



Asia/Pacific Group  
on Money Laundering

**ASIA/PACIFIC GROUP  
ON MONEY LAUNDERING**

**APG MUTUAL EVALUATION REPORT ON  
MYANMAR**

**Against the FATF 40 Recommendations (2003) and 9 Special  
Recommendations**

**As Adopted by the APG Plenary  
10 July 2008**

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## **PREFACE - information and methodology used for the evaluation of Myanmar**

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Myanmar was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004. The evaluation was based on the laws, regulations and other materials supplied by Myanmar, and information obtained by the evaluation team during its on-site visit to Myanmar from 7-21 January, 2008, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant Myanmar government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

2. The evaluation was conducted by a team of assessors composed of APG experts in criminal law, law enforcement and regulatory issues. The Evaluation Team consisted of:

### ***Legal experts***

Janet Maki, Ombudsman, Cook Islands; and  
Arnold Frane, Technical Assistant, Office of the Executive Director, Anti Money Laundering Council Secretariat, the Philippines (Additional Evaluator).

### ***Financial experts***

Woon Hooi Shyen, Deputy Director, Bank Negara Malaysia Financial Intelligence Unit, Malaysia; and  
Edwin Nurhadi, Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK)/Indonesian Financial Transaction Reports and Analysis Centre (INTRAC), Indonesia

### ***Law enforcement expert***

David Cope, Detective Chief Inspector , Hong Kong, China Police.

### ***APG Secretariat***

Lindsay Chan, Executive Officer.

3. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems.

4. This report provides a summary of the AML/CFT measures in place in Myanmar as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Myanmar's levels of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

## **Executive Summary**

### **1. Background Information**

1. The Union of Myanmar (“Myanmar”) shares borders with China to the north and north east, Laos to the east, Thailand to the south east, Bangladesh to the west and India to the north west.
2. Myanmar is predominately a cash-based economy with less than 20% of the population accessing the formal banking system. It is also a “U.S. dollarized” economy with the U.S. dollar readily accepted at shops and retail outlets.
3. The State Peace and Development Council (SPDC) has governed the country since 1988. Myanmar has a military government with executive power vested mainly in military officers. However, civilian government officials also occupy senior government posts. SPDC administrative control is exercised from the central government through a system of subordinate SPDC executive bodies and regional military commanders throughout the country’s seven divisions and seven states, including the four semi-autonomous states.
4. Myanmar has no Parliament. Legislative authority is exercised through Cabinet (the Executive) formed by heads of government agencies which are normally headed by a senior military officer appointed by the SPDC.
5. Myanmar, like many other countries, has significant levels of domestic corruption. Myanmar signed the 2003 UN Convention Against Corruption on 2 December 2005, but it has not ratified or acceded to this Convention. Myanmar has an old Anti-Corruption Act of 1948 which is still in effect.
6. The SPDC appoints the judges to the Supreme Court and indirectly also judges to the lower courts. The judiciary lacks independence. The Myanmar Bar Council is also supervised by the Attorney General and staffed by government officials.
7. Drug trafficking and human trafficking are the major sources of illicit proceeds. Myanmar is the second largest opium poppy grower in the world after Afghanistan. However, the major narcotics problem now is the trafficking of large quantities of methamphetamine and other psychotropic substances. Furthermore, up to one million Myanmar nationals have been trafficked primarily to China for arranged marriages and to Thailand for sexual servitude.
8. Myanmar cannot be regarded as a safe haven jurisdiction for illegal proceeds unlike some other jurisdictions which have sound and well developed financial institutions and products. Criminal elements both within and outside Myanmar are more likely to use the country as a transit point to move funds abroad or have settlement for illegal activities undertaken offshore.
9. The prevalent use of the U.S. dollar in the country makes cash courier/currency smuggling of U.S. dollar notes an attractive method of laundering illicit proceeds. Valuable portable commodities

such as gems, precious metals and jewellery are also likely concealment and transfer methods given such commodities are readily available and easily transportable.

10. Myanmar authorities advised that since January 2006, 34 “terrorist acts” in the form of explosions caused by improvised explosive devices had occurred in Yangon (Rangoon) and in many other places in the country.

11. Three hotels have been given exemptions to operate casino style operations in the border areas. In addition, there are illegal operations in some hotels in border areas.

12. The structure of Myanmar’s financial system comprises the Central Bank of Myanmar, four state-owned banks, 15 domestic private banks and a few non-bank financial institutions, which include a state-owned insurance enterprise, a state-owned small loan enterprise and a private-owned leasing company. Private banks are neither permitted to open foreign currency accounts nor enter into correspondent banking relationships with foreign banks. There are no Myanmar financial institutions with branches off-shore and correspondingly there are no branches of foreign financial institutions in Myanmar.

13. While no official study has been undertaken, the Myanmar authorities acknowledge that an unregulated Hundi system operates in the country.

14. Myanmar joined the APG in March 2006. It was removed from the FATF non-cooperative countries and territories (NCCT) list in October 2006 after being added in June 2001. However, Myanmar is still subject to FATF monitoring.

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

15. The offence of Money Laundering (ML) was first introduced in Myanmar under the Narcotics Drugs and Psychotropic Substances (NDPS) Law 1993, as it relates to drug offences under that Act. The offence of ML as it applies to other predicate offences was later criminalised under several provisions contained in the Control of Money Laundering Law (CMLL) 2002 and Rules and Orders subsequently made hereunder.

16. The provisions of the CMLL are not fully consistent with international conventions and standards, in respect of its scope pertaining to the definition of money laundering, property, list of predicate crimes and legal persons. There has only been one conviction under the CMLL despite 23 money laundering investigations since 2004 and 54 individual predicate crime convictions in the last two years from 16 money laundering investigations.

17. There is no law specifically penalizing terrorism as a separate crime, and Myanmar has not enacted a law specifically criminalizing terrorist financing and designating it as one of the predicate offences to money laundering.

18. Myanmar has provisions under both the NDPS Law and the CMLL to allow for the confiscation of criminal property, and the restraint and seizure of such property potentially subject to confiscation. However, there has been little use of the CMLL and confiscations have been predominately under the NPDS Law.

19. Myanmar established the Myanmar Financial Intelligence Unit (MFIU) on 16 January 2004. There is an STR analysis process and database system in place. It has processed 1073 STRs since 2004 and has referred 23 cases to the Central Control Board (CCB) Investigation Body for action. However, the MFIU has no separate budget and its independence is hampered by the operational role of the CCB in STR processing.

20. The Myanmar Police Force (MPF), CCB Investigation Body, Central Committee of Drug Abuse Control (CCDAC) and the Bureau of Special Investigation (BSI) are the units which have the powers and resources in Myanmar to investigate and prosecute cases of money laundering. Money laundering investigations are normally conducted by the CCB Investigation Body, which can and do draw officials from other government agencies as required, including Customs and various immovable property agencies.

21. There is no specific team to investigate suspected case of financing of terrorism, outside of the predicate offences these groups may have committed. The MPF Special Branch in concert with other units of the MPF and BSI will investigate specific “acts of terrorism” and the groups practicing them, including investigating potential sources of financing.

22. Myanmar has a Declaration system for cross-border control. The declaration threshold is US\$2,000 or more. This includes currencies, bearer negotiable instruments and precious metals and stones such as gold or jewellery. Failure to declare or making a false declaration is punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine. However, seizure statistics are low given the cash-based nature of the economy and there is a lack of declaration statistics outside of Yangon.

### **3. Preventive Measures – Financial Institutions**

23. Myanmar has neither excluded any financial activities nor implemented enhanced customer due diligence based on a risk assessment. The same standard or obligation of customer due diligence is applied for all customers irrespective of risk.

24. The basic obligations under Recommendations 5, 10 and 13 are not fully set out in the CMLL, its Rules or regulation. Parts of Recommendations 5 and 13 are covered but not all. Recommendation 10 requirements are not set out in law or regulation.

25. There are inadequacies in the CMLL and regulation for a number of key preventive measures including obligations to identify beneficial owners, determining the natural persons who ultimately own or control a corporate customer, enhanced and on-going due diligence, and application of CDD to existing customers.

26. Myanmar has not addressed the issue of enhanced CDD measures in relation to politically exposed persons (PEPs) and has no regulatory requirement concerning correspondent banking.

27. Myanmar has not allowed the operation of any form of electronic banking. Banks are not permitted to provide ATM, internet or telephone banking or similar electronic banking facilities. Credit cards operation has been terminated by the Central Bank of Myanmar (CBM) arising from Myanmar’s banking crisis in 2003.

28. Relevant sections of CML Rules set aside previous secrecy provisions in the Financial Institutions in Myanmar Law, Central Bank of Myanmar Law and Insurance Act. There are still restrictions in respect of information sharing amongst financial institutions.
29. The CMLL includes a legal requirement for financial institutions to maintain all documents and records concerning the opening of accounts and transactions for at least five years, but the requirement to maintain such records after the closure of accounts or termination of relationships is only specified in a CBM notification.
30. In respect of wire transfers, there is no detailed instruction issued by the CBM to banks in relation to originator information for both domestic and cross-border wire transfers.
31. There is a limited and an indirect requirement to pay special attention to unusual patterns of transactions. There is no regulatory requirement in terms of examining the background and purpose of such transactions and to document and record the analysis.
32. Myanmar has a requirement for suspicious transaction reporting (STR). However, there is a lack of a clear requirement to report when there is suspicion that funds are the proceeds of criminal activity or terrorism financing. Nevertheless, since 2004, a total of 1073 STRs have been submitted. These STRs have come from five banks with two state-owned banks accounting for the majority of the STRs submitted. There have been no STRs submitted by the non-bank designated financial institutions and no STRs have been received in relation to terrorism financing. There is no requirement to report in respect of attempted transactions.
33. The safe harbour provision in the CMLL appears only to apply to employees and not to directors or to the financial institution itself, when submitting reports in good faith to the FIU.
34. Myanmar has a well established requirement for threshold reporting of 100 million kyats.
35. The CMLL and its Rules do not provide any explicit provisions for the development or establishment of an internal AML/CFT programme. Neither do they provide for the designation of a compliance officer or internal audit. However, such requirements are provided in the CBM's AML Guidance to banks and financial institutions. Furthermore in April 2004, the CBM issued an Instruction to banks and financial institutions to designate a compliance officer to handle reporting of suspicious transactions and threshold reporting.
36. There are no shell banks in Myanmar but there is an absence of regulatory guidance to prohibit the establishment of business relationships with off-shore shell banks either directly or indirectly
37. The CBM is the primary AML/CFT regulatory and supervisory authority for banks and financial institutions. It has the powers to supervise and regulate the sector. The CBM has two responsible departments: one is the Bank Supervision Department which has 10 examination and inspection teams with a total of 128 staff; and the second is the Banking Regulation Department, which issues prudential and AML/CFT instructions and guidelines, and deals with special audit programs for state-owned banks in terms of AML/CFT issues.
38. The CBM has not established a specific or comprehensive administrative enforcement framework for non-compliance with Myanmar's AML requirements. This includes a graded

approach to supervisory or administrative sanctions depending on the severity of the non-compliance. The CBM has, however, issued a number of warning letters and terminated the banking licenses of three private banks in 2005. The latter was in response to the findings of an internal investigation into potential abuses of Myanmar's bank licensing requirements and its money laundering law. The CBM on 14 March 2008 issued a memorandum to banks and financial institutions on the imposition of administrative penalties for failure to comply with record-keeping and reporting provisions in the CMLL.

39. The CBM has issued a series of instructions and guidelines to banks and financial institutions on how to comply with the overall AML obligations. However, there needs to be more detailed guidelines provided to address the unique business requirements in the different sectors.

40. There is no provision in Law, Regulation and other enforceable means which require the licensing or registration of informal money remitters (Hundi) other than as financial institutions. Given the existing laws, the large number of Hundi dealers are operating illegally in Myanmar. There has been no systematic prosecution or conviction of Hundi dealers for operating without a banking license. There have been investigations and prosecutions based on their involvement in facilitating drug trafficking payments.

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

41. Myanmar's current CDD, record keeping and sanctions requirements in the CMLL and CMLR do not extend to Designated Non-Financial Businesses and Professions (DNFBPs). DNFBPs are subject to existing CDD and record-keeping requirements as part of other non-AML specific processes. These include basic identification requirements for real estate transactions; licensing requirements by the Department of Mines and the Myanmar Gems Trading Enterprise respectively; and seller and buyer registration requirements for the wholesale gems market.

42. There are no STR requirements for hotels operating gaming operations such as slot machines and for real estate agents. Myanmar has, nevertheless, taken steps in meeting STR reporting requirements for other DNFBPs, including precious stones and metals dealers and lawyers and accountants. Government agencies involved in immovable property and precious metals and stones transactions are also designated reporting entities.

43. There have been no STR reports submitted by DNFBPs. However, government agencies involved in immovable properties and in precious metals and stones, as designated reporting entities, have submitted STR reports.

44. There is no specific provision which requires DNFBPs to establish and maintain internal procedures, policies and control to prevent money laundering and the financing of terrorism.

45. There is very limited AML/CFT oversight of DNFBPs given the current arrangements i.e. lack of mandate and some regulatory agencies are also designated reporting institutions.

46. The Bar Council and Myanmar Accountancy Council are not involved in monitoring compliance with AML requirements. The Accountancy Council has been involved in education of its members regarding the current AML requirements.

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

47. There are about 16,882 domestic and 1,259 foreign-owned companies registered in Myanmar. Most companies are formed by registration under the Myanmar Companies Act 1914. The vetting process for registration includes checking the backgrounds of the board of directors, including verification of identity and personal particulars such as residential address and sources of funds of the major share owners.

48. There are no requirements for companies to obtain, verify and record the beneficial ownership of shareholders or to make beneficial ownership information available in a timely fashion. There is also no publicly available list of incorporated companies in Myanmar.

49. There is no central registry of shares in Myanmar and bearer shares are not specifically prohibited, but in practice, bearer shares are not a feature of the market.

50. Myanmar authorities, including the Attorney General Office, advised that legal arrangements such as express trusts no longer operate in the country. While Myanmar has a modified common law system based on a legal framework first adopted in India, there have been significant changes to the legal structure in the country since 1988.

51. There was no evidence of trust accounts held in state owned and private banks. The lawyers and accountants met by the ME team advised that they do not manage funds or assets or accept funds in trust. The same applies to real estate agents.

52. Non-Profit Organisations (NPOs) in Myanmar are governed by the Law Relating to Forming Organizations. There are 302 NPOs registered under this law of which 78 have international connections. There has been no comprehensive review of the LRFO or the NPO sector including any review to assess the vulnerabilities of NPOs to terrorist financing. There have been some outreach activities, and there is ongoing monitoring of NPO activities at the township level to ensure compliance with the law. But the monitoring is not necessarily focused on high risk areas.

53. The LRFO does not mandate that NPOs should maintain and make their records available to the appropriate authorities. The requirement only relates to six monthly reporting but there is no requirement that financial reports/balance sheets should be audited.

## **6. National and International Co-operation**

54. The CCB is the competent authority and policy making body for advancing AML/CFT in Myanmar. It comprises Ministers, Deputy Ministers and high ranking officials of the key agencies involved in combating ML and FT. The CCB holds interagency meetings with the aim of sharing information and case experience. There are three to four plenary meetings each year.

55. Myanmar has acceded to the Vienna and Palermo Convention. Importantly, in acceding to these important Conventions, Myanmar expressed reservations in relation to the extradition frameworks and obligations provided in both Conventions. It signed the International Convention for the Suppression of the Financing of Terrorism on 12 November 2001 but has not yet ratified this instrument.

56. Myanmar has enacted the Mutual Assistance in Criminal Matters Law (MACML) 2004 Act and signed the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. The provision of mutual legal assistance is subject to the requirement of dual criminality. The efficiency and effectiveness of processes under both statutes are yet to be tested as Myanmar has yet to receive a MLA request.

57. The non-criminalization of terrorist financing, the limited number of predicate offences in its CMLL, and dual criminality requirement significantly limit the extent of assistance that Myanmar may provide.

58. Myanmar's extradition law is contained in the old Burma Extradition Act 1901. Authorities have, however, indicated that this statute is no longer used or enforced despite not being repealed.

59. Myanmar has signed a number of international, regional and bilateral agreements and is able to provide assistance to international counterparts. There are clear and efficient mechanisms on assistance and information sharing, particularly in the areas of drug trafficking, money laundering and human trafficking. Myanmar Customs has established contact points with Customs authorities in the region, including with members of ASEAN. There have been limited information exchanges in the regulatory and supervisory areas.

## **7. Other Issues**

60. Myanmar has been a very willing partner in the very limited technical assistance and training afforded to the country. Myanmar's AML/CFT competent authorities would benefit from additional international technical cooperation and sharing of implementation experiences with foreign competent authorities, not only in the areas of FIU and law enforcement, but also in the regulatory and supervisory areas.

**Table 1:** Ratings of Compliance with FATF Recommendations

**Table 2:** Recommended Action Plan to improve the AML/CFT system

**Table 3:** Authorities' Response to the Evaluation (if necessary)

# MUTUAL EVALUATION REPORT

## 1. GENERAL

### 1.1 General information on Myanmar

61. The Union of Myanmar (“Myanmar”) is strategically located between South Asia and South East Asia and between the two most populous nations in the world - China and India. It shares borders with China to the north and north east, Laos to the east, Thailand to the south east, Bangladesh to the west and India to the north west.

62. As of 2004/2005 the population of Myanmar was approximately 54 million with an estimated growth rate of approximately 2 % per annum.

#### *Economic Overview*

63. Myanmar is a resource-rich country with a strong agricultural base. It has vast timber, natural gas, and fishery reserves and is a leading source of gems and jade. Teak, hardwood and precious gemstone products contribute significantly to the country’s GDP. The agricultural sector accounts for approximately 38% of the country’s total production, and provides employment for 65% of the population.

64. It is a market-based economy but there are licensing requirements in all sectors of the economy. All exporters and importers must be licensed by the Government. There are also licensing controls over other key sectors including finance, mining, forestry and hotels and tourism. According to Government estimates, per capita income is about US\$300 per annum; inflation is currently at over 30%; and interest rates on Kyats savings deposits and loans are at 12% at 17% respectively. Savings on foreign currency saving accounts are pegged at 1%.

65. There are restrictions on international trade due to United States (U.S.) and European Union (EU) sanctions. Some key Myanmar exports such as gems, semi-precious stones and timber are currently banned from the U.S and EU markets. There is also a Foreign Investment Law of November 1988 governing Foreign Direct Investment (FDI) in Myanmar. The Myanmar Investment Commission is responsible for approval all foreign investment proposals. Foreign investors can set up their businesses either in the form of a wholly owned or a joint venture with any partner.

66. The major countries investing in Myanmar are: Singapore (US\$1.572 billion), United Kingdom (US\$1.431 billion), Thailand (US\$1.341 billion) and Malaysia (US\$660.75 million).

67. Myanmar is predominately a cash-based economy with less than 20% of the population accessing the formal banking system. Approximately 70% of banking transactions are business-related current account transactions. Savings account transactions constitute the remaining 30% but individual transactions are smaller on average.

68. Alternative secure payment methods are very limited. Personal cheques are not normally accepted and banks only introduced certified cheques (bank guaranteed) in January 2008.

### ***Foreign Exchange***

69. Myanmar is a “U.S. dollarized” economy with the U.S. dollar readily accepted at shops and retail outlets. There is a very strong preference for “clean and fresh” U.S. notes. Older notes are accepted but at a discount rate.

70. The Myanmar currency is the Kyat (“Ks”). The kyat is not an internationally tradable currency and cannot be legally taken out of the country. The official conversion rate is approximately US\$ 1 to Kyat 6. However, there is an unofficial market which at the time of the on-site was US\$1= Kyat 1,300.

71. Myanmar maintains significant exchange restrictions in accordance with its Foreign Exchange Regulation Act 1947, the Foreign Exchange Control Manual 1957, and occasional directives from higher authorities. All cross border payments and wire transfers are subject to vetting and approval by the CBM Exchange Board. Myanmar nationals are not normally permitted to own foreign currencies except for businesses licensed to accept foreign currencies and to open foreign currencies accounts with the three state owned banks. Currently, multiple exchange rates are practised in Myanmar.

### ***Government and Legal System***

#### ***Government***

72. Myanmar (previously known as “Burma”) was a British colony from 1824 until 1948 when a Constitution was established. From 1948 until 1962 Myanmar suffered from internal conflict. In 1962 the military seized power in a coup and suspended the Constitution, but later, in 1974, re-instituted a modified form of the Constitution. It was suspended again (permanently) in 1988 when a new military government gained power. The new government, referred to as the State Law and Order Restoration Council (SLORC), changed the name of the country from “Burma” to “Myanmar”. In 1997, the ruling SLORC was reorganized as the “State Peace and Development Council (SPDC)”.

73. Myanmar has a military government with executive power vested mainly in military officers. However, civilian government officials also occupy senior government posts, normally at the deputy level and in certain agencies such as the Central Bank, the head is a civilian. In 2005, the military government relocated the capital city from Yangon to Nay Pyi Taw. Government agencies and officials are progressively being relocated to Nay Pyi Taw.

74. Myanmar is administratively divided into seven divisions and seven states. The seven divisions include cities such as the new administrative capital Nay Pyi Taw, Yangon and Mandalay and are generally more developed. The seven states are located in the more remote border areas including four semi-autonomous states. Below the State/Division level are the Districts and Townships. Administrative control is exercised from the central government through a system of subordinate SPDC executive bodies and regional military commanders.

75. Myanmar has no Parliament. The People's Assembly (Pyithu Hluttaw) was abolished in 2000. Legislative authority is exercised through Cabinet (the Executive) formed by heads of government

agencies which are normally headed by a senior military officer appointed by the SPDC. All heads of government agencies are accountable to the SPDC. Cabinet-endorsed draft legislation is submitted to the SPDC for ratification. Promulgation of legislation is subject to SPDC approval and signature of the SPDC Chairman. Ministers, or their equivalents, can issue subsidiary legislation in the form of Orders.

76. In 2008 the government prepared a new national Constitution and recently put the document to the general public through a national referendum planned on 10 May 2008.<sup>1</sup>

77. The SPDC is composed of the Senior General Than Shwe, who is the SPDC Chairman and head of state; Deputy Senior General Maung Aye, the SPDC Vice-Chairman; and General Thein Sein, Prime Minister and head of the government.

### *Legal*

78. Myanmar has a modified common law system based on a legal framework first adopted in India in the nineteenth century. The judicial system that Myanmar (then Burma) inherited from the British was abolished in 1974 with the new Constitution of that year. The Constitution established a new hierarchy of courts at the state, town, village and ward level. In September 1988, SLORC (now SPDC) issued Law No. 2/88 (the Judiciary Law) according to which there shall be a Supreme Court composed of a Chief Justice and "not more than five judges". Lower courts, the State or Division and Township Courts, were to be formed by the Supreme Court. The Supreme Court supervises all other courts.

79. The SPDC appoints the judges of the Supreme Court. The Supreme Court selects judges for the lower courts, but with the approval of the SPDC. The Judiciary Law does not contain any provisions regarding judicial security of tenure and protection from arbitrary removal by the Executive, thus leaving such issues in the hands of the government. In 2001 the International Commission of Jurists criticised the judicial system of Myanmar as lacking judicial independence.

### *Principles such as transparency and good governance*

80. Myanmar, like many other countries, has significant levels of domestic corruption. A 2005 UNODC Country Report on Myanmar stated that "corruption is endemic in Myanmar." The structures in place to mitigate corruption are minimal by international standards. In 2007 Myanmar ranked 179 in the Transparency International (TI) Corruption Perception Index. In the year previous, Myanmar had a similar ranking and also with previous years. Domestic corruption is reported (internationally) at all levels of government.

81. Myanmar needs to make efforts to improve transparency and good governance, including establishing administrative structures and mechanisms, public education, enforcement and laws.

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<sup>1</sup> However, due to a disastrous cyclone which hit the country just prior to that date, the government decided to postpone the referendum in certain parts of the country hardest hit by the cyclone. The final outcome of the constitutional referendum was not known to the team at the time of writing this report.

### *A reasonably efficient court system and properly enforced judicial decisions*

82. Like most jurisdictions with limited resources, the courts face significant challenges in processing cases on a timely basis.

### *Appropriate measures to combat corruption*

83. The Bureau of Special Investigation (BSI) under the Ministry of Home Affairs is responsible for investigating corruption. It has investigated and filed cases against senior government officials including ex-ministers and several high level customs officers.

84. However concerns have been expressed at the international level that anti-corruption laws are sometimes used inappropriately rather than to address the corruption referred to by the UNODC.

85. Myanmar signed the 2003 UN Convention Against Corruption on 2 December 2005 but it has not ratified or acceded to this Convention. Myanmar has an old Anti-Corruption Act of 1948 which is still in effect. Myanmar officials advised the evaluation team that it is drafting a new Anti-Corruption Law. No time-frame for the enactment and implementation of this law was given to the evaluation team.

### *Ethical and professional behaviour on the part of professionals*

86. There are two categories of lawyers in Myanmar; the Higher Grade Lawyers and Advocates of the Supreme Court. Higher Grade Lawyers can appear in township, divisional and state courts while Advocates may appear in all courts including the Supreme Court. All lawyers are subject to the professional standards of the Myanmar Bar Council.

87. However, since 1989, the Bar Council has been supervised by the Attorney General and staffed by government officials. Accordingly, the Council is no longer independent.

88. The practice of accountancy is governed by the Myanmar Accountancy Council Law of 1994. Chapter VIII of this law sets out the Duties, Ethics and Rights of the Practising Accountant. Myanmar amended the client confidentiality clause of this law in December 2007 to permit suspicious transaction reporting.

89. The Accountancy Council is the professional body for Certified Practising Accountants in the country and sets professional standards and confers membership.

### *Culture of AML/CFT compliance*

90. Myanmar has made progress, since the enactment of its Control of Money Laundering Law (CMLL), to educate and raise awareness internally amongst government agencies and with reporting entities. Amongst the reporting entities, initial efforts focused on the banking sector and then on the Designated Non-Financial Businesses and Professions (DNFBPs). While a lot more work needs to be undertaken, there is a growing, albeit slowly, a culture of AML understanding and compliance as evidenced in the area of suspicious transaction reporting.

91. Without a Counter Financing of Terrorism (CFT) law, there is less appreciation and understanding of terrorist financing (TF) except in relation to domestic related issues.

## **1.2 General Situation of Money Laundering and Financing of Terrorism**

### **Sources of Illicit Funds**

92. Myanmar has not undertaken a formal threat and risk assessment in relation to money laundering. Moreover, the government does not consistently publish annual crime statistics to assist in determining the levels of crimes and how they vary from year to the next. The UN has however reported that there is very little violent crime in Myanmar. The mutual evaluation (ME) team relied largely on information provided during the on-site visit, together with information provided in APG typologies reports, available crime and suspicious transaction report (STR) statistics, and on open source information in identifying key threats and money laundering typologies.

93. Myanmar authorities advised that drug trafficking and human trafficking are the major sources of illicit proceeds. The FIU received 717 STRs in 2007, out of which nine cases were identified as potential money laundering:

- four cases involved drug trafficking;
- one case involved cash courier, alternative remittance, and smuggling of gold;
- one case involved fraud and cheating; and
- three cases involved tax evasion in purchasing real estate.

94. There have been 23 money laundering (ML) investigations from 2003 to 2007 by the Investigation Board (IB) of the Central Control Board on Money Laundering. The profile of the 23 ML investigations is similar to the STR statistics, except that there are cases concerning human trafficking and breaches of foreign exchange controls.

95. Narcotics remain a major source of illegal proceeds in Myanmar despite efforts taken to reduce this problem. There were a total of 81,289 narcotics related arrests during the period 1988 to mid 2007. According to the statistics issued by the Central Committee for Drug Abuse Control (CCDAC), the narcotics problem is improving, as narcotics related arrests have fallen from 3078 cases in 2005 to 2856 cases in 2006 and to 1498 in the period of January to July 2007.

96. Myanmar's opium poppy cultivation decreased from 130,300 ha in 1998 to 81,400 in 2002 and only 21,500 ha in 2006 (a reduction of 83% from 1998 to 2006). The World Drug Report indicates that despite years of decreases, Myanmar still is the second largest opium poppy grower in the world after Afghanistan. However, its share of the world opium poppy cultivation fell from 63% in 1998 to only 11% in 2006. The major narcotics problem now is the trafficking of large quantities of methamphetamine and other psychotropic substances either produced in the country or smuggled from abroad.

97. Human trafficking is also a major problem. According to Myanmar authorities, up to one million Myanmar nationals have been trafficked primarily to China for arranged marriages and to Thailand for sexual servitude. People are also trafficked for economic reasons including employment in neighbouring countries. Malaysia is also becoming an end country for trafficked people transiting through Bangkok in Thailand. The authorities were not able to provide any information on the estimated scale of illicit funds generated from this activity.

98. Myanmar has taken steps to tackle the trafficking of women and children by enacting the Anti Trafficking in Persons Law in September 2005 and participating in the COMMIT (Coordinated Mekong Ministerial Initiative against Trafficking) process.

99. The following table provides statistics on drug and human trafficking cases:

**Table: Number of cases related to drug and trafficking in persons**

Year	Drug Cases	Trafficking in Persons
1998	3546	
1999	4765	
2000	3535	
2001	2933	
2002	2899	99
2003	2767	195
2004	3012	118
2005	3078	203
2006	2856	191
2007(Jan-July)	1498	93

100. There is no information on the scale of corruption from the cases investigated by the Bureau of Special Investigations, although there were 15 cases under investigation at the time of the on-site visit.

101. Myanmar is the primary producer of teak wood globally and a major producer of precious gems, including sapphire and jade. Gold, while mined and sold within the country, is a prohibited export. Myanmar acknowledges that illegal logging and mining do occur. These products are

smuggled across Myanmar's borders to neighbouring countries either as end or transit destination points.

102. Smuggling or illegal exporting is also committed to avoid customs or export controls. There have been documented cases of attempted smuggling of precious stones, gems and jewellery and teak. There are no official estimates of the scale of smuggling.

103. The authorities acknowledged the existence of illegal casinos operating in some hotels in the border areas. The scale of funds generated from these establishments is unknown. While acknowledging their existence the government does not appear to be taking enforcement action to prevent their continued operations.

