (s3 and s6), POCA (s3, s4, s10 and s11), MLA Act and Extradition Act. There are gaps in the legal person sanction for giving of bribes and corruption in that the sanction is only applicable for the natural person that committed the act and persons acting as the “Principal Official” (Chairman, Board Member, General Manager, Managing Director or the Official of a company or corporate body working in the same capacity). In addition, Nepal is able to confiscate property and also freeze accounts and transactions related to corruption as civil sanctions under section 39 and 49 of the Prevention of Corruption Act.

601. For the Terrorist Financing Convention, most of the provision has been implemented in ALPA (s4, s5), POCA (s3, s4, s10 and s11), OCPA (s4), Penal Code (s52, s211,) Extradition Act and MLA Act.



*Weighting and Conclusion*

602. Nepal is party to all the conventions with minor shortcomings in criminalisation of some offences.

603. **Recommendation 36 is rated largely compliant.**

*Recommendation 37 - Mutual legal assistance*

604. In its last MER Nepal was rated non-compliant with former R.36 and SRV as (i) no MLA laws existed, (ii) only extremely limited MLA entailing use of coercive could be demonstrated by Nepal, (iii) no mechanisms enabling assistance to be provided in a timely, constructive and efficient manner existed, and (iv) gaps in the ML offence and absence of TF offence may have impeded Nepal's ability to provide international cooperation. Since the last MER, Nepal passed the MLA Act.

605. *Criterion 37.1* - Nepal can provide MLA on the basis of a bilateral treaty<sup>104</sup> (s3(1) MLA Act) or reciprocity for non-treaty jurisdictions (s3(2) MLA Act) in relation to ML, TF and all predicate offences. The following assistance is to be given (s5 MLA Act):

- Taking, collecting or receiving document or evidence;
- Providing information and evidence by inspecting any relevant thing or place;
- Providing originals or certified copies of relevant documents including banking, financial or business records;
- Executing searches and seizures of objects, locating or identifying persons;
- Facilitating the appearance of persons who can assist in a matter of criminal nature;
- Serving summons; and
- Freezing or confiscating movable or immovable property.

606. However, Nepal can only enforce judgments of a foreign court with a treaty and therefore could not provide this form of assistance rapidly (s3(2) MLA Act) with regard to a decision from a foreign court.

607. *Criterion 37.2* - The MoJPA is the central authority for MLA (s6 MLA Act). The MLA Act and MLA Rules (MLAR) provide a mechanism for transmitting and execution of requests. In accordance with the Chapter 4 of MLA Act and MLAR, all requests are to be made via diplomatic channels to the MoFA. Requests are then sent to the Central Authority within 15 days (s27 MLA Act). The Central Authority has a committee to assist in deciding whether it will grant or deny the request for assistance (r7 MLAR) within 15 days (r3(5) MLAR) before referral to the relevant LEA or investigating authority or Government Attorney for application to the relevant court (s27(3) MLA Act). Refusal to provide MLA must be communicated to requesting jurisdiction within 7 Days (s30 MLA Act). The MLAR includes required details that foreign jurisdictions should include in MLA requests. This process is not fully timely as the decision on whether a request will be granted can take up to 30 days. Once there is a decision made to assist there are no further timeframes on how long domestic agencies have to actually action the request by submitting the same to local authorities or to court.

<sup>104</sup> Nepal has one MLA Treaty with China

608. In accordance with Rule 10 MLAR, the Central Authority has a basic case management system to monitor cases. However, the system lacks sufficient detail to fully monitor the status of MLA requests over the full process with agencies appearing to also keep their own records, which are only shared when requested by the Central Authority.

609. *Criterion 37.3* - The Central Authority can refuse a request on several grounds (s4 and s28 MLA Act). Most of the reasons for refusal are not unreasonable or unduly restrictive. Some of the reasons for refusal such as “the matter requested for is of insufficient importance to the investigation or information in relation to that matter can be obtained by other means” appears to be unduly restrictive.

610. *Criterion 37.4* -

611. (a) - Nepal does not refuse MLA on matters involving fiscal matters. Under s4 MLA Act, the only bar to extension of MLA is civil matters below NPR 100,000.00 (~USD 750.00), criminal matters with a prison term below one year or a fine below NPR 50,000.00 (~USD 375), or if it undermines sovereignty or public order in Nepal.

612. (b) - Nepal does not refuse MLA on grounds of secrecy or confidentiality requirements on financial institutions or DNFBPs.

613. *Criterion 37.5* - While the MLA Act does not contain provisions on confidentiality, all civil servants are prohibited from disclosing information received in the course of their employment, except as required by law (s46 Civil Service Act). In addition, competent authorities have secrecy and confidentiality provisions in their prevailing laws.

614. *Criterion 37.6* - Where MLA does not involve coercive actions dual criminality is not a condition of rendering assistance with the exception of search and seizure (s32(4) MLA Act).

615. *Criterion 37.7* - Dual criminality is not a requirement for MLA except in relation to search and seizure (s32(4) MLA Act) and the requirement is satisfied as long as the offence is an offence (underlying conduct is criminalised) in both Nepal law and the requesting jurisdiction’s law. The deficiencies in criminalisation noted in R.3 apply to c.37.7.

616. *Criterion 37.8 is* - Once a request for MLA is granted by the Central Authority, it can then direct the relevant LEA and Investigative Authority to provide the necessary assistance using powers under their prevailing laws (s31 MLA Act).

617. (a) - As per R.31, Nepal has some gaps in powers covering compulsory measures for the production of records held by FI, DNFBPs and other natural and legal persons. There are no compulsory measures in the NCrPC for the production of records from FI, DNFBPs and other natural and legal persons. The DMLI can exercise their powers for the production of records. All other LEAs and Investigative Authorities responsible for predicate offences rely on search and seizure powers.

618. (b) - As per R.31, the broader investigation powers (surveillance, undercover operations, controlled delivery, and interception warrants) are only available for some specific offences. As there are no powers related to special investigative techniques in the NCrPC, only specific/ prevailing laws for respective LEAs and Investigative Authorities apply for exercising special investigative techniques. Telephone intercept only applies to narcotics and organised crime; all other LEAs and Investigative Authorities outside of DMLI and DRI cannot access

computer systems; and only DMLI and LEAs responsible for organised crime can exercise powers for controlled delivery.

### *Weighting and Conclusion*

619. Nepal can provide a wide range of MLA in relation to ML, TF and predicate offences, but not rapidly in relation to the enforcement of foreign judgments due to the requirement for a MLA treaty. Nepal has a central authority for MLA with processes and mechanisms for transmitting and execution of requests, and a basic system for monitoring requests. Dual criminality is only required for search and seizure. Major shortcomings in R.31 cascade into c.37.8.

620. **Recommendation 37 is rated largely compliant.**

### *Recommendation 38 – Mutual legal assistance: freezing and confiscation*

621. In its last MER Nepal was rated non-compliant with R.38 as assistance could not be provided by way of freezing and seizing assets other than in relation to ML-related investigations, capacity to freeze in ML-related investigations was not complemented by capacity to confiscate frozen assets and gaps in the ML offence and absence of TF offence may have impeded Nepal in providing MLA in relation to provisional measures and confiscation. Since the last MER, Nepal passed the MLA Act.

