



ASIA/PACIFIC GROUP ON MONEY  
LAUNDERING



# Mutual Evaluation Report Executive Summary

Anti-Money Laundering and Combating the  
Financing of Terrorism

# India

25 June 2010

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## EXECUTIVE SUMMARY

### MUTUAL EVALUATION OF THE FEDERATIVE REPUBLIC OF INDIA

1. This report summarises the anti-money laundering (AML)/combating the financing of terrorism (CFT) measures in place in India as of the time of the on-site visit (30 November – 12 December 2009), and shortly thereafter (through 12 February 2010). The report describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened. It also sets out India's levels of compliance with the Financial Action Task Force (FATF) 40+9 Recommendations (see the attached table on the Ratings of Compliance with the FATF Recommendations).

#### 1. Key Findings

2. The AML/CFT regime in India is relatively young. The Prevention of Money Laundering Act, 2002 (PMLA) came into force in 2005 and was amended in 2009. The Unlawful Activities (Prevention) Act, 1967 (UAPA) was amended in 2004 to criminalise, inter alia, terrorist financing. The UAPA was further amended in December 2008 to broaden its scope and to bring the legislation more in line with the requirements of the United Nations Convention for the Suppression of the Financing of Terrorism (FT Convention).

3. As a leader among the emerging economies in Asia with a strongly growing economy and demography, India faces a range of money laundering and terrorist financing risks. The main sources of money laundering in India result from a range of illegal activities committed within and outside the country, mainly drug trafficking; fraud; counterfeiting of Indian currency; transnational organised crime; human trafficking; and corruption.

4. Money laundering (ML) methods are diverse. With respect to domestic crimes, the most common money laundering methods are opening multiple bank accounts; intermingling criminal proceeds with assets of a legal origin; purchasing bank cheques against cash; and routing through complex legal structures. For transnational organised crimes, methods used to disguise the criminal origin of the funds include the use of offshore corporations and trade based money laundering. India has several mechanisms in place for domestic co-ordination and co-operation at both the policy and operational levels to identify new and emerging trends and to formulate appropriate responses.

5. India continues to be a significant target for terrorist groups and has been the victim of numerous attacks. There are no published figures of terrorist cells operating in the country. Based on a threat assessment, India has identified the following major sources for terrorist financing (FT): funds/resources

from organisations outside India, including foreign NPOs; counterfeiting of currency; and criminal activities including drug trafficking and extortion.

6. Since mid-2009, India has increased its focus on money laundering and the use of the ML provisions. However, there are still some important and in some instances, long-standing legal issues, such as the threshold condition for domestic predicate offences, that remain to be resolved. Effectiveness concerns are primarily raised by the absence of any ML convictions.

7. India's serious commitment to combating terrorism in all its forms must be acknowledged. From a law enforcement perspective, this commitment is reflected in an active pursuit of the financial aspects of terrorism. At the prosecutorial level, an appropriate focus on FT can be observed. However, this effort has not yet been convincingly followed up by convictions and firm case law.

8. India has progressively expanded and strengthened its preventive measures for the financial sector, which now apply to all but one of the financial activities required to be covered under the FATF standards. However, several preventive provisions need to be brought more closely into line with the FATF standards, and overall, more time is needed before all requirements are substantially implemented. The supervisory regime for financial institutions is generally sound, but its effectiveness with regard to AML/CFT has not yet been sufficiently demonstrated. In addition, the sanctions that supervisors have applied for AML/CFT deficiencies cannot be considered to be effective, dissuasive or proportionate.

9. With the exception of casinos (which operate only in the State of Goa), the DNFBP sectors are not subject to the PMLA and are not regulated and supervised for AML/CFT purposes. AML/CFT preventive measures were only recently extended to casinos, which raises effectiveness concerns regarding the implementation of the preventive measures and the functioning of both the regulatory and supervisory regime.

10. Key recommendations made to India include the need to: address the technical shortcomings in the criminalisation of both money laundering and terrorist financing and in the domestic framework of confiscation and provisional measures; broaden the CDD obligations with clear and specific measures to enhance the current requirements regarding beneficial ownership; improve the reliability of identification documents, the use of pooled accounts, PEPs, and non-face-to-face business; ensure that India Post, which recently became subject to the PMLA, effectively implements the AML/CFT requirements; enhance the effectiveness of the STR reporting regime; enhance the effectiveness of the financial sector supervisory regime and ensure that India Post is adequately supervised; ensure that the competent supervisory authorities make changes to their sanctioning regimes to allow for effective, proportionate and dissuasive sanctions for failures to comply with AML/CFT requirements; and extend the PMLA requirements to the full range of DNFBPs, and ensure that they are effectively regulated and supervised.

## **2. Legal systems and Related Institutional Measures**

11. India has criminalised money laundering under both the Prevention of Money Laundering Act, 2002 (PMLA), as amended in 2005 and 2009, and the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), as amended in 2001. While the ML provisions under the NDPS Act only relate to predicate drug offences, the PMLA applies to a much broader range of predicate offences, including narcotics. With the extension of the list of predicate offences under Schedule A and B and the addition of Schedule C (offences with cross-border implications), since 1 June 2009, India has made a serious effort to bring the criminalisation of money laundering in the PMLA in line with the FATF standards. However,

while there have been significant improvements, the measures that were implemented did not do away with all shortcomings.

12. The new definition of the ML offence in section 3 of the PMLA tries to capture all requisite mental and physical elements of the Convention's ML provision in one overarching sentence, but it does not fully cover the physical concealment and the sole acquisition, possession and use of all relevant proceeds of crime. In addition, the restrictions that come with the predicate offences listed in Schedule B, which carry a threshold of 3 million INR (USD 60 000) before they qualify as predicate offences unless they have "cross-border implications" (Schedule Part C), also constitute a major deficiency. The linkage and interaction of the ML offence with a specific predicate is historically very tight in the Indian AML regime. The concept of stand-alone money laundering is quite strange to the practitioners, who cannot conceive of pursuing money laundering as a *sui generis* autonomous offence. The INR 500 000 (USD 10 000) maximum fine provided for legal persons for transgressions of the PMLA is low, taking into account the possible scale of the ML activity and the financial capacity of most commercial companies.

13. Effectiveness concerns are primarily raised by the total absence of any ML convictions, even though the NDPS Act has been in effect since 2 October 2001 and the PMLA since 1 July 2005. At the time of the on-site visit only six prosecutions were underway, with the first proceedings starting in 2008. This also means case law has yet to be developed on the correct interpretation and implementation of the law, particularly on the evidentiary requirements. The Indian authorities expect a significant improvement in this regard now that (1) the mechanism for sharing of information between the Directorate of Enforcement (ED), which investigates the money laundering offences, and the law enforcement agencies (LEAs), which investigate the predicate offences, has been institutionalised, and (2) the 2009 amendment of the PMLA allows ML investigations to be initiated immediately after the registration of a predicate offence by a LEA, thus facilitating parallel and simultaneous investigations by the ED into the offence of money laundering.