104. Property taxation avoidance through the undervaluation of property is a common fiscal offence. There have been a number of immovable properties seized because of undervaluing to avoid real estate taxes.

### **Terrorism**

105. The Myanmar authorities advised the ME team that since January 2006, 34 "terrorist acts" in the form of explosions caused by improvised explosive devices had occurred in Yangon (Rangoon) and in many other places in the country. There were explosions in upmarket locations both in Nay Pyi Taw and Yangon during the ME team's on-site visit. The Ministry of Home Affairs attributes the "terrorist acts" to dissident groups using violence to harm innocent civilians in an attempt to undermine the government.

106. Myanmar has not criminalised terrorist acts or terrorist financing. Law enforcement agencies use offences in existing laws such as the Penal Code to lay charges against those involved in activities deemed to be "acts of terrorism". Statistics were not provided to the team.

107. Customs Officers are law enforcement officers and have the powers to stop and detain any person they suspect of being in possession of any property that is either linked to any crime under the criminal law of Myanmar; is the proceeds of any crime; or is involved in money laundering or financing predicate crimes.

### **Terrorism Financing**

108. Cash couriers and Hundi are believed to be the two main means of transferring funds for "terrorist acts". Myanmar authorities advised that investigations were ongoing and no further details were provided to the team.

109. There is a risk that the proceeds from the operations of illegal casinos in some hotels in the border areas, particularly in Myanmar's semi independent zones, could be used to finance "terrorist acts". However, authorities were unable to provide any information on what they are currently doing to mitigate this risk.

110. No STR has been submitted on the financing of "terrorist acts" as currently deemed by Myanmar.

## **ML and TF risks and vulnerabilities**

111. Myanmar's close regulation and control of foreign exchange and wire transfers, directly or indirectly, encourages the use of informal systems to move money and products in and out of the country.

112. Myanmar's borders are vulnerable in terms of transnational crime, money laundering and increasingly terrorism financing. The distance, terrain and semi-autonomous nature of its border states make them more attractive places for illegal activities. Historically, Myanmar's border areas have been the major source of opium production and now amphetamine-type stimulants (ATS). They have also been the route for illegal contraband and movement of assets, including currency.

113. As noted in the UNODC's 2005 Country Profile of Myanmar, for combined political, economic and institutional reasons, Myanmar is an "unappealing destination for laundering money." The bulk of money laundered can be assumed to be generated from predicate crimes committed domestically "with drug productions and trafficking playing a predominant role". It cannot be regarded as a safe haven jurisdiction for illegal proceeds unlike some other jurisdictions which have sound and well developed financial institutions and products. Criminal elements both within and outside Myanmar are more likely to use the country as a transit point to move funds abroad or have settlement for illegal activities undertaken offshore.

114. The prevalent use of the U.S. dollar in the country makes cash courier/currency smuggling of U.S. dollar notes an attractive method of laundering illicit proceeds, either into or out of the country. The policing of customs requirements along Myanmar's extensive and porous borders is constrained by resources, authority and difficult terrain.

115. Valuable portable commodities such as gems, precious metals and jewellery are another conduit for the conversion, concealment and transfer of illicit proceeds. Myanmar is a major producer of these commodities and retail shops store significant amounts of high value but relatively small items of gems and jewellery. They can be easily concealed and transported across Myanmar's borders.

116. There have been cases of trade-based money laundering with settlement using the Hundi system in a third country. Trade-based ML provides an effective avenue to overcome the tight controls in place with international wire transfers and foreign currencies.

117. The Hundi system is commonly used for legitimate purposes. However, it is illegal to provide a remittance service unless licensed by the Central Bank of Myanmar (CBM). Since the informal channels are not identified and hence not subject to any AML/CFT measures, these remittance flows could be exposed to abuse. One of the major drug case investigated in Myanmar identified the use of Hundi to launder drug proceeds.

118. The use of wire transfers is limited. The Kyat is not an internationally tradable currency and Myanmar citizens cannot convert the Kyat into foreign currency. Only licensed businesses are

allowed to deal in foreign currencies and open foreign currency accounts in the three state owned banks. Only state owned banks can provide international wire transfer services to customers. In addition, all wire transfers (in and out) are subject to the CBM Foreign Exchange Controller's vetting and approval. Given the various controls in place, using the banking sector to transfer proceeds abroad poses significant challenges, albeit it is still possible.

119. It is a common practice to settle international business transactions offshore. This business practice can be attributed to a number of factors, including the domestic restrictions imposed on the banking sector and the sanctions imposed by other countries on their banks' correspondent relationships with banks in Myanmar.

120. There have been cases of co-mingling of illicit funds in the banking sector. The CBM revoked the licences of three banks in 2005 because funds used to establish the banks breached the Financial Institutions of Myanmar Law's bank licensing conditions. However, only the owner of the Myanmar Universal Bank - U Tin Sein - was convicted and imprisoned and had assets confiscated under both Myanmar's drug trafficking and money laundering laws. This case also highlighted the co-mingling and the use of illicit proceeds to provide capital for legitimate businesses, including retail shops, construction and mining businesses.

121. Myanmar has a gaming law governing an official lottery system managed by the State Lottery Department. Payments are relatively low at 5 million kyats (about US\$3,846 at the current market exchange rate). Payments are in cheque drawn by the Myanmar Economic Bank which is the state-owned bank which acts as the banker for payments and receipts for the Government.

122. The Myanmar Hotel and Tourism Law (1993) prohibits gambling in hotels. Nevertheless, Myanmar has advised that exemptions have been given to three hotels to install slot machines and operate casino style operations. This decision was made to cater for international tourists, predominately from Myanmar's neighbouring countries such as Thailand and China. These include the Thahtay Kyun Andaman Resort Hotel, Golden Triangle Paradise and the Allure Group Resort Hotel in the border areas. They are unlikely to be used for money laundering by Myanmar citizens given the latter are prohibited from entering and the limited payments involved i.e. 3,000 baht maximum payments.

123. The operations of illegal gaming and casino operations in some hotels near the border are more of a concern. These illegal casinos cater predominately to Thai and Chinese nationals. Law enforcement agencies such as the Myanmar Police Force and the Bureau of Special Investigation under the Ministry of Home Affairs are responsible for investigating illegal gambling activities. Under the guidance of the Central Control Board, the Myanmar FIU is discussing with the Ministry of Hotel and Tourism and the regional officials concerned to adopt a control mechanism for illegal casino on the Myanmar- Thai border area. In this respect, Myanmar has had discussions with its neighbours on this problem.

### **1.3 Overview of the Financial Sector and DNFBP**

124. At present, the structure of the Myanmar financial system comprises the Central Bank of Myanmar, four state-owned banks, 15 domestic private banks and a few non-bank financial institutions, which include a state-owned insurance enterprise, a state-owned small loan enterprise

and a private-owned leasing company. Since the non-bank financial sector is relatively small, the development of banking sector has become significantly more important for the mobilisation and allocation of financial resources and thus, for economic development.

**Table: Size of Financial Sector (in terms of total assets)**

	<b>Amount (in million of Kyats)</b>	<b>Percentage</b>
<b>Banking</b>	<b>1,521,448 (i)</b>	<b>99.00</b>
<b>Insurance</b>	<b>2,704</b>	<b>0.1</b>
<b>Securities</b>	<b>36.4</b>	<b>-----</b>
<b>Total</b>	<b>1,524,156</b>	<b>100.00</b>

(i) State-Owned banks account for 55% and private banks 45% )

**Table: Details of the Financial Sector**

<b>Types</b>	<b>Number</b>	<b>Network</b>	<b>Asset size</b>	<b>Regulatory Authority</b>
State-owned banks	4	276 branches	838514.02 million kyats (55.11 %)	CBM (MADB – Ministry of Agriculture)
Domestic private banks	15	161 branches	682933.44 million kyats (44.89 %)	CBM
State-owned insurance	1	38 branches	2704.44 million kyats	Ministry of Finance and Revenue
State-owned small loan enterprise	1 (no deposit taking)	186 branches	10519.47 million kyats	Ministry of Finance and Revenue
Private-owned leasing company.	1 (subsidiary of Myanmar Oriental Bank)	-	2142.67 million kyats	CBM
Myanmar Securities Exchange centre (MSEC)	1 (50-50 joint venture between Ministry of Finance and Revenue and Daiwa, Japan.)	2 companies listed in MSEC	36.4 million kyats	Ministry of Finance and Revenue

## **Central Bank of Myanmar**

125. The Central Bank of Myanmar (CBM) was established in February 1948 under the Union Bank of Burma (Myanmar) Act of 1947. The Bank is now governed by the CBM Law that was enacted in 1990 and which confers upon the Central Bank broad powers to operate with relative independence and to exercise regulatory and supervisory authority over a wide range of financial institutions, both state and privately owned.

126. The CBM is responsible for acting as the adviser to the Government on economic matters; issuance of currency and securities; acting as a banker to the government as well as to financial institutions; formulating and implementing monetary policy; managing the international reserves of the State; controlling foreign exchange transactions; and licensing, inspecting, supervising and regulating financial institutions.

127. Since 1992, the CBM has granted licenses to domestic private banks to conduct banking business. At present, 15 domestic private banks conduct banking operations with 161 branches throughout the country.

## **Four State-owned Banks**

128. State-owned banks include the Myanmar Economic Bank, Myanmar Foreign Trade Bank, Myanmar Investment and Commercial Bank and Myanmar Agricultural Development Bank. Only State-owned banks are allowed to undertake international wire transfers which are still subject to vetting and approval by the Central Bank.

### **(a) Myanmar Economic Bank (MEB)**

129. The Myanmar Economic Bank (MEB) was established in 1976 under the Bank Law of 1975. It is now governed by the Financial Institutions of Myanmar Law enacted in July 1990. The MEB acts for the Government of Myanmar to pay government staff salaries and receive deposits of company and income taxes. It has both current and saving deposits as well as issuing savings certificates and providing different types of loans to the private sector. It caters to banking transactions in border areas.

130. The MEB has 275 branches across the country.

### **(b) Myanmar Foreign Trade Bank (MFTB)**

131. The Myanmar Foreign Trade Bank was established in 1976 under the Bank Law of 1975 and is subject to the Financial Institutions of Myanmar Law enacted in July 1990. The bank conducts most commercial foreign exchange transactions for the Government of Myanmar. The bank renders such banking services as accepting deposits in specified foreign currencies; accepting and confirmation of Bills of Exchange; sales and purchase of travellers' cheques and foreign currencies; and all matters relating to letters of credit, remittances and bank guarantees.

132. The MFTB has no domestic branches but has a correspondent banking network of over 142 banks in 48 countries including in England, Hong Kong, Japan, Norway, Singapore and Sweden.

### **(c) Myanmar Investment and Commercial Bank (MICB)**

133. The Myanmar Investment and Commercial Bank commenced business in September 1989, as a subsidiary of the MEB. It became an independent entity in September 1990 under the Financial Institutions of Myanmar Law. The Bank is now functioning as a commercial, investment and development bank for local and foreign investors, joint venture companies, and local and foreign business enterprises. Both domestic banking and foreign facilities are provided by the bank. It has performed its savings deposit taking function since October 1994.

134. MICB is performing its foreign banking operations through its correspondent network of 149 banks in 25 countries. These include Austria, Belgium, China, France, Germany, Hong Kong, Indonesia, India, Italy, Iran, Japan, Korea, England, Macau, Malaysia, Pakistan, Singapore, Thailand and Vietnam.

**(d) Myanmar Agricultural Development Bank (MADB)**

135. The Myanmar Agricultural Development Bank (MADB) is a state-owned bank which commenced operations in 1953. It is the only state owned bank operating under the Ministry of Agriculture and Irrigation. MADB is the major source of institutional credit for small scale farmers. It covers the whole country extending credit to about one million farmers and their families.

136. MADB has a country wide net work of 14 regional offices and 205 branches.

**Table: Details of State-owned Banks**

Details	MEB	MFTB	MICB	MADB
Branches in Myanmar	275		1	205
Correspondent banks	-	142 banks in 48 countries	149 banks in 25 countries	-
Types of products and services	Savings, current, certificate of deposits, foreign banking, border trades.	Commercial foreign exchange transactions, deposits in foreign currencies, bills of exchange, travellers' cheques, LCs, remittances, bank guarantees.	Open to both local and foreign investors, JV companies, local and foreign business enterprises. Savings deposit.	Institutional credit for small scale farmers. Bank loans to state-owned agriculture and livestock organisations, cooperatives, private persons, farmers' groups.
Assets	Deposits: 646353 million kyats Loans: 255550 million kyats	8382.12 mil kyats	Deposits: 25055.29 million kyats Loans: 14905.39 million kyats	Deposits: 18715.29 million kyats Loans: 18066.98 million kyats

## **Domestic Private Banks**

137. Since 1990, privately owned domestic banks were granted licences to operate banking business under the Financial Institutions of Myanmar Law 1990. Currently, 15 domestic private banks are conducting domestic commercial banking services which include accepting demand deposits and saving deposits and extending loans. Private banks are neither permitted to open foreign currency accounts nor enter into correspondent banking relationships with foreign banks.

138. Private banks have 161 branches through out the country as at the end of May 2008.

## **Representative Offices of Foreign Banks**

139. The CBM has allowed foreign banks to open representative offices in Myanmar since 1990. These representative offices are allowed to deal in liaison business only.

140. Currently, 13 foreign banks have opened their representative offices in Yangon. These foreign banks are DBS Bank Ltd., United Overseas Bank Ltd., Overseas-Chinese Banking Corporation Ltd., Malayan Banking Berhad (MAYBANK), Malaysia, Bangkok Bank Public Company Ltd., National Bank Ltd., Brunei Investment Bank (BIB), First Overseas Bank Ltd., the Bank of Tokyo-Mitsubishi-UFJ Ltd., First Commercial Bank, Singapore Branch, Bumiputra-Commerce Bank Berhad, Sumitomo Mitsui Banking Corporation and Natexis Banques Populaires.

## **Non-Bank Financial Institutions**

### **(a) Myanmar Insurance**

141. Myanmar Insurance is a State-owned insurance organization under the administration of Ministry of Finance and Revenue. It provides a comprehensive range of products and is regulated by the CBM. Currently it is the only insurance organisation in Myanmar.

142. Insurance policies are sold at the Myanmar Insurance's head office (Yangon) and its 38 branches across the country. Insurance policies are not sold by independent agents. Life Insurance premium is Kyat 500,000 at maximum and Property Insurance premium is fixed at 10% of the property value and on annuity basis. Fire insurance business has grown along with bank lending to private entrepreneurs, since insurance cover is often a requirement for bank loans which have property as collateral.

143. General insurance and life insurance account for 90% and 10% respectively of the businesses of the Myanmar's Insurance. Life insurance is on annuity basis and merely underwritten for protection. Upon maturity, the sum insured can be withdrawn but without any interest.

### **(b) Myanmar Securities Exchange Centre Co., Ltd**

144. Myanmar has one securities company, the Myanmar Securities Exchange Centre Co., Ltd (MSEC), which is a Joint Venture between the between the Ministry of Finance and Revenue and the Japanese Daiwa Institute of Research and was launched in April, 1996.

145. Generally, trading activities are low and investors hold the shares as another savings instrument. The securities sector is still in its infancy and currently there are only two companies

listed in the Myanmar Securities Exchange Company (MSEC): the Forest Products Joint Venture Corp (FPJV) engaged in timber extraction, saw-milling and wood-based production; and the Myanmar Citizens Bank Ltd (MCBL).

**(c) Myanmar Small Loans Enterprise**

146. The Myanmar Small Loans Enterprise was previously part of the Myanmar Economic Bank. The Myanmar Small Loans Enterprise was established as a separate entity from the bank in 1992. It is under the supervision of Ministry of Finance and Revenue. The Myanmar Small Loan Enterprise caters to the financial needs of small enterprises and private individuals. It does not take deposits.

**(d) Money Changers**

147. According to the CBM Foreign Exchange Management Department (FEMD), there are four (4) other types of money changers operating in Myanmar namely: (i) Money Changer License (MC); (ii) Foreign Exchange Acceptor and Holder License (AH); (iii) FEC Changer License and FRC License for Kyats; and (iv) Authorized Dealer Licenses (AD). There are approximately 1053 such money changers in Myanmar.

148. FEMD officials advised that, except for ADs, the first three categories of money changer actually do not engage in currency changing and therefore do not fit the FATF definition of money changers. They have been authorised to buy and sell only in the same foreign currency and not to exchange one currency with another currency, including with the local Kyat.

149. There are 42 ADs which operate in Myanmar. Under its licensing rule, an AD may engage in handling, buying, selling, collecting and dealing in several foreign exchanges such as Pound sterling, USD, Yen and Euro in cash or traveller's cheques. Among the licensed ADs, 41 licenses were issued to three state-owned banks and their branches. However, the CBM issued one license to the Andaman Club Co., Ltd, which is a resort hotel near Thailand. These three banks, including their branches and the Hotel are the only institutions providing money changing services as defined by FATF.

150. There are - as noticed by the team during the on-site visit – many unauthorised money changers operating in the country because of significant differences in the official and market rates of exchange between the U.S. dollar and the Kyat.

**(e) Others**

151. Myanmar does not have a developed financial sector. There are no complex financial instruments or products available such as derivatives, store value cards, or professional portfolio management. There is no private sector superannuation industry. Those who have savings traditionally invest in tangible assets for their retirement needs. Government officials are entitled to an employer-funded pension on retirement.

152. There is, as mentioned, a significant informal and illegal alternative remittance (Hundi) system in the country. The government has not reviewed these illegal operations, nor has it enforced the prohibitions against them under the Financial Institutions Law.

### **1.3.2 The Designated non-Financial Business and Professions (DNFBPs)**

#### **Casinos**

153. Gambling in hotels is strictly prohibited in Myanmar. Nevertheless, the Ministry of Hotels and Tourism has granted exemptions to three hotels, namely the Thahtay Kyun Andaman Resort Hotel, Golden Triangle Paradise and the Allure Group Resort Hotel in the border areas to operate casino gaming operations, mainly with slot machines. The Thai baht is used in these premises. It is illegal for Myanmar citizens to use or visit such premises. The maximum payment from a slot machine is 3,000 baht (US\$1000).

154. There are also illegal casinos in hotels in the border areas. Under the guidance of CBB, the FIU is discussing with the Ministry of Hotel and Tourism and relevant regional officials to address this problem. The number of hotels with illegal casino operations is considered to be small.

#### **Real Estate Agents**

155. There is no real estate law in Myanmar. Private sector real estate agents are relatively new. While they facilitate the sale and purchase of real estate, they do not take deposit payments from clients in trust. All payments are direct between the vendor and buyer. Real estate agents are required to register with the Ministry of Home Affairs but there are no regulatory requirements.

#### **Dealers in Precious Metals and Stones**

156. The Myanmar Gemstone Law (1995) governs the commercial operations of the very sizeable gems market in Myanmar. Mining companies selling gemstones can only legally sell gems at the Gems Emporium Enterprise's tri-annual gems market through bidding and tendering process. The buyers at the Gems Emporium market are international buyers and domestic retailers.

157. There are a total of 1,200 government licensed retail gem shops selling gems and jewellery. They are required to be licensed by the Myanmar Gems Emporium Enterprise which is a government agency responsible for regulating and supervising the commercial gems market. All sales at the tri-annual auctions must be reported to the Myanmar Gems Emporium. The latter in turn submits threshold reports and STRs to the CCB. The actual mining and gems dealers, until March 2008, were not reporting institutions under the CMLL. However, these companies and gem shops have been required to report to the Myanmar Gem Enterprise quarterly sales transactions for the purpose of foreign exchange reporting.

158. The Myanmar Gems Enterprise has 10 inspectors who conduct on-site inspections of retail gems/jewellery shops as part of their monitoring programme.

159. There are about 300 gold mining companies licensed by the Department of Mines. They are permitted to sell gold domestically but not to export. However, there is very limited oversight of both the wholesale and retail gold market. It is estimated there are 800 retail gold dealers. There are no licensing requirements for retail dealers beyond the normal business registration requirements. There is also no requirement to submit quarterly sales reports.

## **Lawyers and notaries**

160. As noted earlier there are two classes of lawyers: High Grade lawyers and Advocates. There are 6,000 Advocates in Myanmar registered with the Bar Council of which 1,700 lawyers are prosecutors. No statistics for high grade lawyers were available.

## **Accountants**

161. Public accountants are registered with the Myanmar Accounting Council (MAC). There are a total of 328 Certified Public Accountants registered with MAC.

## **Trust and Company Service Providers**

162. There are no trust providers in Myanmar. Neither accountants nor lawyers provide trust accounts for clients but do act as required. Real estate agents do not hold any money in trust as payment is made directly by the buyer to the seller of the property.

163. Accountants and lawyers provide company formation services and may act on behalf of any persons provided appropriate mandate is given such as the power of attorney or the Board of Directors' resolution in the case of a company. In providing company services, the office of the accountant and/or lawyer may be used as a temporary address for receiving mails etc.

## **1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements**

164. There are about 16,882 domestic and 1,259 foreign-owned companies registered in Myanmar.

165. Legal persons in Myanmar may be established under four statutes: Myanmar Companies Act (1914); Special Company Act (1950); The Union of Myanmar Foreign Investment Law (1988); and the Myanmar Citizens investment Law (1994). There are four types of companies in Myanmar:

- Local Private Company;
- Local Public Company;
- Foreign Company incorporated in Myanmar and wholly Owned by Foreign Investor (Sole Proprietorship); and
- Joint Venture (Foreign Investor/ Local partner).

## **1.5 Overview of strategy to prevent money laundering and terrorist financing**

### *a. AML/CFT Strategies and Priorities*

166. The Myanmar authorities have stated that they are committed to taking effective action against money laundering and to prevent predicate offences. Myanmar joined the APG in March 2006. It was removed from the FATF non-cooperative countries and territories (NCCT) list in October 2006 after being added in June 2001. However, Myanmar is still subject to FATF monitoring.

167. The government has developed an implementation plan, in part in response to FATF monitoring requirements in the past and currently, in order to implement and enhance the CMLL. The plan includes the following priorities:

- Updating the legislation and financial regulation in line with international standards;
- Enhancing the capacity of the FIU;
- Socialization/seminars/workshops for banks, non-bank financial institutions and DNFBPs;
- Compliance audits conducted by CBM in cooperation with financial institutions' internal auditors;
- AML/CFT awareness raising training for government officials involved in the anti-money laundering regime;
- Training and socialization for investigators and prosecutors to enhance their capacity to conduct money laundering cases; and
- Improving the reporting system to receive quality reports.

***b. The institutional framework for combating money laundering and terrorist financing***

**The Central Control board on Money Laundering (CCB)**

168. The Central Control Board on Money Laundering (CCB), created under the Control of Money Laundering Law (CMLL), is the competent authority and policy making body for advancing AML/CFT. The CCB comprises ministers, deputy ministers and high ranking officials of the key agencies involved in combating ML and TF. The CCB is chaired by the Minister of Home Affairs and Minister of Finance and Revenue is leading the Committee as Vice Chairman. The Chief of Police and the FIU head are also actively engaged in providing relevant information and advice to the CCB.

**Ministries**

**(a) Ministry of Home Affairs (MoHA)**

169. The Ministry of Home Affairs is responsible for national security and is responsible for the Myanmar Police Force in which is located the Department against Transnational Crime (DTC). The Myanmar Police Force is responsible for investigating all crimes including ML and TF. DTC is responsible for investigating transnational crimes and for systematic prevention and suppression of transnational organized crimes in cooperation with international organization.

**(b) Ministry of Finance and Revenue (MoFR)**

170. The Ministry of Finance and Revenue is responsible for the CBM which regulates the banking sector and also responsible for non-bank financial institutions under its control.

**(c) Attorney General Office (AGO)**

171. Under the 2001 Attorney General Law the SPDC appoints the Attorney General and the three Deputy Attorney Generals. The primary roles of the Attorney General are to provide legal advice to the Government and to act as Prosecutor in criminal cases.

172. The AGO is responsible for legal processes related to the Vienna Convention (Narcotics), the Palermo Convention (Transnational Organized Crime) and the Convention against Terrorist Financing and its Protocols, as well as mutual legal assistance treaties, and processes amendments of laws and regulations. In addition, the AGO is responsible for handling requests for international cooperation. The Deputy Attorney General is represented on the CCB. It compares any draft laws or international agreements with consistency with existing laws.

**(d) Chief Justice Office (CJO)**

173. The CJO handles judicial affairs related to all criminal and civil prosecutions.

**(e) Ministry of Foreign Affairs (MoFA)**

174. The Ministry of Foreign Affairs is responsible for signing, rectifying and acceding the UN Convention, protocols and UN Resolutions such as Vienna Convention (Narcotics), the Palermo Convention (Transnational Organized Crime) and the Convention against Terrorist Financing and its Protocols, as well as international and regional mutual legal assistance treaties.

**Financial sector bodies**

**The Central Bank of Myanmar (CBM)**

175. The CBM is responsible for the licensing, regulating and supervising the financial sector. The Central Bank Governor is represented as a member in the CCB. There are no other financial sector supervisors in Myanmar.

**The agencies and bodies involved in AML/CFT**

**(a) Myanmar Police Force (MPF)**

176. The Myanmar Police Force (MPF) is a law enforcement agency responsible for intelligence in any crime against national security and a coordinating body in ML predicate offences relating to the Vienna Convention, the Palermo Convention and the Convention against Terrorist Financing and other related international obligations. The Chief of MPF is represented as the Secretary on the CCB.

**(b) Financial Intelligence Unit (FIU)**

177. The Financial Intelligence Unit was established in January 2004 under the Ministry of Home Affairs and under the direct supervision of the Chairman of CCB who is the Minister of Home Affairs. The FIU performs the analysis and investigation of transaction reports as well as coordinating policy and operational matters with domestic and international agencies.

**(c) Department against Transnational Crime (DTC)**

178. The DTC is a MPF department responsible for security aspects of AML/ CFT, related predicate offences, and transnational organized crime.

**(d) Bureau of Special Investigation (BSI)**

179. The Bureau of Special Investigation established under the Ministry of Home Affairs is responsible for investigating economic crimes, including corruption.

**(e) The Customs Department (MOFR)**

180. The Customs Department is the primary customs agency, and is under the Ministry of Finance and Revenue. Its main roles are to collect duty relating to imports and exports, ensure security in international trade and to protect society from contraband goods. It is also responsible for the monitoring of cross border transactions as well as the investigation of breaches of the country's customs requirements.

**(f) The Internal Revenue Department (MOFR)**

181. This Department is an agency under the Ministry of Finance and Revenue and responsible for collecting taxes and cooperating in ML, TF and related issues of tax claims on legitimate unidentified income.

**(g) The Central Committee of Drug Abuse Control (CCDAC)**

182. The CCDAC is a law enforcement body and responsible for the eradication of drug production, investigation and prosecution of drug-related offences under the Vienna Convention and other international obligations.

**(h) Settlements and Land Records Department (SLRD)**

183. The SLRD is a department under the Ministry of Agriculture and Irrigation and oversees the registration of non-agricultural land and property transactions in Myanmar. Under the CMLL, the SLRD has to report to the CCB, non-agricultural land and property transactions where the amount of cash payment is greater than 100 million kyat or the transaction is suspicious. The Director General of SLRD is represented as a member on the CCB.

**(i) Department of Mines (DoM)**

184. The Department of Mines is responsible for the monitoring of mining operations, prospecting, exploration, inspection and environmental protection. The mining of precious metals is governed by the Myanmar Mines Law 1994 and Rules 1996. The Myanmar Gemstone Law 1995 governs the trading of gemstones and jewellery. In addition, the Ministry of Mines formed the Century Gemstone Supervisory Committee to regulate the mining industry to prevent illegal production of gemstone and unlawful sale of gemstones abroad.

**(j) Myanmar Gems Emporium Enterprise**

185. Myanmar Gems Enterprise is a government agency responsible for regulating, including licensing and supervising the 1,200 retail gem stops selling gems and jewellery. It also manages the tri-annual Myanmar Gems Emporium public tender process for the sale of precious stones.

**(k) Road Transport Administration Department, which is under the Ministry of Rail Transportation.**

186. The registration of motor vehicles is under the Road Transport Administration Department which is under the Ministry of Rail Transportation. The Department administers the Motor Vehicle Law 1964 and Motor Vehicles Rules 1989.

187. The information required for registration of motor vehicles includes the owner's name and address. Owner's identification and verification is checked with the citizen registration card. Registration is done at district, division or state level. Change of ownership of a motor vehicle can be conducted at the related office of the Road Transport Administration Department (RTAD), however

for motor vehicles above 100 million kyats, permission from the Head Office is required. All subsidiaries of RTAD have to forward cases to the Head Office after verification of the change in ownership. The Head Office issues permission for the transfer of the ownership and submit the threshold report to the CCB.

**(l) Divisional Courts and the Supreme Court**

188. The Divisional Courts are where ML cases under the CMLL and also predicate crime cases are adjudicated upon by a Divisional Judge.

**(m) Directorate of Investment and Company Administration (DICA)**

189. The Directorate of Investment and Company Administration is responsible for administering the Myanmar Companies Act and other related acts, including registration and supervision of companies, both domestic and foreign owned in Myanmar.

*c. Approach concerning risk*

190. Myanmar has not undertaken a comprehensive risk assessment of money laundering or the financing of terrorism. The same standard or obligations of customer due diligence is applied for all customers irrespective of risk.

*d. Progress since the last mutual evaluation*

191. Myanmar has not previously been evaluated for compliance with AML/CFT standards having joined the APG in 2006 after the first round of APG evaluations was completed.