622. *Criterion 38.1* - As highlighted in c.37.1, Nepal can provide MLA on the basis of a bilateral treaty (s3 (1) MLA Act) or reciprocity for non-treaty jurisdictions (s3(2) MLA Act) and assistance in relation to identification (s5(a)-(c) MLA Act), and search and seizure (s5(d) MLA Act). In relation to freezing and confiscation of movable or immovable property (s5(g) MLA Act) enforcement can only be done if there is treaty between the requesting country and Nepal. There is a general provision in s19 for providing evidence for any offence, or any judicial proceedings (which includes investigations), and s23 and s24 MLA Act to provide for freeze, seize and confiscation of property if requested by foreign countries. Therefore, Nepal has the authority to identify, freeze or confiscate in relation to c.381(a) to (e).

623. However, as highlighted in R.37, the Central Authority takes 15 days to consider MLA requests. This is also added onto any time (maximum of 15 days) the request takes to reach the Central Authority from the Ministry of Foreign Affairs. This is a barrier to providing expeditious assistance especially as there is no system of prioritisation particularly in cases where there are risks of assets dissipating.

624. *Criterion 38.2* - Nepal is not prohibited from providing assistance for requests for cooperation on the basis of non-conviction based confiscation proceedings with assistance (see c.37.1) able to be provided in relation to 'judicial proceedings'. This is broadly defined to include any proceeding from filing the case to enforcement of the judgment including investigation and inquiry into an offence (s2(e) MLA Act). A foreign judgment (final verdict) that is requested to be enforced, can be enforced if there is a MLA treaty with Nepal regardless of whether there is a conviction or non-conviction based confiscation proceedings and related provisional measures. As discussed in R.4, Nepal has a non-conviction based confiscation regime.

625. *Criterion 38.3* - Section 16 of POCA provides a broad power for DMPC to enter into MOUs with similar types of foreign counterparts for cooperation. The wording of s16 is sufficiently broad to permit entering into agreements for coordinating seizure and confiscation actions. As

discussed under c.4.4, while DMPC is mandated to manage and dispose of property frozen, seized or confiscated there are shortcomings in its mechanisms for disposal.

626. *Criterion 38.4* - Nepal is able to share confiscated property by entering into an agreement with a foreign jurisdiction for sharing confiscated property (s29 POCA).

### *Weighting and Conclusion*

627. There are major shortcomings in relation to Nepal's ability to provide expeditious assistance where there is a request for enforcement of foreign judgments in relation to confiscation. There are minor shortcomings in relation to how the law deals with identifying of property, and provisions that allow Nepal to coordinate search, seizure and disposal.

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

### *Recommendation 39 – Extradition*

629. In its last MER Nepal was rated non-compliant with R.39 as (i) the Extradition Act had not been used since enactment in 1988, (ii) the process enabled considerable executive intervention and is not likely to enable the swift surrender of requested persons, and (iii) gaps in the ML offence and absence of TF offence may have impeded Nepal's ability to provide MLA, including extradition.

630. *Criterion 39.1* - Nepal can only execute an extradition request on the basis of an extradition treaty (s3 Extradition Act) and only has a treaty with India. Nepal did not demonstrate it can negotiate an extradition treaty in a timely manner.

631. (a) - ML and TF are extraditable offences as the penalty for both is over the 3 years minimum sentence for it to be an extraditable offence (s4 Extradition Act).

632. (b) - Nepal does not have a central case management system for extradition. Ministry of Foreign Affairs, Ministry of Home Affairs, Chief District Office, and District Attorney's office appear to keep their own records, which are not available unless requested. There is no evidence that there is any system of prioritisation of any extradition request. The processes laid down in the Extradition Act are clear in demarcating the process for extradition and the bodies responsible for each step. Nepal has some timelines for processing extradition requests. Each request is to be sent through diplomatic channels to Ministry of Foreign Affairs which will then forward the same to the Ministry of Home Affairs. The Ministry of Home Affairs has 15 days to decide on the request. Upon decision on the request, the Chief District Officer is then forwarded the request to action by way of forwarding this to the District Attorney's Office. The relevant proceedings are then begun by the District Attorney's Office in the District Court (s10 Extradition Act 2014). There are numerous bodies that come into play in the whole chain of processing an extradition request. Apart from the actual decision of whether to proceed to grant extradition or not by the Ministry of Home Affairs which is regulated by 15 days, none of the other agencies appear to have any prescribed guidelines on when they should proceed to the next step in the chain. This prevents expeditious execution of extradition requests.

633. (c) - Nepal has prescribed a list of reasons on why an extradition request may be refused (s5 Extradition Act). The reasons are not unreasonable or unduly restrictive. However, a further condition for extradition is that the requesting country must be a treaty country (s3 Extradition

Act). This means that requests from non-treaty countries are not considered extraditable. Nepal only has a treaty with India.

634. *Criterion 39.2* - Nepal can refuse extradition on the grounds that a person is a citizen of Nepal (s5(e) Extradition Act). Where Nepal decides not to extradite, it is required to prosecute their citizens provided the offence is also an offence under the laws of Nepal (s16 and s17 Extradition Act).

635. *Criterion 39.3* - For an extradition request to be granted, Nepal only requires that the offences for which extradition is requested is also an offence in Nepal for which a sentence of over 3 years can be given (s4(a) to (b) Extradition Act) or an “offence related to taxation, revenue, banking transaction or any other type of economic or financial offence of similar nature” regardless of sentence (s4(c) Extradition Act). Similarly, the extradition offence must be punishable by over 3 years imprisonment in the requesting jurisdiction. There is no requirement that it should be the same offences in both jurisdictions. The deficiencies in criminalisation noted in R.3 apply to c.39.9.

636. *Criterion 39.4* - The only simplified mechanism Nepal has in place is in relation to arresting a person. Nepal can on the basis of a warrant issued by the requesting country, arrest a fugitive while the request is being considered. This is dependent on the requesting country request for the arrest due to risk of the person escaping or disappearing (s7(3) Extradition Act). The only documents required for arrest is the warrant from the requesting country and prima facie record of evidence as well the decision of the competent court of the requesting country. There is no provision for simple extradition processes if a person consents to surrender. All requests have to go through the processes as highlighted in c.39.1.

### *Weighting and Conclusion*

637. Nepal can only provide extradition on the basis of an extradition treaty and only has one treaty with India. Other shortcomings include Nepal’s lack of a central case management system, no simplified extradition mechanism, and the deficiencies in criminalisation noted in R.3 apply to c.39.9.

638. **Recommendation 39 is rated partially compliant.**

### *Recommendation 40 – Other forms of international cooperation*

639. In its last MER Nepal was rated non-compliant with R.40 as (i) the FIU could not share confidential information with foreign counterparts, (ii) no appropriate procedures or working practices were evident to ensure widest possible range of international cooperation to foreign counterparts, (iii) SOPs used were not clear, effective, prompt or constructive to enable exchanged directly with counterparts, and (iv) FIU sharing of information was hindered by absence of conclusions on bilateral agreements which hampered its ability to engage in international exchange in accordance with the ALPA.

