



ASIA/PACIFIC GROUP ON MONEY
LAUNDERING



FINANCIAL ACTION TASK FORCE

Mutual Evaluation Report

Executive Summary

Anti-Money Laundering and Combating the
Financing of Terrorism

KOREA

26 June 2009

Korea is a member of the Asia/Pacific Group on Money Laundering (APG) and an observer member of the Financial Action Task Force (FATF). This evaluation was conducted by the FATF and the APG and was adopted as a 3rd mutual evaluation by the FATF Plenary on 26 June 2009 and endorsed by the APG during its annual meeting on 10 July 2009.

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EXECUTIVE SUMMARY

1. This report summarises the anti-money laundering (AML)/combating the financing of terrorism (CFT) measures in place in the Republic of Korea (Korea) as of the time of the on-site visit (3-14 November 2008), and shortly thereafter. The report describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Korea'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

- Korea has demonstrated political commitment, and commitment by government agencies and the private sector, to anti-money laundering (AML) efforts since the mid 1990s. It has participated actively within the Asia/Pacific Group on Money Laundering and the Egmont Group of Financial Intelligence Units. Korea's counter-terrorist financing (CFT) system is new, coming into effect in December 2008, and it could be further strengthened.
- Korea does not have structured organised crime syndicates, but rather has 'brotherhoods' which are primarily involved in online gambling, loan-sharking, extortion and prostitution. The most prevalent offences in Korea are fraud; theft; forgery; and, copyright and trademark violations. The most common money laundering (ML) techniques involve cash transactions and accounts in other persons' names. Given the prevalence of cash transactions in ML activities, in 2006 the government implemented a cash transaction reporting system.
- There have been no confirmed cases of terrorist financing (TF) in Korea to date. However, authorities recognise that Korea might be attractive to persons wishing to move funds or goods through Korea in order to make them appear legitimate.
- The ML offences are largely in line with international requirements but penalties available and applied are not sufficiently effective, proportionate or dissuasive and there is a lack of focus on ML investigations. The confiscation regime is sound and it applies to all crimes but, given the size of the economy and the risk of money being laundered in Korea, the number of confiscations each year and the value confiscated is low.
- The Korea Financial Intelligence Unit (KoFIU), is Korea's financial intelligence unit (FIU) and the lead agency in Korea for AML/CFT matters. The Korean AML/CFT system is heavily reliant on KoFIU's work on financial intelligence, AML/CFT supervision, training of obliged entities, policy, reform, national co-ordination and international co-operation.
- Customer identification and verification represents a strength in the Korean preventive measures but issues such as beneficial ownership, politically exposed persons and correspondent banking have yet to be addressed. In addition, the obligation to file suspicious transaction reports (STRs) only applies to transactions over KRW 20 million (USD 17 227).
- The level of sanctions available for breaches of AML/CFT obligations is low and sanctions are not often applied by supervisory authorities. However the compliance culture within Korean financial institutions is very strong.

- Key recommendations made to Korea include: continue building the CFT system; bring designated non-financial businesses and professions (DNFBPs) into the AML/CFT system; more actively inspect institutions' compliance with AML/CFT obligations; focus more investigations on cases of ML and TF; strengthen legal and administrative penalties and sanctions available and applied to persons and entities which commit ML or fail to comply with AML/CFT obligations; and strengthen information sharing amongst relevant authorities.
- Since November 2008, Korea has amended two laws in order to strengthen its AML/CFT system and has made a clear commitment to take further action to address deficiencies identified in this evaluation report.

2. Legal System and Related Institutional Measures

2. Two statutes criminalise money laundering: the 1995 *Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, Psychotropic Substances and Hemp* (ASPIT); and the 2001 *Proceeds of Crime Act* (POCA). Korea has a list approach to predicate offences, which, while broad, does not include terrorism and TF¹; and, environmental crime. Moreover, there is an insufficient range of copyright and fraud offences which constitute predicates to ML. The punishment of legal persons for ML offences is available although closely linked to the punishment of the natural person who perpetrated the ML offence. Legal persons are subject to modest financial penalties only. The maximum penalties for the ML offences are adequate though the number of convictions for ML is modest considering the size of Korea's population and economy: in 2007, there were 71 ML cases, with 55 convictions for ML.

3. The *Prohibition of Financing for Offences of Public Intimidation Act* (PFOPIA), which came into force 22 December 2008, introduced two TF offences. In addition, the *Punishment of Violences Act* contains provisions against organisations or groups that use or have the aim to use violence, collectively or habitually, with or without deadly weapons or other dangerous articles. The PFOPIA is a well intentioned piece of legislation but needs to be strengthened by addition of provisions which make it clear that it applies to the funding of terrorist organisations and individual terrorists even when those funds or assets, or the intention of the provider of those funds or assets, cannot be linked to a terrorist act. Application of the PFOPIA also needs to be broadened, to ensure it encapsulates the provision/collection of funds for an individual terrorist or terrorist organisation. Korea has had no TF prosecutions or convictions to date.

4. The confiscation regime established under the *Criminal Act* applies to all crimes in Korea, though confiscation powers are not available for ML (under the POCA) where the predicate offences were terrorism, including TF, or environmental crime. Given the size of the economy and the risk of money being laundered in Korea, the number of confiscations each year and the value confiscated is low.