14. With the combined application of sections 15, 17 and 40 of the Unlawful Activities (Prevention) Act, 1967 (UAPA), as amended in 2004 and 2008, India has taken important steps to meet the international standards governing the criminalisation of terrorist financing. The Article 2 requirement of the FT Convention is covered by the criminalisation of the financing of terrorist acts, as defined and listed in section 15 of the UAPA. Also, India is party to all Treaties annexed to the FT Convention, and goes beyond Article 3 of the Convention, which excludes its application to domestic terrorism. Nevertheless, there are a number of technical deficiencies that need to be addressed to bring the offence more in line with the relevant international standards and thereby enhance the effectiveness of the CFT system itself. In particular: the sole (intentional or knowing) financing of the offences covered by the Treaties annexed to the FT Convention should be criminalised as terrorist financing; the UAPA offence of making demands for nuclear material, etc. should be included in the list of terrorist acts; the terrorist acts covered by the UAPA should also target international organisations; the attempt to commit the section 17 and section 40 UAPA offences should be fully covered; and the sole wilful financing of terrorist individuals and terrorist organisations as such, without requiring the specific intention or knowledge that the funds should or are to be used to commit a terrorist act, should be criminalised.

15. The statistics show a fairly frequent application of the relevant criminalisation provisions by the prosecution. Since 2006, 29 FT prosecutions have been initiated on the basis of the UAPA, although the trial is still underway in 28 cases and only one case had ended in a conviction at the time of the on-site

visit<sup>1</sup>. The very length of the court proceedings must be a matter of concern for the authorities, as this does create an impression of ineffectiveness.

16. Although the confiscation regime in India allows for a broad spectrum of seizure and forfeiture measures in the AML/CFT context, it is not fully comprehensive and does show a number of technical deficiencies. The current legislation does not allow for confiscation of the money laundered as subject of the ML offence and is contingent on a conviction for the predicate offence. The definitions of proceeds of crime and property in the PMLA are broad enough to allow for confiscation of property derived directly or indirectly from proceeds of crime relating to a scheduled (predicate) offence, including income, profits and other benefits from the proceeds of crime and also allow for confiscation of corresponding value, regardless of whether the property is held or owned by a criminal or a third party. The UAPA and the NDPS Acts however do not provide for full equivalent value confiscation. The effectiveness of the confiscation provisions under the PMLA, the NDPS Act, and the UAPA, cannot be assessed due to the low numbers of confiscations under these Acts. However, confiscations of proceeds derived from predicate offences are frequent under the Indian Penal Code.

17. India has an adequate system for freezing terrorist related assets which is mainly based on a specific provision in the UAPA that allows for freezing of terrorist funds or other assets of persons and entities designated in accordance with S/RES/1267(1999) and S/RES/1373(2001). India also has mechanisms in place that enable it to freeze assets based on lists from other jurisdictions. When funds are frozen, the affected person has no access to assets necessary for basic expenses but the person can, however, get free legal aid. There are procedures in place through which a person or entity whose funds have been frozen can challenge that measure by having it reviewed by a court. The rights of bona fide third parties are adequately covered.

18. The Ministry of Home Affairs (IS-I of the MHA) has issued instructions and guidance outlining the procedure for the implementation of the UAPA provision to ensure that freezing would take place without delay and without prior notice to the designated individuals/entities. The financial sector regulators (Reserve Bank of India (RBI), Securities and Exchange Board of India (SEBI) and the Insurance Regulatory Development Authority (IRDA)) have issued guidelines to banks, stock exchanges, depositories, intermediaries regulated by SEBI and insurance companies concerning their obligation to take action consistent with India's freezing mechanism. On 22 February 2010 (ten days after the two months following the on-site visit and outside the scope of this mutual evaluation) Indian authorities issued guidance for the DNFBP sector, but to date, there is no indication that any of these instructions are effectively implemented. In addition, with the exception of the financial sector, there are no appropriate measures in place to monitor the compliance with the relevant legislation and guidelines and to impose sanctions for non-compliance.

19. On 18 November 2004, the Government of India established the Financial Intelligence Unit, India (FIU-IND), as an independent body reporting directly to the Economic Intelligence Council (EIC), headed by the Finance Minister. The FIU-IND became operational in March 2006. In addition to being the central national agency for receiving, processing, analysing and disseminating information relating to suspicious financial transactions, the FIU-IND is also responsible for co-ordinating and strengthening efforts of national and international intelligence, investigation and enforcement agencies in pursuing the global effort against money laundering, terrorist financing and related crimes.

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<sup>1</sup> Another 2 terrorist convicts were sentenced by a Delhi court to life imprisonment on 10 March 2010, *i.e.* on the basis of section 17 of the UAPA. It is not known if this conviction is final.

20. The PMLA provides the FIU-IND with the statutory basis to access financial, administrative and law enforcement information from various sources for analysing STRs and processing references from other agencies. The FIU-IND has the same powers as a civil court in matters such as inspection; enforcing the attendance of any person; compelling the production of records; and receiving evidence on affidavits. Every financial institution can be requested to provide additional information, even if the entity has not submitted a STR or CTR to the FIU. The FIU-IND periodically issues a newsletter and publishes an annual report that covers several FIU core areas, but does not contain a specific section on typologies and trends. There is an effectiveness concern because the dissemination of financial information for investigation or action by the State Police is relatively low, compared with the State Police's primary responsibility for investigating and prosecuting FT and ML predicate offences and for confiscating proceeds of crime.

21. On 1 July 2005, the Government of India vested at the federal level the Directorate of Enforcement (ED) with exclusive powers to investigate ML offences under the PMLA, which is a federal statute. In contrast, the investigation and prosecution of FT offences rests primarily with the State Police. However, the UAPA also empowers the Central Bureau of Investigation (CBI) to investigate FT offences. In addition, under the National Investigation Agency Act (NIA Act), 2008, the Central Government has constituted the National Investigation Agency (NIA), a specialised agency for the investigation and prosecution of offences under the Acts mentioned in the schedule to the NIA Act, including the UAPA.

22. Law enforcement authorities in India have an adequate legal basis for using a wide range of investigative techniques, including undercover operations, interceptions and other forms of surveillance. However, the PMLA does not contain a specific provision authorising controlled deliveries.

23. As indicated above, until June 2009, ML prosecutions were all but non-existent, with only two ML prosecution proceedings commenced and no convictions. However, the evaluation team was advised that two key legislative changes in 2009 have cleared the way for the ED to increase significantly the number of active ML investigations and therefore, the effectiveness of its enforcement of ML offences. On 31 December 2009, a total of 798 investigations were registered, including 43 cases involving provisional restraining of proceeds of crime. During the on-site visit, the ED presented cases to illustrate effective investigative powers and capability.