640. *Criterion 40.1* - Nepal can provide a range of international cooperation for ML, TF and predicate crimes under the jurisdiction of NP and circumstances related to Nepal’s border. In accordance with the 1950 Indo-Nepal Treaty of Peace and Friendship, Nepal and India have a five-level border security cooperation and coordination mechanism. Nepal has a similar two-level border security cooperation and coordination mechanism with China. These mechanisms are

used to coordinate and exchange information on border-related criminal activity. Nepal has an extradition treaty with India and a MLA treaty with China.

641. DMLI, the FIU, and NRB can provide a wide range of international cooperation in relation to ML, TF and predicate crimes through statutory provisions and their MOUs. The FIU has MOUs with 16 foreign FIU counterparts. NRB has signed MOUs with their counterparts in India, China, Bangladesh and Pakistan. NP can provide international cooperation through INTERPOL; ARIN-AP; its attaché in the Nepal Embassy, New Delhi; Nepal India MOU for drug trafficking; and Nepal Qatar Letter of Intent for ML, TF and other higher risk predicate crimes. Other LEAs and Investigative Authorities (such as DRI and CIAA) do not have specific cooperation mechanisms for their respective predicate offences to enable rapid and widest range of international cooperation outside of multilateral and bilateral agreements.

642. *Criterion 40.2* - While there appears to be no statutory restriction over international cooperation in relation to LEAs and Investigative Authorities, the lawful basis for all competent authorities is unclear and there are no clear documented mechanisms and processes as required by criterion 40.2 (c), (d) and (e) with the exception of the following:

643. (a) - s10(2), s12(1) and s7U(3)–(5) ALPA provides legal basis for the FIU, DMLI and AML/CFT supervisors of FIs to provide cooperation, respectively.

644. (b) - There is no statutory restriction in the ALPA over efficient means used to cooperate with foreign counterparts.

645. (c) - FIU cooperation is via ESW and/or MOUs with 16 foreign FIUs. Confidentiality measures apply to all information received from foreign counterparts (s10(5) ALPA). For DMLI, s12(4) ALPA ensures that confidentiality measures apply to all information received from foreign counterparts. The mechanism(s)/channel(s) by which DMLI engages in international cooperation is unclear. NRB has MOUs with the Central Banks of Bangladesh, China, India and Pakistan, which mainly focus on licensing and prudential issues but could include other AML/CFT supervision issues.

646. (d) - The FIU has processes for prioritisation and timely execution of requests.

647. (e) - In accordance with s10(5) and s44A ALPA, the FIU has clear policies and procedures covering security and confidentiality of information (see c.29.6(a)), which apply to information received from foreign counterparts.

648. *Criterion 40.3* - Various competent authorities have entered into MOUs. The DMLI and AML/CFT supervisors of FIs can enter into MOUs with foreign counterparts (s12(3) and s7U(4) ALPA). The FIU can enter into MOUs and conduct cooperation on the basis of reciprocity with foreign counterparts in line with the ALPA (s10(2)(4)(5)), ALPR (s17(f)) and FIU Bylaw (s4(3)). The FIU has demonstrated it can negotiate and sign MOUs in a timely way. For all other competent authorities the legal basis for MOUs and whether they can be entered into in a timely way is unclear.

649. *Criterion 40.4* - The FIU can provide and seek feedback on information disseminated or received (r17(g) ALPR and FIU Guidelines for International Exchange with Foreign FIUs). Nepal has not provided information that all other competent authorities have provided timely feedback or have procedures in place to provide timely feedback.

650. *Criterion 40.5* - Nepal reports that no laws or other measures prohibits or place unreasonable or unduly restrictive conditions on the provision of exchange of information or assistance. In general, the FIU, DMLI and AML/CFT supervisors do not have unduly restrictive conditions on the exchange of information (s12 ALPA). Nepal did not provide sufficient information to the AT to determine if the same applies for all other competent authorities.

651. *Criteria 40.6* - In accordance with s10(5) and s44 ALPA, the FIU has clear policies and procedures covering security and confidentiality of information (see 29.6(a)), which applies to information received for foreign counterparts. Besides in relation to legal provisions and MOUs discussed in c.40.1 and c.40.2, it is unclear if Nepal's competent authorities, have clear safeguards to ensure information exchanged is only used for the purposes, and by authorities, for which the information was given.

652. *Criteria 40.7* - With the exception of the FIU (see c.29.6), it is unclear if Nepal's competent authorities have clear policies, procedures and SOPs to ensure confidentiality of any requests for cooperation and the information exchanged. All civil servants are prohibited from disclosing information received in the course of their employment, except as required by law (s46 Civil Service Act).

653. *Criterion 40.8* - There appears to be no statutory restrictions on competent authorities conducting inquiries on behalf of foreign counterparts and exchanging such information where international cooperation is enabled using mechanisms discussed under c.40.1 and c.40.2.

#### *Exchange of Information between FIUs*

654. *Criterion 40.9* - The FIU is mandated to provide cooperation with foreign counterparts that perform similar functions spontaneously or upon request (s10(2) ALPA, r17 ALPR). The FIU is also mandated to cooperate with foreign counterparts at the request of an investigating officer (s16(1)(g) ALPA). The ambit of the cooperation provided is identified as 'information and cooperation' and is deemed to be unlimited in view of no definition in the ALPA.

655. *Criterion 40.10* - As above, Nepal FIU can cooperate with foreign counterparts (s10(2) ALPA). Under r17(f) ALPR, the FIU can provide feedback to foreign counterparts including the outcomes of analysis carried out and annual feedback.

656. *Criterion 40.11* - As per c.29.3(a), the FIU is able to seek additional information and exchange information as required, through international cooperation. The ALPA and ALPR permits entering into MOUs and reciprocal exchange of information with foreign counterparts. There is no prohibition by law on sharing all information available to the FIU with foreign counterparts.

#### *Exchange of Information between Financial Supervisors*

657. *Criterion 40.12* - AML/CFT supervisors are enabled to co-operate with foreign counterparts on the exchange of notices or information on regulation and supervision of reporting entities; and exchange notices of information on the prevention of ML or TF (s7U(3) and (5) ALPA). These exchange of notices or information require the foreign regulatory body to be performing similar functions or different nature of business under the same group (s16 ALPR 2016).

658. *Criterion 40.13* - The provisions described in c.40.12 above and rules in r16(1)(d) ALPR allow supervisors to provide information domestically available to a foreign counterpart.

659. *Criterion 40.14* - The relevant Nepali laws cited in c.40.12 above, authorises broad international cooperation and do not restrict types of information that can be exchanged. However, prudential information can not be exchanged under the ALPA or ALPR. The NRB and NIA are able to exchange prudential information under s85 of the NRB Act and 163 of the Insurance Act 2022, respectively. Relevant provisions that enable international cooperation for all other supervisors are unclear.

660. *Criterion 40.15* - The provisions described in c.40.12 and c.40.13 above do not explicitly allow financial supervisors to conduct inquiries on behalf of foreign counterparts; however, the ALPA and ALPR are sufficiently broad to enable it. For the NRB, there are similar provisions in s85 of the NRB Act. There are no provisions in the ALPA or ALPR to facilitate the ability of foreign counterparts to conduct inquiries themselves in Nepal, in order to facilitate effective group supervision.