# MUTUAL EVALUATION REPORT

## 2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

### Laws and Regulations

#### 2.1 Criminalisation of Money Laundering (R.1, 2 & 32)

##### 2.1.1 Description and Analysis

###### Recommendation 1

192. The offence of Money Laundering (“ML”) was first introduced in Myanmar under the Narcotics Drugs and Psychotropic Substances Law 1993 (“the NDPS Law”), as it relates to drug offences under that Act. Sections 17(a) and 19(c) and (d) provide as follows:

*“17. A person responsible from the bank or financial institutions, who is guilty of any of the following acts in respect of money, property and benefits involved in an offence under this Law shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 5 years to a maximum of 10 years and may also be liable to a fine:-*

*(a) transferring of accounts, causing to disappear, altering and amending relevant financial records so that action may not be taken against the offender;*

*19. Whoever is guilty of any of the following acts shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 10 years to a maximum of an unlimited period:-*

*(c) concealing and causing to disappear money, property and benefits derived from the commission of any offence contained in this Law, so that action may not be taken;*

*(d) transferring and converting money, property and benefits involved in an offence, so that it may appear to have been acquired from a legitimate source.”*

193. The offence of ML as it applies to other predicate offences was later criminalised under several provisions contained in the Control of Money Laundering Law 2002 (“the CMLL”) and Rules and Orders subsequently made hereunder. Although the CMLL does not amend the NDPS Law, the Myanmar authorities explained that with the introduction of the CMLL, all ML investigation involving predicate drug offences committed under the NDPS Law, have been and continue to be dealt with under the provisions of the CMLL.

194. The ML offence is defined in sections 3(a), (b) and section 5 of the CMLL:

*“3. The following expressions contained in this Law shall have the meanings given hereunder -*

*(a) Money laundering offence means an offence of money laundering money and property obtained by illegal means in respect of any offence mentioned in subsections (a) and (b) of section 5 of this Law.*

- (b) *Money and property obtained by illegal means mean money and property obtained by converting, transferring, concealing, obliterating or disguising of money or property obtained from committing the money laundering offence.”*
5. (a) *This Law shall apply to the offences of illegally converting, transferring, concealing, obliterating or disguising of money and property obtained from the commission of any of the following offences to legalize the same:*
- (1) *offences committed under the Narcotic Drugs and Psychotropic Substances Law;*
  - (2) *trafficking in and smuggling of women and children;*
  - (3) *undertakings of a financial institution without the licence issued by the Central Bank of Myanmar;*
  - (4) *theft and smuggling out of the country of antiques and articles of cultural heritage;*
  - (5) *illegal trafficking in arms, ammunition and explosives;*
  - (6) *counterfeiting money, using and possessing thereof;*
  - (7) *hijacking of aircraft, vessel or any type of vehicle;*
  - (8) *cyber crimes committed by electronic means;*
  - (9) *offences committed by acts of terrorism;*
  - (10) *offences prescribed by the Government by notification from time to time.”*
- (b) *This Law shall also be applicable to the commission of transnational offences contained in sub-section (a).*
- (c) *The amount of value of money and property relating to offences contained in sub-sections (a) and (b) shall be as prescribed by the Central Control Board.”*

195. Section 5(a) and (b) are further reproduced in the Control of Money Laundering Rules 2003 (“the CMLR”) under Rule 2(b).

196. Sections 22, 23 and 25(b) make it an offence to commit ML:

“22. *Whoever commits any of the following acts in committing any offence contained in the Narcotic Drugs and Psychotropic Substances Law shall, on conviction, be punished with imprisonment for a term which may extend from a minimum of 10 years to a maximum of an unlimited period:*

- (a) *concealing or obliterating of money and property obtained by commission of an offence, so that action may not be taken;*
- (b) *converting, transferring or disguising of money and property relating to an offence so as to appear to have been acquired from a legitimate source.*

23. *Whoever converts, transfers, conceals, obliterates or disguises money and property obtained by committing any offence contained in subsections (a) and (b) of section 5, so as to appear to have been acquired from a legitimate source except any offence contained in section 22 shall, on conviction, be punished with imprisonment for a term which may extend to 10 years and may also be liable to a fine.*

25. *Any member of the Investigation Body who commits any of the following acts or omissions in investigating money laundering offence shall, on conviction, be punished with imprisonment for a term which may extend from a minimum of 3 years to a maximum of 7 years and may also be liable to a fine:-*

- (c) *concealment, obliteration, conversion, transfer in any manner or disguising of money and property obtained by illegal means so that action may not be taken against them.”*

197. In addition to the above, the Central Control Board on Money Laundering Order No.5/2004 provides as follows:

*“With respect to converting, transferring, concealing, obliterating or disguising by illegal means of money or property obtained by committing an offence mentioned in sub-section (a) and (b) of the Control of Money Laundering Law to legalise whatever the amount of the value of the money and property relevant to the offence, it shall be taken action under the said Law as the money laundering offence.”*

198. There is also the Central Control Board on Money Laundering Order No.4/2006 which imposes mandatory reporting on the Central Bank of Myanmar, financial institutions and companies regarding the purchase, sale and transfer of shares to report shares in excess of 100 million kyats or that are “unusual or suspicious” to the CCB “so that the CCB can examine and determine whether the ‘Source of Funds’ are assets derived from Money Laundering”.

### ***Consistency with the Vienna and Palermo Conventions***

199. Myanmar has acceded to the Vienna Convention and the Palermo Convention. Whereas the main provision of section 5(a) of the CMLL includes conversion, transfer and concealing “to legalise the same”, other elements of Article 3(1)(b) and (c) of the Vienna Convention or Article 6(1) of the Palermo Convention are not covered, namely:

- a. other than the reference in sections 22 and 23 of the CMLL, which refer to “so as to appear to have been acquired from a legitimate source”, the purpose of “for concealing or disguising illicit origin of the property” is not specifically covered;
- b. other than section 25(c) of the CMLL which refers to an offence by a member of the Investigation Body for concealment, obliteration, conversion, transfer in any manner or disguising of money and property obtained by illegal means “so that action may not be taken against them”, the element of “assisting any person who is involved to evade legal consequences of his actions”, or “helping any person who is involved in the commission of the predicate offence to evade legal consequences of his actions” is not specifically covered;
- c. concealment or disguise of true nature, location, disposition, movement and “rights with respect to, or ownership of property knowing that such property is derived from an offence established or an act of participation” are not covered. But for the reference to the CCB Order 4/2006 setting out CCB’s purpose for requiring reports from the Central Bank, financial institutions and companies to examine and determine the “source of funds” in share sales and transfers, it is questionable whether the concealment or disguise of the “source” of proceeds is covered;
- d. the acquisition, possession or use of property.

200. With regard to the elements of “knowledge that the property is derived from an offence” or “knowing at the time of receipt, that such property was derived from an offence or act of participation in the offence”, under section 33 of the CMLL, the onus of proof is on the suspect or defendant to prove that the property was legally obtained –

*“33. A person under investigation has the responsibility to prove clearly with valid evidence of how he legally obtained the money and property under investigation or by which income they were obtained.”*

201. The Myanmar authorities explained that under the above provision, it would be for the defendant to provide evidence of “lack of knowledge” as referred to in the above elements.

***Definition of property***

202. The term “money and property” is defined in sections 3(d) and (e) of the CMLL as follows:

*“(d) Money means legal tender coins, their lower denominations and currency notes issued by the Central Bank of Myanmar, promissory notes, bills of exchange and cheques being negotiable instruments, bonds, treasury bills and debentures instruments, and foreign currencies and any kind of instruments or certificates related to foreign currencies;*

*(e) Property means moveable or immovable property in any form, being corporeal or incorporeal and tangible or intangible. This expression also includes profits, rights and titles pertinent to property.”*

203. In addition to the above, section 5(e) of the CMLL provides: “The amount of value of money and property relating to offences contained in sub-sections (a) and (b) shall be as prescribed by the Central Control Board.” This provision is further reproduced under section 8 of the CMLL which sets out the powers of the Central Control Board (“the CCB”) –

*“(a) prescribing the amount of value of money and property obtained by committing any offence contained in sub-sections (a) and (b) of section 5 and revising thereof from time to time;”*

204. Under these provisions, the CCB has made the CCB on ML Order No.5/2004 which sets this amount at “whatever the amount of the value of the money and property relevant to the offence”, i.e. there is no threshold:

*“With respect to converting, transferring, concealing, obliterating or disguising by illegal means of money or property obtained by committing an offence mentioned in sub-section (a) and (b) of the Control of Money Laundering Law to legalize whatever the amount of the value of the money and property relevant to the offence, it shall be taken action under the said Law as the money laundering offence.”*

205. Although there is no specific definition of “property” in the NDPS Law, section 13 authorises the “search and seizure of money, property and benefits derived from transfer, conversion and transformation of property involved in an offence”.

206. The definition of “property” is also found in section 3(h) of the Anti Trafficking in Persons Law 2005 (“the ATP Law”) – “trafficking in and smuggling of women and children” is listed in section 5(2) of the CMLL as a predicate offence for ML –

*“(h) Property means movable property in any form, being corporeal or incorporeal, tangible or intangible, animate or inanimate or immovable property. This expression also includes legal documents evidencing title, negotiable instruments and benefits pertinent to property.”*

207. The term “moveable property” is defined in section 22 of the Penal Code:

*“The words ‘moveable property’ are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.”*

208. Section 5 of the Interpretation of Expressions Law 1973 also defines the terms “immoveable property” and “moveable property” -

- “(20) the expression ‘immoveable property’ also includes land, benefits that arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth;*
- (21) the expression ‘moveable property’ includes property of every description except immoveable property;”*

209. Under the Law for Taking Against Owning and Marketing of Properties Obtained by Unlawful Means 1986, the following terms are defined in section 2 -

- “(a) “Property Obtained by Unlawful Means” property obtained by income of economic enterprise not permitted under the law or income derived in contravention of law or income concealed by evading payment of taxes under the law;*
- (b) “Property” means movable property or immovable property;*
- (c) “Immoveable Property” means land, benefits arising out of land, trees and crops on such land, buildings and things built or imbedded in the earth and things installed in such building;*
- (d) “Movable Property” means all other property including cattle and animals with the exception of property mentioned in sub-section (c) of section 2;*

210. Section 517 of the Criminal Procedure Code which covers the disposal of property including confiscation of property, provides as an ‘Explanation’ the following:

*“In this section the term ‘property’ includes in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.”*

211. The definitions of “property” as referred to above, do not specifically provide for the following:

- Property that is wholly or partly derived or realised, whether directly or indirectly from the commission of the predicate offence;
- Does not cover property situated outside of Myanmar;
- Enforceable rights of action and incorporeal property;
- Property that is subject of a gift;
- Does not define “benefits”, e.g. (a) a person benefits from an offence if the person receives, at any time, any payment or other reward in connection with, or derives any pecuniary advantage from, the commission of the offence; and (b) a reference to a benefit derived or obtained by, or otherwise accruing to, a person includes a benefit derived or obtained by, or otherwise accruing to, another person at the first mentioned person’s request or direction.
- It does not exempt property that may be subject to a forfeiture order made under another Act or is proposed to be made against the property under another Act;

- It does not cover property that is used in connection with or intended to be used in or in connection with the commission of the predicate offence.

*Predicate offences*

212. Under the provisions of the CMLL, it is not necessary that a person be convicted of a predicate offence to prove that property is the proceeds of crime. An Investigation Body set up under the provisions of the CMLL to investigate ML, can be authorised by the CCB to seize “money and property obtained by illegal means” during its investigation. Where the Investigation Body reports back to the CCB that there is evidence of a ML offence, the CCB can appoint a Preliminary Scrutiny Body to assess the evidence in terms of determining whether or not the money and property seized by the Investigation Body should be confiscated. The onus of proof under section 33 of the CMLL, is on the defendant to prove that the seized money and property were legally obtained.

213. The predicate offences are listed in section 5(a) of the CMLL with other offences added to the list by way of Rule 2(b) of the CMLR; CMLL Notification No.30/2004 and CMLL Notification No.13/2007. The predicate offences are as follows:

- Offences committed under the NDPS Law;
- Trafficking in and smuggling of women and children;
- Undertakings of a financial institution without the licence to operate issued by the Central Bank of Myanmar;
- Theft and smuggling out of the country of antiques and articles of cultural heritage;
- Illegal trafficking of arms, ammunitions and explosives;
- Counterfeiting money, using and possessing thereof;
- Hijacking of aircraft, vessel or any type of vehicle;
- Cyber crimes committed by electronic means;
- Offences committed by act of terrorism;
- Offences prescribed by the Government by notification from time to time;
- Transnational crimes of offences mentioned above in (1) to (10);
- Fraud/cheating;
- Corruptions;
- Illegal loggings;
- Trafficking in persons;
- Making fraudulent documents;
- Smuggling of persons and illegal property;
- Kidnappings;
- Extortions;
- Violations of trademark and copyrights;
- Evasion of taxes;
- Organised commission of any offences relating to the Control of Money Laundering Law.

214. The Myanmar authorities confirm that the “organised commission of any offences relating to the CMLL” refers to organised crime. The offence of participation in an organised criminal group is also specifically criminalised under the NDPS Law and the ATP Law, applying respectively to those particular offences. Furthermore, an offence based on conspiracy is available under section 120A of the Penal Code although conspiracy is not specifically listed as a predicate offence.

215. The following offences, as listed under the FATF Designated Categories of Offences, are not listed as predicate offences in the CMLL –

- *Terrorism including terrorist financing.*  
Although the list of predicate offences includes “offences committed by act of terrorism” the terms “terrorism” and “act of terrorism” are not defined in Myanmar’s laws. The financing of terrorism has not yet been criminalised.
- *Sexual exploitation, including sexual exploitation of children.*  
These offences are recognised in the ATP Law and section 66 of the Child Law and sections 372 and 373 of the Penal Code.
- *Illicit trafficking in stolen and other goods.*  
As currently listed, this is restricted to “antiques and articles of cultural heritage”.
- *Bribery.*  
This offence is recognised in sections 161 to 165, 171B and 171E of the Penal Code and the Suppression of Corruption Act 1948.
- *Environmental crime.*  
Other than illegal logging under the Forest Law 1992, other forms of environmental crime are not covered although the Myanmar authorities advise that they have several laws in place which address other areas of the environment.
- *Murder, grievous bodily harm.*  
These offences are covered under sections 299 to 302 and sections 319 to 338 of the Penal Code.
- *Robbery or theft.*  
Currently, the predicate offence is restricted to theft of “antiques and articles of cultural heritage”. Theft and robbery are criminalised under sections 378 to 382 and sections 390 to 397 of the Penal Code.
- *Piracy;*  
This offence is not criminalised under Myanmar law.
- *Insider trading and market manipulation.*  
These offences are not criminalised under Myanmar law.

216. In March 2008, the Myanmar authorities submitted to Cabinet a proposed amendment to Section 5 of the CMLL to prescribe the following offences as money laundering offences:

- i. participation in an organized criminal group and racketeering;
- ii. contribution of money and property for terrorism;
- iii. illicit trafficking in stolen and other goods;
- iv. counterfeiting and piracy of products;
- v. environmental crimes;
- vi. murder and grievous bodily injury;
- vii. unlawful confinements including illegal restraint and hostage taking;
- viii. robbery, dacoity and thefts;
- ix. infringement of intellectual property right;
- x. market manipulation and insider trading.

217. Myanmar does not include a threshold approach in terms of identifying predicate offences for ML.

218. Section 2 of the CMLL provides as follows:

*“This Law shall have jurisdiction on any person who commits any offence cognizable under this Law in the territory of the Union of Myanmar, or on Myanmar citizen or any person residing permanently in the Union of Myanmar who commits the said offence outside the country, or on any person who commits the said offence on board a vessel or aircraft registered under its existing law.”*

219. Section 2 could only be said to satisfy the requirement that predicate offences for ML extend to conduct by citizens and permanent residents of Myanmar that occurred in another country, if the phrase “any offence cognizable under this Law” is taken to mean, not just ML offences, but all predicate offences. If “any offence cognizable under this Law” means ML offences created under the CMLL, Section 2 of the CMLL only extends to ML offences committed outside of Myanmar. It is not clearly provided in the CMLL that predicate offences committed outside Myanmar are able to be the subject of ML offences under the CMLL.

220. Section 3 of the Penal Code provides:

*“Any person liable, by any law in force in the Union of Burma, to be tried for an offence committed beyond the limits of the Union of Burma shall be dealt with according to the provisions of this Code for any act committed beyond the Union of Burma in the same manner as if such act had been committed within the Union of Burma.”*

221. Section 4 of the Penal Code also provides that the “provisions of this Code apply also to any offence committed by any citizen of the Union wherever he may be”. The *Explanation* provides that: “In this section the word “offence” includes every act committed outside the Union of Burma which, if committed in the Union of Burma, would be punishable under this Code.”

#### *Self-laundering*

222. Although not specified in the CMLL, the provisions of the CMLL are such that a person who commits the predicate offence can also be charged with the offence of ML, which has been confirmed by the Myanmar authorities.

#### *Ancillary offences*

223. Ancillary offences for ML are set out in section 32 of the CMLL:

*“Whoever attempts, conspires, organises or administers to commit any offence or abets or aids financially in committing any offence contained in this Law shall be liable to the punishment provided in this Law for such offence.”*

224. It is noted that the ancillary offences of “abets or aids” is restricted to financial assistance. The Penal Code also contains provisions specifically setting out ancillary offences. Chapter VA defines conspiracy and Chapter V defines abetment and circumstances amounting to ‘abetment’. It includes to instigate, conspire, aid and facilitate. Section 511 of the Penal Code describes and penalises ‘attempt’.

225. Section 5(23) of the Interpretation of Expressions Law defines the term “Abetment” as including “inciting or aiding a person in the commission of an offence or engaging in any conspiracy with another person in the commission of an offence”.

## Additional elements

226. Where the proceeds of crime are derived from conduct that occurred in another country, which is not an offence in that other country but would have constituted a predicate offence had it occurred domestically, constitutes a ML offence if it falls within the provisions of section 5 of the CMLL.

### **Recommendation 2**

#### *Mental element*

227. Pursuant to section 33 of the CMLL, the onus of proof is on the suspect or defendant to prove that the money and property is from a legal source:

*“A person under investigation has the responsibility to prove clearly with valid evidence of how he legally obtained the money and property under investigation or by which income they were obtained.”*

228. The Myanmar authorities advise that the burden of proof in prosecuting criminal acts is on the prosecution, the standard of proof being beyond reasonable doubt. The Team was provided with a Case Note on *Sein HLA v The Union of Burma [1951] BLR (H.C) 289* whereby it was held:

*“That an accused person owes not duty to anybody and the burden of proving his guilt remains throughout the trial with the prosecutor who must prove such guilt beyond all reasonable doubt”.*

229. However, certain situations exist under the law whereby the onus of proof is reversed. Sections 101 and 105 of the Evidence Act 1872 provide:

*“101. Whoever desires any Court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*

*105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Penal Code, or within any special exemption or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.”*

230. The Team was further provided with a Case Note which illustrates the standard of proof on the defendant for an ‘exception to the Penal Code’ in *Aung Bwin v The King [1947] RLR 50* whereby it was held:

*“The test is not whether the accused has proved beyond reasonable doubt that he comes within any exception to the Penal Code, but whether in setting up his defence he has established a reasonable doubt in the case for the prosecution and that thereby earned his right to an acquittal.”*

231. The Myanmar authorities advised that the same standard would apply for a defendant or suspect under section 33 in proving that he obtained the money and property from a legal source given that the reversal of the burden of proof for a ML offence is an “exception”. The Team was also

advised that the defendant or suspect would have to establish the ‘benefit of the doubt’ which is a lower standard than ‘beyond reasonable doubt’ but whether this included proving a lack or absence of knowledge that the money and property was proceeds of crime, could not be confirmed. Given the reversal of proof, the onus is on the defendant to prove the lack of intention which the Team was advised by the authorities that this can be inferred from objective factual circumstances.

#### *Criminal liability of legal persons*

232. Although the term “person” or “persons” is not specifically defined in the CMLL, section 5(24) of the Interpretation of Expressions Law 1973 provides as follows:

*“the expressions ‘Person’, ‘anyone’, ‘individual’ includes any company, association, organisation or body of individuals:”*

233. The Myanmar authorities advise that the above definition would apply to the CMLL extending criminal liability for ML to legal persons. Section 2 of the CMLL provides:

*“This Law shall have jurisdiction on any person who commits any offence cognizable under this Law in the territory of the Union of Myanmar, or on Myanmar citizen or any person residing permanently in the Union of Myanmar, who commits the said offence outside the country, or on any person who commits the said offence on board a vessel or aircraft registered under its existing law.”*

234. It is noted that the terms used to denote offenders in sections 22 to 25(c) are not terms listed in the Interpretation of Expressions Law:

- *Section 22* – uses the term “whoever” and furthermore, only provides for a term of imprisonment;
- *Section 23* – uses the term “whoever”;
- *Section 24* – refers to “any responsible persons of the bank and financial institutions” which could be read to mean that the provision applies to natural persons only;
- *Section 25* – refers to “any member”.

235. The Myanmar authorities advised the Team that making legal persons subject to criminal liability for ML, would not preclude any parallel criminal, civil or administrative proceedings. The Team was further advised that in the one ML case that was prosecuted in Court which involved a bank, the banking licence was revoked. It was further noted under various legislation relating to legal persons that these included administrative sanctions such as the following:

- *Financial Institutions of Myanmar Law 1990* – Section 17(c) provides that the Central Bank “shall withdraw the licence to operate” where the financial institution fails “within the period specified, to refrain from activities which violate the existing laws or fail to comply with the terms and conditions prescribed by the authorities”. The reference to “existing laws” could be read to include the CMLL however the context within which the term is used would indicate that the CMLL could not be included given that a financial institution found to have committed a ML offence would not be required to “refrain from activities” related to ML.
- *The Insurance Business Law 1996* – Section 17 provides that if the Supervisory Board finds that an insurer, underwriting agent or insurance broker has been “operating business in a manner detrimental to the interests of the policy-holders” or “sending incorrect, inaccurate, ambiguous or fraudulent data to the Supervisory Board”, the Board can cancel the business licence. The Board

can then proceed under Chapter IX of the Law to apply to the Court to pass an order for liquidation of the company in accordance with the provisions of the Myanmar Companies Act. Currently however, insurance business is currently restricted by the Government of Myanmar to one insurance company “Myanmar Insurance” which is State-owned. This Law does not apply to Myanmar Insurance which is established under the Myanmar Insurance Law.

- *Company Law 1950 Banks* – Under section 138 of the Company Law, the President may appoint inspectors to investigate the affairs of any company (all banks are required to be registered under this Law) and to report in such manner as the President directs on the application of members. Section 141A provides as follows:

*“(1) If from any report made under section 138 appears to the President of the Union that any person has been guilty of any offence in relation to the company for which he is criminally liable, the President of the Union shall refer the matter to the Attorney-General or the Public Prosecutor.*

*(2) If the officer to whom the matter is referred considers that the case is one in which a prosecution ought to be instituted, he shall cause proceedings to be instituted, and it shall be the duty of all officers and agents of the company, past and present (other than the accused in the proceedings), to give to him all assistance in connection with the prosecution which they are reasonably able to give*

*(3) For the purposes of sub-section (2) the expression ‘agents’ in relation to the company shall be deemed to include the bankers and legal advisers of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.*

*(4) Any director, manager or other officer of the company convicted as the result of a prosecution initiated under this section shall not without the leave of the Court be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for a period of five years from the date of such conviction.”*

Also under section 237, if it appears to the Court in the course of a winding up of a company, that any past or present director, manager or other officer, or any member of the company has been guilty of any offence in relation to the company for which he is criminally liable, the Court may direct the liquidator to prosecute the offender or refer the matter to the Registrar. The Registrar may under section 237(3) refer the matter to the President of the Union for further inquiry or investigation. Under subsection (6), if the Registrar considers the matter reported to be one in which a prosecution ought to be instituted, he shall report the matter to the Attorney-General or Public Prosecutor and if advised to do so, institute proceedings.

- *Foreign Exchange Regulations* – The Central Bank has the right to revoke licenses of persons dealing in foreign currencies or any instrument or certificate incidental to foreign exchange. However, there is no administrative provision either in the Central Bank of Myanmar Law whereby the licence of a licence holder charged or convicted of ML can be suspended or revoked. Terms and conditions of such licences issued under the Foreign Exchange Regulation Act 1947 do not include any administrative sanctions in terms of ML activities.

*Effective, proportionate and dissuasive sanctions*

236. The penalties for the ML offence are set out in sections 22, 23 and 25 of the CMLL:

*“22. Whoever commits any of the following acts in committing any offence contained in the Narcotic Drugs and Psychotropic Substances Law shall, on conviction, be punished with*

*imprisonment for a term which may extend from a minimum of 10 years to a maximum of an unlimited period:*

- (a) *concealing or obliterating of money and property obtained by commission of an offence, so that action may not be taken;*
- (b) *converting, transferring or disguising of money and property relating to an offence so as to appear to have been acquired from a legitimate source.*

23. *Whoever converts, transfers, conceals, obliterates or disguises money and property obtained by committing any offence contained in subsections (a) and (b) of section 5, so as to appear to have been acquired from a legitimate source except any offence contained in section 22 shall, on conviction, be punished with imprisonment for a term which may extend to 10 years and may also be liable to a fine.*

25. *Any member of the Investigation Body who commits any of the following acts or omissions in investigating money laundering offence shall, on conviction, be punished with imprisonment for a term which may extend from a minimum of 3 years to a maximum of 7 years and may also be liable to a fine:-*

- (c) *concealment, obliteration, conversion, transfer in any manner or disguising of money and property obtained by illegal means so that action may not be taken against them.”*

237. It should be noted under this provision, that the maximum term of imprisonment is “unlimited”. The Myanmar authorities explained that this could be for life (denoting the ‘life of a human being, unless the contrary appears from the context’ – section 45 of the Penal Code). Section 60 of the Penal Code refers to sentences that may be “wholly or partly rigorous or simple” and provides:

“In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.”

238. Throughout the Penal Code, whereas some offences refer to “rigorous imprisonment” or “simple imprisonment”, the main penalty in terms of imprisonment is prescribed as “imprisonment of either description” which is assumed to mean that the Court has an option of prescribing either of the two categories when sentencing.

239. Although section 22 of the CMLL does not refer to either “rigorous” or “simple”, or imprisonment of “either description”, in the one ML case that has been prosecuted, the defendant, U Tin Sein, was sentenced under section 22(a) of the CMLL to an “unlimited term of rigorous imprisonment”. In addition, U Tin Sein was also convicted under section 23 of the CMLL and sentenced to 10 years of “rigorous imprisonment” whereby the sentences “are to be served separately”. Furthermore, seized exhibits, properties and money were confiscated which included land, buildings and its contents, share certificates and benefits from the shares, 144 items of jewellery, 1 Rolex watch, 74 gold bars, motor vehicles, jade rocks, shops, currency and bank accounts. U Tin Sein was the Chairman of the Myanmar Universal Bank and had used proceeds from the sale of illegal drugs prescribed in the NDPS Law to establish the Myanmar Universal Bank, including its 27 branches. All shares in the bank were owned by either himself or his wife. U Tin Sein was also prosecuted and convicted under Myanmar’s NDPS Law. The Myanmar Universal Bank licence was also revoked.

240. No amount is given as to the fines that can be imposed and the term “fine” is not defined in the CMLL or in the Interpretation of Expressions Law. However, sections 63 to 65 of the Penal Code provide as follows:

*“63. Where no sum is expressed to which a fine may extend, the amount to a fine to which the offender is liable is unlimited, but shall not be excessive.*

*64. In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine, it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.*

*65. The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.”*

241. In terms of civil or administrative sanctions, as referred to above, a financial institution may have its licence revoked under section 17(c) despite the ambiguity of that provision. A company could also be investigated under the Company Act and depending on whether criminal liability is found during the investigation the matter could be referred to the Attorney-General or Public Prosecutor for prosecution. However, whether a legal person is subject to the offence of ML is unclear given the wording used in the offence provisions.

242. Although no information has been provided as to the effectiveness of the sanctions, based on the penalty received by the defendant in the one ML case in addition to the confiscation of proceeds, it would appear that the penalty for a natural person is dissuasive in terms of predicate drug offences. It is also noted that the Court has jurisdiction to impose “unlimited” fines for ML related to other predicate offences with a requirement that such a fine not be “excessive” – the Myanmar authorities advise that such an amount would depend on the circumstances of the case. The ‘uncapped’ fine would appear to provide opportunity for imposing a dissuasive sanction as well. In terms of legal persons, in practice and as demonstrated in the one ML case involving the Myanmar Universal Bank, the Bank did lose its licence but it is unclear under which law this revocation was done. Given the ambiguity of the CMLL offence provisions in terms of the liability of legal persons, it is difficult to conclude that there exist dissuasive civil or administrative sanctions for legal persons in terms of ML.

### **Recommendation 32**

243. The following statistics for ML prosecutions have been provided:

**Table: Confiscation amount of ML cases (Million Kyats)**

No.	Case No.	Offenders	Tax	By Drug law	By CMLL	Total
1	3/2004 (SSZ)	25		963.55		963.55
2	1/2005		119.96			119.96
3	2/2005		144.85			144.85

4	3/2005 (MUB)	2		17266.03	7024.66	24290.63
5	5/2006 (Muse)	76				-----
6	6/2006 (UMP)				67.64	67.64
7	2/2007 (LL)				390.40	390.40
	<b>Total</b>			<b>246.81</b>	<b>18229.58</b>	<b>7482.64</b>

**Table: Investigated cases by Investigation Body (IB) and Preliminary Scrutiny Body (PSB) from 2003 to 2007 (Nov):**

No	Period	Closed	ML	Drug law	Financial institution case	Under prosecution	Under investigation	Total	Remark
1	2003				1			1	
2	2004	2		1				3	
3	2005	2	1*					3	*MUB by CMLL
4	2006	5	1**			1		7	**Myint Pe's remittance case
5	2007	2	1** *		1	1	4	9	***Wan Yein opium camp
<b>Grand total</b>		<b>11</b>	<b>3</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>4</b>	<b>23</b>	

**Table: Investigated cases by IB and PSB from 2003 to 2007 (Nov)**

No.	Investigation period	Cases		Remark
		IB	PSB	
1	2003	1		
2	2004	3		
3	2005	3	2	AWB & MMFB and Soe San Zone cases scrutinised by PSB
4	2006	7	1	MUB case scrutinised by PSB
5	2007	9	2	U Myint Pe's remittance case and Wan Lein (Loilan) Drug case scrutinised by PSB
<b>Total</b>		<b>23</b>	<b>5</b>	

### Effectiveness

244. Myanmar has sufficient powers under the CMLL to prosecute and convict criminals on money laundering charges. However, it has only to date achieved one conviction under the CMLL since its enactment in June 2002. There is a tendency to prosecute on predicate crimes, rather than on ML charges, given it is easier to obtain convictions. Based on the statistics provided by Myanmar, of the

16 money laundering investigations conducted in the two years from 2006 to 2007, 54 individuals were convicted of predicate offenses but only one under the CMLL.