24. To implement SR IX, India uses a combination of a declaration system, pursuant to the Foreign Exchange Management Act (FEMA), which uses Currency Declaration Forms (CDFs), and a disclosure system. The declaration and disclosure regimes apply to currency and Bearer Negotiable Instruments (BNI) carried by incoming and outgoing persons via India's airports and land borders. There are restrictions on sending currency and BNI to and from India through post and cargo. Failure to file a CDF upon entry to India or to disclose the carriage of currency out of India, or filing a false declaration amounts to a breach of the Customs Act and gives rise to a power by customs officers to request and obtain further information with regard to the origin of the currency and its intended use. The number of cash seizures on an annual basis is very low given the very large number of people moving across India's borders; the cash-based nature of India's economy; the number of CDFs declared; and the number of false declarations detected. This raises an issue regarding the effectiveness of the implementation of both the declaration scheme for importing and the disclosure regime for export of currency and BNI's, as required by Special Recommendation IX.

### 3. Preventive Measures – Financial institutions

25. India has implemented preventative measures for both money laundering and terrorist financing through the application of the PMLA and the Prevention of Money Laundering Rules (PML Rules). Chapter IV of the PMLA, which sets the obligations for banking companies, financial institutions and intermediaries, is very brief, containing only four short sections, two of which (on record-keeping and reporting to the FIU) provide for further elaboration through measures that may be prescribed at a later date. Such measures are introduced under section 73 of the PMLA, which provides the Central Government with rule-making powers. Most of the PML Rules became effective on 1 July 2005, when the PMLA itself came into force. However, additional Rules were notified on 24 May 2007 to expand the definition of suspicious transactions and, on 12 November 2009, to expand the scope of the regulatory agencies that can exercise powers under the Rules beyond the core financial sector regulators, and to strengthen the preventive measures. A further, short amendment was made on 12 February 2010, to include, among other things, a general definition of “beneficial owner”. The structure of these Rules is such that they qualify for consideration as “law or regulation” and, therefore, would be a suitable medium for the introduction of the core elements of Recommendations 5, 10 and 13.

26. The AML/CFT requirements are further elaborated in several binding circulars issued by the relevant financial sector regulators, specifying requirements in relation not only to the matters specifically delegated to the RBI, SEBI and IRDA under the PML Rules, but also more broadly. The regulators’ authority to issue specific instructions is provided under Rules 5 and 7 of the PML Rules, and authority to issue more general instructions is contained in each of the regulators’ governing legislation. These circulars fall within the FATF definition of “other enforceable means”. With the exception of commodities futures brokers, all the financial activities required to be covered under the FATF standards are now fully covered by the PMLA; the omission of the commodities futures brokers from the PMLA’s scope is of limited materiality.

27. Overall, there is no evidence that there are systematic failings by financial institutions in India in implementing the broader CDD obligations, but there are several specific issues that give rise to varying degrees of concern:

- Neither the PML Rules nor the various circulars promulgated by the respective regulators provide a practical definition of what constitutes beneficial ownership, creating a clear need for further clarification from the regulators as to what is expected in the whole area of beneficial ownership;
- During the CDD process, considerable reliance is placed on a range of official ID documents available to Indian nationals, but there appear to be concerns among financial institutions and some parts of Government about the underlying reliability of the documents;
- The use of pooled client accounts is common in the accountancy, legal and company secretary professions, but such accounts are covered by strict professional secrecy provisions that prevent the disclosure to the financial institution of the name(s) of the beneficial owner(s) of the funds;
- While the IRDA circular firmly places the obligation on the insurer to oversee the activities of the tied agents, the assessors had some concerns about how this is achieved in the basic customer identification procedures;

- The three regulators have all issued instructions with respect to PEPs, but there are inconsistencies in the scope of what each sector is required to do and, therefore, there can be no assurance that there is a common understanding across the financial industry of the full range of obligations; and
- The provisions in the insurance circulars are much less robust, in that they fail to mention the need to take special measures to prevent the misuse of technological development and offer no material guidance on how to deal with non-face-to-face transactions, even though the range of options for remote account-opening is mentioned.

28. Although there appear to be no provisions formally prohibiting third-party introduced business, the universal view among financial institutions is that such business is not permitted, even where the introduction might come from another part of the group. After careful consideration, the assessors have concluded that, in both regulation and practice, the terms of Recommendation 9 are not applicable in the case of India.

29. There is no financial secrecy law that inhibits the implementation of the FATF Recommendations. The routine reporting requirements imposed on financial institutions are extensive, as are the powers granted to the competent authorities to request, or have access to, such additional information as they may require.

30. India's record-keeping regime largely complies with the requirements of the FATF standard, the February 2010 amendments to the PML Rules having corrected most of the previous deficiencies. However, the gap that existed in the record-keeping requirements before those amendments could potentially have an ongoing impact, since relevant records pertaining to transactions pre-dating February 2010 may be unavailable. In addition, the PMLA and the accompanying Rules still do not clearly require the retention period for customer identification records to run from the termination of the account or business relationship, rather than from the date of the last transaction. This matter is clarified only in OEM and is not addressed by other general or sector-specific laws or regulations.

31. India has established obligations with respect to cross-border wire transfers that appear to largely comply with Special Recommendation VII. India Post, which is authorised to conduct both domestic and cross border wire transfers, is now governed by the PMLA, correcting a significant scope issue that existed before June 2009. However, there remain uncertainties about how effectively India Post is currently implementing its obligations.

32. Financial institutions are required to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose. Securities intermediaries must also give special attention to business relationships and transactions with persons from or in countries that do not or insufficiently apply the FATF Recommendations, but there are no express, direct requirements in law, regulation or OEM obligating banks and insurance companies, or other financial institutions to take similar measures. Apart from the problem of delay, when advisories have been circulated regarding the FATF statements about jurisdictions with material AML/CFT deficiencies, the dissemination mechanism appears to be effective. Although some institutions, intermediaries and regulators might have taken isolated actions with regard to business relationships and transactions from or in such countries, individual actions do not rise to the level of counter-measures.

33. India's STR reporting requirements have been in effect since the PMLA came into force in July 2005; the reporting obligation specifically included terrorist financing, effective 2007. Regardless of the amount of the transaction, the current reporting obligation largely meets the technical requirements of Recommendation 13, including attempted transactions and transactions related to tax matters. The FIU has been operational and receiving STRs since March 2006. The country has made important progress in establishing its STR reporting regime since that time, and the total number of STRs has been rising. Despite the positive efforts of officials in terms of training and outreach, as well as the threat of sanctions for failing to report, STRs filings appear to be extremely low in relation to the size of the financial system, the scale of economic activity and the reported levels of proceeds-generating crimes. This raises significant concerns about the overall effectiveness of the STR reporting regime. In addition, given India's vulnerability to terrorism and the large number of actual terrorist attacks per year, the number of terrorist related STRs also appears to be extremely low, raising further questions about the implementation and effectiveness of the STR reporting obligation.

34. Section 14 of the PMLA provides covered institutions and their officers with protection from civil liability with respect to any reports filed with the FIU. Directors or employees are not expressly covered by the PMLA's safe harbour provision. The PMLA contains no protection from criminal liability with respect to any reports filed with the FIU. However, protection from criminal liability is provided by a provision in the Indian Penal Code. The 12 November 2009 amendment to the PML Rules requires that covered entities and their employees keep the fact of furnishing information on suspicious transactions strictly confidential. As formulated, the tipping-off provision is sufficiently broad that it would cover tipping-off before, during and after the submission of an STR.