661. *Criterion 40.16* - While general provisions are available, as detailed in c.40.12 and c.40.13, there are no specific provisions covering prior authorisation before dissemination or exchange of information from the requested financial supervisor. It is unclear if prevailing laws or regulatory bodies' internal policies or procedures provide coverage for this criteria.

#### *Exchange of Information between Law Enforcement Authorities*

662. *Criterion 40.17* - DMLI is authorised to exchange domestically available information relating to ML and TF with foreign counterparts on the basis of reciprocity (s12 ALPA). There is no clear legal basis for other LEAs and Investigative Authorities to exchange domestically available information with foreign counterparts.

663. *Criterion 40.18* - There appears to be no statutory restriction over use of investigative techniques available in accordance with domestic law to conduct inquiries and obtain information on behalf of foreign counterparts. However, LEAs and Investigative Authorities have gaps in their investigative powers (see R.31) and the legal basis of all forms of international cooperation is unclear (see c.40.1 and c.40.2). s12 ALPA allows the DMLI to use its powers to conduct inquiries and obtain information on behalf of foreign counterparts in ML or TF cases.

664. *Criterion 40.19* - The DMLI can form investigation teams to conduct cooperative investigations (s12(2) ALPA). When necessary DMLI can make a mutual understanding with the foreign counterpart to establish methods, terms and conditions of the joint investigations. These joint investigations are for ML and TF. The AT has not observed similar provisions or conditions for other LEAs or Investigative Authorities.

#### *Exchange of Information Between Non-Counterparts*

665. *Criterion 40.20* - While Nepal reports that there is no restriction to exchange information indirectly with non-counterparts, the AT has not observed supporting information or legislation relevant to this criteria.

#### *Weighting and Conclusion*



666. Nepal can provide a range of international cooperation for ML, TF and predicate crimes under the jurisdiction of DMLI and NP; circumstances related to Nepal’s border; and in relation to AML/CFT supervision. There is a clear legal basis for DMLI, the FIU, and AML/CFT supervisors with the FIU having clear policies, procedures and safeguards. For all other competent authorities, where international cooperation may be occurring, the legal basis and policies, procedures and safeguards are unclear.

667. **Recommendation 40 is rated partially compliant.**

SUMMARY OF TECHNICAL COMPLIANCE – KEY DEFICIENCIES

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	PC	<ul style="list-style-type: none"> <li>The AT considers banking offences as lower threat and that drugs trafficking and environmental crime may be higher than outlined in the NRA. The identification of human trafficking as medium threat is not reasonable. The NRA does not include all FIs and DNFBPs. Other shortcomings include no analysis of ML/TF risk associated with legal persons and limited analysis of cross-border issues. The TF assessment in the NRA is very limited and lacks sufficient analysis.</li> <li>It is unclear if the frequency of NRA updates is based on consideration of changing ML/TF risk</li> <li>It is unclear how the National AML/CFT Strategy and Action Plan is used to allocate institutional-level resources across all agencies involved in Nepal's AML/CFT regime.</li> <li>There are minor scope gaps for DNFBPs.</li> <li>NRB is ensuring commercial banks are implementing their obligations under R.1. For all other sectors a risk-based AML/CFT supervision is either in its very early stages or not yet commenced. Across all DNFBPs, risk-based AML/CFT supervision has not yet commenced.</li> <li>FIs and DNFBPs are required to have policies, controls and procedures to manage and mitigate identified risks and monitor their implementation. There is no explicit requirement for senior management approval.</li> <li>FI and DNFBPs can take simplified measures to manage and mitigate risks. However, criteria 1.9 to 1.11 are not all met.</li> </ul>
2. National cooperation and coordination	PC	<ul style="list-style-type: none"> <li>Nepal has a range of AML/CFT cooperation and coordination mechanisms; however, limited operational cooperation and is occurring.</li> <li>There is no cooperation and coordination on PF.</li> </ul>
3. Money laundering offence	LC	<ul style="list-style-type: none"> <li>Minor shortcomings in relation to the designation of predicate offences.</li> <li>The sanctions for ML for both natural and legal persons are not fully dissuasive.</li> <li>It is unclear how facilitating and counselling of the ML offence is defined and criminalised.</li> </ul>
4. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> <li>LEAs and investigating authorities also have shortcomings relating to investigative measures.</li> <li>The DMPC is responsible for asset management with shortcomings relating to disposal of properties before a court action is finalised and cooperation with all LEAs and investigating authorities.</li> </ul>
5. Terrorist financing offence	LC	<ul style="list-style-type: none"> <li>Nepal does not explicitly criminalise the financing of travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.</li> <li>Criminal sanctions applied to natural persons are not fully proportionate or dissuasive.</li> <li>Criminal sanctions applied to legal persons are not fully proportionate or dissuasive.</li> </ul>
6. Targeted financial sanctions related to terrorism & TF	PC	<ul style="list-style-type: none"> <li>There is no legal requirement in the ALPA or ALPR-TFS for the designation criteria to be in accordance with relevant UNSCRs.</li> <li>There is no legal requirement in the ALPA or ALPR-TFS to ensure the independence of criminal proceedings involving investigations and prosecutions.</li> <li>There is no legal requirement in the ALPA or ALPR-TFS for relevant competent authorities to follow procedures and</li> </ul>

		<p>standard forms for listing in accordance with the 1267/1989 or 1988 Committee.</p> <ul style="list-style-type: none"> <li>• There is no legal requirement in the ALPA or ALPR-TFS for as much relevant information as possible be included in any proposed listing.</li> <li>• There is no procedural requirement to designate persons or organisations to the 'domestic designation list' in accordance with the criteria of UNSCR1373.</li> <li>• There is no procedural requirement for the designation criteria to be in accordance with UNSCR 1373.</li> <li>• There is no legal requirement in the ALPA or ALPR-TFS to ensure the independence of criminal proceedings involving investigations and prosecutions.</li> <li>• It is not clear what information is required under a freezing mechanism to accompany a request to another jurisdiction.</li> <li>• Nepal does not have procedures or mechanisms allowing competent authorities to collect or solicit information to identify persons and entities suspected or believed to meet the criteria for designation.</li> <li>• Nepal does not have a legal requirement in the ALPA or ALPR-TFS nor any procedures or mechanisms to allow competent authorities to operate ex parte in Nepal.</li> <li>• Nepal is not implementing TFS-TF without delay in relation to UNSCR 1267 and 1989 as its freeze order is not in effect The ALPA does not define 'immediately' it is unknown whether a freeze could be completed within 24 hours.</li> <li>• Nepal does not have a legal requirement in the APLA or ALPR-TFS that explicitly covers joint indirect benefit.</li> <li>• Nepal doesn't have a mechanism to provide clear guidance to FI or DNFBPs that may be holding targeted funds or other assets.</li> <li>• Nepal only requires properties or funds frozen to be reported, there is no requirement to report compliance actions. Further, there is no provision to explicitly include attempted transactions.</li> <li>• There is no legal provision covering compensation and protection against arbitrary deprivation/seizure of property or in an oppressive manner to those bona fide third parties 'acting in good faith'.</li> <li>• Nepal's procedures and standards required for the submission of a request for de-listing is not outlined.</li> <li>• Nepal has no legal provision that outlines the procedures to facilitate review by the 1988 Committee.</li> <li>• There are no procedures for informing designated persons and entities of the availability of the United Nations Office of the Ombudsperson, pursuant to UNSCRs 1904, 1989, and 2083 to accept de-listing petitions.</li> <li>• Nepal does not have any procedures for unfreezing false positives is unclear and is not publically available.</li> <li>• Nepal does not have any mechanism to provide clear guidance to FI or DNFBPs on their de-listing obligations.</li> </ul>
<p>7. Targeted financial sanctions related to proliferation</p>	<p>NC</p>	<ul style="list-style-type: none"> <li>• Nepal is not implementing TFS-PF without delay and has not issued a Freeze Order pursuant to UNSCRs 1718 or 2231 and successor resolutions.</li> </ul> <p>Nepal has no freezing obligation in relation to UNSCR 1718 or 2231 and therefore natural and legal persons are not required to freeze funds or assets without delay.</p> <p>Nepal does not have a PF legal framework with relevant enforceable means.</p> <ul style="list-style-type: none"> <li>• Nepal does not allow the listed persons or entities to petition the Focal Point.</li> <li>• Nepal's procedures for unfreezing false positives is unclear and is not publically available.</li> </ul>