245. Recommended amendments to the CMML (as outlined below) to criminalise other outstanding elements, namely: assisting in the commission of predicate offences, the concealment and disguise of property, extending the definition of property to include all types of property, and expanding the list of predicate offense would facilitate further ML convictions.

## **2.1.2 Recommendations and Comments**

### **Recommendation 1**

246. Myanmar should amend the CMLL to criminalise the following:

- i. assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;
- ii. the concealment or disguise of the true nature, source, location, disposition, movement, or ownership of, or with respect to property knowing that such property is the proceed of crime; and
- iii. the acquisition, possession, or use of property, knowing, at the time of receipt, that such property is the proceeds of crime.

247. Myanmar should amend the CMLL to extend the definitions of property to provide for all types of property, including property:

- i. that is wholly or partly derived or realised, whether directly or indirectly, from the commission of the predicate offence; and
- iv. property situated outside of Myanmar.

248. Myanmar should amend the CMLL to include a specific provision that a person may be charged with a money laundering offence in circumstances where that person was not involved in the commission of the predicate offence.

249. Myanmar should also expand further list of predicate offences to include terrorism and terrorist financing, sexual exploitation, illicit trafficking in stolen and other goods, bribery, environmental crimes, murder, robbery or theft, piracy, insider trading and market manipulation.

250. While a draft CCB notification is already submitted for Cabinet consideration, there is still room to further improve the draft's provisions. Myanmar should consider defining each of the additional predicate offences as well as the scope of some of the crimes mentioned therein. For instance, the draft notification could provide a glossary defining the term "racketeering" or providing the scope of "environmental crimes". This will greatly assist the authorities in the implementation of the law.

251. Myanmar should also amend the following two Sections of the CMLL:

- Section 2 of the CMLL to delete the words "any offence cognisable under this Law" and substitute the words "any offence mentioned in Sections 5(a) and 5(b) of this Law"; and

- Section 32 of the CMMLL to remove reference to “financial assistance” so as not to limit the scope of the ancillary offence of aiding and abetting.

## Recommendation 2

252. Myanmar should amend the CMLL to extend criminal liability to legal persons and include provisions for effective, proportionate and dissuasive criminal, civil or administrative sanctions in respect of such persons.

### 2.1.3 Compliance with Recommendations 1, 2 & 32

	Rating	Summary of factors underlying rating
R.1	PC	<ul style="list-style-type: none"> <li>• The ML offence lacks some of the elements outlined in Article 3(1)(b)(c) of the Vienna Convention and Article 6(1) of the Palermo Convention.</li> <li>• Definition of property does not include all types of property.</li> <li>• Not all designated categories of offences are included.</li> <li>• Ancillary offence of aiding and abetting is limited to financial assistance.</li> </ul>
R.2	PC	<ul style="list-style-type: none"> <li>• ML offence does not effectively extend to legal persons.</li> <li>• Lack of effective, proportionate and dissuasive civil or administrative sanctions.</li> </ul>
R.32	PC	<ul style="list-style-type: none"> <li>• Discrepancies in statistics.</li> </ul>

## 2.2 Criminalisation of Terrorist Financing (SR.II & R.32)

### 2.2.1 Description and Analysis

253. Section 5 (a) No. 9 of the CMLL includes *offences committed by acts of terrorism* as a predicate offence to money laundering. While there is no law specifically penalizing terrorism as a separate crime, the term “acts of terrorism”, according to Myanmar authorities, makes reference to the various punishable acts/offences under the Myanmar Penal Code of 1886 (penalizing hijacking of an aircraft vessel or any type of vehicle), the 1950 Emergency Provisions Act (penalizing acts of destruction related to High Treason), the Unlawful Association Act of 1908, the Arms Act, the Explosives Act and the Explosive Substances Act.

254. Section 23 of the CMLL provides that “[W]hoever converts, transfers, conceals, obliterates or disguises money and property obtained by committing any offence contained in subsections (a) and (b) of Section 5 (CMLL), so as to appear to have been acquired from legitimate sources x x x shall, on conviction, be punished with imprisonment for a term which may extend to 10 years and may also be liable to a fine”.

255. It appears from Section 23 (CMLL) that the funds refer to those subjects of laundering and does not contemplate funds derived from legitimate sources which may be used to finance acts of terrorism. It is for this reason that it can be concluded that the CMLL does not cover terrorist-financing.

256. Myanmar has not enacted a law specifically criminalizing terrorist financing and designating it as one of the predicate offences to money laundering as well as making it an extraditable offence as required under Article 11 of the TF Convention.

257. It is noted that a draft anti-terrorism law is currently being prepared and will be duly submitted to the Myanmar Cabinet. The ME team requested to see the draft but Myanmar advised that draft laws are only circulated to domestic agencies involved. The authorities indicated that the law might be passed before the end of 2008.

### 2.2.2 Recommendations and Comments

258. Myanmar should criminalise terrorist financing in accordance with the Terrorist Financing Convention and designate TF as a predicate offence to money laundering.

### 2.2.3 Compliance with Special Recommendation II & 32

	Rating	Summary of factors underlying rating
SR.II	NC	<ul style="list-style-type: none"> <li>There is no law specifically criminalizing terrorist financing (TF) as required under the TF Convention.</li> </ul>
R.32	N/A	No statistics

## 2.3 Confiscation, freezing and seizing of proceeds of crime (R.3 & 32)

### 2.3.1 Description and Analysis

Legal Framework:

259. Myanmar law allows for the confiscation of criminal property under the following pieces of legislation:

- (i) Narcotic Drug and Psychotropic Substances Law 1993 in respect of case concerning the following offences: -
  - (a) Cultivation, Possession, Transportation, and Sale of narcotic drugs, psychotropic substances or chemical/plants used in the production of the same;
  - (b) Laundering the proceeds of (a)
  - (c) Accepting Bribes in connection with (a)
  - (d) Conspiracy to commit (a) or (b)
- (ii) Section 8(i) of the Control of Money Laundering Law, 2002 allows the CCB to pass an order confiscating money and property obtained by illegal means.
- (iii) The Code of Criminal Procedure, 1889 Section 517 allows for the general confiscation

of items of property including money, and other valuable property.

260. Myanmar's laws allow for the confiscation of a wide variety of properties and instrumentalities. Section 8(i) of the CMLL allows the CCB to pass an order confiscating "money" and "property" obtained by illegal means. However, the definitions of property in Myanmar's laws do not specifically provide for property that is wholly or partly derived or realised, whether directly or indirectly from the commission of the predicate offence. Furthermore, it does not cover property that is used in connection with, or intended to be used in, or in connection with the commission of the predicate offence.

261. Under Section 3(d) of the CMLL, "money" is defined very widely and includes legal tender coins and notes issued by the Central Bank of Myanmar, promissory notes, bills of exchange, and cheques, debentures, foreign currency, and any kind of instrument or certificate related to foreign currency.

262. Under Section 3(e) of the CMLL "property" is also defined very widely and includes movable or immovable property in any form, being corporeal or incorporeal and tangible or intangible. This expression also includes profits, rights and titles pertinent to property.

263. In a similar manner, section 24 of the NDPS Law allows a wide variety of property to be confiscated, which includes all money, implements, moveable property, vehicles/vessels and animals linked to drug offences, as set out above.

264. The IB, MPF and BSI have full powers to compel the production of documents and records, to search persons or premises for, and seize and obtain any type of property and documents or records in connection with an investigation into money laundering or drug trafficking.

#### *Provisional measures*

265. Myanmar has provisions under both the NDPS Law and the CMLL to allow for the restraint and seizure of property potentially subject to confiscation.

266. Section 13 of the NDPS Law allows for the search and seizure of money, property and benefits involved in Narcotics Offences. Section 14 of the NDPS Law also allows the Central Committee for Drug Abuse Control ("CCDAC") to issue an order to allow for the taking into custody pending the conclusion of any case under the NDPS Law any "money or property" involved in the offence.

267. Such property can only be returned by the order of the relevant court or the CCDAC, and under Section 17 of the NDPS Law it is an offence punishable by a minimum of 5 years and a maximum of 10 years to deal in such property without the consent of the relevant court of the CCDAC.

268. Section 26 (e)-(l) of the NDPS Law covers "immovable property". In such cases the law enforcement agency involved may apply to the CCDAC for an "Attachment Order" which prevents the concerned immovable property being sold, mortgaged, leased or transferred for the duration of the Attachment Order.

269. Section 26(i) of the NDPS Law allows for immovable property subject to an Attachment Order to be freed from the order following an application to the CCDAC showing sufficient grounds why this should occur and with the payment of bond in lieu of the Attachment Order if the CCDAC deem this is suitable bearing in mind the facts of the case.

270. Under Section 26(l) of the NDPS Law policing of the “Attachment Order” is by the relevant township Police Force Commander.

271. In case of where the suspect has died before the case is sent to court, the seized money and property shall be submitted before the court for disposal in accordance with the Code of Criminal Procedure Sections 523 and 524 and it shall be disposed in conformity with the court’s order.

272. In case of where the suspect has absconded or can not be located, the court shall make a miscellaneous case in accordance with the Code of Criminal Procedure Section 512. Where a case relating to such suspect has been sent before the court, the court shall firstly examine the witnesses who can testify to the absconding of the suspect. Secondly, the court shall also examine the witnesses produced on behalf of the prosecution to prove the offence which was committed by the suspect.

273. After examining the witnesses and where it is proved that the absconded suspect has committed an offence, the court shall carry out such case in accordance with the Code of Criminal Procedure Sections 87 and 88. The court shall make an order for exhibits in conformity with the Code of Criminal Procedure Sections 523 and 524. If the order is for confiscation, the CCDAC shall dispose of such exhibits according to the court’s order.

274. Rule 5(l) of the Rules relating to the Control of Money Laundering Law states that the Central Control Board “may, if it is evident that, after committing the money laundering offence, the person under investigation is absconding or cannot be found or has died or has gone abroad for good, with respect to money and property involved in the money laundering offence, pass the confiscation order under the report of findings of the Investigation Body and submission made by the Preliminary Scrutiny Body.”

*Power to identify and trace property*

275. The “Investigation Body” (“IB”) is formed by the CCB under Section 9 of the CMLL to investigate money-laundering offences. Rule 17 of the CMLL gives the IB wide powers to seize “money and property” from a person(s) under investigation for a money laundering offence, or from a third party if there is money or property derived from money or property obtained by illegal means. In respect of a person(s) who is under investigation by the IB there is no requirement to link the money or property seized to any actual money laundering or other offence.

276. Following such seizure the IB is under Rule 18(b) required to submit a request to the CCB to obtain a “Prohibitory Order” with respect to money and property seized, or under Section 18(d) of the CMLL, any responsible persons of the bank and financial institutions shall not, without the permission of the Central Control Board, release or transfer money and property obtained by illegal means, during the period of investigation by the IB once being informed of the believed tainted quality of such property.

277. In respect of immovable property, Section 8 (g) and Rule 4(i) and Rule 22(a) (1) of the CMLL also gives the CCB the power to issue the “Prohibitory Order” to all relevant Myanmar Government Departments and Organizations, and to legal and natural persons prohibiting them from the: conversion, transfer, concealment, obliteration and disguise of all identified money and property obtained by illegal means.

278. Section 26 of the CMLL makes it an offence to violate a Prohibitory Order - such offence can be punished with imprisonment for a term, which may extend to 7 years and the person may also be liable to a fine.

279. These orders last for the duration of the “investigation period” by the IB. Following this, under Section 26 of the CMLR the IB is required to submit a report to the CCB for it to decide upon whether a Money Laundering Offence has been committed and also whether the property seized as above should be confiscated. To determine whether property should be confiscated the CCB will then form under Section 26 of the CMLR a “Preliminary Scrutiny Body” (“PSB”).

280. Under Section 27 of the CMLL, the PSB then informs the person whose money or property has been seized, or who has a beneficial interest in the same, that he has 30 days to either appear personally, instruct a representative or lawyer to appear before them. Under Section 28(a) of the CMLL such property will be confiscated unless the person concerned can show, either in person or by written submissions “reason why the money and property seized temporarily should not be confiscated”. The burden of proof on a standard of, being on the person whose money or property has been seized temporarily. The defendant or suspect would have to establish the “benefit of the doubt” which is a lower standard than “beyond reasonable doubt”.

#### *Protection of Bona Fide Third Parties*

281. Section 34 of the CMLL provides protection for the rights of bona fide third parties as follows:

"in respect of money and property obtained by illegal means, if any other person who is not under investigation is able to prove clearly that such money and property were transferred by certain means with consideration and in good faith, his rights shall not be affected."

282. If the person whose money or property has been seized temporarily denies any involvement in money laundering offence, then Section 29 of the CMLL allows the PSB to have a hearing to determine factual matters in relation to this, to call and examine witnesses, and to direct an IB to further investigate certain facts if required.

283. Section 15 of the CMLL allows that any person under investigation by the PSB to appeal any order of the CCB that he is dissatisfied with to the Government of Myanmar within 90 days of the order. Under Section 15 (CMLL) states that “a person who is under investigation may, if he is dissatisfied with any order of the Central Control Board appeal to the Government within 90 days from the date on which the said order is received”. Section 16 of the CMLL permits the CCB (Government) to pass any suitable order for confirmation, revision or setting aside the said order or cause re-investigation to be made, upon an appeal submitted by the aggrieved person or at its discretion on any order passed by the Central Control Board. Section 17 of the CMLL states that the order of the Government under Section 16 shall be final and conclusive.

284. Following this under Section 28(b) the PSB informs the CCB of its view on whether the money or property should be confiscated.

285. Section 32 of the CMLL then allows the CCB to confiscate all property or money, and may direct that a case of money laundering is preferred against persons identified in the investigation by the IB and PSB.

*Power to Void Actions*

286. Myanmar law does not provide provisions to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.

*Additional Elements*

287. The CCB may, if it is evident that, after committing a money laundering offence the person under investigation is absconded, cannot be found or has died, has gone abroad for good, with respect to money and property involved in the money laundering offence, pass the confiscation order under the report of findings of the Investigation Body and submission made by the Preliminary Scrutiny Body. [Rule 4(l)]

**Recommendation 32**

288. Myanmar reports the following cases where powers of restraint and confiscation have been used :-

		<b>Law Enforcement Agencies</b>	<b>Cases</b>	<b>Offenders</b>	<b>Amount Seizures</b>
1	1986 Law for taking action on owning and marketing of properties obtained by unlawful means	Bureau of Special Investigation	41	16	698,607,898 kyats and USD 20,000 S\$ 139043.17
2	1993 Narcotic Drug and Psychotropic Substances Law	CCDAC	1774	2133	1216,305,728 kyats
3	1993 Narcotic Drug and Psychotropic Substances Law	CCDAC and FIU	10	76	1136,808,027 kyats
4	1993 NDPS Law & 2002 the Control of Money Laundering Law	CCDAC and FIU	1 (July, 2004)	11	107,249,100 kyats 13 motor vehicles 4 motor cycles Gold 1.61 & jewellery 17

					pieces 7 houses and 11 apartments
5	1993 Narcotic Drug and Psychotropic Substances Law	CCDAC and FIU	1 (Oct, 2005)	12	17.26 billion kyats
6	2002 the Control of Money Laundering Law	CCDAC and FIU	1 (Oct, 2005)	2	6.97 billion kyats

### Effectiveness

289. Myanmar has a basic framework of law that allows for the confiscation of criminal proceeds and instrumentalities. The CMLL has sufficient provisions allowing the CCB to take action against illegally obtained money and property through the issuance of orders for their inspection, seizure, prohibition and eventual confiscation. However once again there has been little use of the law outside of cases under the 1993 Narcotic Drug and Psychotropic Substances Law. Thus it is impossible for the evaluators to make a meaningful assessment of Myanmar's restraint and confiscation law in respect of the proceeds of non-drug crime.

290. There are also gaps in the CMLL already identified in Recommendation 1 which limits the money and property that may be seized and/or confiscated.

### 2.3.2 Recommendations and Comments

291. Myanmar should:

- apply its laws more extensively to the confiscation of assets beyond drug related offences; and
- amend the CMLL to cover all property subject to confiscation, including proceeds from, instrumentalities used or intended to be used in the commission of ML, FT or other predicate offences.

### 2.3.3 Compliance with Recommendations 3 & 32

	Rating	Summary of factors underlying rating
<b>R.3</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Lack of use of available powers to confiscate the proceeds of non-drug crime in Myanmar.</li> <li>• Myanmar law does not provide for the confiscation of instrumentalities intended for use in any money laundering offences.</li> </ul>

		<ul style="list-style-type: none"> <li>• Property in Myanmar law does not mean all the “property subject to confiscation”.</li> <li>• Myanmar law does not provide provisions to prevent or void actions, whether contractual or otherwise</li> </ul>
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Minor inconsistencies in the cases provided as evidence of effectiveness.</li> <li>• Low level of confiscation under the CMLL.</li> </ul>

## **2.4 Freezing of funds used for terrorist financing (SR.III & R.32)**

### **2.4.1 Description and Analysis**

Legal Framework:

292. Myanmar has not criminalised terrorist financing nor has it criminalised terrorist acts. Consequently terrorism financing is not a designated predicate offence for money laundering under the CMLL, although the list of predicate offences includes “offences committed by act of terrorism”. The terms “terrorism” and “act of terrorism” are not defined in Myanmar’s laws.

293. The CBM advised the ME team that it had issued Instruction No 2/2002 to banks and financial institutions to freeze funds and other assets of, and prohibit accounts related with terrorists and terrorist organisations, and to report to the CBM immediately. It has also circulated to financial institutions UNSCRs 1267 and 1373 lists, and other lists provided by the U.S. Embassy in Yangon and by Interpol.

294. The legal basis for CBM Instruction No. 2/2002 is not clear given TF is not criminalised in Myanmar. The CBM advised that no bank in Myanmar had any accounts under the names indicated in the 1267 list. Thus the enforceability of this CBM Instruction has not been tested.

295. The Myanmar Ministry of Home Affairs has also “designated” in Notification 3/2005 and 1/2006 a number of groups as “terrorist groups” in Myanmar. These include the Shan State Army, Chin National Front, and Karen National Union. According to the Notification they were designated under the Unlawful Association Law.

296. Besides this process of instructing and advising financial institutions, and some designations of domestic groups, Myanmar has no effective laws or procedures in place to give effect to UNSCRs 1267 and 1373. There are no procedures to give legal effect to freezing actions taken by other countries; de-listing requests and unfreezing funds of de-listed persons; unfreezing funds of persons inadvertently affected by freezing mechanism; access to frozen funds for expenses and other purposes; review of freezing decisions; freezing, seizing, and confiscation in other circumstances; protection of rights of third parties; and enforcing the obligations under SR III.

### **2.4.2 Recommendations and Comments**

297. Myanmar should:

- ensure that the proposed Anti-Terrorism law currently being drafted incorporates all the required elements to freeze terrorist funds or other assets of persons designated in accordance with UNSCRs 1267 and 1373; and
- include other measures in the draft law to give legal effect to freezing actions taken by other countries; de-listing requests and unfreezing funds of de-listed persons; unfreezing funds of persons inadvertently affected by freezing mechanism; access to frozen funds for expenses and other purposes; review of freezing decisions; freezing, seizing ,and confiscation in other circumstances; protection of rights of third parties; enforcing the required obligations; and other provisions under Special Recommendation III.

### 2.4.3 Compliance with Special Recommendation III & 32

	Rating	Summary of factors underlying rating
SR.III	NC	<ul style="list-style-type: none"> <li>• No mechanism in place to give effect to UNSCRs 1267 and 1373.</li> <li>• No mechanism in place that would enable authorities to take action on funds intended to be used for terrorism.</li> </ul>
R.32	N/A	No statistics

### Authorities

## 2.5 The Financial Intelligence Unit and its functions (R.26, 30 & 32)

### 2.5.1 Description and Analysis

298. On 4 July, 2002 Myanmar formed the Central Control Board on Money Laundering (“CCB”), under Section 6 of the CMLL. The CCB has a dual role; it is responsible for AML/CFT policy as well as being the operational controlling authority for the investigation of money laundering offences in Myanmar.

299. The CCB is comprised of the following persons:-

- (1) Minister Chairman  
Ministry of Home Affairs
- (2) Minister Deputy Chairman  
Ministry of Finance and Revenue
- (3) Deputy Minister Members  
Ministry of Home Affairs
- (4) Deputy Minister Members  
Ministry of Finance and Revenue
- (5) Deputy Minister Members  
Ministry of Agriculture and Irrigation

- (6) Deputy Chief Justice Member
- (7) Deputy Attorney General Member
- (8) Governor Member  
Central Bank of Myanmar
- (9) Director General Member  
Department of Settlements and Land Records
- (10) Police Director General Secretary  
Myanmar Police Force
- (11) Director General Joint- Secretary  
Bureau of Special Investigation

300. The CCB meets at least three times a year and decision making is by consensus. When nominated members are unable to attend they may appoint a deputy to attend on their behalf; there is no quorum, save that each meeting must have both a chair and a vice chair. Minutes are taken for each meeting recording the decisions made.

#### **Receiving STRs and CTRs**

301. On 16 January, 2004, CCB Order 3/2004 established the Myanmar Financial Intelligence Unit (“MFIU”). Myanmar has chosen the Law Enforcement model of an FIU. The MFIU is a unit under the Ministry of Home Affairs; it is headed by a Police Colonel who also the head of the Myanmar Police Force’s (“MPF”) Department Against Transnational Crime.

302. The MFIU receives the following types of transaction reports from entities that are required to file transaction reports pursuant to sections 19, 20 and 21 of the CMLL namely:-

- (i) Cash transaction reports (CTRs), being all transactions in Kyat 100 million or more, and all US\$ cash transaction of US\$10,000 or more;
- (ii) Immovable and Movable Property transaction reports of property with a value of Kyat 100 million or more (PTRs); and
- (iii) Unusual or suspicious transaction reports (STRs).

303. The thresholds of reporting for (i)-(iii) are set as an order of the CCB under the powers granted to it by the CMLL. At present there is no threshold for STR reports, which means that all transactions considered suspicious must be reported regardless of value.

304. The MFIU is the sole body in Myanmar authorized to receive transaction reports. The reports are delivered to the MFIU by the reporting bodies either by courier/messenger or through the post. At the time of the ME on-site visit, there was no capability for the MFIU to receive reports by fax or electronic means. However, Myanmar advised it subsequently provided the FIU with a fax machine after the on-site.

#### *Guidelines to Financial Institutions on Reporting STR*

305. The MFIU does not issue guidance or other instruction in relation to the form and manner of the reporting procedure for CTRs, PTRs or STRs in Myanmar. However the CBM has issued a list of 21 “Suspicious Transaction Indicators” to those institutions under its supervision. No other form of reporting guidance has been given.

306. The CCB has issued orders in respect of who should report and the size of the thresholds of CTRs, PTRs and STRs :-

- **Order 1/2004 and Order 2/2004** on 12 January 2004 provides for threshold reporting of 100 Million Kyats and on the reporting of suspicious and unusual transactions involving bank deposits, withdrawals and remittance transactions irrespective of the amount; and threshold and suspicious transaction reporting for the sale, gift, charity, disowning and exchanging of immovable property respectively.
- The **CCB Order 4/2004** on 1 July 2004 requires Myanmar Customs Department and any other government department and organizations to report foreign currency brought into the country or carried and sent abroad from a port, airport or any border area or by money order by post, which exceeds US\$10,000 or equivalent amount of any foreign currency.
- **The CCB Order 5/2004** on 28 August 2004 stipulates a “ Zero-Setting” for the value of money and property relevant to the CMLL Money Laundering offence.
- **The CCB Order 1/2006 and Order 2/2006** on 20 March 2006 extends the obligation to file reports to the following reporting agencies as follows :-
  - (a) Nay Pyi Taw City Development Committee
  - (b) Yangon City Development Committee
  - (c) Mandalay City Development Committee
  - (d) Internal Revenue Department
  - (e) Human Settlement and Housing Development Department
  - (f) Department of Development Affairs
- This was further extended by CCB Order 2/2006 as follows:-
  - (a) Road Transport Administrative Department
  - (b) Marine Administrative Department
  - (c) Trade Administrative Department
- **CCB Order 4/2006** on 27 June 2006 requires the Central Bank of Myanmar (“CBM”) and the Directorate of Companies Registration and Administration, to report the sale or transfer of shares on capital injection of banks and companies in order to scrutinize the source of funds.
- **CCB Order 5/2006** on 13 September 2006 further extends the suspicious transaction reporting obligations to Advocates of the Myanmar Supreme Court, Higher Grade Lawyers, Certified accountants, Auditors and Notaries Public.
- **CCB Orders No 1/2007,2/2007, 3/2007, 4/2007** on 11 July 2007 further extends both the threshold and STR reporting obligations to the following agencies:

- (a) Myanmar Security Exchange Company limited (MSEC);
  - (b) Myanmar Agriculture Development Bank and Myanmar Small Loans Enterprise;
  - (c) Myanmar Insurance Enterprise;
  - (d) Directorate of Mines and Myanmar Gems Enterprise.
- **CCB Order No 5/2007** on 11 July 2007 delegates the Ministry of Finance and Revenue and CBM to a “Program and Special Audit Program on AML/CFT” on Myanmar Insurance, MSEC, Agricultural Development Bank and Myanmar Small Loan Enterprise.
  - **CCB Order No. 1/2008** extends threshold and STR reporting to precious metals and stones dealers including dealers in gold, silver, gems, pearl and jewellery.

*Access to Information on Timely Basis by FIU*

The Analysis Process.

307. The analysis process of the MFIU at the time of the on-site was as follows :-

- (i) The basic format of the CTR, PTR or STR report is manually checked and if necessary an enquiry is made with the reporting body for clarifications.
- (ii) All CTRs and PTRs are then entered into a computer database held on a stand-alone system in the MFIU. There is little or no analysis of CTRs and PTRs at this stage, with only exceptionally large transactions being subject to further action.
- (iii) A detailed manual review is made of the STR, by either teams 1, 2 or 3 of the MFIU depending upon the filing body. This review is largely based on the CBM’s suspicious indicators checklist, and any further information obtained from the reporting body if and when required as per step (i). No pattern or other linking analysis is carried out.
- (iv) Based on the outcome of the checklist and if deemed suspicious, the analysis team will then check the CTR/PTR computer database and previous STRs received.
- (v) A recommendation is then made to the head of MFIU as to whether further action is to be taken.
- (vi) If the MFIU head agrees, then checks are made against the MPF, Bureau of Special Investigations and Myanmar Customs intelligence and criminal records and further analysis of the STR is carried out.
- (vii) Should the Head of the MFIU direct, other checks can be made with the appropriate government departments in Myanmar. There are no legal restrictions on what the MFIU can request to conduct analysis of an STR. The normal format is a request in writing from the Head of the MFIU to the holder of the information; however if the holder of the relevant Myanmar governmental information refuses the request, the matter is then referred to cabinet for decision.
- (viii) Based on this review of known data about the subject(s) of the STR, the Head of FIU then decides whether to refer the STR and “analysis” to the CCB in order to form an Investigating Body (see paragraph below) to investigate further.

308. Post the ME on-site visit the evaluation team has been informed that the MFIU has now adopted revised standard operating procedures for STR analysis. The initial analysis now involves a

full check on all available data from Myanmar law enforcement sources before a decision is made on whether to undertake further action on an STR.

309. The Head of the Myanmar Police Force can order all law enforcement agencies in Myanmar to respond to requests from the MFIU for data. To date, this is said to comprise criminal records, drug trafficking reports and intelligence, economic crimes reports and intelligence, fraud reports and intelligence, bribery and corruption reports and intelligence.

310. While the revised process will provide a better decision making process, it remains to be seen how effective and timely these checks can be carried out and whether they produce a better quality of product from the MFIU.

#### *Additional Information from Reporting Parties*

311. The head of the MFIU, acting on behalf of the CCB, has the power under Section 10 of the CMLL and Section 4 of the CMLR to request information held by reporting entities and Myanmar Government bodies which are reporting entities.

312. Staff from the analysis teams can and do request further information from reporting bodies as part of their STR analysis process. The requests for further information from reporting bodies have never been refused.

313. If a refusal was to be made, the head of the MFIU would then re-direct his request for further information to the Governor of the CBM, who would then use his powers under the Myanmar Banking Law to compel production of the information required, at least from financial institutions.

#### *Dissemination of Information*

314. When the MFIU has analysed a transaction report and the head of the MFIU has decided that there are “grounds to believe that a money laundering offence has taken place”, the head of MFIU then submits a report on the transaction report and analysis to the CCB.

315. If the CCB agrees that there are “grounds to believe that a money laundering offence has taken place”, then the CCB will, using its powers under Section 9 of the CMLL, form an Investigation Body (“IB”) which is comprised of not less than three persons from the MFIU or elsewhere in the Myanmar Government to further investigate and to establish whether there is sufficient evidence to prove a money laundering offence.

316. In order to conduct its investigation, the IB is authorized by CCB under Section 10 of the CMLL to :-

- (a) make necessary investigations and gather intelligence;
- (b) call for an examine document from the person under investigation of any other persons, of body, including an government department;
- (c) summon any person for investigation; and
- (d) enter and search any building, and seize as an exhibit any property derived by illegal means.

317. The IB shall then within three months report back to the CCB as to their findings. The IB can either: request for more time to investigate the matter; recommend that no further action take place; or recommend that a report the MFIU be made to the appropriate law enforcement agency, either the MPF or BSI, in order that prosecution action can take place.

318. Should the IB discover any property obtained by “Illegal Means” under Section 13 of the CMLL, the matter shall be passed to a Preliminary Scrutiny Body (“PSB”) who shall then examine the matter further and report to the CCB as to whether the property should be confiscated or not. Appeal of the CCB’s decision lies under Section 15 of the CMLL to the Myanmar cabinet.