35. The PMLA and the PML Rules require covered institutions to report to the FIU all cash transactions greater than INR 1 million (USD 20 000) or its equivalent in foreign currency, including all series of integrally-connected cash transactions occurring within a month that together exceed the INR 1 million threshold. Currency transaction reports (CTRs) must be filed on a monthly basis. RBI, SEBI and IRDA circulars provide instructions on the procedure and manner of furnishing CTRs to the FIU.

36. The PML Rules require all covered institutions to establish and maintain internal AML/CFT procedures, policies and controls that cover CDD and record retention, and to communicate these to their employees. While the PML Rules do not expressly require internal AML/CFT procedures, policies and controls to address the detection and reporting of unusual and suspicious transactions, they do require the appointment of a Principal Officer to handle the reporting function, which implies a need for procedures, policies and controls addressing the identification and reporting of unusual and suspicious transactions. In any event, regulatory obligations in the banking, securities, and insurance sectors require covered institutions to establish and maintain effective risk-based AML policies and procedures regarding: customer acceptance policy; customer identification procedures; transaction monitoring; risk management and record retention. While the guidance in the securities sector satisfies the requirements of Recommendation 15, the guidance for the banking sector and insurance sector has some technical shortcomings. The application of the PMLA to India Post, including AML/CFT training and programmatic requirements, has not yet been effectively implemented. India has fully implemented the requirements of Recommendation 22 with respect to foreign branches and subsidiaries of relevant banks, securities intermediaries and authorised money changers. The Recommendation is not applicable to India's insurance sector, since insurance companies are not legally permitted to conduct business overseas through branches or subsidiaries.

37. Although there are no specific provisions in the Banking Regulation Act or elsewhere prohibiting the establishment of shell banks, the requirements for establishing a bank set forth in the Banking Act and related regulations, together with the licensing process for banks established by the RBI, ensure that shell banks do not operate in India. The RBI has issued the necessary guidance to financial institutions in this regard, but the guidance should be expanded further to require financial institutions to satisfy themselves that they are not entering into relationships with shell banks or that their foreign respondent institutions do not permit their accounts to be used by shell banks.

38. While the Central Government has extensive powers in terms of the appointment and dismissal of senior personnel in the regulatory authorities and can also give directions to the authorities, there is no evidence that the government interferes with the day-to-day operations of the agencies, which appear to have broad operational independence in terms of budgetary resources and regulatory procedures. The licensing provisions appear to be applied rigorously by the individual regulators, with due concentration given to the fitness and probity of the management. However, the scope of the regulators' legal duty to approve subsequent managerial appointments does not generally extend to non-executive directors, and fit and proper tests are generally applied at various stages after appointments have been made. This practice does not meet the FATF standard, which requires that the supervisor applies fit and proper criteria prior to appointment.

39. All the regulators have very extensive powers of inspections and information-gathering, which they use routinely. Information is obtained through regular reporting, on-site examinations and special instructions, and the scope of the information that is routinely requested is very broad. However, there is no established supervisory regime covering the banking operations of India Post, which holds a very large number of small accounts. The penalties for failing to provide information or to provide false or misleading information are generally severe. All the regulators routinely carry out inspections of the institutions for which they are responsible. However, the assessors are concerned that AML/CFT risks are not being given sufficient weight in identifying which institutions should be inspected (particularly with regard to the RBI), and what degree of attention should be paid to the particular AML/CFT risks in the inspections. The legal provisions and the data on the sanctions applied by the regulators for AML/CFT deficiencies clearly indicate that the framework does not provide for effective, dissuasive or proportionate measures.

40. Money service businesses and foreign exchange houses, which facilitate cross border money transfers, are required to be licensed or authorised by the RBI under the FEMA and the Payment and Settlement Systems Act (PSSA). The MVT sector was only brought into the AML/CFT regime with effect of 1 June 2009, and at the time of the on-site visit, there was little evidence on which to base an assessment of the effectiveness of implementation. While legitimate businesses are captured under the FEMA and PSSA legal provisions, a sizeable and demonstrated informal sector is operating illegally, although the exact scale of the problem is not known. The Directorate of Enforcement (ED), which is the primary enforcement authority dealing with informal remittances has identified a significant number of breaches of the FEMA provisions relating to Hawala-type transactions.

#### **4. Preventive Measures – Designated Non-Financial Businesses and Professions**

41. DNFBPs conducting business in India include casinos, lawyers, real estate agents, accountants, company secretaries, gold dealers, and dealers in precious metals and stones. There is no free-standing profession of trust and company service providers, but these services are provided by the other

professionals, especially accountants and company secretaries. With the exception of casinos<sup>2</sup> (which only operate in the State of Goa), these businesses are not subject to the PMLA provisions. As part of the process of deciding when and if to include the remaining DNFBP sectors within the provisions of the PMLA, the authorities have undertaken a formal risk assessment. Based on its results, the authorities have proposed a number of measures to address the perceived risks in respect of each of the sectors, but none currently involves bringing them within the PMLA.

42. The June 2009 amendments to the PMLA included casinos within the definition of financial institutions, making all the PMLA's provisions and accompanying Rules applicable to this sector. The Home Department of the Government of Goa issued enforceable guidelines to this sector on 24 December 2009, but they add nothing beyond what the PMLA and the Rules themselves require. At the time of the on-site visit, the casino sector had been subject to the PMLA for less than six months. Therefore, there was no real basis for assessing the effectiveness of implementation, but, given its structure, the sector currently appears to pose a relatively low risk for money laundering.

## **5. Legal Persons and Arrangements & Non-Profit Organisations**

43. India's corporate registry and information collection system does not focus on obtaining information relating to the beneficial owner or controller of companies or limited liability partnerships. The information maintained (including changes in information) relates almost solely to persons and other corporations that are the immediate owners or controllers of a company. In addition, there is the possibility that nominee directors act on behalf, and at the direction, of an undisclosed principal in the operation of a company. Hindu undivided families (HUF) are part of traditional Hindu customary law, and are legal entities comprised of members of a nuclear or extended family. HUFs are unique under Indian law and have some elements in common with a trust or partnership, but in other respects are different. A HUF can hold assets, such as company shares, securities, jewellery, and moveable and immovable property. HUFs also present challenges for the identification of beneficial ownership of common assets; there are no specific requirements to ensure that beneficial ownership information is collected and maintained. Accordingly, there is no assurance that competent authorities have access to accurate and current information on the ultimate beneficial owners and controllers of all legal persons on a timely basis. Bearer shares are not permitted under Indian legislation. The Companies Act permits ownership of public companies through bearer share warrants, but there appear to be adequate safeguards in place to ensure that beneficial owners of these instruments are identified.

44. India is a common law jurisdiction that has a system of trust law. There are three general categories of trusts in India: private trusts (to benefit selected persons); charitable or public trusts, including religious trusts (to benefit the public at large); and wakfs<sup>3</sup> (for performing certain Islamic religious activities). Although not required by Indian law for private trusts, trust instruments (such as a trust deed) may be registered, but a written instrument is not a strict requirement. Indian authorities advised that no statistics are available on the number of private trusts in India, including those that voluntarily register. There are a variety of registration requirements for charitable or public trusts and wakfs in India. Indian authorities indicated that no statistics are available on the number of charitable or public trusts and

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<sup>2</sup> Comprising both ship-based and land-based facilities. Internet casinos do not exist in India.