5. Since the PFOPIA came into force, Korea has had two parallel regimes for restricting the financial activities of listed entities. The measures in the *Foreign Exchange Transactions Act* for implementation of S/RES/1267(1999) do not establish a freezing mechanism for terrorist assets or funds; rather, they provide for a restriction on foreign exchange transactions and related transactions by or with non-residents or in connection with foreign entities. To date, 508 transactions have been restricted in accordance with that legislation. Korea has a mechanism to designate terrorists and terrorist entities in

¹ Amendments to POCA, which include addition of the terrorist financing offences to the list of predicates, were passed by the National Assembly on 2 March 2009. In addition, offences in the *Copyright Act* and in the *Computer Programs Protection Act* were included as predicate offences, effective 20 March 2009. As these amendments occurred outside the period of time considered by this evaluation, they have not been taken into account in this report.

accordance with S/RES/1373(2001), but it relies on KoFIU's initial screening and thereafter there is no explicit mechanism for the ultimate determination of designation.

6. The Korea Financial Intelligence Unit (KoFIU) is Korea's financial intelligence unit (FIU) and the lead agency in Korea for AML/CFT matters. Under the *Financial Transaction Reports Act*, KoFIU's mission is the collection, analysis and dissemination of STRs, CTRs and information on foreign exchange transactions. KoFIU is also responsible for supervision and inspection of financial institutions' AML/CFT activities, actions to comply with the PFOPIA, research on ML and TF trends and preventive measures, provision of AML training and consultation to financial institutions on AML/CFT and, domestic and international ML and TF co-operation and information exchange. While KoFIU has access to information held by government entities, it can take up to three weeks to receive responses and this may be leading to some delays in STR analysis and dissemination of information to law enforcement agencies. In 2007, KoFIU received more than 50 000 STRs. While IT developments have been important for the efficiency of KoFIU's operations, an increase in human resources is warranted for effective analysis of STR information.

7. In Korea, investigations of ML and TF offences are conducted by the Ministry of Justice, Public Prosecutors' Office (PPO), National Police Agency (NPA), Korea Customs Service (KCS), National Tax Service (NTS), National Election Commission (NEC) and the Financial Services Commission (FSC). Law enforcement authorities (LEAs) have a broad range of investigative powers, including special investigative techniques. Other than for the NTS and the NEC, powers to compel production of documents and for search and seizure depend on obtaining a warrant which can take time and be difficult to obtain with respect to ML investigations. While LEAs are designated with ML and TF investigative authority and are well resourced and trained, there is a lack of focus on ML investigations: there were only 120 ML investigations in 2007 and most of these were conducted in conjunction with investigations of predicate crimes. There have been no TF investigations to date.

8. Korea has nine international airports, 20 seaports and shares a land border with North Korea, along which there are two border checkpoints. There is a declaration system in place for cross border movement of currency and bearer negotiable instruments (BNI). Any resident or non-resident who intends to export or import means of payment exceeding USD 10 000 or the equivalent is required to report this to KCS (under the *Foreign Exchange Transactions Act*, its enforcement decree and regulations). The KCS has adequate powers to stop or restrain currency and BNI where no declaration or a false declaration is made, or in case of suspicion of ML or TF. However, the only sanctions imposed over three and a half years to June 2008, for export/import of means of payment without declaration or with submission of a false declaration, have been fines and these average USD 6 280, which is not considered to be sufficiently dissuasive.

3. Preventive Measures – Financial Institutions

9. Traditionally, Korea has seen a high reliance on cash but this is decreasing at a rate of approximately 10% per year thanks in part to the government not issuing large denomination notes and various measures implemented to encourage use of secure electronic transactions. Korea effectively addresses the risk of the electronic banking and other new non-face-to-face technologies.

10. In Korea, financial institutions are required to conduct customer due diligence (CDD) under the 1993 *Act on Real Name Financial Transactions and Guarantee of Secrecy (Real Name Financial Transactions Act)* and the 2006 *Financial Transaction Reports Act (FTRA)*. The *Real Name Financial Transactions Act* effectively prohibits anonymous accounts and accounts in obviously fictitious names and requires financial institutions to identify and verify the identity of their customers, while the FTRA requires financial institutions to conduct CDD in some, but not all, of the circumstances specified by the FATF Recommendations.

11. In September 2008 KoFIU produced the *AML Enforcement Guidelines* and Korean authorities and financial institutions consider this document constitutes ‘other enforceable means’. Because of the stated purpose of the *AML Enforcement Guidelines*, the ambiguous nature of the language employed, the absence of a clear link between the *AML Enforcement Guidelines* and any sanctions, and the absence of effective, proportionate and dissuasive sanctions for non-compliance, this document does not however constitute ‘other enforceable means’ for the purposes of the *FATF Methodology*. As Korea relies on this document for its implementation of a number of important AML/CFT measures, it is recommended that either its provisions be transplanted into one or more laws/regulations/decrees, or, provisions be enacted in law clearly making the guideline enforceable and sanctionable. The *AML Enforcement Guidelines* are not sector-specific and focus mainly on issues for banking institutions. KoFIU also acknowledges receipt of reports from reporting entities and provides institutions with information and guidance on its website and via the reporting entities’ council. Other publications of use for reporting entities include the *KoFIU Annual Report* and the *Suspicious Transaction Reference Book and Casebook of Analysis*.

12. The FTRA and its enforcement decree provide for some entities to be exempt from some AML/CFT obligations. Complete and partial exemptions from CDD obligations have been granted to some institutions which do not take deposits or give loans, do not conduct any financial transactions with customers, or otherwise present a low risk of ML/TF because of the nature of the business or its products. In addition, the *Enforcement Regulation of the FTRA* exempts a very limited number of particular types of transactions from CDD requirements. While there has not been a robust assessment underpinning the exemptions, and it is recommended that this be conducted, information is available indicating that the exempted institutions and types of transactions are probably low risk for ML/TF.