319. This makes the CCB the final deciding authority for any further action on the findings of the IB. However, during the on-site visit, Myanmar authorities advised that at no time since the enactment of the CMLL has the CCB ever refused to form an IB or refused to follow the recommendations of the IB or PSB following its investigation. The MFIU has on the authority of the CCB disseminated 23 cases to law enforcement and agencies.

#### *Operational Independence*

320. The MFIU is formed under the authority of the CCB. No investigative action or dissemination can be taken without the express consent of the CCB.

321. All MFIU reports to the CCB must be passed through the Chief of Police. As is discussed further below, the evaluation team has serious concerns about the lack of operational independence of the MFIU under the current arrangements.

#### *Protection of Information Held by FIU*

322. All STRs, CTRs and PTRs are sent to the MFIU by mail or by courier. The MFIU requires that all such documents should be contained in a double envelope and sealed in a manner to ensure that tampering would be evident. This requirement covers both reports by mail and by messenger.

323. Upon receipt of STRs, CTRs and PTRs the MFIU will contact the reporting body to confirm the report by means of telephone. Any discrepancy is to be reported to the head of the MFIU who will then report it to the CCB for further consideration of the investigation.

324. All staff members of the MFIU are covered by the Official Secrets Act of Myanmar, and all transaction reports filed with the MFIU are graded as “Confidential”. It is a criminal offence under the Official Secrets Act of Myanmar for any member of the MFIU to disclose information contained in or derived from a transaction report to any person who is not authorized to receive such information by the CCB. The punishment for breach of the Official Secrets Act is a fine and an unlimited prison sentence.

325. Currently the MFIU is housed in the Yangon Ministry of Home Affairs building which is fully secured. Internal MPF orders prohibit any member of the MPF below the rank of Police Major, who is not a staff member of FIU, from visiting the FIU. Breach of this order would lead to a disciplinary charge being laid against the offender. To date no such charge has been laid.

326. Each of the three analysis teams of the MFIU stores STR information in hard copy on files in a locked cabinet within the MFIU. All CTRs and PTRs are stored in a stand-alone, secure database; access is by password and user identity numbers allowing a full audit trail to be maintained. However there is neither fixed audit routine nor any procedure for regular audit inspections of the use of the computer system.

#### *Publication of Annual Reports*

327. There is no requirement for a formal annual report to be submitted by the MFIU to the CCB, although there is extensive and regular operational reporting. It is only when an IB is formed that there is a system that schedules when written reports should be made.

328. The FIU does not publish any report or statistics available to non-governmental bodies or persons.

329. With the exception of the list of 21 suspicious indicators provided by the CBM in collaboration with the FIU, no feedback or other information on typologies, trends in money laundering methods or recent cases studies is given to reporting institutions or their regulatory bodies by the MFIU.

#### *Membership of Egmont Group*

330. The MFIU is currently in the process of applying for membership of Egmont Group under the co-sponsorship of Japanese JAFIO and Thai AMLO.

#### *Egmont Principles of Exchange of Information Among FIUs*

331. The MFIU is not required under Myanmar law to enter into a Memorandum of Understanding (“MOU”) or other arrangement to share information for intelligence purposes. In this respect the MFIU has regard to the Egmont Group’s “Statement of Purpose and its Principles of Information Exchange Between Financial Intelligence Units for Money Laundering Cases”. No statistics are kept on numbers of cases shared, received or rejected.

332. However the MFIU has signed MOUs to govern the exchange of information and financial intelligence with the Thai FIU, AMLO and Indonesian FIU, PPATK. Negotiations are under way to sign MOUs with the FIUs of the People’s Republic of China and India.

### **Recommendation 30**

#### *Adequacy of Resources to FIU*

333. The MFIU is headed by a Police Colonel who is also the MPF’s head of Department against Transnational Crime. This officer has an office in the Yangon FIU and also an office the MPF Building in Nay Pyi Taw where he is based.

334. The MFIU is divided into three sections:-

- (i) The Information, Training, and Administration Section headed by a Police Lieutenant Colonel. This officer has an office in the MFIU in Yangon;

- (ii) The International Cooperation Section headed by an officer seconded from the CBM. This officer does not have an office in the MFIU and has an office in both the Yangon and Nay Pyi Taw;
- (iii) The Scrutiny and Analysis Section, headed by an officer from the BSI, who has an office in the both the BSI offices in Yangon and in Nay Pyi Taw. This Section is responsible for analysis of STRs, it is divided into three teams, each headed by an officer of the rank of Captain.

335. The roles of the Scrutiny and Analysis Section teams are divided as follows :-

- (i) Team 1 :- Analysis and Assessment of reports submitted by banks;
- (ii) Team 2 :- Analysis and Assessment of reports submitted in respect of the sale/transfer of property;
- (iii) Team 3 :- Analysis and Assessment of reports submitted by Myanmar Customs Department.

336. On formation the MFIU was established with a strength of 10. However in April 2006 further staff members were seconded from various government departments to the FIU. Currently the FIU strength is given as follows:-

- MPF :- 14 persons. (including the Head of FIU)
- BSI :- 5 persons.
- Myanmar Customs :- 2 persons.
- CBM :- 3 persons.
- SPDC :- 2 persons.
- Internal Revenue Department :- 2 persons.
- Auditor General Department :- 2 persons.
  
- Total staff: 29 persons

337. The MFIU has neither a separate budget, nor a pre-determined part of the MPF's budget; its operating budget for the MFIU is part of the budget of the MPF. Requests for additional resources are made by the head of the MFIU to the Chief of Police on a case-by-case basis. The MFIU staff salaries are paid from the budgets of the seconding department.

#### *Integrity of FIU Authorities*

338. The MFIU's managerial staff all have considerable previous experience in their parent government departments or agencies and held positions of seniority prior to their assignment to the MFIU. The MFIU more junior staff, in terms of both rank and length of service, are employed in a more operational capacity. All of these seconded officers are university graduates and have worked as either a financial analyst or an investigator for a term of two years.

339. All the senior FIU staff members, including its head and deputies, have many years of recorded and verifiable government service. All staff are subject to the Bureau of Internal Security vetting on a regular basis and the Official Secrets Act of Myanmar. Any breach of the latter could potentially involve an unlimited prison term of rigorous labour.

*Training for FIU Staff*

340. All members of the MFIU have a university degree, and receive a subsequent training courses in:-

- (i) Financial analysis;
- (ii) Financial investigation;
- (iii) The Methods and typologies of money laundering, terrorist financing, and other types of financial crime; and
- (iv) How to use the MFIU's database and software applications.

341. Staff of the MFIU have attended a number of AML/CTF workshops and training courses conducted both in Myanmar and overseas.

342. Since 2003 a considerable amount of training to MFIU staff has been provided by the following overseas organisations:-

- (i) Drug Enforcement Agency ("DEA");
- (ii) Australian Federal Police ("AFP");
- (iii) Australian Suspicious Transaction and Reporting Centre ("AUSTRAC");
- (iv) Hong Kong Police;
- (v) Egmont Group;
- (vi) Japanese Police;
- (vii) Malaysian FIU;
- (viii) Asia Development Bank;
- (ix) IMF; and
- (x) World Bank.

343. The MFIU has also organised a number of internal workshops and training for persons involved in the investigation of ML and Financial Crime. The training is given by experienced officers from the Financial Investigation Division of CCDAC, the CBM, and from those persons who have attended overseas courses. From 2002 to 2007 seven such internal workshops have taken place, in both Yangon and Mandalay.

**Recommendation 32**

*Statistics*

MFIU Statistics.

**Table: Suspicious Transaction Reports**

Year	Number of STRs
2004	12
2005	7
2006	337
2007	717

**Table: Cash Transaction Reports –  
Kyats 100 million**

<b>Year</b>	<b>Number of CTRs</b>
2004	3678
2005	7883
2006	18130
2007	31824

**Table: Cash Transaction Reports-  
US\$ (or equivalent)**

<b>Year</b>	<b>Number of CTRs</b>
2004	37
2005	583
2006	14425
2007	42304

**Table: Wire Transfer Reports**

<b>Year</b>	<b>Number of CTRs</b>
2006	12827
2007	36889

**Table: Property Transaction Reports**  
(immoveable, moveable, gems, shares)

<b>Year</b>	<b>Number of CTRs</b>
2004	30
2005	56
2006	399
2007	418

**Table: Cross Border Cash Courier Reports**

<b>Year</b>	<b>Number of CTRs</b>
2004	2576
2005	1565
2006	1602
2007	2775

Note: The MFIU does not retain statistics on number of spontaneous referrals made by the MFIU.

344. There has been a positive trend in terms of the numbers of reports submitted in all categories, particularly in respect of STRs which have increased from 12 in 2004 to 717 in 2007. This reflects the work undertaken by the MFIU and the CBM in terms of awareness raising and outreach to the banking sector, which accounts for the majority of STR reports submitted. However, most of the STRs from the banking sector are from state-owned banks which are important sources of financial intelligence given only they can undertake international wire transfers; and the increase in wire transfer reports in 2007 will further add to the FIU's intelligence base. However, given that private banks account for nearly 45% of the banking sector and there are 15 private banks, the low level of STRs from the private banking sector is both an intelligence gap and compliance concern.

345. The relatively recent extension of threshold and STR reporting obligations to DNFBBPs has resulted in reporting on a wider front. At the time of the on-site, there was no requirement for private sector dealers in precious metals and stones to submit STR reports, although the Myanmar Gems Enterprise (the government regulatory agency) provided 271 reports. This intelligence gap has been rectified, and the FIU should receive more on-the-ground reporting in a sector which is vulnerable to money laundering abuse.

*Additional elements:*

**Table: STRs disseminated**

<b>Year</b>	<b>Number of STRs passed to IB</b>
2004	3
2005	4
2006	7
2007	9

346. To date only one of these cases has resulted in prosecution action and conviction in 2005 for a money laundering offence. Although currently there is one case pending a decision on prosecution by the Attorney General Department in connection with a Human Trafficking case.

## Analysis of Effectiveness

347. Despite a considerable number of staff, reasonable training, and a steadily increasing numbers of CTRs, PTRs and STRs, there have only been a limited number of cases referred for formal investigation by the CCB to an IB. The 23 IB investigations have resulted in only one case of money laundering prosecution and conviction under the CMLL. Although currently there is one case pending a decision on prosecution by the Attorney General Department in connection with a Human Trafficking case.

348. The STRs have resulted in other forms of predicate crime investigations, prosecutions and confiscations. The table below provides an analysis of the outcomes of STRs referred to an IB for investigation in 2006 and 2007:

**Table: Investigations/Prosecutions from STRs**

Type of actions taken	2006	2007
Number of cases investigated	7	9
Number of cases filed for prosecution	2	4
Number of completed prosecutions	2	3
Number of persons convicted	26	28
Number of persons sentence to more than 5 years imprisonment	20	16
Number of persons sentence to less than 5 years imprisonment	6	10
Number of confiscations	1	3
Number of persons punished by fines only	0	2

349. Despite Myanmar's cash-based economy, there is a clear lack of any systematic analysis process for CTRs and cross border courier reports. Given likely money laundering typologies, there is a need for greater involvement of customs in the strategic and operational analysis process.

350. Currently the MFIU does not meet the Egmont Group definition of an FIU. The role of the CCB in the process of forming the IB, passing an STR for investigation, and then to prosecution severely undermines the independence of the MFIU.

351. The current means of receipt of CTRs, PTRs and STRs is too slow. Post the on-site visit, the evaluation team was informed that the MFIU was, in February 2008, equipped with a fax machine to facilitate the submission of urgent STRs.

352. The MFIU does not provide any systematic guidance as to the structure and form of reporting CTRs, PTRs and STRs. Neither does it provide reporting bodies updates on current trends of crime and money laundering methods in Myanmar and elsewhere. No feedback is given to any reporting entity either specific or general.

353. No annual report or other statistics are published, despite a reasonably effective record keeping system being available to the MFIU. A small number of required statistics are not currently maintained.

354. The MFIU has no separate budget, and additional items required for operational use such as computers and software have to be approved on a case-by-case basis by the Police General of the MPF.

355. The operational structure of the MFIU is hampered by the fact that while the office of the MFIU is in Yangon, the Police Colonel and his deputies are based in the administrative capital of Myanmar, Nay Pyi Taw.

356. The analysis process in the past has resulted in decisions being taken on whether to undertake analysis on an STR without having a full picture of what is known about the subject(s) of the STR. While this has been amended, it is not clear at this stage its impact in enhancing the analysis process.

357. CTRs and PTRs, despite being stored in a computer, are not subject to any form of pattern analysis or link charting. The information is used purely as a database on which checks can be made by units of the FIU in their STR analysis process or by other MPF and BSI units.

## **2.5.2 Recommendations and Comments**

358. Myanmar should implement the following in respect of its FIU:

- The Head of the FIU should have the power to form the IB without having to submit the matter to the CCB. Members of the IB should be distinct from those involved in the analysis process. The role of the CCB should be limited to a National Coordination Committee and a policy role, and to its existing quasi-judicial role in the process of asset restraint and confiscation when illegally obtained property is discovered and the matter referred to the PSB.
- The MFIU should retain statistics on the number of spontaneous referrals to foreign FIUs made by the MFIU.
- The MFIU should provide a standard reporting form to all persons and bodies in Myanmar that are required to report CTRs, PTRs and STRs.
- The MFIU should release an Annual Report at a minimum to all persons and bodies in Myanmar that are required to report CTRs, PTRs and STRs. The Annual Report should

contain CTR, PTR and STR statistics, qualitative and quantitative analysis of these statistics, as well as case studies and current money laundering typologies.

- All persons and bodies who file STRs should be given at a minimum an acknowledgement that the STR has been received.
- The MFIU should allow CTRs, PTRs, and STRs to be filed by fax. Consideration should be given to an electronic means of filing STRs in line with the circumstances of Myanmar's overall development.
- STRs should be entered into the same database as the CTRs and PTRs to allow automatic cross-referencing of individuals and entities.
- Myanmar should consider seconding additional customs staff to work in the FIU to enhance cross border strategic and operational analysis.
- The MFIU should move to Nay Pyi Taw or the Head of the FIU and his deputies should be based in Yangon. If the MFIU moves to Nay Pyi Taw, the method of receipt of CTRs, PTRs and STRs needs to be changed to a more efficient system.
- The head of the MFIU should have a specific budget which is either drawn from the main budget of the MPF or independently assigned by the CCB from the Ministry of Home Affairs. This would allow the head of the MFIU to plan for growth and development of the MFIU as reporting of CTRs, PTRs and STRs increases.

### 2.5.3 Compliance with Recommendations 26, 30 & 32

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
<b>R.26</b>	<b>PC</b>	<p>The role of the CCB undermines the independence of the MFIU.</p> <ul style="list-style-type: none"> <li>• Very limited guidance or feedback provided to reporting institutions.</li> <li>• Gaps in the analysis process of STRs, and no analysis of CTRs and PTRs is made.</li> <li>• Limited number of cases referred to law enforcement authorities for investigation.</li> </ul>
<b>R.30</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The MFIU lacks sufficient technical infrastructure to deal with the analysis process of STRs.</li> <li>• There is no independent budget for the MFIU.</li> <li>• Despite considerable training the results of the MFIU analysis process has not resulted in many cases of overt prosecution action being taken.</li> </ul>
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The MFIU does not retain statistics on the number of spontaneous referrals made by the MFIU.</li> </ul>

## **2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, 28, 30 & 32)**

### **2.6.1 Description and Analysis**

#### **Recommendation 27**

##### *Legal Framework*

359. The Myanmar Police Force, (“MPF”), IB, Central Committee of Drug Abuse Control (“CCDAC”) and the Bureau of Special Investigation (“BSI”) are the units which have the powers in Myanmar to investigate and prosecute cases of money laundering, and freeze and confiscate proceeds of crime. The Myanmar Customs Department is a law enforcement agency but it does not investigate or prosecute money laundering cases.

##### Myanmar Police Force.

360. The MPF is about 80,000 strong and has the following stated objectives:-

- (i) Community peace and tranquillity
- (ii) Prevalence of law and order
- (iii) Narcotic drug suppression
- (iv) Community welfare activities

361. In the MPF, the Criminal Investigation Department deals with the investigation and prosecution of simple crime cases while the Department against Transnational Crime (“DTC”) deals with transnational organized crimes including money laundering and related predicate offence investigations.

##### Bureau of Special Investigation.

362. The BSI was founded by the Special Investigation Administrative Board and the Bureau of Special Investigation Act, 1951. It is separate from the MPF and is a separate department under the Ministry of Home Affairs. The BSI has a strength of 1,731 and has the following stated objectives:-

- (i) To investigate economic crimes and corruption of government.
- (ii) To collect intelligence on malicious elements and open and underground “destructionists”.

363. The BSI is discharging its function of duties in line with the provisions of the Special Investigation Administrative Board and the Bureau of Special Investigation Act, 1951. The Bureau is also authorized to investigate any offences committed under existing law including the five scheduled offences under section 6(1) and 7(1) of the BSI Act, and the Special Investigation Administrative Board. The five scheduled offences are:-

- (i) Offences against section 6(1) of the Public Property Protection Act, 1947
- (ii) Offences against section 8 of the Essential Supply and Services Act, 1947
- (iii) Offences against section 5 of the Control of Imports and Exports (Temporary) Act, 1947

- (iv) Offences against section 24 of the Foreign Exchange Regulation Act, 1947
- (v) Offences against section 4(2) of the Suppression of Corruption Act, 1948

364. Under section 17 of the Bureau of Special Investigation Act, officers of the BSI have the same powers as officers of the MPF. Both MPF and BSI officers are trained in the same police academy and the BSI officers have to follow the same provisions of the Criminal Procedure and the Evidence Act as MPF officers.

365. Given that both the BSI and the MPF are under control of the Ministry of Home Affairs, there are clear avenues for the sharing of information. The BSI and the MPF chiefly cooperate in the following matters of national security :-

- (i) Security investigation of persons going abroad for good, to work or going on study tour.
- (ii) Security investigation of persons (who are) to be employed as personnel of government organizations.
- (iii) Security investigation of persons (who are) applying for literary printing and publishing license.
- (iv) Security investigation of persons (who are) applying for visa.

#### Central Committee of Drug Abuse Control

366. Given Myanmar's historical problems with the manufacture and distribution of drugs, a specific specialist body has been formed to deal with drug crime. The Central Committee of Drug Abuse Control ("CCDAC") is a law enforcement body under the Ministry of Home Affairs and is responsible for eradication of drug production, investigation and prosecution of drug-related offences.

367. In addition to its law enforcement role, the CCDAC is tasked with cooperating with local drug prevention and suppression bodies in drug prevention and suppression activities. The law enforcement arm of the CCDAC is headed by a Police Colonel.

368. The CCDAC is staffed by officers seconded from the MPF and the BSI; the Director General of BSI sits on the management body of the CCDAC. The CCDAC has the following stated objectives:-

- (i) The implementation of a national strategy to eradicate illegal narcotic drugs in Myanmar.
- (ii) To work towards the eradication of poppy cultivation by the development and enhancement of the standard of living of the national races in border areas.

#### Myanmar Customs Force

369. The Myanmar Customs Force is a Department under the Ministry of Finance and Revenue. It has a total strength of 2,300 and has the following stated objectives:-

- (i) To levy duty on imported/exported goods in accordance with Myanmar's laws, rules and regulations on the import/export of goods.
- (ii) To oversee imports and exports to ascertain whether they are comply with the laws and regulation or not.
- (iii) To investigate and prevent illegal imports and exports.
- (iv) To compile data of imports and exports.

(v) To promote Myanmar's external trade and support the State economic development.

370. The Myanmar Customs has an investigation department involved in the investigation of the following types of cases :-

- (i) Commercial Fraud;
- (ii) False declarations in respect of import or export of good to/from Myanmar.

371. When the Customs Department has grounds to believe that a case of money laundering has occurred, it will inform the MPF, and when they have information in respect of drugs it will inform CCDAC.

*Designation of Authorities ML/FT Investigations*

372. The main unit tasked with the investigation of ML offences in Myanmar is the Investigation Body ("IB") formed by the CCB on the request of the MFIU to investigate a potential money laundering case. The IB will be composed of suitable officers from the MFIU, the MPF, BSI and other units in the Myanmar government depending upon the specifics of the case under investigation. For example, if a case concerns the laundering of the proceeds of illegal logging then an officer from the Department of Forestry would be involved.

373. Outside of the MFIU-CCB-IB, the main body in Myanmar for conducting financial investigations is the Financial Investigation Team headed by a Police Major under the CCDAC, who reports to the Police Colonel in charge of the law enforcement arm of CCDAC. This unit is available to assist other units of the MPF and BSI in conducting financial investigation at the request of that unit to the Chief of Police in charge of the MPF. It also works closely with the FIU and was involved in the investigation of Myanmar Universal Bank.

374. When this unit has grounds to believe that a case of money laundering under the CMLL has occurred, the unit will inform the CCB and act upon its instructions. The method for the report to CCB is through the Police Colonel of CCDAC to the Police Colonel, who is also the head of FIU, at the daily morning meeting. Both officers attend together with the Police General in charge of the MPF. CCB will then review the case and decide whether an IB is to be formed.

375. This unit is housed in a separate building from other MPF units. The unit's main aim is the identification of the proceeds of drug crime with a view to ensuring these proceeds are restrained and then confiscated. It is a well trained and motivated unit with a considerable number of successful complex cases. The unit has worked closely with a number of law enforcement agencies of both APG members and others.

376. Given the lack of any specific law in Myanmar in respect of the financing of terrorism, there is no specific team to investigate suspected case of financing of terrorism, outside of the predicate offences these groups may have committed.

377. The MPF Special Branch in concert with other units of the MPF and BSI will investigate specific "acts of terrorism" and the groups practicing them. Myanmar advised that this includes investigating potential sources of financing.

*Ability to Postpone / Waive Arrest of Suspects or Seizure of Property*

378. There are no legal restrictions in Myanmar law on officers of the IB, MPF, CCDAC and BSI delaying overt action either in arresting a suspect or seizing property pending the gathering of evidence.

*Additional elements - special investigative techniques*

379. Controlled delivery and other measures are allowed under the provisions of the CMLL, NDPS Law and Anti Trafficking in Persons Law.

380. An officer of the MPF, CCDAC, and BSI has the power to use controlled delivery or undercover techniques, when there are reasonable and probable grounds to believe that the investigation may involve an organised criminal group. These powers are most commonly used in drug investigations (organised crime groups are claimed to be involved in most of the drug trafficking and production cases).

381. In general these techniques are used in intelligence gathering only, with prosecution being based on the overt investigation following these special investigative techniques. Where interception of telecommunications is involved, the authority of the Minister for Communications must be obtained and the matter under investigation must be deemed by the Minister to be serious enough to warrant the use of such interception weighing up the individual rights of the person under investigation. Such information obtained through the interception of communications is used as intelligence only and is not used in any criminal trial although evidence discovered and obtained by the use of such interception is used in criminal trials.

382. The use of such special investigative techniques has been in the investigation of money laundering and asset identification cases conducted by the Financial Investigation Unit of CCDAC in connection with organised drug trafficking syndicates. However there is no legal restriction on the use of such techniques in money laundering cases involving organised crimes that do not involve drug trafficking.

383. Special investigation techniques are used, including by the MPF Special Branch and BSI, to investigate predicate crimes including in relation to “terrorist acts”.

*Additional Element—Specialized Investigation Groups & Conducting Multi-National Cooperative Investigations*

384. The IB is a temporary group set up to investigate ML cases on a case-by-case basis when authorised by the CCB.

385. The CCDAC’s dedicated financial investigation team is providing support to the MFIU as required and is available to assist other units of the MPF in financial investigation. It is common practice for this unit to send officers on temporary attachments to other units of the MPF to assist them in financial investigation in a specific case.

386. Co-operative investigations, using special investigative techniques, conducted by the IB, MPF and BSI are allowed under Myanmar law provided the matter under investigation concerns organised crime. In the past 4 years, officers of CCDAC have undertaken joint investigations using special investigative techniques with law enforcement agencies of the PRC, Thailand, Laos, and the United States.

*Additional Elements—Review of ML & FT Trends by Law Enforcement Authorities*

387. The CCB holds inter-agency meetings with the aim of sharing information and case experience. These meetings cover policy issues including money laundering techniques used by criminals. At their daily meeting, the head of the MFIU and the law enforcement arm of CCDAC meet with the Police General in charge of the MPF to discuss operational priorities.

**Recommendation 28**

*Ability to Compel Production of and Searches for Documents and Information*

388. The IB, MPF and BSI have full powers to compel the production of documents and records including physical items of evidence; and to search persons or premises for, and seize and obtain any type of property and documents or records. This is under Section 8 of the CMLL.

389. The Myanmar Customs is unable to obtain banking records in its investigations. In practice, when a bank account is suspected in a Customs case to be used to receive funds in connection with a crime, the matter is passed to the MFIU, via the MPF.

*Power to Take Witnesses' Statement*

390. The IB, MPF, Myanmar Customs and BSI have full powers to summon and to obtain a witness statement for the purpose of aiding an investigation. If the witness later changes his/her evidence at a court hearing then the witness can be prosecuted for giving false information. A witness has the right not to incriminate himself or herself in any such statement given in response to an order of the IB, MPF, Myanmar Customs and BSI to give a witness statement.

391. There is no power to investigate the financing of terrorist acts or groups outside of the predicate offences they commit.

**Recommendation 30 (Law enforcement and prosecution authorities only)**

*Adequacy of Resources to Law Enforcement and Other AML/CFT Investigative or Prosecutorial Agencies*

392. All cases of suspected money laundering under the CMLL must be referred via the MFIU. For such cases to be investigated, the MFIU must submit a request to the CCB to form an IB.

393. The structure of this system, including the large and diverse membership of CCB, show a clear lack of independence and autonomy in the investigative function of all the law enforcement units in Myanmar involved in the investigation of money laundering.

394. Despite this, there has been no evidence given to the evaluation team to date of any case of the CCB refusing to authorise the continued investigation of a money laundering case that is brought before it. In the vast majority of money laundering cases, the CCB will cause the IB to be formed with officers from the initiating investigating unit and others, and to carry on with the investigation of the case with support if needed from officers of the MFIU.

#### *Integrity of Competent Authorities*

395. There are three levels of entry into the MPF and BSI, namely at Constable Rank, at Second Lieutenant Rank and by direct transfer from the Armed Forces of Myanmar at ranks from Captain and above.

396. Officers of Constable rank must be high school graduates and all officers of the rank of Second Lieutenant and above must hold a university degree; this includes officers transferred from the Armed Forces of Myanmar.

397. All new officers of Constable or Second Lieutenant rank must successfully complete a 12 month training program at the Police Academy which teaches ethics (with practical law enforcement applications), general investigative techniques (including surveillance and undercover techniques), methods of evidence gathering (including search and seizure), physical fitness and defensive tactics, use of firearms, interviewing techniques, and criminal procedure (including how to apply for a search warrant and a subpoena for the production of documents). Training on ethical issues including anti-corruption is also a core part of the training curriculum.

398. Following graduation all members of the MPF and BSI are subject to the Myanmar Police Manual, Police Officer Manual and Criminal Procedure Laws of Myanmar. These contain the rules and procedures to be carried out in the investigations. The MPF and BSI publish separate rules, and regulations for matters concerning conduct and discipline.

399. The 2,300 Myanmar Customs officers comprise of 600 officers of the rank of Second Lieutenant and above and 1,700 other ranks. Officers of Second Lieutenant and above are required to hold a college degree and all Customs officers undertake a 4 month initial training period at the Myanmar Public Service Academy before being posted out for operational attachment. Training on ethical issues including anti-corruption is also a core part of the training curriculum.

#### *Training for Competent Authorities*

400. Following completion of their initial training and probationary year service, all officers of Second Lieutenant and above will receive a series of training courses in Detective Investigation which includes an introduction to financial investigation.

401. All officers of the rank of Second Lieutenant or above who are involved in the MFIU, or involved in those units of the MPF and BSI involved in financial investigation will receive additional training in financial analysis, financial investigation, methods and typologies of money laundering, terrorist financing, and other types of financial crime.

#### *Additional Element - Special Training for Judges*

402. Judicial officers are included in the Myanmar based money laundering and financial investigation courses.

**Recommendation 30 (Other competent authorities):**

403. The MPF is headed by the National Police Director General, and comes under the Minister of Home Affairs. The MPF maintains offices in every city of Myanmar and also in the smaller towns.

404. In general the operational staff of all Myanmar Law Enforcement Agencies and Government Departments maintains the required degree of awareness for professional standards, confidentiality and integrity.

405. All members of the MPF, BSI and Customs undergo rigorous background and security checks prior to employment. Any person with a criminal record is not eligible for employment; persons convicted of a criminal offence will be dismissed from employment. Members of the MPF, BSI and Customs found to be using illegal drugs face disciplinary action and, in the case of recidivism, dismissal.

406. All MPF, BSI and Customs members are required to sign confidentiality agreements, and are subject to the Official Secrets Act of Myanmar. All investigation files of criminal cases conducted by the MPF, BSI and Customs are graded as “Confidential”. It is a criminal offence under the Official Secrets Act of Myanmar for any member of the MPF, BSI and Customs to disclose information graded confidential or above. The punishment for breach of the Official Secrets Act is a fine and/or imprisonment for an unlimited period of time.

407. Police officers involved in the investigation of crime, and all BSI officials are given specialized training which includes courses on the investigation of money laundering offences and other types of financial crime, and topics related to threats to national security (such as investigating terrorist acts ).

**Recommendation 32 (Law Enforcement)**

408. See Statistics in Sections for R1, R3, and R26.

Analysis of Effectiveness.

409. All the law enforcement bodies involved in the investigation of money laundering, and in the use of financial investigation techniques in predicate offence investigation have a wide variety of powers fully in line with those of similar bodies in other nations.

410. Law enforcement used these powers in the inter-agency investigation of U Tin Sein and Myanmar Universal Bank, including obtaining 26 witness statements, bank records, and records and assets of businesses owned by the accused. This case also highlighted the effective inter-agency cooperation in investigating this multi-faceted case involving different breaches of Myanmar’s laws.

411. However to date, there has been an over concentration of financial investigation resources in the field of asset tracing, seizure, restraint and confiscation for drug offences. While this can be understood given that drug trafficking is the major source of illicit proceeds in Myanmar, it has meant

that financial investigation techniques have not been widely used in other crimes such as corruption, the trafficking of persons, smuggling, fraud and illegal gambling.