<sup>3</sup> A "wakf" is a charitable Islamic trust that involves "the permanent dedication by a person professing Islam of any moveable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable".

wakfs. While India has some robust systems in place for public trusts (e.g., record-keeping and maintenance of records, including financial records), measures relating to the collection of beneficial ownership information for private trusts is limited. Indian law does not require those who perform trust services (primarily lawyers) to obtain, verify, or retain records on the beneficial ownership and/or control of trusts, or to retain copies of trust instruments. Consequently, there are no measures that guarantee that the competent authorities can obtain or access adequate and accurate information concerning the beneficial owners of private trusts in a timely fashion.

45. The NPO sector plays a vital social role in Indian society. India does not maintain a unified database for NPOs; each registering authority maintains its own database. Statistics on the number of registered NPOs under the various statutes are not generally available in India. However, by government estimates, there are approximately two million foreign and domestic NPOs operating in India. India has not yet undertaken a review of its NPO sector, as envisaged by the FATF standards. There has been no effective outreach to the NPO sector by the Government of India or by State Governments in relation to risks and vulnerabilities of the sector to terrorist financing abuse. Except under the Income Tax Act and the Foreign Contribution (Regulation) Act (FCRA), the NPO sector is subject to limited or no monitoring and supervision, but the NPOs registered under these Acts only account for a small number of entities within the sector. While Indian officials indicated that they believe the FT risk in the NPO sector is small, it is difficult to understand how they can maintain this confidence, in light of the fact that they were unable to state the size, wealth and activities of the majority of NPOs in India.

## 6. National and International Co-operation

46. There are several mechanisms in place to ensure domestic co-operation. Inter-agency co-ordination and co-operation appears to be imbedded in the Indian system, having been mandated by the Central Government, not just for AML purposes, but for a range of other activities, including national security. In terms of parallel ML and predicate offence investigations, the assessment team received assurances from the ED about its ability to gather evidence and work alongside the agency responsible for the predicate offence investigation. The increase in the number of registered cases since 2009 certainly supports this position. To date, however, there are only six prosecutions for money laundering and no convictions. Until there are convictions that illustrate the ability to gather evidence effectively and prosecute money laundering in separate proceedings, the effectiveness of India's domestic co-ordination and co-operation mechanisms cannot be demonstrated.

47. India has not yet ratified the Palermo Convention<sup>4</sup>. Since, as mentioned above, there are several technical shortcomings with regard to the criminalisation of ML and FT, in addition to deficiencies in the implementation of the preventive regime; India's AML/CFT system is not fully in line with the relevant Conventions.

48. India provides mutual legal assistance on the basis of Mutual Legal Assistance (MLA) Treaties with contracting States, treaties containing MLA provisions, and requests for assistance, based on reciprocity. There are few conditions or restrictions on providing MLA. A request is not refused on the sole ground that the offence involves fiscal matters or that it involves secrecy or confidential requirements of financial institutions or DNFBPs. However, India's ability to provide MLA in relation to coercive

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<sup>4</sup> The Union Cabinet of India in its meeting held on the 19 March 2010 has approved the ratification of the Palermo Convention. India is in the process to complete the necessary formalities.

measures is limited by the deficiencies in the criminalisation of ML/FT and the domestic framework of confiscation and provisional measures. The same problems occur with dual criminality requirements in relation to MLA. Some countries reported problems with international co-operation via formal legal channels with India. These problems relate to the delay in the Indian authorities' response when providing MLA and failure to provide MLA at all.

49. India has a comprehensive and basically sound extradition regime. The procedures for extradition are clear and straightforward. Both the ML and FT offences meet the minimum punishment threshold and are extraditable offences. The strict application of the dual criminality principle, however, negatively impacts on India's legal capacity to extradite for ML offences. Terrorist financing and terrorist acts are also extraditable offences, but the deficiencies in the definitions and criminalisation of FT may affect the ability to extradite when the dual criminality test is applied. India can extradite its own nationals. Where another country with which India has an extradition agreement bars the extradition of its own citizens, India may do the same. If a criminal is not extradited, he can be prosecuted in India instead. As with MLA, some countries have encountered problems related to the Indian authorities' delay in providing extradition assistance, if extradition takes place, and to refusals to extradite at all. This raises concerns about the effectiveness of the extradition system in place in India.

50. India has implemented effective measures to facilitate international co-operation by the FIU, law enforcement, and customs authorities in contexts other than the formal MLA process, and generally provides a wide range of such co-operation in a rapid, constructive, and effective manner. India does not refuse co-operation on the ground that offences also involve fiscal matters. Adequate precautions are in place to ensure confidentiality of information and data protection. However, international cooperation in relation to AML/CFT is impeded in the financial sector, because the financial sector supervisors (with the partial exception of the Securities Exchange Board of India) currently lack a specific legal basis for exchanging confidential information with supervisors in other countries. For the most part, information exchange between these agencies and their foreign counterparts is restricted to high-level information and does not extend to customer-specific information. However, the authorities have indicated that the agencies work on the principle that they are able to take whatever measures they consider appropriate to fulfil their general objectives, unless they are explicitly prohibited by law. All three agencies have indicated that they have developed procedures that permit confidential information to be exchanged.

## **7. Resources and Statistics**

51. The majority of the competent authorities appear to be adequately resourced and structured to perform their current designated functions effectively. However, although IRDA's staff strength has been growing in pace with the regulatory/supervisory requirements of the regulated industry, and it uses technology to augment its human resources in conducting its regulatory/supervisory activities, IRDA recognises the need to expand its pool of qualified experts in order to effectively supervise the sector and to keep pace with the developments and growth in the industry. In addition, uncertainties remain about the future regulatory regime for the banking activities of India Post.

52. India maintains comprehensive statistics regarding STRs received, analysed, and disseminated, as well as statistics relating to money laundering and terrorist financing investigations, prosecutions and convictions. India also keeps comprehensive statistics of mutual legal assistance and extradition matters. However, the Indian customs authorities do not keep statistics regarding the number of Currency

Declaration Forms completed at land borders and the detection of smuggling of currency and BNI through mail and containerised cargo.

**TABLE 1: RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS**

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (na).