		<ul style="list-style-type: none"> <li>Nepal does not require delisting to be communicated to FIs and DNFBPs and does not provide clear guidance to FI or DNFBPs on their de-listing obligations.</li> <li>Nepal has no legal provision to determine a contract is related to prohibited items or that the payment is not directly or indirectly received and there is no time period mentioned for required prior notice being given to UNSC of the intention to make such payment to the payment or release of funds.</li> </ul>
8. Non-profit organisations	NC	<ul style="list-style-type: none"> <li>Nepal has not identified the subset of NPOs that are likely to be at risk of TF abuse.</li> <li>Nepal has not identified the nature of threats posed by terrorist entities to NPOs at risk.</li> <li>Nepal has not reviewed the adequacy of measures related to at-risk NPOs.</li> <li>Nepal has not periodically reassessed the NPO sector for potential vulnerabilities to terrorist activities.</li> <li>It is unclear how Nepal's policies promoting accountability, integrity and public confidence in the administration and management of NPOs are being applied to NPOs at risk of TF abuse or whether/how they apply to domestic NPOs not affiliated with SWC.</li> <li>Nepal has not undertaken targeted outreach and awareness programs regarding the potential vulnerabilities of NPOs to terrorist financing abuse.</li> <li>Nepal has not worked with NPOs to develop and refine best practices to address TF risks and vulnerabilities.</li> <li>It is unclear whether unregistered/unofficial NGOs who are not affiliated with SWC are encouraged to conduct transactions via regulated financial channels.</li> <li>Nepal has not applied risk-based measures to NPOs at risk of TF.</li> <li>Nepal is not monitoring compliance of risk based measures and it is unclear if it is able to apply effective, proportionate and dissuasive sanctions for violations by NPOs or persons acting on behalf of these NPOs.</li> <li>Nepal's extent of cooperation, coordination and information sharing is unclear among all levels of authorities.</li> <li>Nepal only has limited investigative expertise and capability to examine NPOs.</li> <li>It is unclear if full access to NPO information is available during the course of an investigation.</li> <li>It is not known what mechanisms, if any, are available to promptly share information with competent authorities.</li> <li>The legislation outlining responsibilities when responding to international requests for information regarding particular NPOs suspected of terrorist financing is unknown.</li> </ul>
9. Financial institution secrecy laws	LC	<ul style="list-style-type: none"> <li>There is no overriding provisions that would cover access to information and documentation from insurance companies in predicate crime investigations.</li> </ul>
10. Customer due diligence	PC	<ul style="list-style-type: none"> <li>Requirements to undertake CDD for occasional transaction do not include situations where several operations that appear to be linked, if the wire transfer are fully manual, and when there is suspicion of ML/TF regardless of existing exemptions or thresholds under the ALPA.</li> <li>The definition of Customer does not clearly cover legal arrangements.</li> <li>FI are no required to verify the person purporting to act on behalf of a trusts.</li> <li>Requirements to identify and verify BOs do not include no explicit requirement to use the relevant information or data obtained from a reliable source.</li> <li>Obligations to obtain appropriate information and details on the objective or intended nature of the business relationships do not clearly apply to legal arrangements.</li> </ul>

		<ul style="list-style-type: none"> <li>• Ongoing CDD obligations do not clearly apply to legal arrangements.</li> <li>• For customers that are legal arrangements, there is no explicit requirement to identify persons in equivalent or similar positions or via class of beneficiaries.</li> <li>• CDD measures for life insurance policies, there are no requirements covering beneficiaries that are designated by characteristics, class or other means, and the no requirement for verification of beneficiary details.</li> <li>• There is no explicit requirement to undertake EDD if higher-risks are identified where the beneficiary is a legal person or legal arrangement and that EDD includes reasonable measures to identify and verify the BO of the beneficiary at the time of pay out</li> <li>• There is no requirement that delayed verification must be completed as soon as reasonably practicable and obligations do not clearly apply to customers that are legal arrangements.</li> <li>• There is no express provision within the ALPA or ALPR to require FIs to adopt risk management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification.</li> <li>• For existing customers, the CDD on a risk-sensitive basis does not include when previous CDD measures were undertaken and adequacy of data obtained, and obligations do not clearly apply to customers that are legal arrangements.</li> <li>• No clear provision(s) under the ALPA, ALPR or other directives to give effect to the requirements of c.20.20.</li> </ul>
11. Record keeping	C	
12. Politically exposed persons	LC	<ul style="list-style-type: none"> <li>• Provisions for life insurance policies do not explicitly require insurance providers to take reasonable measures to determine whether the beneficiaries and/or, where required the beneficial owner of the beneficiary, are PEPs in relation to a life insurance policy.</li> </ul>
13. Correspondent banking	LC	<ul style="list-style-type: none"> <li>• There is no definition of pay-through account.</li> </ul>
14. Money or value transfer services	LC	<ul style="list-style-type: none"> <li>• Sanction for carrying out MVTS without a licence is not fully dissuasive and Nepal has taken limited actions to identify natural persons who carry our MVTS without a licence.</li> </ul>
15. New technologies	NC	<ul style="list-style-type: none"> <li>• There is no explicit provision in the ALPA or other legislation requiring the government of Nepal to identify and assess risks arising from new technologies, and there is no detailed coverage of new technologies issues in the 2020 NRA.</li> <li>• Nepal has not identified and assessed the ML/TF risks emerging from VA activities and the activities or operations of VASPs</li> <li>• Nepal has sought to prohibit VA and VASPs but the does not cover all elements of the FATF definitions of VA or VASPs. Nepal has no fit and proper requirements specific for VASPs.</li> <li>• There is no specific provision for VASPs to take appropriate measures to identify assess, manage and mitigate their ML/TF risks.</li> <li>• Nepal has only undertaken some actions to identify legal and natural persons carrying out VAPS activities.</li> <li>• There is no legal provision identifying a supervisory authority for VASPs and requiring VASPs to be subject to adequate regulation and risk-based supervision or monitoring.</li> <li>• Nepal has not developed guidelines or provided feedback to VASPs in accordance to R.34.</li> <li>• There is no proportionate and dissuasive sanctions available for failure to comply with AML/CFT requirements, nor to the directors and senior managers of VASPs.</li> </ul>