412. This is once again reflected by the relatively small number of investigations, prosecutions and convictions for offences under the CMLL.

### 2.6.2 Recommendations and Comments

413. Myanmar should undertake the following in relation to law enforcement investigations:

- Increase financial investigation resources to cover human trafficking, corruption, fraud, smuggling, in addition to drug related cases.
- Allocate dedicated resources to investigate cases of financing of terrorism following the enactment of Myanmar’s proposed law in relation to the financing of terrorism.
- Consider establishing a financial investigation unit which has a mandate to undertake financial investigations into a range of predicate crimes, including the financing of terrorist acts.
- Identify from various sources, and not limited to STRs, cases for investigation and prosecution under the CMLL.

### 2.6.3 Compliance with Recommendation 27, 28, 30 & 32

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	LC	<ul style="list-style-type: none"> <li>• No dedicated team to investigate TF.</li> </ul>
R.28	LC	<ul style="list-style-type: none"> <li>• There is no power to investigate the financing of terrorist groups outside of the predicate offences they commit.</li> </ul>
R.30	PC	Lack of resources for financial investigations of non-drug crimes.
R.32	PC	Limited non-drug related restraint and confiscation in Myanmar.

## 2.7 Cross Border Declaration or Disclosure (SR.IX & R.32)

### 2.7.1 Description and Analysis

#### Relevant Law.

414. Under the Foreign Exchange Regulation Act 1947 (“FERA”) all foreign currency is tightly controlled in Myanmar. No person who is a citizen of Myanmar, or a Myanmar registered company, can possess foreign currency without a Foreign Exchange Acceptor and Holder Licence (“AH”) issued by the CBM.

415. Currently, 981 such licences have been issued mainly to companies involved in the retail and tourist business. All other persons who have in foreign currency their possession must purchase

Foreign Exchange Certificates (FECs) from persons and companies who hold a FEC Changer Licence issued by the CBM.

416. Section 9 of FERA prohibits any citizen of Myanmar from bringing into or taking out of Myanmar any gold, local or foreign currency or any jewellery. Section 14 of FERA prohibits securities from being taken into or out of Myanmar by any citizen of Myanmar

417. Section 21 of CMLL requires that “the responsible persons of the relevant government departments or organizations, on declaring to him the foreign currency brought into the country by any person who enters the Union of Myanmar shall, if the amount exceeds the amount prescribed by the Central Control Board, report the matter to the CCB without delay, and in accordance with the stipulations”.

418. By Order 4/2004 of CCB issued on 1 July 2004, the Myanmar Customs Department is required to report to CCB any case regarding the exportation and importation of foreign currency by, persons legal and natural, including by mail or courier, which exceeds US\$10,000 or equivalent.

#### Relevant Bodies

419. Control of the borders of Myanmar is the responsibility of the Myanmar Customs Department and is assisted by uniformed units of the MPF and the Armed Forces of Myanmar.

420. The main functions of Myanmar Customs are to collect and safeguard revenue, and to control and detect evasion of tax and illegal importation and exportation of goods. The Department not only carries out its main responsibilities but also participates in combating narcotic drugs trafficking under the guidance of CCDAC. It is also responsible for the monitoring of cross border transactions as well as investigation of matters of internal discipline within Myanmar Customs.

421. Myanmar Customs has established the following authorized and official points of entry into Myanmar :-

- (i) two airports (Yangon and Mandalay International Airports);
- (ii) four ports;
- (iii) three at the land border Myanmar-Thailand;
- (iv) one at the land border Myanmar-India;
- (v) one at the land border Myanmar-PRC and;
- (vi) one at the land border Myanmar- Bangladesh.

422. Myanmar Customs has posted officers at all points of entry and exit for postal and courier services, and conducts inspections of all incoming and outgoing postal and courier packets.

#### *Mechanisms to Monitor Cross-border Physical Transportation of Currency*

423. Under Section 21 of CMLL and CCB Order 4/2004, Myanmar has adopted a Declaration system. This is by means of a form that all arriving and departing persons must complete and then sign to certify that it is correct. The form requires them to declare any foreign currency (including cheques) to the value of US\$2,000 or more. The form also requires them to declare any valuable

articles, such as gold or jewellery. This includes watches and other items of value such as electronic equipment.

424. Bearer negotiable instruments such as drafts, cheques and others are required to be declared in the Foreign Exchange Declaration Form which is required to be completed on arrival and departure.

#### *Request Information on Origin and Use of Currency*

425. Failure to declare or making a false declaration is a violation of Section 24(1) of FERA , which states that, “who ever contravenes any of the provision of this Act or any rules, direction or order made there under shall punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine”.

426. Upon discovery of a false declaration / disclosure of currency or bearer negotiable instruments/ valuable property or a failure to declare / disclose them, Myanmar Customs will seize the items concerned. It will also conduct an interview with the persons(s) in possession of the items with a view to obtaining further information from the carrier with regard to the origin of the currency/bearer negotiable instruments/valuable property and their intended use.

#### *Restraint of Currency*

427. Myanmar advised that as law enforcement officers, all Customs Officers have the power to stop and detain any person who they suspect of being in possession of any property including currency/bearer negotiable instrument/valuable items that is either linked to any crime under the criminal law of Myanmar, is the proceeds of any crime, or involved in money laundering.

428. Such persons may be questioned to confirm or refute the suspicion, and if the suspicion is confirmed then the persons are detained pending them being handed over to the MPF.

#### *Retention of Information of Currency and Identification Data by Authorities when appropriate*

429. The prescribed form requires that a person enter their full name, passport number, nationality, date of birth, occupation, flight/vessel number and date of arrival.

430. All such forms submitted to the Myanmar Customs are initially retained by the office that receives them in a hard copy. The forms are then centrally stored at the Customs Headquarters in Yangon, where they can be inspected and used by law enforcement agencies in Myanmar with the appropriate authorisation to examine the declarations. There is no maximum time for the storage of the forms.

#### *Access of Information to FIU*

431. Under Section 21 of CMLL and CCB Order 4/2004, all declarations which exceed threshold amount of US\$10,000 are reported to the MFIU. This done on monthly basis, by sending a hard copy of the form to the CCB, for the attention of the MFIU by the head of the Myanmar Customs.

432. The information on the Declaration forms is not directly available to the MFIU, however it can be accessed by means of a formal request from the head of the MFIU.

*Domestic Cooperation between Customs, Immigration and Related Authorities*

433. All persons who enter/exit Myanmar will be cleared for entry/exit by officers of the Myanmar Immigration Department before they are required to submit their declaration forms to the Myanmar Customs. Myanmar Customs report that on an operational level they have good co-ordination with Immigration Department in respect of persons who enter/exit are suspected to be in possession of excess sums of currency or illegal items.

434. However there are no formal guidelines for this cooperation. Myanmar Customs state that the matter is under consideration to formalise coordination and cooperation.

435. Customs has close operational coordination with the MFIU, CCDAC, and MPF and can coordinate operations with them on a case-by-case basis. However no formal guidelines for cooperation exist.

436. Formal requests for assistance and information have to pass through the Minister of Finance for Myanmar Customs, and through the Minister for Home Affairs for the MFIU, CCDAC and MPF.

*International Cooperation between Competent Authorities relating to Cross-border Physical Transportation of Currency*

437. At the international level, Myanmar Customs has established contact points with Customs authorities in the region, including members of ASEAN. Currently the only exchange of information has been in relation to illegal drugs and suspected cases of under declaration of goods, not the transportation of currency or other valuable items, however there is no legal restriction on Myanmar Customs sharing this information with their overseas counterparts.

*Sanctions for Making False Declarations / Disclosures*

438. If a natural or legal person is found to have made a false declaration then all of the property subject to the false declaration is forfeited by the Myanmar Customs.

439. The matter is then handed over to the MPF for prosecution action under Section 24(1) of FERA. Even if the person is acquitted of the Section 24(1) FERA offence, the property is still subject to forfeiture.

440. If a legal person is prosecuted, both the person in possession of the property subject to the false declaration, and the controlling minds of that legal person can be subject to prosecution.

441. A conviction under Section 24(1) of FERA can result in a sentence of imprisonment for a maximum of three years and a fine, the level of both to be determined by the court hearing the matter.

*Sanctions for Cross-border Physical Transportation of Currency for Purposes of ML or FT*

442. Any person who is suspected of carrying property that is related to money laundering or a criminal offence is detained by Myanmar Customs and is handed over to the MPF for further investigative action

443. All cases involving natural or legal persons suspected of money laundering will be reported to the head of the MFIU, who will then inform CCB for consideration of forming an IB to further investigate the matter under the CMLL.

*Confiscation of Currency Related to ML/FT*

444. Where money laundering is suspected the matter is referred to the MPF and then to the CCB by the head of the MFIU. Action is then taken in respect of the property and persons suspected both being involved in money laundering by any IB formed by the CCB under the CMLL.

445. Myanmar has not passed any law in respect of terrorist funding. Unless terrorist property was covered by the predicate offences under the CMLL no seizure is possible.

*Confiscation of Currency Pursuant to UNSCRs*

446. There is no guidance given to Myanmar Customs as to persons who are subject to UN Security Council Resolutions (“UNSCR”) 1267 and 1373.

447. No list is provided to Myanmar Customs as to persons and organisations who are subject to UNSCRs 1267 and 1373.

448. Myanmar has not passed any law in respect of terrorist funding. Unless terrorist property was covered by the predicate offences under the CMLL no seizure is possible.

*Notification of Foreign Agency of Unusual Movement of Precious Metals and Stones*

449. Myanmar Customs has the power to share information with overseas Customs and similar bodies in respect of articles being imported/exported from Myanmar. There has been no exchange of information with other agencies in relation to such cases. However it should be noted that Myanmar is an exporter of gems and precious metals, and all cases of seizure of gems, gold, and precious metals have been from persons who have been leaving Myanmar.

*Safeguards for Proper Use of Information*

450. Access to the declarations is subject to the approval of a Staff Officer of the Myanmar Customs. A record is kept of all people who ask to inspect the declarations.

451. Should the MPF, MFIU, BSI or IB request to inspect the declarations made an authorisation from the head of the MPF, BSI or MFIU is required. If the IB requests to inspect the declarations made then it uses its implicit authority from CCB under Section 10 of CMLL.

*Additional Element—Implementation of SR.IX Best Practices*

452. Myanmar has implemented certain aspects of the best practice paper. These include setting the declaration threshold at only US\$2,000, the inclusion of precious stones in the declaration requirements, use of x-ray machines, screening passengers for suspicious behaviour, and the profiling of passengers.

*Additional Element—Computerization of Database and Access to Competent Authorities*

453. All declarations received by Myanmar Customs are stored in hard copy only. There is no computerized database of these declarations. No analysis is conducted by Myanmar Customs of these declarations.

**Recommendation 32**

454. In respect of the declarations Myanmar Customs received at Yangon International Airport, Myanmar Customs have sent the following numbers of cross border CTRs above the US\$10,000 (or equivalent) to the MFIU :-

**Table: Cross Border Cash Courier Reports.**

<b>Year</b>	<b>Number of CTRs</b>
2004	2576
2005	1565
2006	1602
2007	2589

455. The following statistics show the seizure of undeclared cash, both inbound and outbound at Yangon International Airport. The vast majority of seizures were in the form of U.S. dollar, to a total of US\$387,688, the remainder being far smaller sums of cash in the following denominations Kyat, Euros, British Pounds, RMB, Thai Baht, HKD\$, Japanese Yen, and Singapore Dollars. All cash has been seized and confiscated and the persons concerned, (eight Myanmar citizen and four foreign nationals) were subjected to prosecution. The figures for 2007 were not available.

**Cash Seizures at Yangon International Airport**

	<b>Number of Cases</b>
2004	3
2005	6
2006	2

456. Statistics were only produced for the year 2007 in respect of seizures for valuables at Yangon Airport. In this year, there were five cases involving the seizure of 3,746 items of jewelry to a value of about US\$200,000. All items seized have been confiscated and the persons concerned, (four Myanmar citizens and one Indian national) were all arrested departing Myanmar, and have been subjected to prosecution.

**Analysis of Effectiveness.**

457. Myanmar is a highly cash-based economy, with the U.S. dollar being the hard currency of choice. There is also a large and as yet unregulated retail market for gold and jewelry. As such, one would expect the seizures of currencies and valuable items leaving Myanmar to be considerably higher than the statistics submitted.

458. The lack of declaration statistics for outside of Yangon makes a full analysis of effectiveness somewhat speculative. However given the well known problems Myanmar has with control of its eastern land borders, especially with the PRC and Thailand, greater effort needs to be made by Myanmar in tackling the use of cash couriers, and currency smuggling in general.

459. The information that is obtained from Myanmar's declaration system is not computerized, making it virtually impossible for a law enforcement agency to search the data.

460. No attempt has been made to spot well known methods to avoid detection such as "smurfing" or the use of child cash couriers.

461. None of the UNSCR lists have been given to Myanmar Customs and no inspection is made of the declarations made to ascertain if listed individuals are coming to or leaving Myanmar with large sums of cash or valuable items.

462. The current lack of law criminalizing the funding of terrorist groups means that person importing cash for use by the groups in non-criminal acts can not be stopped or examined by Myanmar Customs.

### **2.7.2 Recommendations and Comments**

463. Myanmar should undertake the following to enhance the operations of its Customs agency:

- Increase resources in the border areas of Myanmar to interdict the smuggling of currency and valuable items. To this end awareness training should be given to those units of the Myanmar law enforcement agencies and military who conduct operations on the border areas in respect of the smuggling of currency and valuable items.
- Keep statistics of declarations received for every border crossing point not just Yangon International Airport.
- Computerize the declarations received by Myanmar Customs to allow both the Myanmar Customs and the MFIU to conduct analysis of disclosures below US\$10,000, as well as the production of effective statistics.
- Make available the lists of those persons and organizations subject to UNSCRs 1267 and 1373 to Myanmar Customs in order that some examination can be made of those submitting declarations. This could be done in cooperation with the Myanmar Immigration Department.

### **2.7.3 Compliance with Special Recommendation IX & Recommendation 32**

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
<b>SR.IX</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• There is a lack of effectiveness in implementing Myanmar’s currency and valuable item control regime outside of Yangon International Airport.</li> <li>• The declarations received are not computerized making any meaningful analysis virtually impossible.</li> <li>• Declaration data is not readily made available to the MFIU.</li> <li>• UNSCRs 1267 and 1373 are not provided to Myanmar Customs.</li> <li>• Myanmar has no law in respect to the importation of funds to be used to support terrorist organizations.</li> </ul>
<b>R.32</b>	<b>PC</b>	<p>There are only declaration statistics for Yangon International Airport.</p> <ul style="list-style-type: none"> <li>• There are limited statistics over the last four years suggesting that the declarations made are not readily searchable.</li> </ul>

### **3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS**

#### **Customer Due Diligence & Record Keeping**

##### **3.1 Risk of money laundering or terrorist financing**

464. Myanmar has adopted an inclusive approach to the scope of the money laundering obligations in the financial sector. It has neither excluded any financial activities nor implemented enhanced customer due diligence based on a risk assessment. The same standard or obligation of customer due diligence is applied for all customers irrespective of risk. This is a policy decision adopted by Myanmar. However, it intends to implement a risk-based approach in the future with international technical assistance.

##### **3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)**

###### **3.2.1 Description and Analysis**

###### **Legal Framework**

465. The governing legislation for anti-money laundering is the Control of Money Laundering Law 2002(CMLL) and its associated Control of Money Laundering Rules 2003(CMLR). The duties and responsibilities of the Central Bank of Myanmar (CBM), banks and financial institutions are set-out in greater details in the CMLR.

466. Section 7 (f) of the CMLL provides that the CCB should set the policy for AML/CFT in coordination with the government departments and organizations. Section 41 of the CMLL empowers the CCB to issue such Orders for the purpose of implementing the provisions of the CMLL. While section 41 (b) of the CMLL empowers the CCB, the Ministry of Home Affairs, the Ministry of Finance and Revenue and relevant government departments and organizations to issue such notifications, orders and directives as may be necessary.

467. Pursuant to section 8 (b), the CCB is empowered to prescribe, with the approval of the Government, the amount of value of money and property to be reported to the CCB. For this purpose, the CCB has issued Orders for threshold and suspicious transaction reporting to banks, state-owned insurance company and the Myanmar Securities Exchange. Threshold reporting is set at 100 million kyats and above while there is no limit or threshold for suspicious transaction reporting.

468. The CCB has authorised, through CCB Order No.5/2007, the CBM to conduct socialization and audit programmes on other financial institutions which are not licensed by the CBM, such as the state-owned insurance company and the Myanmar Securities Exchange company.

469. While the CBM and the Ministry of Finance and Revenue are the regulatory authorities for banks and financial institutions, the CCB has the overarching oversight of all AML implementation, including the financial sector.

470. Section 102 (b) of the CBM Law provides that the Central Bank may issue regulations, by-laws, orders and directives.

471. The CBM has issued Instructions and Guidelines to banks and financial institutions providing additional directions with regards to the implementation of the various Orders issued by the CCB under the CMLL/CMLR. The Instructions include the reporting of threshold and suspicious transactions, circumstances where transactions are considered suspicious, designation of compliance officer, notification on the FATF standards, and the freezing of accounts that are suspected to be linked to terrorists and terrorist organizations.

472. The basic obligations under Recommendations 5, 10 and 13 are not fully set out in law or regulation. Parts of Recommendations 5 and 13 are covered but not all. Recommendation 10 requirements are not set out in law or regulation. They are further explained and analysed in Section 3 of the report.

473. The lists of Orders and Instructions issued by CCB and CBM respectively in relation to the financial sector, including banks are as follows:-

**Table: AML Orders (A) and Instructions (B) for the Financial Sector**

(A) Orders by CCB	Date	Industry	Types of reporting	(B) Instructions by CBM to banks and FIs	Date	Types of reporting
1/2004	12 Jan 2004	Banks and financial institutions	Report to the CCB and copy to CBM transactions with respect to deposit, withdrawal and transfer of money, determined as confidential, the account of person if:- a. the amount of money being 100 mil kyats and above: b. being unusual or suspicious although the amount does not exceed 100 million kyats and above	1/2004	17 Jan 2004	Report to the CCB and copy to CBM transactions with respect to deposit, withdrawal and transfer of money, determined as confidential, the account of person if:- a. the amount of money being 100 mil kyats and above: b. being unusual or suspicious although the amount does not exceed 100 million kyats and above
				2/2004	17 Jan 2004	Banks and FIs are required to perform their functions and duties precisely. The FATF 40 Recommendations is attached with

						this instruction for information.
				3/2004	19 Feb 2004	Reference is made to Instruction 2/2002 of the CBM to freeze the funds and other assets and prohibit transactions with suspected terrorists and terrorist organizations and to report and submit related accounts to CBM. A set of FATF 8 Special Recommendations is attached as guidelines for Banks and FIs.
				Memorandum	30 Jan 2004	CDD and Record keeping- To open accounts for new customers with proper introduction by two account holders. For inland and foreign remittances performed by TT or DD, must obtain profile of customers such as Name, Registration Card No., Passport number, Full Address of remitters or beneficiaries and reasons for the remittance. STRs – to duly fill the reasons and comments.
				4/2004	27 Apr 2004	Banks and FIs to designate compliance officer for the banking dept and branches, particularly in handling with reporting of

						unusual or threshold transactions. A list of designated compliance officers must be recorded in the HO of each bank.
				2/2005	8 Aug 2005	The on-site inspection teams are to conduct the examination of banks' compliance with the CMLL, Rules and Instructions.
				6/2006	7 Jun 2006	Issuance of a checklist to be applied by the banks in identifying STRs.
4/2006	27 Jun 2006	CBM, FIs, Companies under the Directorate of Companies.	Buying of shares, sale or transfer of shares under the following conditions:- Transaction exceed 100 million kyats Money deposited is unusual or suspicious. Once reported, CCB shall examine if the "Source of Funds" are assets derived from ML.	8/2006	14 Jul 2006	Banks are to report urgently on sales and transfer of shares regarding capital injection in details such as name, address of share holder and amount of share to Director , Internal Audit and Bank Supervision Dept.
				7/2006	7 Jun 2006	Banks are instructed to address weaknesses found during on-site examination or else action will be taken under the CMLL and Rules.
				137/2006 Memorandum to banks and	2 Aug 2006	Further instruction to banks and financial institutions

				financial institutions		to thoroughly identify and report suspicious transactions
				9/2006	31 Oct 2006	Further instructions regarding threshold and STR. -Identify the offence as per checklist -to provide reason for suspicion
1/2007	11 Jul 2007	Myanmar Securities Exchange Co.	Relating to purchase, sale and transfer of security certificates, when:- Money is 100 million kyats and above Extraordinary or suspicious. To report to the CCB and copy to CBM	2/2007	3 Aug 2007	Myanmar Securities Exchange Centre is required to report any unusual or suspicious and threshold transactions with respect to purchase and sales of securities.
2/2007	11 Jul 2007	Myanmar Agricultural Dev Bank, Myanmar Small Loans Enterprise	Deposit, withdrawal and transfer of cash (MADB) Issuing of loans on security and redeeming of pawned articles (MSLE) when:- Amount is 100 million kyats and above;  Being unusual or suspicious	3/2007	3 Aug 2007	Requiring MADB to report threshold and STR to CCB with a copy to CBM. Requested to follow the checklist as a guide in submitting STRs.
				4/2007	3 Aug 2007	Requiring the Myanmar Small Loan Enterprise, to report threshold and STR with respect to disbursement and repayment of small loans, to CCB with a copy to CBM. Requested to follow the checklist.
3/2007	11 Jul 2007	Myanmar Insurance	Deposit, withdraw and transfer of cash when:- Amount is 100 million	5/2007	3 Aug 2007	Requiring Myanmar Insurance Enterprise to report threshold and STR

			kyats and above; Being unusual or suspicious			with respect to underwriting insurance policy and payment of claims in accordance to the threshold and if suspicious.
5/2007	11 Jul 2007	Instruction to Ministry of Finance and Revenue and the CBM	To continue to carry out socialization program and Special Audit programme on AML/CFT for Myanmar Securities Exchange Company Ltd, Myanmar Agricultural Dev Bank, Myanmar Small Loans Enterprise and Myanmar Insurance Enterprise.			
3/2008	14 Mar 2008	Banks and financial institutions	Record keeping requirements of all documents related to accounts and transactions of a customer for at least 5 years after closing of accounts/completion of transaction.	Memorandum to banks and financial institutions	14 Mar 2008	Imposition of administrative penalties for failure to comply with obligations stipulated under section 18 (a) and (b) and section 19 of the CMLL

### Implementation of the preventive measures

474. The CBM issued a set of compliance guidelines for AML/CFT in August 2006. A revised “Compliance Guidelines on Anti-Money Laundering and Combating Terrorist Financing” was further issued in January 2008. This guideline covers customer due diligence, record keeping, suspicious transaction requirements, guidance on wire transfers, internal AML programme, tipping off, and training.

475. Myanmar has neither specified any sanctions in the CMLL nor the CBM law for non-compliance with the guidelines issued by the CBM. This was confirmed during the on-site, when officials of the CBM acknowledged that administrative sanctions for non-compliance with the guidelines were work in progress.

476. The existing CMLL provision on offence and penalties, essentially section 28, provides for the failure of the responsible persons of the banks and financial institutions to carry out any functions and duties contained in section 18 (a) and (b), and section 19, and in accordance to stipulations of the CMLL. However, Section 18(a) primarily relates to identifying and verifying persons who open

accounts, cash deposit and cash withdrawal. Section 18(b) relates to keeping of supporting documents, accounts and records for at least 5 years. Section 19 relates to reporting of threshold transactions and suspicious transactions to the CCB. Section 39(a) of the CMLR essentially expanded the coverage to persons who deposits and withdraws money and person who transfers money.

477. The CBM issued a Memorandum, dated 14 March 2008, as a notification to banks and financial institutions on the imposition of administrative penalties for failures to comply with sections 18 (a) and (b) and section 19, with regards to recording and retaining financial transaction documents and on threshold and suspicious transaction reporting under the CMLL. The administrative sanctions include:-

- Warnings;
- Orders including restricting the operations of financial institutions;
- Fines;
- Temporary or permanent termination from duties in the financial institutions;
- Cancellation of the licence to operate.

478. The Memorandum has just recently been issued by the CBM and therefore the effectiveness of the implementation has yet to be ascertained. The Order is also specific to record keeping and reporting obligations, not the imposition of broad administrative sanction powers in respect of CBM guidelines.

#### Insurance sector

479. The state-owned insurance company is under the purview of the Ministry of Finance and Revenue. The governing legislation is the Myanmar Insurance Law 1993.

480. The CMLL has defined “banks and financial institutions” as:-

*“Organisations established in the State, whose corporate purpose is intermediation on the money or capital markets through the collection of financial resources from third parties for investment on their own account in credit operations, credit and public debt instruments, securities, or other authorized financial activities. This expression also includes the commercial banks, investment or development banks and finance companies.”*

481. The Financial Institutions of Myanmar Law (FIML) in section 5, classified financial institution as :-

- I. Commercial banks;
- II. Investment or Development Banks;
- III. Finance companies;
- IV. Credit societies.

482. Based on the definitions in the CMLL and FIML, it appears the insurance sector is not explicitly included as financial institutions in the CMLL. The Myanmar authorities may consider clarifying the inclusion of this sector in the CMLL, so that there is no ambiguity or legal issue with regards to obligations under section 18 (a) and (b) and the corresponding sanctions for non-compliance under section 28 of the CMLL.

483. The CBM has also issued a set of guidelines on 12 June 2007 to the state-owned insurance company. The guidelines include customer due diligence, primarily identifying and verifying customers and beneficial owners, record-keeping, and STR reporting and tipping-off offence.

484. The CBM is also empowered by the CCB (Order 5/2007) to conduct special AML/CFT audit programme on the insurance company.

485. Similar to the banks, there is no defined sanction for non-compliance with the guidelines issued by the CBM to the insurance company.

Securities sector

486. The CCB order has similarly empowered the CBM to conduct socialization and special audit programme on AML/CFT for MSEC.

487. There is no law governing the MSEC.

488. The CBM has not issued any specific AML/CFT guidelines for MSEC, apart from a list of “red flags” to guide MSEC in reporting suspicious transactions. However, the CBM has advised that a number of instructions and guidelines issued to banks and financial institutions since 2004 are applicable to MSEC. These instructions are as follows:

**Table: CBM Instructions to MSEC**

	<b>Instruction /Guidelines No</b>	<b>Issued Date</b>	<b>Particulars</b>	<b>Targeted Institutions</b>
1.	1/2004	17-1-2004	To report unusual or suspicious transactions and in excess of the amount prescribed by the Central Control Board	Banks and Financial Institutions
2.	2/2004	17-1-2004	To comply the CDD, record keeping and reporting duties of the banks and financial institutions as prescribed in the Control of Money Laundering Laws and Rules	Banks and Financial Institutions
3.	3/2004	19-2-2004	To comply with the FATF 8 Special recommendations regarding Combating the Financing of Terrorism	Banks and Financial Institutions
4.	Memorandum	30-1-2004	To conduct Customer Due Diligence and Record Keeping	Banks and Financial Institutions
5.	4/2004	27-4-2004	To be diligent in undertaking the Functions and Duties of Banks and Financial Institutions prescribed in the CMLL and CMLR and to designate compliance officer for the banking department and branches	Banks and Financial Institutions
6	CBM Guidelines	16-8-2006	Customer due diligence, record keeping, suspicious transaction requirements, guidance on wire transfers, internal AML programme, tipping off, and training.	Banks and Financial Institutions

489. The language of these CBM instructions, particularly the guidelines, is largely skewed to the banking sector. It is advisable for the CBM to issue more specific AML/CFT guidelines to address specific risk or business requirements in respect of MSEC.

### Money Changers

490. All money changers, except one, are the 41 branches of three state-owned banks and are subject to CCB and CBM requirements in respect of banks. The only non-bank money changer, the Andaman Club Co., Ltd, which is a resort hotel near Thailand, was included in the CCB Order in March 2008 to undertake threshold and STR reporting.

### **Recommendation 5 (Customer Due Diligence)**

#### *Prohibition of Anonymous Accounts*

491. There is no explicit statement prohibiting the opening of anonymous accounts in either the CMLL or the CMLR. However, the CBM advised that under Section 18 (a) of the CMLL and Section 1 of the State Commercial Bank Act and Regulations (1957), both which pertain to customer identification at account opening, these sections are interpreted to prohibit the opening of anonymous accounts. There is no evidence to suggest that anonymous accounts are operating.

492. It is clear that false name accounts are prohibited. Section 31 of CMLL provides sanctions for opening of accounts under a false name, “that whoever opens an account under a false name, deposits, and draws money, transfer money or delegates authority to any person, shall on conviction, be punished with imprisonment for a term which may extend to 3 years or both.”

#### *When CDD is required*

493. Section 18(a) of the CMLL and 39(a) of the CMLR require CDD to be conducted when opening of accounts, deposit, withdrawal and transfer of cash or money.

494. Myanmar authorities have not imposed any threshold on the CDD process in relation to account opening and any subsequent transactions involving the account. All the required customer information as stipulated in sections 18 (a) and 39(a) must be collected and scrutinized irrespective of amount or value of transactions.

495. The relevant sections also require banks to follow the same customer identification and verification procedures when carrying out transactions that are wire transfers. There is no specification of a de minimis threshold in conducting CDD for wire transfers.

496. There is no requirement in the CMLL or CMLR for walk-in-customers to be subjected to the full range of CDD if there is suspicion of money laundering or terrorism financing.

497. Under the CBM’s Compliance Guidelines on Anti-Money Laundering and Combating Terrorist Financing issued to banks, the Guidelines stipulate that where transactions are undertaken for a casual or ‘walk-in’ customer, who has no account open with the bank, CDD is required where such transactions involve cash of kyat 100 million or more, and for suspicious transactions.

498. The Compliance Guidelines further promulgate a series of guidance for banks to undertake further measures to identify customers or beneficial owners if any of the following situation arises:-

- i. When the bank has reasonable doubts about the veracity of the information relating to the customer's identity;
- ii. When the bank has reasonable doubts whether the customer is the beneficial owner;
- iii. When the bank has reasonable doubts on the intermediary's declaration on the beneficial owner of the accounts; or
- iv. When the transaction is inconsistent with the customer's transaction profile.