Forty Recommendations	Rating	Summary of factors underlying rating <sup>5</sup>
<b>Legal system</b>		
1. ML offence	PC	<ul style="list-style-type: none"> <li>• (High) monetary threshold condition for most ML predicates.</li> <li>• ML provision does not cover physical concealment of criminal proceeds.</li> <li>• ML provision does not cover the sole knowing acquisition, possession and use of criminal proceeds.</li> <li>• Effectiveness issues: <ul style="list-style-type: none"> <li>○ the absence of any conviction for ML;</li> <li>○ the high evidentiary standard untested before the courts, particularly in respect of the proof of the foreign predicate offence.</li> </ul> </li> </ul>
2. ML offence – mental element and corporate liability	LC	<ul style="list-style-type: none"> <li>• Inadequate sanctions for legal persons committing the ML offence.</li> <li>• Effectiveness issues: <ul style="list-style-type: none"> <li>○ the total absence of ML convictions;</li> <li>○ the interpretation of making corporate criminal liability contingent on prosecution of a natural person.</li> </ul> </li> </ul>
3. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> <li>• Confiscation of property laundered is not covered in the relevant legislation and depends on a conviction for a scheduled predicate offence.</li> <li>• The UAPA does not allow for confiscation of intended instrumentalities used in terrorist acts or funds collected to be used by terrorist individuals.</li> <li>• The UAPA and NDPS Act do not allow for property of corresponding value to be confiscated.</li> <li>• There are no clear provisions and procedures on how to deal with the assets in case of criminal proceedings when the defendant has died.</li> <li>• Effectiveness issue: <ul style="list-style-type: none"> <li>○ concerns based on the limited number of confiscations in relation to ML/FT offences.</li> </ul> </li> </ul>
<b>Preventive measures</b>		
4. Secrecy laws consistent with the Recommendations	C	This Recommendation is fully observed.
5. Customer due diligence	PC	<ul style="list-style-type: none"> <li>• Scope limitation: <ul style="list-style-type: none"> <li>○ the PMLA does not apply to commodities futures brokers.</li> </ul> </li> <li>• No provisions in law or regulation that require CDD to be renewed when there is a suspicion of ML/FT or when there are doubts about</li> </ul>

<sup>5</sup> These factors are only required to be set out when the rating is less than Compliant.