13. Customer identification and verification represents a strength in Korea’s AML/CFT system. Nevertheless, the reliability of the CDD process could be further strengthened by requiring secondary verification of customer identification information. In addition, there is no provision in law or regulation requiring CDD in cases where several transactions below the designated threshold appear to be linked. With very limited exceptions², the *Real Name Financial Transactions Act* requires financial institutions to conduct transactions in customers’ real names. The CDD requirements with respect to legal persons are weak however. Similarly, measures with respect to monitoring business relationships and ongoing due diligence and measures concerning existing customers could be introduced. There are no provisions requiring enhanced CDD on high risk customers, business relationships or transactions and Korea has little in the way of measures concerning politically exposed persons and correspondent banking. While reliance on third parties to perform some elements of the CDD process is possible in practice, there are no provisions dealing with the situations such reliance on third parties is permitted.

14. Overall, Korea has a strong legal framework which ensures that no financial institution secrecy law inhibits implementation of the *FATF Recommendations*. Record keeping obligations exist in several laws, and are being implemented effectively. There is however a limitation on the sharing of customer identification information between financial institutions which should be removed. There is no explicit requirement that institutions keep transaction records sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. Nor is there an explicit requirement that institutions provide information to authorities ‘on a timely basis’. Some limited obligations are in place in Korea with respect to wire transfers.

15. There is no explicit requirement for financial institutions to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or

² Transactions not subject to real name identification and verification include continued transactions by accounts in which the real names of the persons concerned are verified and receipt of various kinds of public imposts (*Enforcement Decree of the Real Name Financial Transactions Act* Article 4(1)).

lawful purpose. There is no requirement for financial institutions to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the *FATF Recommendations*. Financial institutions are, however, required to establish and implement their own risk management systems for AML/CTF and these systems should include procedures for assessing ML and TF risks of other countries.

16. Korea has a well-implemented STR system. However, the STR reporting threshold – which was lowered in January 2004 from KRW 50 million (USD 43 067) to KRW 20 million (USD 17 227) – significantly undermines the STR reporting obligation, particularly with respect to STR reporting related to suspicions of TF. In addition, deficiencies in the list of predicate offences and in the TF offence impact on the scope of the suspicious transaction reporting requirement. As the STR obligation with respect to TF only came into force in December 2008 it is too soon to determine the effectiveness of this obligation. Provisions are in place which protect those who have reported suspicions in good faith from liability and which prohibit tipping off of third parties when an STR is being made or has been made. In addition to the STR reporting, a cash transaction reports (CTR) system was implemented in 2006. In January 2008 the initial threshold of KRW 50 million was lowered to KRW 30 million (USD 25 836) and this will be lowered further to KRW 20 million in January 2010.

17. Key pieces of legislation require financial sector organisations to establish and maintain internal procedures policies and controls and for the operations of their compliance officers and audit committees, however these are not sufficiently specific. They are complemented by provisions in the FTRA which deal with some matters concerning internal controls, though the interplay between the requirements in that act and in the other laws regulating the financial sector is unclear. Further, the obligation for institutions to have AML/CFT training for employees is very general and not well implemented in practice and there are no screening requirements for employees of financial institutions. Korean financial institutions are required to ensure that their foreign branches observe the AML/CFT measures in the FTRA and its enforcement decree consistent with home country requirements but no such provision exists for foreign branches. In addition, there is no requirement that institutions pay particular attention that AML/CFT measures are applied in overseas branches and subsidiaries located in jurisdictions which insufficiently apply the *FATF Recommendations* and there is no requirement that where the home and host country requirements differ, the higher of the two standards be applied wherever possible.

18. Shell banks cannot legally operate in Korea. There is no prohibition however on domestic institutions entering into or continuing correspondent banking relationships with shell banks. Further, there is no requirement that financial institutions satisfy themselves that respondent financial institutions in foreign countries do not permit their accounts to be used by shell banks.

19. KoFIU is the primary authority responsible for supervision of financial institutions' compliance with AML/CFT obligations. The Commissioner of KoFIU has entrusted the Financial Supervisory Service (FSS), the Bank of Korea and some other authorities and self-regulatory organisations to carry out the AML/CFT supervision. All financial institutions in Korea are subject to AML/CFT obligations and supervision. While banks, securities companies and insurance companies which are under the prudential supervision of the FSS are subject to relatively frequent and in depth AML/CFT inspections, other types of financial institutions which are smaller in size and considered to present lower risks are only regulated with minimum measures by their supervisory authorities. The measures currently in place are generally adequate to prevent criminals or their associates for holding or being beneficial owner of a significant or controlling interest or holding or management functions.

20. The FSS adopts the Core Principles in their on-going supervision of banks, insurance and securities companies. However, many of the important prudential management measures are recommended in the *AML Enforcement Guidelines* but have not been implemented in law, regulation or other enforceable

means. The FSS mainly performs its AML/CFT supervision through having an AML/CFT component, focusing on compliance with the FTRA, incorporated in consolidated inspections. To date these on-site inspections have had a relatively narrow focus, looking into compliance with STR and CTR obligations, the appointment of reporting officers and the establishment of internal and external reporting systems. With the exception of the FSS, the entrusted supervisory authorities and the self-regulatory organisations which have supervision roles lack the resources to perform AML/CFT supervision effectively for their sectors. Currency changers are only subject to on-site inspection once every six years and the scope of these inspections is relatively narrow, as for the inspections conducted by the FSS.

21. Authorities have sufficient powers to carry out their inspection role. However, none of them have the power to sanction the full range of breaches. The sanctions available to deal with natural and legal persons who fail to comply with their AML/CFT obligations are not proportionate and the sanctions applied in practice are almost invariably at the lower end of the spectrum.