*Required CDD measures*

499. Section 18(a) of the CMLL requires banks and financial institutions to obtain, scrutinize and record the following information of the customer when opening accounts, deposit, withdraw and transfer cash:-

- v. Name;
- vi. Address;
- vii. Registration card number; and
- viii. Passport number

500. Section 39(a) of the CMLR further elaborates on the CDD requirements as follows:-

- i. Names;
- ii. Address;
- iii. Occupation;
- iv. Citizen scrutiny card;
- v. National registration certificate; and
- vi. If foreigner, the nationality, passport number and visa number.

501. Section 39(b) of the CMLR requires banks and financial institutions to inspect and scrutinize necessary evidence and documents. If it is found that data are incorrect or doubtful and that a false name has been used, the transaction cannot be continued and the CBM shall be informed accordingly.

502. Section 1 of the State Commercial Bank Act and Regulations require any person, firm, company, corporate body, society or local or state authority to be properly introduced when not already known to the bank. There is also a CBM (2/2004) Instruction for a new customer to be introduced by two existing bank customers, but this is an additional requirement and does not replace existing CDD requirements.

503. The CBM Compliance Guidelines on AML/CFT requirements for institutions when opening a personal account are as follows:-

- Application form
- Physical presence at the bank
- National registration cards for nationals and/ passports for foreigners
- Documents for source of income/funds to open the account (for example- job appointment letter, contract for hiring premises or vehicles, etc )
- Introducer's declaration (two introducers who are existing customers)

504. Section 8 (General) of the State Bank Act and Regulations also provide that “A person wishing to open an account should call at the Bank”. CBM officials confirmed that physical face-to-face contact at account opening stage is mandatory.

505. As stipulated in section 18(a) of the CMLL and section 39(a) of the CMLR, banks and financial institutions are required to obtain, scrutinize and record names, addresses and registration cards of persons who open accounts, deposit, withdraw and transfer money. For this purpose, banks are required to obtain the following original documents (or photocopies of certified documents) for Myanmar-incorporated companies and registered firms (partnerships and sole proprietorships):

- i. Certificate of Incorporation (for companies)
- ii. Certificate of Registration (for firms)
- iii. Board of Directors’ resolution authorizing the opening of the company’s account together with specimen signatures.

506. For foreign-incorporated or foreign-registered business entities, comparable documents in subparagraph (ii) (a) above should be obtained. Each bank shall similarly make all necessary efforts to verify the veracity of the documents supplied by the prospective customer. Such documents certified by the office of Foreign Affairs and endorsed by the Embassy of Myanmar are acceptable.

507. For all legal persons, except for public listed companies, the CBM Compliance Guidelines on AML/CFT require all banks to identify the owners of the companies or firms and ascertain the status of their legal existence before establishing any banking relationship with such business entities.

508. Banks are also required to take note of any significant or complete change in the structure of ownership of a business entity to identify potential laundered criminal proceeds.

509. In addition, for business accounts, banks should request the following documents as a matter of practice before opening accounts, depositing, withdrawing or transferring of money:-

- i. Board of Director’s resolution for account opening and delegating authorized persons to operate the account
- ii. Certificate of Incorporation (Issued by Directorate of Investment & companies Administration- DICA)
- iii. Memorandum and Articles of Association
- iv. Certificate of Exporters-Importers Registration (for trading companies)/ Myanmar Investment Commission- MIC permit (for manufacturing companies)
- v. Shareholders List and Numbers of shares allotted
- vi. Registration Certificate issued by the Ministry of Home Affairs(for associations and NGOs)
- vii. List of Directors (Name, National Registration No/ Pass-port No, Address)
- viii. Certificate of Registration of Documents (CRD) (Issued by Directorate of Investment and Companies Administration -DICA)
- ix. Specimen signatures of authorized persons( signed in the presence of the bank’s manager)

510. For companies which are not incorporated in Myanmar, the BODs’ resolution for account opening and delegating authorized person to operate the account must be duly notarized in the country of incorporation, certified by the office of foreign affairs, and endorsed by the Embassy of Myanmar.

511. Banks usually obtain information on the purpose of the business relationship and type of business.

512. When carrying out transactions that are wire transfers, the identity of both the originator and beneficiary of the remittance must be verified when the transactions are made. As a matter of practice, banks collect and verify the follow information from its customer for a domestic fund transfer:-

- the name and national registration card no. of the payee;
- the name and national registration card no. of the remitter;
- address and phone number of payee
- address and phone number of remitter
- the sum to be transferred;
- purpose of transfer
- the name and location of the remitting bank;
- the name and location of the receiving bank;
- the ordering date; and
- the signature of the remitter.

*(The remitter operates an account with the bank, the account number must also be specified.)*

513. For cross-border wire transfer, the information to be obtained and verified is as follows:-

- Both remitter's and beneficiary's names, national registration numbers or passport numbers, addresses, and purpose for the transaction;
- Obtain approvals from Foreign Exchange Management Department for all out-going remittances apart from trade related transactions.

514. Identification of beneficial ownership is neither provided in the CMLL nor the CMLR.

515. The Guidelines on AML/CFT require banks to undertake further verification procedure to identify the beneficial owner if the bank has reasonable doubt as to whether the customer is the beneficial owner of the account. If the customer is being represented by another person, the bank must verify the identity cards of both the customer and the authorized representative. Banking institutions are required to obtain the identities of both the originator and beneficiary when the transactions are made.

516. Myanmar has no trust companies and does not operate express trust accounts.

517. There are joint accounts involving a parent or legal guardian with a minor. These are subject to the normal CDD requirements. The banks normal practice is to verify the minor by requesting for the birth certificate. A parent will be verified using the citizen registration card. If the child or minor is represented by a guardian, in addition to the national registration card of the guardian, the bank will be required to request for a legal document issued by the court that the person is the legal guardian of the child.

*Information on Purpose and Nature of Business Relationship*

518. The CBM Guidelines on AML/CFT require each bank to implement a “Know Your Customer” programme in which the KYC programme should not only cover customer identification but also customer transaction profiling to anticipate the kind of business activities the customer is likely to generate.

519. Banks usually obtain information on the purpose of the business relationship and type of business.

#### *Ongoing CDD*

520. There is no legal requirement in the CMLL, its Rules or any formal CBM Instructions for ongoing due diligence, except for a requirement under Section 44 of the State Commercial Bank Act and Regulations, that every change in address must be immediately notified to the bank at the branch where the account is kept

521. The CBM Guidelines in AML/CFT require banks to take further measures to verify the identity of the customers or the beneficial owner of the account, in the course of the business relationship, if it has reasonable doubt about:

- the veracity (or truthfulness) of the information relating to the customer’s identity;
- whether the customer is the beneficial owner of the account;
- the veracity of the intermediary’s declaration relating to the beneficial ownership of the accounts; or
- the transactions being inconsistent with the customer’s transaction profile.

522. Banks do require, as part of their normal banking practice, for customers and account holders to report any changes in their identity information. Financial institutions will re-identify the customer when the authenticity, validity or integrity of previously obtained identification information is doubted or an abnormality is discovered during the course of business.

#### *Risk*

523. It is the policy of the CBM for financial institutions to apply the same CDD measures to all customers, rather than classifying customer types by risk. Likewise, Myanmar does not apply enhanced or simplified customer due diligence as it is not a requirement to risk profile customers.

#### *Timing of verification*

524. The CBM Guidelines AML/CFT requires all banks to obtain from their prospective customers the information specified in criterion 3.3 for both a natural and legal person before opening an account with the intent of establishing a banking relationship with the customer.

525. There is no exception given for identification and verification of customers as it must be done before account opening. Myanmar financial institutions neither offer electronic banking nor other non face-to-face business.

#### *Failure to satisfactorily complete CDD*

526. Section 18 of the CMLL makes it mandatory for banks and financial institutions to obtain the basic information of a customer before commencing business relationship. The CBM Guidelines on AML/CFT prohibit a bank from conducting any significant business, if a customer fails or refuses to provide information that is necessary to establish the customer's true identity or the background of the transaction.

527. There is a requirement in the CBM Guidelines AML/CFT which requires a bank to take further measures to verify the identity of the customer or the beneficial owner of the account, in the course of the business relationship, if it has reasonable doubt about:

- the veracity (or truthfulness) of the information relating to the customer's identity;
- whether the customer is the beneficial owner of the account;
- the veracity of the intermediary's declaration relating to the beneficial ownership of the account; or
- the transactions being inconsistent with the customer's transaction profile.

#### *Existing customers*

528. There is no requirement to apply CDD requirements to existing customers. As a matter of banking practice, banks will re-identify their customers if doubts arise about the authenticity, validity or integrity of the customer identification record or if an abnormality is discovered during the course of business. When sending out the annual account balance confirmation, banks include a section on updating of customer data such as address.

#### Insurance Sector

529. The guidance issued by the CBM to the state-owned insurance company requires the insurance company to identify the customer and verify that customer's identity using reliable, independent sourced documents, data or information:

- determining whether the customer is acting on behalf of another person, and then taking reasonable steps to obtain sufficient identification data to verify the identity of that other person;
- identifying the (ultimate) beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner such that the insurer is satisfied that it knows who the beneficial owner is. For legal persons and arrangements, insurers should take reasonable measures to understand the ownership and control structure of the customer;
- obtaining information on the purpose and intended nature of the business relationship and other relevant factors; and
- conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the insurer's knowledge of the customer and/or beneficial owner, their business and risk profile, including, where necessary, the source of funds.

#### Securities Sector

530. The securities sector is in its infancy stage. The Myanmar Securities Exchange Company (MSEC) has implemented customer due diligence measures that are equivalent to the banks. There

are no bearer shares and customer information is updated yearly when the customer or the proxy comes to MSEC to collect the dividends.

531. There is no specific guidance issued to MSEC on customer due diligence. However, the CBM advised that as a matter of practice, the MSEC maintains customer records similar to the practices of banks in accordance with MSEC's obligation to comply with the CBM's Instructions, Memorandums and Guidelines issued to banks and financial institutions in respect of AML. The identification and verification of account owner and beneficiary is the same as that adopted by the banks.

532. Shares certificates are issued in the name of the owner and no bearer shares are allowed. The verification of the owner's details is checked against the original citizen registration card and in the case of a company, the memorandum and article of association.

533. MSEC usually obtains information on the purpose of the business relationship and type of business.

#### Money Changers

534. The Andaman Club Resort Hotel is not subject to any AML CDD requirements. All other money changers, which are the 41 branches of state-owned banks are subject to the CBM's CDD requirements as they applied to banks.

#### **Recommendation 6 (Politically exposed persons)**

535. Myanmar has not addressed this area. There are no laws and the CBM has not issued guidance or made reference to PEPs, either foreign or domestic. There is no plan to introduce such a requirement.

536. Myanmar has signed but not acceded to the UN Convention Against Corruption of 2003.

#### **Recommendation 7 (Correspondent banking)**

537. The Myanmar government has authorised three State-owned banks namely the MFTB, MICB and MEB to establish correspondent banking relationships with foreign banks. However, in practice only the MFTB and MICB have correspondent banking relationships. The CBM has neither issued regulatory instructions nor guidance with regards to the State-owned banks' obligations to conduct due diligence on respondent banks. There are neither regulatory nor legal requirements for the state-owned banks to provide or require, prior to entering into a correspondent banking relationship, information about a respondent institution. There are no requirements to understand fully the nature of the business, to determine from publicly available information the reputation of the institution and the quality of supervision, and whether it has been subjected to a money laundering or terrorist financing investigation or regulatory action.

538. The three state-owned banks must obtained prior approval from the CBM before entering into any correspondent banking relationship.

539. The authorities explained that it is current banking practice for the state-owned banks to respond to the AML/CFT questionnaire that they received from their foreign correspondent banks.

The state-owned bank confirmed that it has issued AML/CFT questionnaire to its correspondent banks.

540. Myanmar has a total of 292 correspondent banks in 48 countries.

### **Recommendation 8 (New technologies & non-face-to-face business)**

541. There are no legal prohibitions, structural deficiencies or institutional constraints which would prohibit the use of electronic banking or any form of non face-to-face business. However, Myanmar has taken a conservative, in fact, a no risk approach by making an explicit policy decision to disallow any form of electronic banking and non face-to-face business. It is unlikely that this policy position will change in the immediate future.

542. The CBM has the powers under Section 6 of the Financial Institutions Law of Myanmar to designate the list of activities in which financial institutions are allowed to provide services. Section 10 clearly prohibits financial institutions' direct or indirect involvement in activities other than those specified in Section 6.

543. Banks are required to obtain approval from the CBM before providing any new banking products or services. The CBM has not allowed the operation of any form of electronic banking. Banks are not permitted to provide ATM, internet or telephone banking or similar electronic banking facilities. Credit cards operation has been terminated by the CBM arising from Myanmar's banking crisis in 2003.

544. There are neither on-line insurance products nor on-line securities trading. In terms of the use of technology, the two non-bank financial service providers are lagging behind the banks.

### **Analysis of Effectiveness**

545. The requirements for customer due diligence in the law are basic and limited to collection of customer data in official documents such as the National Registration Card and Citizen Scrutiny Card for individuals.

546. Circumstances for the conduct of CDD provided in the law and regulations are limited to account opening, deposit, withdrawal and transfer of money. The other circumstances such as when dealing with "walk-in" customers, when suspicious, or when doubtful of veracity of previously obtained information, is not required by way of law or regulations. They are only required in the form of non-enforceable guidelines. In practice, banks also apply CDD requirements to "walk in" customers and re-identify customers if necessary.

547. There is no requirement to enquire beyond the individual who is physically present when establishing a business relationship or conducting any transaction. There is no mandatory obligation to disclose the beneficial owner unless the individual voluntarily does so.

548. Similarly for legal persons, other than the requirement to provide the documents of incorporation, it is not mandatory for the institutions to establish and understand the control structure or beneficial owner of the legal entity. Banks place total reliance on the memorandum and articles of

incorporation of the corporate customer and will not go beyond to identify the beneficial owner who is a natural person when this is not self evident.

549. Since there is no differentiation among the types of customers, be it PEPs or otherwise, the same requirements for CDD is applied irrespective of customer risks. CDD measures are not enhanced for customers who are of higher risk such as high net worth individuals.

550. There is no regulatory requirement from the CBM with regard to correspondent banking.

551. Myanmar has some legal issues with regards to enforcing the Compliance Guidelines on AML/CFT, as there are neither implementing provisions nor corresponding defined sanctions for non-compliance in the CMLL, CMLR or other relevant laws. In addition, it is not entirely clear if the definition of banks and financial institutions in the CMLL includes the insurance sector.

552. Notwithstanding the above gaps with the requirements of FATF Recommendation 5, the banking sector in Myanmar engages in traditional banking services that cater mainly to its nationals and foreign business partners. The compliance culture in the banking sector can be considered as high as the CBM has a long history of regulation and supervision. Banks generally comply with the CBM's instructions and guidelines. Local corporations are not established in a complex manner and in most cases, the banks informed the ME Team that they are able to identify the beneficial owner who is a natural person for locally incorporated companies.

### **3.2.2 Recommendations and Comments**

553. Myanmar should undertake the following in respect of CDD and record keeping:

- Authorities should consider implementing a risk-based approach to CDD. It is recommended that customer risk profiling be done to enable financial institutions to identify higher risk customers, and undertake enhanced CDD for PEPs, nationals from high risk jurisdictions, foreign incorporated legal entities, and other customers in the same category.
- Institutions should request other types of identification to further verify the customer information as and when appropriate. Myanmar nationals are not required by law to update their information in the Registration card. Therefore, potentially, the information contained in the Registration card may be outdated. Reliance on verification of customer information should not only be based on the Registration card alone.
- Myanmar should amend its CMLL and CMLR to include explicit mention of beneficial ownership. The CBM could provide more clarification to financial institutions (including insurance and securities) on the concept and process of identifying beneficial ownership. Financial institutions need to ensure that changes in beneficial ownership are captured and recorded promptly.
- Myanmar should provide greater clarity on the action required where the reporting entity is unable to satisfactorily complete the CDD before or after commencing a business relationship. There is a lack of guidance from the CBM on what actions are permissible if the required CDD is

not satisfactorily completed; for example, what constitutes “significant” business is not further elaborated in the CBM Guidelines on AML/CFT.

- Myanmar should include the need for conducting ongoing CDD in the CMLL and CMLR.
- The CBM should issue guidance to financial institutions on going CDD for existing customers based on materiality and risks. It should be mandatory for financial institutions to update their customer records based on money laundering / terrorism financing risk.
- Authorities should provide adequate and appropriate sanctions in the CMLL for non-compliance with any guidelines issued by the relevant authorities.
- Myanmar should consider harmonising the AML/CFT Guidelines issued to the banks and other financial sectors, where appropriate. The current guidance to the insurance sector is much less comprehensive and lacking in some of the applicable FATF Recommendations when compared to that issued to the banks.
- Myanmar authorities should consider providing greater clarity in the CMLL (as well as other relevant laws) so there is no ambiguity in relation to the applicability of AML requirements to the insurance sector.
- The Myanmar authorities should consider putting in place the relevant legislative provisions that would oblige the MSEC to perform required CDD measures. The CBM should consider issuing appropriate guidance notes that relate more specifically to the securities sector.

### 3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
<b>R.5</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Circumstances for mandatory CDD as defined in 5.2 (b) – (e) are not set out in law, regulations or other enforceable means.</li> <li>• Reliability of citizen registration card as a source of verification is inadequate as it is not legally mandatory to update information in the registration card.</li> <li>• Verification of any person purporting to act on behalf of the customer is stated in the CBM Guidelines only and not in law or regulation.</li> <li>• Identification and verification of beneficial owner is not set out in law, regulation or other enforceable means.</li> <li>• Ongoing due diligence is a banking practice only and not set out in law or regulation.</li> <li>• Information on the purpose and intended nature of the business relationship is a banking practice only.</li> </ul>

		<ul style="list-style-type: none"> <li>• Risk profiling of customers for enhanced CDD has not been considered.</li> <li>• No requirement to terminate business relationship should subsequent CDD be unsatisfactory.</li> <li>• CDD on existing customer is not implemented.</li> </ul>
<b>R.6</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Not obligated by way of laws, regulations or guidelines.</li> </ul>
<b>R.7</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Not obligated by way of laws, regulations or guidelines.</li> </ul>
<b>R.8</b>	<b>C</b>	<ul style="list-style-type: none"> <li>• Myanmar has a policy of not permitting electronic or internet banking, ATM, or any form of non face-to-face customers.</li> </ul>

### **3.3 Third parties and introduced business (R.9)**

#### **3.3.1 Description and Analysis**

554. The current CBM Instructions and Guidelines do not provide any reference to the use of third parties and introduced business. However, the CBM advised that Instruction 2/2004 should be interpreted as prohibiting the use of third parties for CDD purposes. Financial institutions advised the ME team that it is their current practice to undertake the required CDD measures themselves, as intended under CBM Instruction 2/2004, even though the wording is neither explicit nor clear.

555. In the absence of explicit requirements in law, regulation or guidelines, it cannot be assumed that financial institutions are not permitted to rely on third party for customer due diligence.

#### **3.3.2 Recommendations and Comments**

556. The authorities need to provide clear and explicit regulatory guidance on circumstances where third party and introduced business are allowed, and the extent to which the institution could rely on the CDD conducted by third parties.

#### **3.3.3 Compliance with Recommendation 9**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.9</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• No explicit regulatory requirements and guidance issued on third party introducers.</li> </ul>

### **3.4 Financial institution secrecy or confidentiality (R.4)**

#### **3.4.1 Description and Analysis**

##### *Inhibition of Implementation of FATF Recommendations*

557. Section 19 of CMLL and Section 7 (a) of CML Rules set aside previous secrecy provisions in the Financial Institutions in Myanmar Law, CBM Law and Insurance Act, at least in respect with information with and amongst competent authorities but not amongst financial institutions.

558. Section 19 of CMLL provides that the responsible persons of banks and financial institutions:
- (a) shall, notwithstanding anything contained in existing laws in respect of bank secrecy, report to the Central Control Board (CCB) without delay any deposit, withdrawal or transfer of cash which is in excess of the amount prescribed by CBB.
  - (b) Shall report any unusual or suspicious transaction to the CCB without delay, and in accordance with the stipulation.

559. Section 19(b) has not explicitly overridden existing secrecy provisions concerning the reporting of unusual or suspicious transactions. However, Section 7 (a) of CML Rules clearly explains the requirement for banks and financial institutions to make reports on threshold amounts and suspicious transactions to the CCB without delay, regardless of bank secrecy provisions as governed in existing laws.

560. Given the CCB Orders issued in respect of STR reporting and the actual STRs submitted, this ambiguity in wording has not been an obstacle to implementation.

561. Section 83 of the Financial Institutions of Myanmar Law provides that members, personnel and auditors of banks mentioned in section 62 shall be punishable under the Official Secrets Act if such persons without permission, disclose or publish information which they have learned in the performance of the financial activities and services, or allow such information to be seen or examined by another person.

562. The CBM and banks advised the ME team that the sharing of information between banks is not allowed except as approved by the CBM.

563. There is also some ambiguity concerning the capacity of the CBM to share information with other government agencies. Section 85 of the CBM Law prohibits a member, personnel or agent of the CBM from disclosing or publishing information relating to the transaction, identity, amount of income or source of income, profits, losses or expenditure of any person which they have learned in the course of the performance of their duties. There is no qualification that such information can be shared with another competent authority for appropriate purposes such as criminal investigations, although numerous competent authorities advised the ME team that such information is available through a written request to the Governor of the CBM. Myanmar advised that obtaining the Governor's approval is a formal procedure and the Governor grants his approval in every case.

564. In terms of international cooperation, Section 6 (a) of CMLR states that with respect to matters on exchange of information relating to money and property obtained by illegal means, the FIU with the directive of the CCB shall liaise mutually with international organizations, regional organizations and neighbouring countries.

### **3.4.2 Recommendations and Comments**

#### **Recommendation**

565. Myanmar should amend the CMLL or CMLR to require financial and reporting institutions to comply with the requirements of Myanmar's AML law, notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by any written law or otherwise.

566. Myanmar should consider issuing exemptions for financial institutions to undertake information sharing, in particular in relation to FATF Recommendations 7, 9 and SRVII.

### 3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	PC	<ul style="list-style-type: none"> <li>• Section 19(b) of the CMLL has not explicitly overridden all secrecy provisions.</li> <li>• The sharing of CDD information between banks is not allowed except by the approval of the CBM.</li> <li>• Potential obstacles to information sharing on TF.</li> </ul>

## 3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

### 3.5.1 Description and Analysis

#### Recommendation 10

##### *Legal Framework:*

567. Section 18 (b) of the CMLL requires financial institutions to maintain all documents and records related to the opening of accounts and transactions for at least five years. Section 28 of the CMLL makes it an offence for a financial institution which fails to conduct the necessary record keeping requirements as mandated in section 18. Responsible persons of banks and financial institutions may be punished with a maximum of seven years imprisonment.

568. Section 39 (c) of the CMLR stipulates the retention period should begin from the date of transaction.

##### *Record Keeping*

569. The revised Compliance Guidelines on AML/CFT of 1 January 2008 also require banks to retain all their financial transaction documents including supporting documents for at least five years. However, it is silent on the requirement for record keeping regardless of whether the account or business relationship is ongoing or has been terminated.

570. After the on-site visit, the CBM Issued Instruction No.3/2008 on 14 March 2008, requiring banks and financial institutions to maintain financial transaction records and supporting documents for at least five years after closing the accounts. Also, according to this Instruction, for walk-in customers and customers who make a transaction without using his/her account, all financial records and supporting documents shall be kept for at least five years after the completion of transactions.

571. It is the practice of financial institutions, based on meetings during the on-site, to keep records of customers for at least five years even after termination of the account.

##### *Availability of Records to Competent Authorities*

572. Section 39 (d) of the CMLR requires banks and financial institutions to grant permission to the CCB Investigation Body to inspect financial records and make copies.

573. Section 39 (h) of the CMLR also states that relevant banks and financial institutions shall provide necessary assistance when financial records relevant to offences of money laundering are being examined by the Investigation Body or FIU.

574. Under Section 39 (j) of the CMLR, relevant banks and financial institutions shall submit information required for the inspection by investigators of the CBM, and auditors appointed by the CBM and show them the necessary accounts, record books and documents.

575. There is no specification of the time frame or the maximum days permitted for a financial institution to respond to a request by a competent authority. This is a significant weakness as it could potentially allow a financial institution to delay the submission of documents.

### **Recommendation SR VII**

576. Section 39 of CML Rule requires financial institutions to comply with the same customer identification and verification procedures as for account opening for persons who transfer money. CBM Guidelines 22/2004 of 30 January 2004 elaborate further the requirements for inland and foreign remittances to include, in addition to account opening information, details of the purpose of the remittance. However, the guidelines do not stipulate any further detailed requirements.

577. Banks advised the team during the on-site that it is normal banking practise to obtain the following details from a customer in respect of a domestic remittance instruction:

- (a) the name and national registration card no. of the payee;
- (b) the name and national registration card no. of the remitter;
- (c) address and phone number of payee;
- (d) address and phone number of remitter;
- (e) the sum to be transferred;
- (f) purpose of transfer;
- (g) the name and location of the remitting bank;
- (h) the name and location of the receiving bank;
- (i) the ordering date;
- (j) the signature of the remitter; and
- (k) if the remitter operates an account in the bank then the account number must also be specified.

578. For cross-border transfers, only three state-owned commercial banks are authorised to handle telegraphic transfers, and these banks must seek prior approval from Foreign Exchange Control Board for all transactions.

579. There is very strict control of foreign exchange transactions in Myanmar based on the Foreign Exchange Regulation Act (1947) and the Exchange Control Manual (1957). Foreign exchange control

is administrated by the CBM in accordance with instructions from the Ministry of Finance and Revenue.

580. The verification requirements for cross-border transfers are the same as for domestic payments. There is a variation in the standard banking practice in the case of cross-border transfers. The following information must be obtained in all cases, irrespective of the amount of the transfer:

- (a) obtaining both remitter and beneficiary names, national registration numbers and passport numbers, addresses, and purpose for every remittance transaction.
- (b) obtaining approval from Foreign Exchange Management Department for outgoing remittances apart from trade related transactions.

581. There is only a limited but non-enforceable requirement in terms of wire transfers in the CBM's Guidelines on AML/CFT. These requirements relate to obtaining information on the purpose of the wire transfer and to the identity of both the originator and beneficiary.

582. There no requirement in law, regulation or other enforceable means for originator information to be included in wire transfer instructions either domestic, cross-border, or non-routine, or for the maintenance of originator information through intermediary and beneficiary financial institutions in the payment chain. Furthermore, there is no requirement for beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfer that are not accompanied by complete originator information, or to effectively monitor the compliance of financial institutions in relation to FATF SR VII. It is also observed that there is no sanction mechanism applied in relation to the implementation of SR VII.

### **Analysis of Effectiveness**

583. After the on site visit, the CBM issued an Instruction requiring banks and financial institutions to keep records for at least five years after the closure of accounts or termination of business relationships. This is a positive development. However, there are two major gaps when assessed against the FATF criteria. A CBM Instruction does not have the effect of law as it is not an amendment to the CMLL, CMLR or a CCB issued Order. Furthermore, the Instruction has just recently been issued by the CBM and therefore effective implementation has not been established.

584. The team was informed that in practice, most financial institutions do maintain records for at least five years after closure of accounts or termination of relationships.

585. There is no requirement in respect of originator information except for the standard information required for account opening.

### **3.5.2 Recommendations and Comments**

#### **Recommendation 10**

586. Myanmar should consider amending the Law to specifically require all designated reporting entities to maintain records of identification data, account files and business correspondence for at least five years following the termination of an account or business relationship.

587. Myanmar should consider issuing a CBM Order for financial institutions to make available records on a timely basis by indicating a clear timeframe.

**Recommendation SR VII**

588. The CBM should issue detailed regulations, consistent with international standards, to ensure that wire transfers, both domestic and cross border, are accompanied by accurate and meaningful originator information through the payment chain.

589. The CBM should require the beneficiary financial institutions to adopt risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. These procedures must cover, whether a wire transfer or related transactions without complete originator information are suspicious enough to be reported to the FIU, and whether the beneficiary financial institutions should consider restricting or terminating relationship with financial institutions that do not comply with SR VII.

590. The CBM should establish a sanction mechanism for financial institutions that are not in compliance with SR VII.

**3.5.3 Compliance with Recommendation 10 and Special Recommendation VII**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.10</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The law does not specifically require all designated reporting entities to maintain information on customer records and business correspondence for five years following the termination of an account or business relationship.</li> <li>• Effective implementation of new requirements not demonstrated.</li> </ul>
<b>SR.VII</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• There is no detailed instruction issued by the CBM to the banks in relation to domestic and cross-border transfers.</li> <li>• There is no requirement for the ordering bank to ensure that information relating to the originator be transcribed onto the wire transfer message and to accompany the message.</li> <li>• There is no requirement in law, regulation or other enforceable means for beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfer without complete originator information.</li> <li>• There is no sanction mechanism related to the implementation of SR VII.</li> </ul>

**Unusual and Suspicious Transactions**

**3.6 Monitoring of transactions and relationships (R.11 & 21)**

**3.6.1 Description and Analysis**

**Recommendation 11**

## *Legal Framework*

### *Special Attention to Complex, Unusual Large Transactions*

591. CBM Instruction No. 6/2006 issued on 7 June 2006 requires banks to identify STRs by applying a CBM checklist. The CBM Instruction sets out 21 criteria to detect the particular types of suspicious and large value transactions that must be reported. These criteria include, *inter alia*, the identification and monitoring of large value or unusual patterns of transactions when they are not consistent with the nature and size of the customer's business operation.

592. The CBM Guidelines on AML/CFT issued in January 2008 provide the following guidance to banks with regard to the monitoring of transactions:-

- The bank's KYC programme should not only cover customer identification but also customer transaction profiling to anticipate the kind of business activities the customer is likely to generate.
- A transaction or a series of transactions shall be considered as "suspicious" if the transaction/(s) does not/do not make economic sense.