Forty Recommendations	Rating	Summary of factors underlying rating <sup>5</sup>
		<p>the veracity or adequacy of previously obtained customer identification data.</p> <ul style="list-style-type: none"> <li>• No provisions in law or regulation that require an institution proactively to determine whether a customer is acting on behalf of another person.</li> <li>• Lack of clarity and divergent practices in relation to the identification and verification of beneficial ownership.</li> <li>• Professional secrecy provisions prevent identification of beneficial owners of client accounts.</li> <li>• No obligation in IRDA circular to understand ownership and control structures of legal persons.</li> <li>• The RBI and IRDA circulars do not require a specific override of the procedures for low risk customers when there are suspicions of ML/FT, or where factors suggest that the customer poses a higher risk.</li> <li>• No explicit requirement in the RBI and IRDA circulars to consider filing an STR when the institution can no longer be satisfied that it knows the true identity of the customer.</li> <li>• Term life policies exempt from AML requirements at stage of writing the policy.</li> <li>• Implementation issue: <ul style="list-style-type: none"> <li>○ recent introduction of the Authorised Persons within the PMLA (including India Post) results in questions over extent of implementation.</li> </ul> </li> </ul>
6. Politically exposed persons	PC	<ul style="list-style-type: none"> <li>• Scope limitation: <ul style="list-style-type: none"> <li>○ the PMLA does not apply to commodities futures brokers.</li> </ul> </li> <li>• No requirement in the RBI and SEBI circulars to implement ongoing risk management procedures for identifying PEPs.</li> <li>• No requirement in the RBI circulars to apply enhanced measures to close relatives of PEPs.</li> <li>• No obligation in the IRDA circular to apply enhanced measures to entities where the beneficial owner of the customer is a PEP.</li> </ul>
7. Correspondent banking	LC	<ul style="list-style-type: none"> <li>• Effectiveness issue: <ul style="list-style-type: none"> <li>○ no evidence provided that implementation is effective.</li> </ul> </li> </ul>
8. New technologies & non face-to-face business	LC	<ul style="list-style-type: none"> <li>• Inadequate provisions in the IRDA circulars to address the issues of technological developments and non-face-to-face business.</li> </ul>
9. Third parties and introducers	N/A	This Recommendation is not applicable in India.
10. Record keeping	LC	<ul style="list-style-type: none"> <li>• Scope limitation: <ul style="list-style-type: none"> <li>○ the PMLA does not apply to commodities futures brokers.</li> </ul> </li> <li>• The requirement that customer identification records need to be maintained for at least five years from the termination of the account or business relationship is not contained in law or regulation.</li> <li>• Sector specific circulars have exempted some insurance products, including term life policies, from AML requirements.</li> </ul>
11. Unusual transactions	LC	<ul style="list-style-type: none"> <li>• Scope limitation: <ul style="list-style-type: none"> <li>○ the PMLA does not apply to commodities futures brokers.</li> </ul> </li> <li>• Effectiveness issue: <ul style="list-style-type: none"> <li>○ Authorised Persons and Payments Service Operators, including India Post, are only covered by the PMLA as of June 2009, making it too soon to assess effectiveness.</li> </ul> </li> </ul>
12. DNFBP – R.5, 6, 8-11	NC	<ul style="list-style-type: none"> <li>• Scope limitation: <ul style="list-style-type: none"> <li>○ the PMLA does not apply to any of the DNFBP sectors, with the exception of casinos.</li> </ul> </li> <li>• Only the basic requirements of the PMLA and the accompanying Rules apply to casinos, and these do not address much of the detail required under the FATF standards.</li> <li>• Effectiveness issue: <ul style="list-style-type: none"> <li>○ extension of the PMLA to the casino sector is very recent and there is insufficient evidence of effective implementation.</li> </ul> </li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating <sup>5</sup>
13. Suspicious transaction reporting	PC	<ul style="list-style-type: none"> <li>• Scope limitation: <ul style="list-style-type: none"> <li>○ the PMLA does not apply to commodities futures brokers.</li> </ul> </li> <li>• There is no definition of “activities of terrorism” in the PMLA, leaving it to reporting institutions to interpret the scope of the STR reporting requirement with respect to the financing of the activities of terrorism.</li> <li>• Effectiveness issue: <ul style="list-style-type: none"> <li>○ concerns about the low number of STRs filed in relation to ML and FT (especially in relation to the banking sector).</li> </ul> </li> </ul>
14. Protection & no tipping-off	LC	<ul style="list-style-type: none"> <li>• Directors or employees are not expressly covered by the PMLA’s safe harbour provision.</li> </ul>
15. Internal controls, compliance & audit	LC	<ul style="list-style-type: none"> <li>• The role of the principal officer in the banking sector (except for AMC’s) is defined in terms simply of STR and other reporting, and does not extend to overall compliance.</li> <li>• There is no express requirement that the audit function in the securities sector should be adequately resourced, and the resource issue is not expressly addressed in insurance sector.</li> </ul>
16. DNFBP – R.13-15 & 21	NC	<ul style="list-style-type: none"> <li>• Scope limitation: <ul style="list-style-type: none"> <li>○ the PMLA does not apply to any of the DNFBP sectors, with the exception of casinos.</li> </ul> </li> <li>• Only the basic requirements of the PMLA and the accompanying rules apply to casinos, and these do not address much of the detail required under the FATF standards.</li> <li>• Implementation issue: <ul style="list-style-type: none"> <li>○ extension of the PMLA to the casino sector is very recent and there is insufficient evidence of effective implementation.</li> </ul> </li> </ul>
17. Sanctions	PC	<ul style="list-style-type: none"> <li>• Scope limitation: <ul style="list-style-type: none"> <li>○ the PMLA does not apply to commodities futures brokers.</li> </ul> </li> <li>• Sanctions applied for AML/CFT deficiencies across all sectors are not effective, proportionate or dissuasive.</li> </ul>
18. Shell banks	LC	<ul style="list-style-type: none"> <li>• There is no guidance for financial institutions regarding measures that should be in place to satisfy themselves that they are not entering into relationships with shell banks or that their foreign respondent institutions do not permit their accounts to be used by shell banks.</li> </ul>
19. Other forms of reporting	C	This Recommendation is fully observed.
20. Other NFBP & secure transaction techniques	LC	<ul style="list-style-type: none"> <li>• No consideration given to extending the AML/CFT provisions to other than DNFBPs.</li> </ul>
21. Special attention for higher risk countries	PC	<ul style="list-style-type: none"> <li>• Scope limitation: <ul style="list-style-type: none"> <li>○ the PMLA does not apply to commodities futures brokers.</li> </ul> </li> <li>• There are no clear and direct requirements for the institutions in the banking and insurance sectors to pay special attention to both business relationships and transactions with persons from or in countries that do not, or insufficiently, apply the FATF Recommendations.</li> <li>• Financial institutions are not expressly required to examine the background and purpose of transactions with persons from or in countries that do not adequately apply the FATF standards.</li> <li>• India has no clear legal authority that enables it to apply a range of appropriate counter-measures in the securities or insurance sectors where a country continues not to apply or insufficiently applies the FATF Recommendations.</li> <li>• Effectiveness issue: <ul style="list-style-type: none"> <li>○ there is a concern that covered institutions do not look beyond the FATF statements, and that they make little use of publicly available information when identifying countries which do not or insufficiently apply the FATF Recommendations.</li> </ul> </li> </ul>
22. Foreign branches & subsidiaries	C	<ul style="list-style-type: none"> <li>• This Recommendation is fully observed.</li> </ul>
23. Regulation, supervision and	PC	<ul style="list-style-type: none"> <li>• Scope limitation:</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating <sup>5</sup>
monitoring		<ul style="list-style-type: none"> <li>○ the PMLA does not apply to commodities futures brokers.</li> <li>● Fit and proper testing by regulators prior to appointment does not apply to Non-executive Directors.</li> <li>● Effectiveness issues: <ul style="list-style-type: none"> <li>○ Authorised Persons and Payment Service Providers, including India Post, have only recently been brought under the PMLA, and hence it is too early to assess effectiveness;</li> <li>○ no inspections or ongoing monitoring by the Ministry of Finance of India Post as yet;</li> <li>○ concerns that the regulators' procedures for targeting on-site inspections do not adequately take into account the AML/CFT risks of individual institutions.</li> </ul> </li> </ul>
24. DNFBP - regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> <li>● Scope limitation: <ul style="list-style-type: none"> <li>○ the PMLA does not apply to any of the DNFBP sectors, with the exception of casinos.</li> </ul> </li> <li>● With respect to the casino sector: <ul style="list-style-type: none"> <li>○ No statutory "fit and proper" tests for owners, operators and managers.</li> <li>○ Insufficient range of sanctions available to the regulator to permit a proportionate response to identified deficiencies.</li> <li>○ Doubts about the statutory authority of the regulator to enforce compliance with the PML Rules and its own AML/CFT circular.</li> <li>○ Lack of dissuasive sanctions for obstructing the regulator's right to inspect.</li> </ul> </li> </ul>
25. Guidelines & Feedback	LC	<ul style="list-style-type: none"> <li>● Written guidance provided to the casino sector to assist with the implementation of the PML rules is limited in scope.</li> </ul>
<b>Institutional and other measures</b>		
26. The FIU	LC	<ul style="list-style-type: none"> <li>● Effectiveness issue: <ul style="list-style-type: none"> <li>○ the dissemination of financial information for investigation or action by the State Police is relatively low in comparison with the State Police's primary responsibility for the investigation and prosecution of FT and predicate offences to money laundering, and for confiscation of proceeds of crime.</li> </ul> </li> <li>● Public information released by the FIU-IND does not include information on typologies and trends in ML and FT cases and related predicate offences.</li> </ul>
27. Law enforcement authorities	LC	<ul style="list-style-type: none"> <li>● Effectiveness issue: <ul style="list-style-type: none"> <li>○ India has yet to achieve ML convictions.</li> </ul> </li> </ul>
28. Powers of competent authorities	C	This Recommendation is fully observed.
29. Supervisors	LC	<ul style="list-style-type: none"> <li>● Scope limitation: <ul style="list-style-type: none"> <li>○ the PMLA does not apply to commodities futures brokers.</li> </ul> </li> <li>● Financial sanctions applied for AML/CFT deficiencies across all sectors are not effective, proportionate or dissuasive.</li> <li>● There is no established supervisory regime covering the banking operations of India Post.</li> </ul>
30. Resources, integrity and training	LC	<ul style="list-style-type: none"> <li>● Concerns about the adequacy of staffing levels in the IRDA.</li> <li>● Uncertainties about the future regulatory regime for the banking activities of India Post.</li> </ul>
31. National co-operation	LC	<ul style="list-style-type: none"> <li>● Effectiveness issue: <ul style="list-style-type: none"> <li>○ the effectiveness of the inter-agency co-ordination and co-operation has not yet been demonstrated.</li> </ul> </li> </ul>
32. Statistics	LC	<ul style="list-style-type: none"> <li>● No statistics available regarding the number of CDFs collected at Land Customs Stations and detections of smuggling of currency and BNI through the mail and containerised cargo.</li> </ul>
33. Legal persons – beneficial owners	PC	<ul style="list-style-type: none"> <li>● Information on additional beneficial ownership of legal persons beyond the immediate beneficial owner is not required to be</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating <sup>5</sup>
		<p>collected by either the corporate registry, within corporate records held by legal persons, or by company secretaries.</p> <ul style="list-style-type: none"> <li>• There are no measures in place to prevent the unlawful use of HUFs in relation to ML or FT – for instance, HUFs are not required to maintain information on beneficial ownership.</li> <li>• While law enforcement and other authorities have sufficient powers to access current and accurate information on beneficial ownership of legal persons (in particular foreign companies), this is not possible in a timely fashion.</li> </ul>
34. Legal arrangements – beneficial owners	PC	<ul style="list-style-type: none"> <li>• There is no requirement to obtain, verify and retain adequate, accurate and current information on the beneficial ownership and control of private trusts.</li> <li>• That are no measures in place that guarantee that minimal adequate and accurate information concerning the beneficial owners of private trusts can be obtained or accessed by the competent authorities in a timely fashion.</li> </ul>
<b>International Co-operation</b>		
35. Conventions	PC	<ul style="list-style-type: none"> <li>• Palermo TOC Convention not ratified.</li> <li>• Criminalisation of ML not in line with the Vienna and TOC Conventions (concealment, acquisition, possession and use).</li> <li>• Restricted ML seizure/confiscation regime.</li> <li>• Inadequate sanctions for the ML offence in the NDPS Act and the sanctions for legal persons in the PMLA.</li> <li>• Deficiencies in the regulatory and supervisory regime.</li> <li>• Effectiveness issue: <ul style="list-style-type: none"> <li>◦ absence of convictions.</li> </ul> </li> </ul>
36. Mutual legal assistance (MLA)	LC	<ul style="list-style-type: none"> <li>• MLA in coercive actions may be hampered as a result of domestic legal deficiencies (dual criminality).</li> <li>• Effectiveness issue: <ul style="list-style-type: none"> <li>◦ India does not provide MLA in a timely manner.</li> </ul> </li> </ul>
37. Dual criminality	LC	<ul style="list-style-type: none"> <li>• MLA in coercive actions may be hampered as a result of domestic legal deficiencies (dual criminality).</li> <li>• Limitations in the criminalisation of ML may limit the possibilities for extradition (dual criminality).</li> </ul>
38. MLA on confiscation and freezing	LC	<ul style="list-style-type: none"> <li>• Deficiencies in confiscation regime of laundered property, instrumentalities and proceeds of money laundering affect the MLA capability.</li> </ul>
39. Extradition	LC	<ul style="list-style-type: none"> <li>• Limitations in the criminalisation of ML may limit the possibilities for extradition (dual criminality).</li> <li>• Effectiveness issue: <ul style="list-style-type: none"> <li>◦ India does not provide extradition in a timely manner.</li> </ul> </li> </ul>
40. Other forms of co-operation	LC	<ul style="list-style-type: none"> <li>• There are no clear and effective gateways and mechanisms in place for the RBI and IRDA that allow for prompt and constructive exchanges of confidential information with foreign counterparts.</li> </ul>