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

22. Casinos – when they provide currency exchange services and exchange betting chips – are the only DNFBP in Korea to have AML/CFT obligations. While no AML/CFT obligations apply to trust and company service providers, trust companies are considered to be financial institutions and are thus subject to licensing requirements and supervision by the FSS. Korean authorities are considering imposing AML/CFT obligation on all DNFBPs. The Korean government has considered applying AML/CFT obligations to gambling associated with horse racing. No DNFBPs are required to pay special attention to business relationships and transactions with persons from or in jurisdictions which insufficiently apply the *FATF Recommendations*.

23. Casinos are subject to suspicious transaction reporting obligations and to requirements with respect to internal procedures, policies and controls. The obligations imposed on casinos are identical to those in place for financial institutions but were established so recently that it is too early to judge their effectiveness. Similarly, as AML/CFT supervision for casinos was established only very recently, it is too early to judge the effectiveness of these measures.

5. Legal Persons and Arrangements & Non-Profit Organisations

24. Korea's general corporate registry and information collection system does not focus on obtaining information relating to the beneficial ownership or control of companies in Korea. The current powers of competent authorities are hampered to the extent that the repositories of information from which the authorities could obtain beneficial ownership information do not maintain beneficial ownership information. And for the NTS, there are statutory barriers (tax secrecy laws) to the sharing of the information with other agencies including law enforcement or other competent authorities. The *Commercial Act* allows for the ownership of companies through the use of bearer shares yet there are no measures in place to ensure disclosure of beneficial owners of bearer shares and to deal with the ML/TF risk they pose.

25. Trust companies are regulated by the FSS under the *Trust Business Act* and are subject to AML/CFT obligations. They are required to identify their customer, including the truster and beneficiaries of trusts. But deficiencies in Korea's CDD obligations with respect to identification of beneficial owners limit transparency concerning beneficial ownership and control of trusts. LEAs have the authority to obtain or access available information on beneficial ownership on trusts in these trust companies only in case of criminal investigations or pursuant to a court order.

26. There were more than 37 000 NPOs in Korea in 2004. Korea conducted reviews its NPO sector in 2006 and in 2007 but there has not been outreach to the sector with respect to TF. Legal persons (domestic or foreign) must apply for permission to operate. NPOs must keep records, including financial records, and competent authorities may, if deemed necessary for off-site or on-site inspection and supervision of an NPO's business, order that NPO to submit relevant documents, accounting books or other reference materials in order to inspect the business and operations of that entity. Some inspections have been conducted by the Ministry of Health and Welfare but more inspection activity across the whole sector is needed. There is no co-ordination mechanism in Korea to effectively manage the 28 administrative authorities in the NPO sector and sharing of information among NPOs is not co-ordinated effectively. There is no mechanism in place (formal or informal) for the prompt sharing of information among relevant competent authorities. Further, points of contact have not been identified to respond to international requests for information regarding NPOs.

6. National and International Co-operation

27. KoFIU is the primary organisation responsible for AML/CTF policy formulation and implementation and in that role consults and co-ordinates national AML/CTF efforts. Korea ratified the *Vienna Convention* in December 1998 but has not implemented certain provisions of that convention. Korea signed the *Palermo Convention* in 2000 including the Trafficking in Persons Protocol and the Migrants Protocol, but has not yet ratified them. Korea ratified the *Terrorist Financing Convention* on 17 February 2004 and the PFOPIA implements some of the obligations of the Convention. Little is in place to implement relevant Security Council resolutions.

28. Korea provides mutual legal assistance (MLA) under bilateral and multilateral treaties and under the *Act on International Judicial Mutual Assistance in Criminal Matters*. As at 1 October 2008, MLA treaties had been concluded by Korea with 29 countries and jurisdictions. The ASPIT and POCA, in conjunction with the *Act on International Judicial Mutual Assistance in Criminal Matters* (IJMACM), govern MLA in relation to confiscation, preservation, collection, and recovery of criminal proceeds in Korea. It should be noted that, even if there is no MLAT with a country, if it promises to provide reciprocity for any assistance it receives to Korea, the lack of an MLAT is not an impediment to assistance.

29. The IJMACM provides for a broad scope of mutual assistance and ASPIT allows for a full range of mutual co-operation to be provided in relation to confiscation preservation and collection of criminal proceeds. Many of the treaties Korea has entered into provide for MLA in an even more flexible and broader manner than that under these acts. Assistance is provided in a reasonably constructive manner. All powers available to authorities in domestic matters can be used in respect of MLA. Statistics demonstrate a steady increase in requests from overseas and requests are returned in a timely manner and without undue delay (bearing in mind complexity issues and translation requirements).

30. Dual criminality is required in the Korean MLA system. However, few requests have been refused by Korea on the sole basis that the lack of dual criminality prevents assistance and none of the refusals relate to ML or TF cases. Further, Korea's MLA treaties often include provisions which dispense entirely with the dual criminality requirement. Thus, while Korean law establishes a dual criminality requirement, this is rarely adhered to in practice. The IJMACM does not contain any mandatory grounds for refusal of MLA and the optional grounds are not interpreted strictly. It is provided by the IJMACM, that a request for MLA should not be refused on the sole ground that the offence is also considered to involve fiscal matters. Nor can an MLA request be refused on confidentiality or secrecy grounds.

31. There are no mechanisms in place to determine the best venue for prosecutions involving more than one jurisdiction in the interests of justice. These were decided on an *ad hoc* basis with the jurisdictions concerned. Arrangements for co-ordinating seizure and confiscation actions with other countries are

considered on a case by case basis through consultation with the countries concerned. Korea has considered establishing an asset forfeiture fund and has considered authorising the sharing of some kinds of confiscated assets.