		<ul style="list-style-type: none"> <li>• There are no provisions requiring VASPs to comply with the required preventive measures set out in R.10 to R.21, including with the travel rule requirements.</li> <li>• Shortcoming in R.6 and R.7 apply.</li> <li>• Shortcomings in R.37 to R.40 apply.</li> </ul>
16. Wire transfers	LC	<ul style="list-style-type: none"> <li>• There is no explicit requirement for intermediary FIs to retain all originator and beneficiary information accompanying the wire transfer is retained with it.</li> <li>• Requirements covering intermediary FIs to have risk-based policies and procedures do not cover originator information and the appropriate follow up action.</li> <li>• There are no explicit requirements to verify the beneficiary if the identity has not been previously identified.</li> <li>• Requirements covering beneficiary FIs to have risk-based policies and procedures does not cover originator information and the appropriate follow up action.</li> </ul>
17. Reliance on third parties	LC	<ul style="list-style-type: none"> <li>• FIs are prohibited from using third parties from a jurisdiction identified as non-compliance or partially compliant with the international standards relating to the prevention of ML/TF (s7)(2)(a) ALPA); however, it is unclear whether there are other information relating to the level of country risk that Nepal FIs are required to taken into consideration.</li> </ul>
18. Internal controls and foreign branches and subsidiaries	LC	<ul style="list-style-type: none"> <li>• It is unclear whether requirements cover sharing of information and analysis of transactions or activities, which appear unusual, specific financial group safeguards to prevent tipping-off.</li> <li>• Safeguard on confidentiality and use of information exchanged do not explicitly cover specific financial group safeguards to prevent tipping-off.</li> </ul>
19. Higher-risk countries	PC	<ul style="list-style-type: none"> <li>• Directives for A, B and C Class Banking Institutions and MVTS and Money Changers clarifies that requirements in the ALPA that EDD is required for natural and legal person when called for by the FATF. It is unclear if directive for other FIs clarify that ALPA requirements.</li> <li>• Nepal can not apply countermeasures.</li> <li>• There are no specific measures in place to ensure that FIs are advised of concerns about weaknesses in the AML/CFT systems of other countries on an on-going basis.</li> </ul>
20. Reporting of suspicious transaction	C	
21. Tipping-off and confidentiality	C	
22. DNFBPs: Customer due diligence	PC	<ul style="list-style-type: none"> <li>• There are scope gaps for real estate agents and DPMS.</li> <li>• Deficiencies identified in R.10 apply to casinos.</li> <li>• Deficiencies identified in R.10 apply to real estate and unclear real estate agents are required to comply with CDD requirements for both buyer and seller.</li> <li>• Deficiencies identified in R.10 apply to DPMS.</li> <li>• Deficiencies identified in R.10 apply to lawyers, notaries, auditors, accounting or other similar professionals.</li> <li>• Deficiencies identified in R.12 also apply to DNFBPs.</li> <li>• Deficiencies identified in R.15 also apply to DNFBPs.</li> <li>• Deficiencies identified in R.17 also apply to DNFBPs.</li> </ul>
23. DNFBPs: Other measures	PC	<ul style="list-style-type: none"> <li>• There are scope gaps for real estate agents and DPMS.</li> <li>• Deficiencies identified in R.18 apply to DNFBPs.</li> <li>• Deficiencies identified in R.19 apply to DNFBPs.</li> </ul>
24. Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> <li>• Nepal only has basic mechanisms to identify and describe associations and corporations.</li> <li>• Nepal has not assessed its ML/TF risks associated with legal persons.</li> </ul>

		<ul style="list-style-type: none"> <li>• While the company and OCR maintain basic information, the vast majority of this information is not publicly available for private and foreign companies.</li> <li>• While the registrars maintain basic information on Associations and Cooperatives, it is not publicly available.</li> <li>• Companies share register is not required to include category of share.</li> <li>• For foreign companies details of shareholder are not required to be maintained.</li> <li>• Requirements regarding updating cooperative basic information are unclear.</li> <li>• It is unclear what circumstances a company is required to ask a shareholder under what capacity they obtained the share(s).</li> <li>• Cooperatives and Associations there is no measures to give effect to c.24.6 (a) or (b).</li> <li>• The key R.10 deficiency impacts Nepal's ability to obtain or determine BO in a timely manner from FIs or DNFBPs.</li> <li>• It is unclear if there are other competent authorities that hold BO information on legal persons in Nepal.</li> <li>• Gaps in LEAs powers mean production of information held by companies would not be timely.</li> <li>• No requirement for OCR or company BO information to be accurate or up-to-date.</li> <li>• CCD BO information held by FI/DNFBPs may not be accurate or up-to-date.</li> <li>• No requirements to give effect to c.24.8.</li> <li>• No explicit timeframe for maintaining the records in the Companies Act.</li> <li>• It is unclear if there are record keeping requirements for Cooperatives and Associations besides those covering CDD in the ALPA.</li> <li>• Gaps in LEAs powers and manual records for all registrars besides OCR means access to basic and BO information is not timely.</li> <li>• There are no mechanism to ensure the misuse of nominee arrangements</li> <li>• There are minor shortcomings in relation to dissuasiveness of sanctions.</li> <li>• For international cooperation, gaps at R.36 to R.40 apply and deficiencies identified in relation to holding of BO information.</li> <li>• Nepal does not have a mechanism for monitoring the quality of assistance in relation to basic and BO information.</li> </ul>
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> <li>• There are major shortcomings in how BO information on a trust is required to be collected, maintained and updated.</li> <li>• Trustees are not obliged to disclose their status to FI's and DNFBP's.</li> <li>• Gaps in LEAs powers and manual/no records at district-level Land Revenue Offices means access to information on a trust is not timely.</li> <li>• For international cooperation, gaps at R.36 to R.40 apply and deficiencies identified in relation to holding trust information.</li> <li>• It is unclear how sanctions under the NCivC would be imposed.</li> <li>• There are no proportionate and dissuasive sanctions for failing to grant competent authorities timely access to information regarding the trust.</li> </ul>
26. Regulation and supervision of financial institutions	PC	<ul style="list-style-type: none"> <li>• There are deficiencies in fit and proper checks for all types of FIs, which rely only on self-declaration of criminal history and are not applied consistently across all relevant persons.</li> <li>• For core principles FIs, regulation and supervision by NRB, DOC, SEBON and NIA is not fully in line with the core principles where relevant for AML/CFT purposes.</li> <li>• Nepal does not conduct consolidated group supervision</li> </ul>