Nine Special Recommendations	Rating	Summary of factors underlying rating
SR.I Implement UN instruments	PC	<ul style="list-style-type: none"> <li>• FT criminalisation not in line with the FT Convention (FT offences, international organisations, attempt).</li> <li>• Confiscation of terrorist funds is deficient.</li> <li>• UN RES are not fully implemented.</li> <li>• Effectiveness issue: <ul style="list-style-type: none"> <li>◦ concerns regarding preventive regime and judicial follow-up in terms of final convictions.</li> </ul> </li> </ul>
SR.II Criminalise terrorist financing	PC	<ul style="list-style-type: none"> <li>• FT provisions not in line with the FT Convention: <ul style="list-style-type: none"> <li>◦ criminalisation of Treaty offences not consistent with art. 2.1(a);</li> <li>◦ not all Treaty offences included in the list of terrorist acts;</li> <li>◦ international organisations not covered;</li> </ul> </li> </ul>

Nine Special Recommendations	Rating	Summary of factors underlying rating
		<ul style="list-style-type: none"> <li>○ FT attempt is not fully covered.</li> <li>• No criminalisation of sole knowing funding of terrorist individuals and terrorist organisations.</li> <li>• Effectiveness issue:               <ul style="list-style-type: none"> <li>○ minimal number of convictions.</li> </ul> </li> </ul>
SR.III Freeze and confiscate terrorist assets	LC	<ul style="list-style-type: none"> <li>• There is no indication of effective implementation of the guidelines recently issued for the DNFBP sector.</li> <li>• There is no monitoring mechanism in place to ensure compliance with the freezing mechanism outside the financial sector.</li> <li>• There are no procedures in place that allow affected persons to have access to funds for basic expenses.</li> </ul>
SR.IV Suspicious transaction reporting	PC	<ul style="list-style-type: none"> <li>• Scope limitation:               <ul style="list-style-type: none"> <li>○ the PMLA does not apply to commodities futures brokers.</li> </ul> </li> <li>• There is no definition of “activities of terrorism” in the PMLA, leaving it to reporting institutions to interpret the scope of the STR reporting requirement with respect to the financing of the activities of terrorism.</li> <li>• Effectiveness issue:               <ul style="list-style-type: none"> <li>○ concerns about the extremely low number of STRs filed in relation to FT in comparison with India’s vulnerability with regard to terrorism;</li> </ul> </li> </ul>
SR.V International co-operation	LC	<ul style="list-style-type: none"> <li>• MLA in coercive actions may be hampered as a result of domestic legal deficiencies (dual criminality).</li> <li>• Deficiencies in the confiscation regime related to FT affect the MLA capability.</li> <li>• Deficiencies in the criminalisation of FT may affect the extradition possibilities.</li> <li>• There are no clear and effective gateways and mechanisms in place for the RBI and IRDA that allow for prompt and constructive exchanges of confidential information with foreign counterparts.</li> </ul>
SR.VI AML requirements for money/value transfer services	LC	<ul style="list-style-type: none"> <li>• The application of the FATF Recommendations to MVTs providers suffers from the same deficiencies as identified in relation to the rest of the financial sector (see sections 3.1 to 3.10 of this report).</li> </ul>
SR. VII Wire transfer rules	LC	<ul style="list-style-type: none"> <li>• Effectiveness issue:               <ul style="list-style-type: none"> <li>○ the PMLA did not apply to India Post, which is authorised to conduct both domestic and cross border wire transfers, until June 2009.</li> </ul> </li> </ul>
SR.VIII Non-profit organisations	NC	<ul style="list-style-type: none"> <li>• There is no review undertaken of the adequacy of domestic laws in the NPO sector.</li> <li>• There are no periodic reassessments undertaken by reviewing new information on the sector’s potential vulnerabilities to terrorist activities.</li> <li>• There is no outreach to the NPO sector with a view to protecting the sector from abuse for terrorist financing takes place.</li> <li>• There is only limited information available on the identity of person(s) who own, control or direct their activities, including senior officers, board members and trustees.</li> <li>• India has not demonstrated that measures are in place to sanction violations of oversight measures or rules by NPOs or persons acting on behalf of NPOs for NPOs other than those registered under the Income Tax Act and under the FCRA.</li> <li>• The majority of NPOs are not registered as such with government agencies, including the tax authorities.</li> </ul>
SR.IX Cross Border Declaration & Disclosure	PC	<ul style="list-style-type: none"> <li>• Effectiveness issue:               <ul style="list-style-type: none"> <li>○ concerns based on the low number of currency declarations, the detected false declarations, and the cash seizures, including seizures of unaccompanied cash or BNIs.</li> </ul> </li> </ul>

Nine Special Recommendations	Rating	Summary of factors underlying rating
		<ul style="list-style-type: none"> <li>• The Cross border declaration/disclosure systems appear to be applied only to currency and BNI via airports, with no information on movements of currency and BNI via land borders or unaccompanied movement of currency through postal and cargo systems.</li> <li>• The shortcomings identified with regard to the attachment, confiscation and forfeiture provisions discussed in Section 2.3 and to the freezing, seizing and attachment of property related to terrorist financing (as discussed in Section 2.4) have a negative impact on Special Recommendation IX.</li> </ul>