7. Resources and Statistics

32. In terms of resources, KoFIU has insufficient human resources for effective analysis when the large volume of STRs is considered. In addition, supervisory authorities, other than the FSS and FSC, and relevant self-regulatory organisations do not have sufficient resources to conduct their AML/CFT supervision roles. Enforcement agencies have received limited training with respect to terrorist financing.

33. The statistics kept and maintained are variable. There are no centralised statistics on the number of AML/CFT inspections carried out on different financial sectors, deficiencies and violations found, actions taken by entrusted agencies and sanctions by KoFIU. Statistics are not available on the outcomes of matters presented to the courts. And, it is not possible to properly determine effectiveness of MLA related to money laundering due to the limited statistics available.

Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations has been made according to the four levels of compliance mentioned in the 2004 Methodology³ (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or, in exceptional cases, Not Applicable (N/A).

Compliant	The Recommendation is fully observed with respect to all essential criteria.
Largely Compliant	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially Compliant	The country has taken some substantive action and complies with some of the essential criteria.
Non Compliant	There are major shortcomings, with a large majority of the essential criteria not being met.
Not Applicable	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country.

Recommendations	Rating	Summary of Factors Underlying Rating ⁴
Legal systems		
1 – ML offence	LC	<ul style="list-style-type: none"> • Terrorism, terrorist financing and environmental crimes are not predicate offences. In addition, there is an inadequate range of offences within two categories of predicate offences: copyright and fraud. • The ancillary offence of conspiracy is limited in its availability for money laundering cases.
2 – ML offence – mental element and corporate liability	PC	<ul style="list-style-type: none"> • The sanctions for legal persons convicted of money laundering are insufficiently effective and are not dissuasive or proportionate. The sanctions imposed on natural persons are not effectively implemented.

³ FATF (2007), *Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations*, 27 February 2004 (Updated as of February 2007), FATF, Paris.

⁴ These factors are only required to be set out when the rating is less than Compliant.

Recommendations	Rating	Summary of Factors Underlying Rating ⁴
3 – Confiscation and provisional measures	PC	<ul style="list-style-type: none"> • Confiscation powers are not available for the money laundering offence where the predicate offence was terrorism, including terrorist financing, or environmental crime. • Given the size of the economy and the risk of money being laundered in Korea, the number of confiscations and the value confiscated each year is low.
Preventive measures		
4 – Secrecy laws	LC	<ul style="list-style-type: none"> • A financial secrecy provision exists which limits the sharing of customer identification information between financial institutions in such a way as to impact full implementation of Recommendation 7 and Special Recommendation VII.
5 – Customer due diligence	PC	<p><i>When CDD is required</i></p> <ul style="list-style-type: none"> • Financial institutions are only expected to discover linked transactions over a twenty-four hour period, which is not sufficient to identify structured transactions intended to avoid the threshold for occasional transactions. • Institutions are not expressly required to conduct CDD when they have doubts about the adequacy of previously obtained customer identification data. <p><i>Required CDD measures</i></p> <ul style="list-style-type: none"> • Financial institutions are not required to verify whether the natural person acting for a legal person is authorised to do so. • For customers who are legal persons or arrangements, financial institutions are not required by law, regulation or other enforceable means to obtain information on the customer's legal form, director(s) and provisions regulating the power to bind the legal person or arrangement. • There is no requirement for financial institutions to identify and verify the identity of the beneficial owner except where there is a suspicion of money laundering or terrorist financing. • In the case of legal persons or arrangements, institutions are not obliged to understand the ownership and control structure of the customer or to determine who are the natural persons who ultimately own or control the customer, other than when there is a suspicion of money laundering or terrorist financing. • Financial institutions are not explicitly required to obtain information on the purpose and intended nature of the business relationship. • Ongoing due diligence on the business relationship is not expressly required in law, regulation or other enforceable means. • There is no express requirement for financial institutions to scrutinise transactions throughout the course of the business relationship to ensure they are consistent with the institution's knowledge of the customer, their business and risk profile, and the source of funds. • There is no explicit requirement that financial institutions ensure documents, data or information collected as part of CDD is kept up-to-date and relevant. • There is no prohibition on institutions opening accounts, commencing business relations or performing transactions when they are unable to: verify that any person purporting to act on behalf of a customer that is a legal person or legal arrangement is so authorised and identify and verify the identity of that person; verify the legal status of the legal person or arrangement; or, identify and verify beneficial owners. • Financial institutions are not required to consider filing an STR when they are unable to complete all CDD as detailed in the <i>FATF Standards</i>.