## TECHNICAL COMPLIANCE

		<ul style="list-style-type: none"> <li>For all other FIs sectors implementation of a risk-based approach to AML/CFT supervision is only in its very early stages or not yet commenced.</li> <li>All FI supervisors are not reviewing the ML/TF risk profile of FIs or groups periodically.</li> </ul>
27. Powers of supervisors	C	
28. Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> <li>For casinos, the fit and proper requirements are derived from an unclear regulatory framework and are not sufficient to prevent criminal ownership or management.</li> <li>Implementation of AML/CFT supervision of casinos by MoCTCA has not commenced.</li> <li>There is no AML/CFT supervisor designated for other professionals.</li> <li>There are no fit and proper requirements for real estate agents, DPMS or TCSPs. There are also deficiencies in relation to available sanctions against directors and senior managers of DNFBPs. For professionals (other than lawyers, notaries, chartered accountants or registered auditors) that undertake the activities in c.22.1(d), there are no fit and proper requirements, no designated competent authority or SRB, no AML/CFT supervision and no available sanctions.</li> <li>Across the casino, DPMS, lawyer, notary, chartered accountant, registered auditor and TCSP sectors, risk-based supervision has not yet commenced.</li> </ul>
29. Financial intelligence units	C	
30. Responsibilities of law enforcement and Investigative Authorities	LC	<ul style="list-style-type: none"> <li>DMLI and other LEAs and Investigative Authorities can identify, trace and initiate freezing and seizing but not expeditiously.</li> <li>Referral of cases is not mandatory except for ML and TF offences.</li> </ul>
31. Powers of law enforcement and Investigative Authorities	PC	<ul style="list-style-type: none"> <li>Not all LEAs and Investigative Authorities have compulsory measures for the production of records held by FI and DNFBPs and other natural or legal persons in relation to predicate offences outside of corruption, narcotics, banking and organised crime offences.</li> <li>Not all competent authorities have the power to conduct undercover operations outside of ML/TF offences and organised crime offences.</li> <li>Not all competent authorities have the power to intercept communications outside of NP for the purposes of narcotics and organised crime offences.</li> <li>Besides DMLI in ML/TF cases, LEAs and Investigative Authorities are not authorised under legislation to access computer systems.</li> <li>LEAs authorised to conduct controlled delivery only applies to the DMLI for ML/TF offence and LEAs investigating organised crime offences.</li> <li>It is unclear provisions exist for mechanisms to identify, in timely manner, whether natural or legal persons hold or control accounts outside of DMLI for ML/TF offences.</li> <li>There is no processes that allows LEAs or DMLI to identify accounts, without notice to the owner, outside of DMLI compelling production powers.</li> <li>It is unclear if LEAs and Investigative Authorities, other than DMLI, can ask for all relevant information from the FIU for predicate offences as no provisions exist outside of s10(1)(f) of the ALPA.</li> </ul>
32. Cash couriers	LC	<ul style="list-style-type: none"> <li>Nepal's cash declaration system is not systematically implemented at all land borders.</li> <li>The lack of definition of the 'claimed amount' for imposing a fine in the case of false declaration or disclosure creates</li> </ul>



		<p>some ambiguity around the dissuasiveness and proportionality of the sanctions.</p> <ul style="list-style-type: none"> <li>• DOC can not engage in exchange of information with foreign counterparts. FIU's internal cooperation on BNI is limited because declarations are not provided to the FIU in a timely manner.</li> <li>• The sanction amounts are not fully dissuasive for the confiscation of currency and BNI related to ML/TF.</li> </ul>
33. Statistics	LC	<ul style="list-style-type: none"> <li>• Nepal does not maintain consolidated confiscated-related information and statistics between the LEAs' seizing and freezing actions, court judgements and enforcement action.</li> <li>• Besides DLMI and NP, all other LEAs and supervisors, do not maintain comprehensive statistics on other forms of international cooperation.</li> </ul>
34. Guidance and feedback	PC	<ul style="list-style-type: none"> <li>• The AML/CFT directives issued by DoLMA for real estate agents and by OCR for TCSPs do not include any guidance. For hire-purchase providers, lawyers, notaries and other similar professionals (that undertake c.22.1(d) activities), there are guidance.</li> </ul>
35. Sanctions	LC	<ul style="list-style-type: none"> <li>• There are no available sanctions for those professionals undertaking c.22.1(d) activities that have no regulatory body.</li> <li>• For payment service operators and providers, securities FIs, pension funds and DNFBPs (other than chartered accountants and registered auditors), there are no clearly available administrative sanctions for directors and senior management.</li> <li>• Administrative sanctions for NPOs and other non-reporting entities relating to TFS obligations may not always be proportionate or dissuasive.</li> </ul>
36. International instruments	LC	<ul style="list-style-type: none"> <li>• Minor shortcomings in criminalisation of the manufacture, transport or distribution of equipment for use in or for cultivation, production or manufacture of narcotic drugs under the Vienna Convention; and legal persons committing corruption under the Merida Convention</li> </ul>
37. Mutual legal assistance	LC	<ul style="list-style-type: none"> <li>• Nepal can only enforce judgments of a foreign court with a treaty and therefore could not provide this form of assistance rapidly.</li> <li>• The central authority for MLA processes and mechanisms lacks sufficient detail to fully monitor the status of MLA requests over the full process with agencies appearing to also keep their own records.</li> <li>• Some reasons for MLA refusal appear to be unduly restrictive.</li> <li>• Where MLA does not involve coercive actions dual criminality is not a condition of rendering assistance with the exception of search and seizure.</li> <li>• The deficiencies in criminalisation noted in R.3 apply to c.39.9.</li> <li>• Major shortcoming in R.31 cascade into c.37.8.</li> </ul>
38. Mutual legal assistance: freezing and confiscation	PC	<ul style="list-style-type: none"> <li>• Nepal's can not provide expeditious assistance where there is a request for enforcement of foreign judgments for confiscation.</li> <li>• There are minor shortcomings identifying of property, and provisions that allow Nepal to coordinate search and seizure and disposal.</li> </ul>
39. Extradition	PC	<ul style="list-style-type: none"> <li>• Nepal did not demonstrate it can negotiate an extradition treaty in a timely manner, which is required for extradition.</li> <li>• There is no centralised case management system or order of prioritisation for extradition requests. Outside of the Home Ministry, no other competent authorities have prescribed guidelines on when they should proceed to the next step in process for extradition requests which prevents expeditious execution.</li> <li>• Nepal can only extradite to treaty jurisdictions, which Nepal only has only one treaty with India. This is unduly restrictive.</li> </ul>