Recommendations	Rating	Summary of Factors Underlying Rating ⁴
		<p><i>Timing of verification</i></p> <ul style="list-style-type: none"> • There is no explicit requirement for institutions to develop internal controls to mitigate the risk posed by transactions undertaken before the completion of the CDD process. <p><i>Existing customers</i></p> <ul style="list-style-type: none"> • There is no provision expressly requiring CDD be applied to pre-existing customers. • There is no express requirement that financial institutions conduct CDD on pre-existing customers at appropriate times or when the institution becomes aware that it lacks sufficient information about an existing customer. • There is no requirement that financial institutions terminate an existing business relationship and consider filing an STR when: the institution has doubts about the veracity or adequacy of previously obtained customer identification data; it is unable to satisfactorily complete post-transaction or post-account opening; or is unable to satisfactorily complete CDD on existing customers. <p><i>Scope issue</i></p> <ul style="list-style-type: none"> • Scope limitation: no formal assessment has been undertaken to justify exclusion of some smaller financial institutions, money changers and certain investment-related companies from the requirement to have internal AML/CFT monitoring/reporting, which may prevent them from conducting effective CDD.
6 – Politically exposed persons	NC	<ul style="list-style-type: none"> • Financial institutions are not required to determine whether a customer is a PEP. • There is no provision requiring financial institutions to obtain senior management approval to establishing business relationships with PEPs or to continue business relationships with PEPs. • Financial institutions are not required to establish the source of wealth and funds of customers and beneficial owners identified as PEPs. • Financial institutions are not required to conduct enhanced ongoing monitoring of business relationships with PEPs.
7 – Correspondent banking	NC	<ul style="list-style-type: none"> • There are no obligations for financial institutions to: determine whether a respondent institution has been subject to money laundering or terrorist financing enforcement action; assess the adequacy of the respondent's AML/CFT controls; require senior management approval before establishing the relationship; or document the respective AML/CFT responsibilities of each institution.
8 – New technologies & non face-to-face business	C	<p><i>This Recommendation is fully observed.</i></p>
9 – Third parties and introducers	NC	<ul style="list-style-type: none"> • Financial institutions relying on a third party to perform CDD are not required to immediately gain from the third party the necessary information concerning elements of the CDD process. • There is no requirement for financial institutions to take adequate steps to satisfy themselves that copies of identification data and other relevant CDD documentation will be made available from the third party upon request without delay. • Financial institutions are not required to satisfy themselves that the third party is regulated and supervised and has measures in place to comply with CDD requirements. • There is no provision requiring financial institutions relying on CDD conducted by third parties in foreign countries to take into account

Recommendations	Rating	Summary of Factors Underlying Rating ⁴
		whether those countries adequately apply the <i>FATF Recommendations</i> .
10 – Record keeping	LC	<ul style="list-style-type: none"> • There is no specific requirement that the transaction records kept by institutions be sufficient to permit reconstruction of individual transactions. • There is no overall and general requirement that the information which must be provided to competent authorities will be available on a timely basis.
11 – Unusual transactions	NC	<ul style="list-style-type: none"> • There is no explicit requirement in law, regulation or other enforceable means for financial institutions to pay special attention to complex, unusual large transactions, or patterns of transactions. • Financial institutions are not required to examine the background and purpose of such transactions and set forth findings in writing except where there is a suspicion of money laundering or terrorist financing. • Institutions are not required to make findings of their examinations of unusual transactions available to competent authorities.
12 – DNFBPs – R.5, 6, 8-11	NC	<ul style="list-style-type: none"> • With the exception of casinos, no AML/CFT obligations have been applied to DNFBP sectors. • As the AML/CFT obligations for casinos are identical to those for financial institutions, they suffer from the same deficiencies identified previously with respect to Recommendations 5, 6 and 9-11. • The AML/CFT obligations for casinos came into force so recently that it is too soon to determine their effectiveness.
13 – Suspicious transaction reporting	PC	<ul style="list-style-type: none"> • The suspicious transaction reporting requirement does not apply to funds that are the proceeds of all offences that are required to be included as predicate offences under Recommendation 1. • The STR obligation is only mandatory above a transaction threshold of KRW 20 million (for transactions in Korean Won) / USD 10 000 (for transactions in foreign currencies). • It is too soon to determine the effectiveness of the new obligation to report suspicious transactions related to terrorist financing.
14 – Protection & no tipping-off	C	<i>This Recommendation is fully observed.</i>
15 – Internal controls, compliance & audit	PC	<ul style="list-style-type: none"> • It is not explicitly required that the internal AML/CFT procedures, policies and controls be communicated to employees. • There is no requirement that compliance officers be appointed at a management level. • Audit committees are not explicitly required to test compliance with AML/CFT procedures, policies and controls. • The obligation for institutions to have AML/CFT training for employees is very general and not well implemented in practice. • Financial institutions are not required to have screening procedures to ensure high standards when hiring employees.
16 – DNFBPs – R.13-15 & 21	NC	<ul style="list-style-type: none"> • Only one type of DNFBP – casinos – is required to report suspicious transactions and this obligation suffers from the same limitations as noted for R.13. • Only one type of DNFBP – casinos – is required to have some internal AML/CFT controls, reporting officers and employee training and this obligation does not involve establishment of a full compliance management function or employee screening. • It is too early to assess the effectiveness of obligations imposed on casinos.

Recommendations	Rating	Summary of Factors Underlying Rating ⁴
		<ul style="list-style-type: none"> No DNFBPs are obliged to pay special attention to business relationships and transactions with persons from or in jurisdictions which insufficiently apply the FATF Recommendations.
17 – Sanctions	PC	<ul style="list-style-type: none"> The only sanctionable AML/CFT breaches are failure to file STRs and CTRs and conducting financial transactions with restricted persons without approval. The level of sanctions available for natural and legal persons who fail to comply with their AML/CFT obligations is very low and not proportionate to the more severe breaches which may occur. Sanctions are not often applied by supervisory authorities and are usually in the nature of a request to the institution during the on-site inspection that corrections be made.
18 – Shell banks	PC	<ul style="list-style-type: none"> There is no prohibition in law, regulation or other enforceable means on financial institutions from entering into or continuing correspondent banking relationships with shell banks. There is no requirement in law, regulation or other enforceable for financial institutions to satisfy themselves that respondent financial institutions do not permit their accounts to be used by shell banks.
19 – Other forms of reporting	C	<i>This Recommendation is fully observed.</i>
20 – Other NFBP & secure transaction techniques	C	<i>This Recommendation is fully observed.</i>
21 – Special attention for higher risk countries	NC	<ul style="list-style-type: none"> There is no requirement in law, regulation or other enforceable means for financial institutions to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations. Where transactions have no apparent economic or lawful purpose, there is no requirement to examine the background and purpose of the transactions, set forth findings in writing and make them available to assist competent authorities. While there are demonstrated means of notifying financial institutions of weaknesses in the AML/CFT systems of other countries, institutions are not provided clear advice on what action should be taken. The only possible counter-measure is application of enhanced customer due diligence and as this was only implemented on 22 December 2008 it is too early to assess the effectiveness of this measure.
22 – Foreign branches & subsidiaries	PC	<ul style="list-style-type: none"> Foreign subsidiaries are not required to observe AML/CFT measures consistent with Korean requirements. Not all Korean AML/CFT measures must be observed by foreign branches. Financial institutions are not required to pay special attention to the application of AML/CFT measures in branches and subsidiaries located in jurisdictions which insufficiently apply the FATF Recommendations. Financial institutions are not required, where the home and host country requirements differ, to apply the higher of the two standards wherever possible.
23 – Regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> The scope of AML/CFT supervision by FSS is not adequate: AML risk management, implementation of enhanced CDD for high risk customers and on-going monitoring systems for unusual, large and complex transactions are not reviewed. Institutions, other than those subject to the Core Principles and

Recommendations	Rating	Summary of Factors Underlying Rating ⁴
		<p>supervised by the FSS, are not adequately supervised for AML/CFT.</p> <ul style="list-style-type: none"> • Scope limitation: no formal assessment has been undertaken to justify exclusion of some smaller financial institutions, money changers and certain investment-related companies from the obligation to have internal AML/CFT monitoring/reporting, and thus from the corresponding regulatory regime.
24 – DNFBP: regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> • With the exception of casinos, no AML/CFT supervision is in place for DNFBP sectors. • AML/CFT supervision for casinos came into force so recently that it is too soon to determine its effectiveness.
25 – Guidelines & Feedback	LC	<ul style="list-style-type: none"> • The only guidance is generic for all obliged entities; there are no guidelines on AML/CFT requirements for different financial sectors. • Casinos are the only DNFBP which has received AML/CFT guidance. • It is too early to evaluate the effectiveness of feedback to casinos as their reporting as the obligation to report has only just come into force.
Institutional and other measures		
26 – The FIU	LC	<ul style="list-style-type: none"> • KoFIU does not have timely access to other agencies' financial, administrative and law enforcement information and this is leading to delays in STR analysis and delays in dissemination of information to law enforcement agencies. • The human resources for STR analysis is insufficient considering the significant and continuing increase in the amount of information being submitted to KoFIU.
27 – Law enforcement authorities	LC	<ul style="list-style-type: none"> • Effectiveness concerns: The number of investigations of money laundering is low when compared with the incidence of predicate crimes, and, as the terrorist financing offence was implemented in December 2008 it is too early to judge the effectiveness of terrorist financing investigations.
28 – Powers of competent authorities	LC	<ul style="list-style-type: none"> • Effectiveness concern: The requirement that a warrant be obtained in order to compel production, search and seizure and the difficulties experienced in obtaining such warrants may result in a relatively limited use of these powers in cases of money laundering and terrorist financing.
29 – Supervisors	PC	<ul style="list-style-type: none"> • The inspection areas of some supervisory authorities and self-regulatory organisations entrusted with inspection are under-resourced. • The only sanctionable AML/CFT breaches are failure to file STRs and CTRs and conducting financial transactions with restricted persons without approval. • Scope limitation: no formal assessment has been undertaken to justify exclusion of some smaller financial institutions, money changers and certain investment-related companies from the obligation to have internal AML/CFT monitoring/reporting, and thus from the corresponding regulatory regime.
30 – Resources, integrity and training	PC	<ul style="list-style-type: none"> • KoFIU has insufficient human resources for effective analysis when the large volume of STRs is considered. • Enforcement agencies have received limited training with respect to terrorist financing. • Supervisory authorities, other than the FSS and FSC, and relevant self-regulatory organisations do not have sufficient resources to conduct their AML/CFT supervision roles.
31 – National co-operation	LC	<ul style="list-style-type: none"> • Limited feedback is provided to the various competent authorities which conduct AML/CFT supervision.