		<ul style="list-style-type: none"> <li>• The deficiencies in criminalisation noted in R.3 apply to c.39.9.</li> <li>• Nepal does not have a simplified extradition mechanism, as there is no specific process if a person consents to surrender. The same process in c39.1 is to be followed.</li> </ul>
<p>40. Other forms of international cooperation</p>	<p>PC</p>	<ul style="list-style-type: none"> <li>• It is unclear what mechanisms and regulations exist that specify competent authorities can rapidly provide the widest range of international cooperation upon request and spontaneously outside of global networks (INTERPOL, ARIN-AP, EGMONT); NP various department’s engagement with international counterparts (rule 53(n) NP Regulation 2014); CIB’s mandate to cooperate and coordinate with foreign counterparts (s9(f) CIB Regulation 2013); Nepal India Management Committee (border security matters); DMLI’s cooperation with foreign counterparts on joint investigations (s12(1)(2) ALPA); commitment to international conventions (World Customs Organisation and Kyoto Convention); CMAA with China; BIMSTEC and SCO.</li> <li>• There is no evidence outside of ALPA that demonstrate provisions exist between Nepal’s competent authorities and foreign counterparts for international cooperation.</li> <li>• There is no statutory restriction over efficient means used to cooperate with foreign counterparts.</li> <li>• There is no gateways, mechanisms, or channels that exist to facilitate and allow for the transmission and execution of requests for LEAs, Investigative Authorities or supervisors outside of NP and NRB.</li> <li>• There is no processes for the prioritisation and timely execution of requests.</li> <li>• There is no processes for safeguarding the information received.</li> <li>• There is no signed bilateral or multilateral agreements or arrangements to cooperate.</li> <li>• There is no evidence that Nepal has provided timely feedback or has procedures (except for the FIU) in place to provide timely feedback.</li> <li>• There is no evidence that competent authorities should not refuse a request on the grounds of inclusion of fiscal matters.</li> <li>• There is no evidence that competent authorities should not refuse a request on the grounds of FIs or DNFBPs’ maintaining secrecy or confidentiality.</li> <li>• There is no evidence that competent authorities should not refuse a request on the grounds of an inquiry, investigation or proceeding underway in the requested country (unless impeding on the inquiry, investigation or proceeding).</li> <li>• There is no evidence that competent authorities should not refuse a request on the grounds of the nature or status of the requesting counterpart authority.</li> <li>• No specific provisions exist for safeguards and controls of information exchanged by LEAs, Investigative Authorities and supervisors.</li> <li>• There is no evidence that demonstrates how confidentiality is maintained or covered in other competent authorities’ respective legislation. The assessment team has not observed conditions that allows Nepal to refuse to provide information to a requesting competent authority where protection of information cannot be provided.</li> <li>• There is no evidence that competent authorities are able to conduct inquiries on behalf of foreign counterparts and exchange with their foreign counterparts all information that would be obtainable by them if such inquiries were being carried out domestically.</li> <li>• It is unclear if prudential information can be exchanged under the ALPA or ALPR, although the NRB is able to exchange prudential information under s85 of the NRB Act.</li> </ul>

		<ul style="list-style-type: none"> <li>• There are no provisions in the ALPA or ALPR to facilitate the ability of foreign counterparts to conduct inquiries themselves in Nepal, in order to facilitate effective group supervision.</li> <li>• While general provisions are available, as detailed in c.40.12 and c.40.13, there are no specific provisions covering the situation under this criteria.</li> <li>• No provisions exist for competent authorities to exchange domestically available information relating to predicate offences with foreign counterparts on the basis of reciprocity outside of DMLI for ML/TF offence.</li> <li>• In Legislation there is no explicit statement on LEAs' or other Investigative Authorities' use of powers to conduct inquiries and obtain information on behalf of foreign counterparts outside of DMLI's functions for ML/TF. There are no other additional restrictions to apply investigative techniques in relation to foreign counterpart requests outside of INTERPOL and ARIN-AP agreements.</li> <li>• No provisions exist for LEAs or other Investigative Authorities responsible for investigations into predicate offences to be able to form joint investigation teams to conduct cooperative investigations with foreign counterparts.</li> <li>• No provisions exist that allows competent authorities to exchange information indirectly with non-counterparts. There is no evidence that competent authorities' requesting information indirectly always make it clear for what purpose and for who the requested information is for.</li> </ul>
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## GLOSSARY

ALPA	Asset (Money) Laundering Prevention Act 2008
ALPR	Asset (Money) Laundering Prevention Act Rules
AML/CFT	Anti-Money Laundering/ Countering Financing of Terrorism
APF	Armed Police Force
AT	Assessment Team
BAFIA	Bank And Financial Institution Act 2017
BO	Beneficial Ownership
BNI	Bearer Negotiable Instruments
CDD	Customer Due Diligence
CFT	Countering the Financing of Terrorism
CIAA	Commission for the Investigation of Abuse of Authority
CPF	Counter Proliferation Financing
CTC	Counter Terrorism Committee
CTM	Counter Terrorism Mechanism
DeoC	Department of Cooperatives
DOC	Department of Customs
DoFE	Department of Foreign Employment
DoFSC	Department of Forest and Soil Conservation
DoLMA	Department of Land Management and Archive
DPRK	Democratic People's Republic of Korea
DMLI	Department of Money Laundering Investigation
DMPC	Department for Management of Proceeds of Crime
DNFBP	Designated Non-financial Businesses and Professions
DPMS	Dealers in Precious Metals and Stones
DoNPWLC	Department of National Park and Wild Life Conservation
DRI	Department of Revenue Investigation
EDD	Extra Due Diligence
ESW	Egmont Secure Web
FERA	Foreign Exchange (Regulation) Act 1962
FI	Financial Institutions
FIR	First Information Report
FIU	Financial Intelligence Unit
IC	Implementation Committee
ICAN	Institute of Chartered Accountants of Nepal
ICC	Investigation Coordination Committee
ICM	Investigation Coordination Mechanism
INGO	International NGO
IRD	Inland Revenue Department
JED	Judgment Execution Directorate
LEA	Law Enforcement Agency
MEC	Mutual Evaluation Committee
MLA	Mutual Legal Assistance
MOU	Memorandum of Understanding
MoCTCA	Ministry of Culture, Tourism and Civil Aviation
MoF	Ministry of Finance
MoFA	Ministry of Foreign Affairs
MoHA	Ministry of Home Affairs
MoLJPA	Ministry of Law, Justice and Parliamentary Affairs
MoWCSC	Ministry of Women, Children and Senior Citizens
NBC	Nepal Bar Council
NDCA	Narcotic Drugs (Control) Act 1976
NCB	Narcotics Control Bureau

NCivC	National Civil Code 2017
NCC	National Coordination Committee
NCPC	National Civil Procedures Code 2017
NCrPC	National Criminal Procedures Code 2017
NIA	National Insurance Authority
NID	National Investigation Department
NNPC	Nepal Notary Public Council
NP	Nepal Police
NPC	National Penal Code 2017
NPO	Non-Profit Organisation
NPR	Nepalese Rupee
NRA	National Risk Assessment
NRB	Nepal Rastra Bank
NRC	National Review Council
NVC	National Vigilance Centre
OAG	Office of the Attorney General
OCPA	Organised Crimes Prevention Act 2014
OCR	Office of the Company Registrar
OPMCM	Office of the Prime Minister and Council of Ministers
PASA	Payment And Settlement Act 2019
PEP	Politically Exposed Persons
POCA	Criminal Proceeds and Instruments of Offence (freezing, controlling and confiscation) Act 2013
POCR	Criminal Proceeds and Instruments of Offence (freezing, controlling and confiscation) Rule 2021
RCM	Regulatory Coordination Mechanism
RFI	Request For Information
RE	Reporting Entity
SAR	Suspicious Activity Report
SC	Supreme Court
SCDD	Simplified Customer Due Diligence
SEBON	Securities Board of Nepal
SOP	Standard Operation Procedure
STR	Suspicious Transaction Report
SWC	Social Welfare Council
SWA	Social Welfare Act 1992
SWR	Social Welfare Regulation 1993
TCSP	Trust and Company Service Providers
TF	Terrorism Financing
TFS	Targeted Financial Sanctions
TFSC	Targeted Financial Sanctions Committee
TFS-TF	Targeted Financial Sanctions for Terrorism Financing
TFS-PF	Targeted Financial Sanctions for Proliferation Financing
TTR	Threshold Transaction Report
UNSCR	United Nations Security Council Resolutions
VA	Virtual Assets
VASP	Virtual Asset Service Providers