Recommendations	Rating	Summary of Factors Underlying Rating ⁴
32 – Statistics	PC	<ul style="list-style-type: none"> • There are no centralised statistics on the number of AML/CFT inspections carried out on different financial sectors, deficiencies and violations found, actions taken by entrusted agencies and sanctions by the KoFIU. • Statistics are not available on the outcomes of matters presented to the courts. • It is not possible to properly determine effectiveness of MLA related to money laundering due to the limited statistics available.
33 – Legal persons – beneficial owners	NC	<ul style="list-style-type: none"> • Laws do not establish adequate transparency concerning beneficial ownership and control of legal persons. • Competent authorities are not able to obtain in a timely fashion adequate, accurate and timely information by competent authorities on the beneficial ownership of legal persons. • There are no measures to ensure that bearer shares are not misused for money laundering and terrorist financing.
34 – Legal arrangements – beneficial owners	NC	<ul style="list-style-type: none"> • Laws do not require adequate transparency concerning the beneficial ownership and control of trusts and other legal arrangements. • Although law enforcement agencies have powers to obtain information on legal arrangements, there is minimal information concerning the beneficial owners of legal arrangements that can be obtained. • Providers of trust and company services are not subject to AML/CFT obligations.
International Co-operation		
35 – Conventions	PC	<ul style="list-style-type: none"> • The <i>Vienna Convention</i> has been partly implemented, but shortcomings exist in the elements of the money laundering offences. • The <i>Palermo Convention</i> has not been ratified or fully implemented. • Significant shortcomings exist in implementation of the <i>Terrorist Financing Convention</i>.
36 – Mutual legal assistance (MLA)	LC	<ul style="list-style-type: none"> • There is potential for conflicts of jurisdiction as Korea has no mechanisms for determining the best venue for prosecution of defendants.
37 – Dual criminality	C	<i>This Recommendation is fully observed.</i>
38 – MLA on confiscation and freezing	LC	<ul style="list-style-type: none"> • Korea does not have formal arrangements outside some specific bilateral agreements for co-ordinating seizure and confiscation actions with other countries, relying often on <i>ad hoc</i> arrangements. • It is too early to evaluate the effectiveness of MLA related to terrorist financing due to the very recent enactment of that offence.
39 – Extradition	LC	<ul style="list-style-type: none"> • It is not required that nationals be prosecuted in lieu of not being extradited.
40 – Other forms of co-operation	LC	<ul style="list-style-type: none"> • Information exchange is only possible under MOU arrangements. • Deficiencies in the list of predicate offences and in the criminalisation of money laundering and terrorist financing have the potential to impact on the scope of international co-operation.
Nine Special Recommendations		
SR.I – Implement UN instruments	PC	<ul style="list-style-type: none"> • Collection of funds or other assets by terrorist organisations or individual terrorists for the general furtherance of their respective criminal activities or criminal purpose is not adequately criminalised. • There is no adequate provision for confiscation of funds or assets for use by a terrorist organisation or by individual terrorists.

Recommendations	Rating	Summary of Factors Underlying Rating ⁴
		<ul style="list-style-type: none"> • S/RES/1373(2001) has not been fully implemented and shortcomings exist in relation to implementation of S/RES/1267(1999).
SR.II – Criminalise TF	PC	<ul style="list-style-type: none"> • The terrorist financing offence does not adequately cover provision/collection of funds for an individual terrorist or terrorist organisation. • Terrorist financing is not a predicate offence for money laundering. • It is too soon to determine the effectiveness of the terrorist financing offence as it came into force on 22 December 2008. • The ancillary offence of conspiracy is only available where an offence has been committed.
SR.III – Freeze and confiscate terrorist assets	PC	<ul style="list-style-type: none"> • Measures for implementation of S/RES/1267(1999) do not allow for freezing of terrorist assets (only restriction of transactions) and obligations under S/RES/1373(2001) have not been fully implemented. • The current regimes only cover foreign exchange transactions and related foreign transactions <u>and domestic banking, cash and securities transactions conducted by financial institutions</u>. • There are no provisions for freezing concerning movable or immovable property or property derived from funds or assets owned or controlled by designated entities. • There are no provisions with respect to confiscation of funds or other assets of designated persons or entities other than where those funds or assets can be confiscated as criminal proceeds. • Procedures underlying the mechanisms for restricting the funds or other assets of designated entities are in place but require clarification.
SR.IV – Suspicious transaction reporting	NC	<ul style="list-style-type: none"> • The suspicious transaction reporting requirement does not apply to funds linked or related to, or to be used for, terrorist organisations or those who finance terrorism. • The STR obligation is only mandatory above a transaction threshold of KRW 20 million (for transactions in Korean Won) / USD 10 000 (for transactions in foreign currencies) and this is of particular concern when the nature of terrorist financing is considered. • It is too soon to determine the effectiveness of the new obligation to report suspicious transactions related to terrorist financing.
SR.V – International co-operation	LC	<ul style="list-style-type: none"> • There is potential for conflicts of jurisdiction as Korea has no mechanisms for determining the best venue for prosecution of defendants. • Korea does not have formal arrangements outside some specific bilateral agreements for co-ordinating seizure and confiscation actions with other countries, relying often on <i>ad hoc</i> arrangements. • It is not required that nationals be prosecuted in lieu of not being extradited. • It is too early to evaluate the effectiveness of international co-operation, including extradition and MLA, with respect to terrorist financing due to the very recent enactment of that offence.
SR.VI – AML requirements for money/value transfer services	PC	<ul style="list-style-type: none"> • The limitations identified under Recommendations 4-7, 9-11, 13, 15, 17, 21-23 and Special Recommendation VII also affect compliance with Special Recommendation VI.
SR.VII – Wire transfer rules	PC	<ul style="list-style-type: none"> • Ordering financial institutions are not required by law, regulation or other enforceable means to include full originator information in messages accompanying cross-border or domestic wire transfers, though the institutions do in fact appear to be including full originator information in the messages.

Recommendations	Rating	Summary of Factors Underlying Rating ⁴
		<ul style="list-style-type: none"> • There is no requirement that each intermediary or beneficiary institution in the payment chain be required to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer. • Beneficiary institutions are not required to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. • As limited obligations exist in law, regulation or other enforceable means with respect to wire transfers (these are primarily found in guidance), there is limited corresponding monitoring or sanctions by supervisory authorities in this area.
SR.VIII – Non-profit organisations	PC	<ul style="list-style-type: none"> • No outreach has been undertaken to the NPO sector on terrorist financing risks and preventative measures. • There is no domestic co-ordination or information sharing among NPO supervisory authorities or between these authorities and other government agencies, including law enforcement. • Points of contact have not been identified to respond to international requests for information regarding NPOs.
SR.IX – Cross-border Declaration & Disclosure	LC	<ul style="list-style-type: none"> • The sanctions imposed on persons who do not make declarations or who make false declarations are only in the nature of fines and these are too low to be considered dissuasive.

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