593. The CBM Guidelines to the insurance sector issued on 12 June 2007 provide a list of "red flags" to the Myanmar Insurance company. The CBM also provided a list of "red flags" to the MSEC. These are meant to assist financial institutions detect unusual or complex transactions. However, these guidelines have neither sanctions nor other enforceable means for violations.

### *Examination of Complex & Unusual Transactions*

594. There is no regulatory requirement in terms of examining the background and purpose of such transactions and set forth their findings in writing.

### *Record-Keeping of Findings of Examination*

595. There is no regulatory requirement to establish a system to monitor transactions that would include documentation of customer background, analysis of customer profile and related transactions.

596. It is not apparent that financial institutions have implemented any system of monitoring transactions in order to detect unusual patterns, except for the purpose of STR reporting. There is no requirement to keep the reports regarding findings of unusual pattern of transactions for at least five years for the competent authorities and auditors.

## **Recommendation 21**

597. The CBM policy is to treat all customers and clients the same irrespective of any perceived risks. It has neither required its banks and financial institutions to implement any risk assessment, nor has it provided any guidance to banks and financial institutions with regard to countries with a heightened risk for money laundering and terrorism financing.

598. Banks informed the ME team that a list of “countries of interest”, which are tax haven countries or drug source/destination countries, is used for the purposes of applying special attention to any transactions or business relationships with these jurisdictions.

### **Analysis of Effectiveness**

599. Banks have indicated that they now ask their clients about the purpose of their business transactions. This is one major difference in the way banking business is carried out since the promulgation of the CMLL and issuance of CCB and CBM directives. Banks are generally aware of the need to gather information on the nature of their client’s business. However, it is not apparent that banks have been able to establish an effective system to monitor or pay attention to large and unusual pattern of transactions, nor are there any clear requirements or guidance provided.

600. Banks and financial institutions have not implemented risk assessments and no guidance has been issued concerning business relationships with persons from countries that have not sufficiently implemented the FATF Recommendations.

### **3.6.2 Recommendations and Comments (R11 and 21)**

601. Myanmar authorities should consider issuing specific regulatory requirements and guidance to ensure banks and financial institutions establish a mechanism to monitor transactions and relationships with customers. There should be an emphasis on scrutinising large value transactions or transactions that do not fit into a customer’s profile.

602. Myanmar should consider issuing regulation to make it mandatory for documentation of findings arising from the examination of unusual or complex transactions, including the requirement for such findings to be kept for five years for competent authorities and auditors. Similar requirements should be extended to the securities and insurance sectors.

603. The authorities should consider issuing guidance to financial institutions on the appropriate measures that should be applied when dealing with higher risk countries, including more extensive examination of the background and purpose of transactions.

604. The CBM should consider providing banks and financial institutions with more information on countries’ implementation of the FATF Recommendations, such as summaries of weaknesses in AML/CFT programmes as highlighted in Mutual Evaluation Reports.

### **3.6.3 Compliance with Recommendations 11 & 21**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.11</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Limited requirement to pay special attention to unusual patterns of transactions.</li> <li>• No guidance or requirement for financial institutions to document the analysis of unusual transactions.</li> <li>• No requirement to keep documentation on the analysis of unusual transactions for at least 5 years.</li> </ul>

		<ul style="list-style-type: none"> <li>• Lack of effective implementation of a system of monitoring transactions.</li> <li>• No requirement or guidance given to other non-bank financial institutions, such as the insurance and securities sectors.</li> </ul>
<b>R.21</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• No guidance from the authorities in dealing with countries which have not sufficiently applied the FATF Recommendations</li> <li>• No specific measures for higher risk countries.</li> </ul>

### 3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

#### 3.7.1 Description and Analysis

*Legal Framework:*

605. The obligation of STR reporting for financial institutions is promulgated under the CMLL, the CMLR, CCB Orders and CBM Instructions.

606. Section 19 (b) of the CMLL and Section 7 (a) of CMLR require the responsible person of banks and financial institutions to report any unusual or suspicious transactions to the CCB without delay and irrespective of the amount.

607. The CCB Orders and the CBM Instructions in relation to STR reporting are listed below respectively:

**Table: STR Reporting Obligations for Financial Institutions**

<b>Type of reporting institutions</b>	<b>CCB Order</b>	<b>CBM Instruction</b>
Banks and financial institutions (STRs)	1/2004	1/2004
Banks and financial institutions (Report on terrorism financing related activities)		3/2004
Banks and financial institutions (circular to duly submit STR)		Memorandum dated 30 Jan 2004
Banks and financial institutions (STR checklist and examples)		6/2006
CBM Financial institutions and companies under the Directorate of companies (STR on shares)	4/2006	8/2006
Banks and financial institutions (further instructions on STRs)		9/2006
Myanmar Securities Exchange Co Ltd STR and CTR reporting	1/2007	2/2007
Myanmar Agricultural Development Bank Myanmar Small Loans Enterprise STR and CTR reporting	2/2007	3/2007
Myanmar Small Loans Enterprise (further instructions on STRs)		4/2007
Myanmar Insurance STR and CTR reporting	3/2007	5/2007

608. The definition of unusual or suspicious transactions is neither stated in the CMLL nor in the CMLR. There is a definition provided in the CBM AML/CTF Guidelines. It states that a transaction or a series of transactions shall be considered “suspicious” if the transaction (s) in question is inconsistent with the customer’s known transaction profile or it does not make economic sense. However, this definition does not cover the essential element of requiring a financial institution to report when it suspects or has reasonable grounds to suspect that funds used are the proceeds of crime.

609. A checklist of the types of transactions that are considered suspicious is provided in CBM Instruction No 6/2006 to banks. Therefore, the interpretation of suspicious transactions is based on the checklist issued in Instruction No 6/2006 and this checklist is only applicable to banks. The indicators in the checklist are provided below:

1. Deposit of an amount that is transferred to another bank in the same city within a very short
2. timeframe
3. Ordering customer’s name is similar to beneficiary name (perhaps using an alias)
4. Poor or false identification to open account
5. Incomplete information – refusal to include information in forms
6. Incomplete information – refusal to include information in forms by walk in customer
7. Cancellation of a transaction because of reporting requirements
8. Cash deposits inconsistent with normal business takings
9. Unknown customer (third party) instructing person conducting transaction
10. Transaction amount inconsistent with stated occupation
11. Deposit followed by wire transfer to overseas location
12. Transaction to ‘country of interest’ – tax haven countries or drug source/destination countries
13. Structuring of deposits to same account by multiple people to avoid threshold reporting
14. Structuring of deposits to same account in different locations (in a short timeframe)
15. Transaction amount is significantly higher than regular transactions made by same customer
16. No business rationale for making the transaction in a certain way (there are easier and less complicated ways to undertake the same transaction).
17. Sudden activity in a previously dormant account
18. Customer refuses to explain relationship to beneficiary
19. Customer refuses to answer reasonable questions regarding the transaction
20. Large deposit into local account made by a foreigner
21. Multiple large transactions made in short period of time to the one account
22. Multiple transfers to separate accounts held in foreign locations

610. A listing of “red flags” is circulated to Myanmar Securities Company and the Myanmar Insurance Company on what might constitute suspicious transactions. Notwithstanding this guidance, in the absence of a legal definition, a “suspicious transaction” is primarily a matter of judgment by reporting institutions. If a transaction involves proceeds of an unlawful activity or a money laundering offence but does not fall into any of the listings or checklist provided, a reporting institution may not detect and report such a transaction. It may also be a legal issue on whether the reporting institution has discharged its reporting obligation since the law is silent on what is a suspicious transaction.

611. As previously noted, the predicate offences covered by the CMLL are not complete. As a result, the scope for reporting of transactions is incomplete as it does not extend to all the 20 categories of offences designated by the FATF. For example, proceeds from offences such as murder would not be within the reporting net.

612. Based on the CBM Instruction No. 4/2004, banks and financial institutions are instructed to designate a compliance officer for the banking department and branches, particularly in handling the STR reporting. In practise, a compliance officer can make an independent decision to report an STR to the CCB without prior approval from the Board of Directors.

613. However, for an insurance company, the branch office should firstly submit STRs to the head office with the purpose of making an assessment. The head office will then submit the STRs to MFIU.

614. Even though the CMLL, which was promulgated on 17 June 2002, covers STR reporting obligations for banks and other financial institutions, the obligations of STR reporting for non-bank financial institutions, namely the Myanmar Insurance Enterprise, Myanmar Securities Exchange Centre, Myanmar Small Loan Enterprise and Myanmar Agriculture Development Bank were only introduced by the CCB on 11 July 2007 (CBB Order No. 1/2007, 2/2007 and 3/2007). In following up these Orders, the CBM issued four (4) Instructions No. 2/2007, 3/2007, 4/2007 and 5/2007 respectively on 3 August 2007.

615. The Andaman Club Resort Hotel, which is the only non-bank licensed Money Changer, had not previously been subjected to any AML/CFT requirements including STR reporting. On 13 March 2008, after the on-site visit, the CBB issued Order No. 1/2008 designating the Andaman Club Resort Hotel as a reporting entity, and it is required to submit reports on threshold transactions as well as STRs consistent with other designated reporting entities.

#### *STRs Related to Terrorism and its Financing*

616. There is no provision in law, rules or other enforceable means which covers the obligation of STR reporting where there are reasonable grounds to suspect funds are related to terrorism or financing of terrorism. There is no specific mention of STR reporting in respect of terrorism financing in the CML, CMLR or in any of the CCB Orders or CBM Instructions.

617. There is a CBM Instruction No 3/2004 which requires banks to comply with “FATF 8 Special Recommendation” regarding combating the Financing of Terrorism and to comply with CBM Instruction No.2/2002 dated 7 March 2002. However, these relate to the requirements to freeze accounts and block any transactions on the UNSCR lists of terrorists and terrorist organizations.

#### *No Reporting Threshold*

618. There is no threshold limit for STR reporting as described in CMLR Section 7 (a) which states that STR reporting includes transactions below the CTR designated reporting threshold.

619. There is no explicit requirement in the CMLL, CMLR or guidelines for banks and financial institutions to report attempted transactions to the CCB, even if there is suspicion that the transactions involve proceeds of crimes.

#### *Tax Matters*

620. Taxation avoidance is a predicate offence for money laundering. There have been a number of STRs relating to the avoidance of real estate sales tax.

*Additional Element - Reporting of All Criminal Acts*

621. There is no specific reference to predicate crimes in the STR reporting regime in Myanmar, including those designated as predicate crimes for money laundering in the country. Reporting is on a checklist approach which may or may not capture all the predicate crime groups or all criminal acts.

**Recommendation 14**

*Protection for Making STRs*

622. Section 35 of CMLL provides that no suit or prosecution may be conducted against a person who reports according to his / her duty in good faith under sections 19, 20, and 21, notwithstanding that his /her report caused injury to any person. However, it appears that the safe harbour provision is only applied to employees of the reporting institution who reports to the CCB.

623. The protection is in respect of a natural person and the individual reporting. It is not clear whether the safe harbour provision is also applied to the Board of Directors and the Financial Institutions itself.

*Prohibition Against Tipping-Off*

624. The Law Amending the Control of Money Laundering Law (The State Peace and Development Council Law No. 8/2004) was enacted on 2 November 2004 and inserts the tipping-off provision as section 31-A of the CMLL. The detail provision is as follows:

*“Whoever reveals, show or makes known by any means to the person relevant to transmission of information or any other person including a client with respect to information transmitted or to be transmitted for unusual or suspicious transfer of money or property or information any matter investigated under this Law shall, on conviction, be punished with imprisonment for a term which may extend to 3 years or with fine or with both. Provided that this section shall not apply to revealing of information or any matter to a client or any other person as in duty bound by investigation officer, attorney, notary public, legal professional, accountant or any other person in discharging his duty in conformity with law ”*

625. According to this provision, it appears that the tipping off provision does not apply to an investigation officer, attorney, notary public, legal professional, accountant or any other person in discharging his duty in conformity with law.

*Additional Element—Confidentiality of Reporting Staff*

626. Section 46 of the CMLR requires the CCB to keep secret the name of an informant in respect of the money and property obtained by illegal means and to arrange to give lawful protection as necessary. The informant could be a staff member of a financial institution or some other individual.

**Recommendation 19**

*Reporting of Currency Transactions Above a Threshold*

627. Under Section 19 of the CMLL, banks and financial institutions are required to report to the CCB without delay, any deposit, withdrawal or transfer of cash in an amount which is in excess of the amount prescribed by the CCB.

628. Pursuant to Section 19, Myanmar has implemented a threshold reporting system which requires transactions exceeding 100 million kyats or equivalent in domestic or foreign currency respectively to be reported by financial institutions to the CCB.

629. The following Orders and Instructions issued by the CCB and the CBM require financial institutions to report such threshold transactions:

**Table: Reporting Requirements**

<b>Industry</b>	<b>Types of reporting</b>	<b>CCB Order-CBM Instruction</b>
Banks and financial institutions (FIs)	Report to the CCB and copy to CBM transactions with respect to deposit, withdrawal and transfer of money	1/2004 – 1/2004
CBM, FIs, Companies under the Directorate of Companies.	Buying of shares, sale or transfer of shares under the following conditions:- Transaction exceed 100 million Kyats	4/2006 - 8/2006
Myanmar Securities Exchange Co.	Relating to purchase, sale and transfer of security certificates, when:- Money is 100 million Kyats and above.	1/2007 - 2/2007
Myanmar Agricultural Dev Bank, Myanmar Small Loans Enterprise	Deposit, withdraw and transfer of cash (Bank). Issuing of loans on security and redeeming of pawned articles when:- Amount is 100 million Kyats and above.	2/2007 - 3/2007
Myanmar Insurance	Deposit, withdraw and transfer of cash when:- Amount is 100 million Kyats and above.	3/2007 - 5/2007

630. The FIU has maintained the CTR data in a computerized database system. All CTR reports are entered into this database.

631. The confidentiality and secrecy requirements for STRs apply to CTRs.

**Recommendation 25 (only feedback and guidance related to STRs)**

632. The CBM issued Instruction No. 1/2004 and Instruction No. 6/2006 to banks to enhance the reporting of STRs by supplying a check list for identifying suspicious transactions. However, the overall Instructions do not provide detailed guidance on STR reporting, including on a clear definition of “suspicious transaction” and linking it to the proceeds of crime.

633. The FIU has only issued one form for CTR (deposit, withdrawal and transfer) and STR reporting. There are no separate reporting forms for STR and CTR as well as for transfer transactions

exceeding 100 million kyats or US\$10,000. There is lack of detailed guidance on both CTR and STR reporting.

634. Neither the CBM nor the FIU has made available publicly or to the Myanmar Bankers Association statistics on STR reporting including STRs investigated and sanitised case studies. Such feedback would provide some incentive or encouragement to maintain or increase reporting.

635. There is no regulatory guidance issued yet on STR for non-bank financial institutions.

636. The Bank Supervisory Committee and the Myanmar Bankers Association, including its members, do meet on a regular basis. At these meetings, there is discussion on compliance with AML/CFT policy by banks including STR reporting, and necessary advice and clarification are provided by the Bank Supervisory Committee and the CBM.

### **Effectiveness (R32)**

637. Details of STR, CTR and other forms of reporting filed by reporting institutions since the inception of the system in 2004 are as follows:-

**Table: Breakdown of STRs**

<b>Types of transactions</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>Total</b>
Cash transactions (from banks)	10	5	337	702	1054
Immovable property	2	2	-	14	18

**Table: Breakdown of Threshold reporting**

<b>Reporting institutions</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>Total</b>
Cash transactions from banks	3678	7883	18130	31824	61515
Transactions in USD	37	583	14425	42304	57349
Cash couriers	2576	1565	1602	2775	8518
Immovable Property transactions	30	56	371	237	694
Moveable Property transactions			28	24	52
Mining and Gems				148	148
Changes in shares ownership			19	55	74

<b>Total</b>	<b>6321</b>	<b>10087</b>	<b>34575</b>	<b>77367</b>	<b>128350</b>
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638. Despite the gaps highlighted in the preceding analysis, Myanmar has made steady progress in recent years in improving compliance with STR reporting. There was a noticeable increase in the STRs filed by banks in 2006, due to the issuance of the checklist and subsequent instruction by the CBM on STRs. The authorities have indicated the quality of STRs have improved since the introduction of the checklist. This is evidenced from the substantial increase of STRs from 7 in 2005, to 337 in 2006 and 716 in 2007.

639. So far, a total of five banks have submitted STRs with two state-owned banks accounting for the majority of STRs submitted. There has been only single digit STR reporting from private banks. This is due to the fact that the majority of STR reports pertain to foreign (US\$) currency transactions which can only be conducted by the three state-owned banks.

640. Despite the CBM's issuance of a list of "red flags" for the insurance and securities sector, no STRs have been submitted to date by those sectors.

641. No STRs have been received relating to terrorism financing activities.

642. The Supervision Department of the CBM also keeps monthly statistics on the number of STRs and CTRs submitted by each bank. The statistics have been used to provide feedback to the industry on reporting numbers and the need to establish an effective internal transaction monitoring system.

643. There is significant scope for Myanmar to build on the progress made to date. Myanmar could improve the scope, quantity and quality of STR reports received from designated reporting institutions through addressing the gaps highlighted.

### **3.7.2 Recommendations and Comments**

#### **Recommendation 13 & SR IV**

644. Myanmar should amend the CMLL as well as issue a regulation to provide clarity on the STR obligation to ensure that : (i) all financial institutions are obliged to file an STR to the CCB when it suspects or has reasonable ground to suspect that funds are the proceeds of all criminal acts; (ii) all financial institutions are obliged to file an STR to the CCB when it suspects or has reasonable ground to suspect that funds are linked or related to terrorists, or to be used for terrorism, terrorist act or by terrorist organisations or those who finance terrorism; and (iii) all suspicious transactions, including attempted transactions, should be reported by financial institutions.

645. Myanmar should criminalise TF and issue orders for the reporting of TF transactions.

646. The definition of Financial Institutions in the CMLL should be clarified to cover other financial institutions such as insurance companies, securities companies and Authorized Dealer Licenses.

647. Myanmar should subject STR reporting obligations to all holders of Authorized Dealer Licenses, including any new licensees.

#### Recommendation 14

648. Redraft the tipping off provision as stated in Section 31A of the CMLL so that it is clear that “tipping off” applies to suspicious transactions and not to the disclosure of information relating to investigation.

649. Myanmar should amend the CMLL in order to provide clarity on the safe harbour provision for directors and the reporting institution itself.

#### Recommendation 25

650. The FIU and the CBM should provide Financial Institutions with detailed guidance and appropriate feedback with regard to all AML/CFT measures including STR.

651. The FIU should consider providing a specific reporting format for STR and CTR related to transfer transactions respectively.

#### 3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
<b>R.13</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• A lack of definition of what is “suspicious” under the CMLL.</li><li>• The scope of STR reporting is limited to a checklist.</li><li>• TF has not been criminalised; therefore, there is no mandatory obligation for financial institutions to file a STR in relation to terrorism, terrorist acts, terrorist organisations or those who finance terrorism.</li><li>• No provision in law, regulation and other enforceable means to report a STR on an attempted transaction.</li><li>• No STR reporting obligations to all holders of Authorised Dealer Licenses (Money Changer) including potential new licensees.</li></ul>
<b>R.14</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• It appears that the tipping off provision does not apply to investigation officer, attorney, notary public, legal professional, accountant or any other person in discharging his duty in conformity with law.</li><li>• A lack of clear protection for Directors as well as for a reporting institution itself if they report STR in good faith.</li></ul>
<b>R.19</b>	<b>C</b>	<ul style="list-style-type: none"><li>• This recommendation is fully observed</li></ul>
<b>R.25</b>	<b>NC</b>	<ul style="list-style-type: none"><li>• The FIU / CBM does not provide detail guidance for banks on STR reporting.</li><li>• There is no guidance issued on STRs for the non-bank financial institution.</li><li>• Deficiencies in reporting form issued by the FIU.</li><li>• Inadequate feedback from the CBB/ Myanmar FIU to Financial Institutions regarding STRs submitted.</li></ul>
<b>SR.IV</b>	<b>NC</b>	<ul style="list-style-type: none"><li>• There is no Terrorist Act in Myanmar.</li></ul>

		<ul style="list-style-type: none"> <li>• No mandatory obligation for financial institutions to submit STRs in relation to terrorist financing, terrorist act or terrorist organisations.</li> <li>• No sanction provisions.</li> </ul>
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### **Internal controls and other measures**

## **3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)**

### **3.8.1 Description and Analysis**

*Legal Framework:*

*Establish and Maintain Internal Controls*

652. The CMLL and CMLR do not provide any explicit provisions for the development or establishment of an internal AML/CFT programme. Neither do they provide for the designation of compliance officer.

653. However, CBM Instruction 4/2004 of 27 April 2004 introduced the requirement for all financial institutions and their branches to designate a compliance officer, particularly in handling reporting of unusual or suspicious and threshold transactions.

654. Furthermore, CBM Compliance Guidelines on AML/CFT issued in January 2008 to banks and the insurance company mandated that banks and insurance company set their own internal anti-money laundering guidelines and put in place effective money laundering control programme that is appropriate to an institution's size, nature and complexity.

655. The CBM Compliance Guidelines specify the compliance officer must be at managerial level but do not provide guidance with regard to the duties and responsibilities of the compliance officer.

656. There is no provision in the CMLL, CMLR, regulations or guidelines for the compliance officer to have timely access to customer data, transaction records or other relevant information.

657. There is no sanction attached to the Guidelines, neither in the actual Guidelines nor in the CMLL and CMLR.

658. The CBM Compliance Guidelines on AML/CFT require the institutions to establish among others, the following areas:-

- An AML compliance department or unit at head office where it should be headed by a well experienced senior official. A compliance officer at managerial level should be appointed to lead the compliance team to deal with all money laundering matters.
- An internal anti-money laundering guidelines and control programme consisting of the following:-
  - KYC programme
  - Internal reporting programme where the bank must train their staff to ensure that the staff is familiar with the bank's internal reporting system
  - The internal money laundering control programme must be regularly monitored by the bank's internal audit

- Regular training to be conducted at various levels as follows:-
  - Senior management
  - Managers and compliance officers
  - Front-line staff
  - Staff dealing with new customer
- KYC – customer identification and verification
- Record-keeping requirements
- Reporting of suspicious transactions
- Protection of person reporting and duty to confidentiality of information.

659. The banks visited provided the ME team with copies of their AML/CFT policies and procedures. These essentially reflected the requirements issued by the CCB and CBM.

#### *Independent Audit of Internal Controls*

660. Persons in charge of a financial institution are responsible for ensuring that an internal control program is implemented effectively. There is, however, no requirement in the CMLL or the related rules for financial institutions to maintain an adequately resourced and independent audit function to test compliance with internal AML/CFT controls.

#### *Employee Training Screening Procedures*

661. The CBM Compliance Guidelines on AML/CFT require the institutions to conduct “refresher” courses at regular intervals to ensure that the staff are reminded of their responsibilities and to be kept informed of new developments.

662. There are no regulatory requirements to screen employees to ensure high standards when hiring new staff.

#### *Additional Element—Independence of Compliance Officer*

663. Banks confirmed that compliance officers can make an independent decision to report STRs to the MFIU. If the compliance officer is not sure, the case can be brought up to a higher level, usually at Managing Director level for approval.

664. STRs generated from the branches are sent directly to the MFIU. However, for the insurance company, the procedure is for the branch to submit reports to the head office and for the Head Office to make an assessment before submitting the STR to the MFIU.

### **Recommendation 22**

665. At the present moment, Myanmar banks and financial institutions do not have any branches or subsidiaries established abroad because of institutional reasons. Even if they had the capacity, they would not be permitted to do so under Myanmar’s current policy. Foreign banks and financial institutions are also not allowed yet to open branches in Myanmar. It is also Myanmar’s policy to remain closed to foreign entities until the domestic banks are well developed and can compete with foreign banks. There are representative offices conducting business liaison only.

### 3.8.2 Recommendations and Comments

666. The CBM should consider providing more regulatory guidance with regard to the duties, responsibilities and enabling powers for compliance officers to access records in a timely manner.

667. The CBM should consider providing some criteria for employee screening to ensure that bank officers meet the necessary professional and integrity standards.

668. Myanmar is strongly encouraged to incorporate in the CMLL, the requirement for reporting institutions to establish and develop an internal AML/CFT programme in order to implement effectively the requirements of the CMLL. The internal programme should be required to include CDD requirements, record keeping, and on-going training for all relevant employees.

669. Myanmar should consider incorporating in the CMLL a requirement to designate the compliance officer at management level and with independence to lodge STRs directly with the MFIU. There should also be a legal obligation to conduct independent audits to check the AML/CFT internal compliance programme is effective.

### 3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
<b>R.15</b>	NC	<ul style="list-style-type: none"> <li>• No mandatory obligations for reporting institutions to establish an AML/CFT internal compliance programme.</li> <li>• No mandatory requirements for independent audit function.</li> <li>• No guidance on the functions and responsibilities of a compliance officer.</li> <li>• No enabling powers for compliance officer to access relevant records on a timely basis.</li> <li>• No guidance on employees screening.</li> <li>• No mandatory requirement for on-going training for employees.</li> <li>• Securities sector not subjected to requirements for an internal AML/CFT programme.</li> <li>• Unable to ascertain if the CBM Guidelines on AML/CFT has been effectively implemented since the revised guidelines were issued in January 2008</li> </ul>
<b>R.22</b>	NA	<ul style="list-style-type: none"> <li>• Myanmar currently has no financial institutions operating overseas and does not allow foreign banks to set-up branches in Myanmar.</li> </ul>

### 3.9 Shell banks (R.18)

#### 3.9.1 Description and Analysis

## Legal Framework:

### *Prohibition of Establishment Shell Banks*

670. Shell banks are considered not to be permitted in Myanmar by virtue of Section 12 and Section 14 (a) and (b) of the Financial Institutions of Myanmar Law. These sections effectively prohibit establishing a bank with the nature of a shell bank, by explicitly specifying the requirements for the establishment of banks. An applicant needs to have a specified minimum amount of registered capital; a sound organizational structure and management system; and the required place of business, security and other facilities relevant to its business operations.

671. No natural or legal person is authorised to incorporate a banking institution to conduct operational banking activities without obtaining approval from the CBM in the banking sector. (Section 12 of Financial Institutions in Myanmar Law).

672. The CBM is required, by law and regulation, to examine and approve the incorporation and termination of banking institutions, any changes in their ownership (in relation to change of shareholders or registered capital), or any changes to the scope of the business activities. This includes examining the banking institution's sources of funds, its financial situation, capital provision capacity and the integrity of its shareholders when considering an application for the incorporation of a banking institution, or when an existing banking institution applies for a change of shareholders or registered capital. (CBM Instruction 8/2006).

673. It is the practice for banks to seek approval from the CBM before entering or establishing correspondent relationship.

### *Prohibition of Correspondent Banking with Shell Banks*

674. While it is the banking practice to establish correspondent banking relationship with reputable banks only, there is no instruction from the CBM on the FATF requirement with regard to establishing correspondent banking relationships. In the absence of regulatory requirements, it cannot be concluded that the banks are adopting the FATF standards concerning the establishment of banking relationships with shell banks overseas.

### *Prohibit of Use of Accounts by Shell Banks*

675. There are no requirements for banks to gather information about their correspondent banks. Banks are also not required to issue questionnaires on AML/CFT to determine if their correspondent banks have adequate AML/CFT policies and whether they permit their services to be used by shell banks.

## **3.9.2 Recommendations and Comments**

676. The CBM should consider issuing regulatory guidance with regards to the prohibition of establishing business relationships or dealing with shell banks.

677. The CBM should consider making it mandatory for financial institutions to implement measures to satisfy themselves that their respondent financial institutions do not deal with shell banks.

### 3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
<b>R.18</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Absence of regulatory guidance to prohibit business relationship with shell banks either directly or indirectly.</li> <li>• No requirements for financial institutions to satisfy themselves that their respondent financial institutions do not allow their accounts to be used by shell banks.</li> </ul>

### Regulation, supervision, guidance, monitoring and sanctions

### 3.10 The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)

#### 3.10.1 Description and Analysis

#### Recommendation 23, 30, 29, 17, 32, & 25

#### Authorities' /SROs' roles and duties & structure and resources - R.23, 30

#### Recommendations 23

#### *Regulation and Supervision of Financial Institutions*

678. The basic regulatory framework in Myanmar is as follows:

**Table: Regulatory and Supervisory Framework**

Overall Regulation/Supervision	Financial institutions
1. Central Bank of Myanmar (CBM)	<ul style="list-style-type: none"> <li>• Three state-owned (MEB, MICB &amp; MFTB) and private banks</li> <li>• Authorised Dealer of Foreign Exchange</li> </ul>
2. Ministry of Agriculture and Irrigation	<ul style="list-style-type: none"> <li>• The Myanma Agricultural Development Bank</li> </ul>
3. Ministry of Finance and revenue	<ul style="list-style-type: none"> <li>• The Myanmar Small Loan Enterprise</li> </ul>
3. Ministry of Finance and Revenue	<ul style="list-style-type: none"> <li>• The Myanmar Insurance Company</li> </ul>
3. Ministry of Finance and Revenue	<ul style="list-style-type: none"> <li>• The Myanmar Securities Exchange Company</li> </ul>

#### *Designation of Competent Authority*

679. The CBM is the sole regulatory and supervisory authority for the banking sector except for the Agricultural and Development Bank whose business and conduct are normally regulated by the Ministry of Agriculture. In addition, the CBM does not undertake the prudential regulatory and supervisory functions for the Myanmar Insurance Company and MSEC. Instead the oversight regulator is the Ministry of Finance and Revenue. However, the CCB issued Orders 5/2007 and 3/2007 which extends the CBM’s AML/CFT regulatory and supervisory responsibilities to include the Myanmar Insurance Company, Myanmar Securities Exchange Company, and the Myanma Agricultural Development Bank.

680. The regulatory and supervisory framework for AML/CFT in Myanmar is as follows.

**Table: Financial Sector Regulatory and Supervisory Framework for AML/CFT**

AML Regulation/Supervision	Financial institutions
1. Central Bank of Myanmar (CBM)	<ul style="list-style-type: none"> <li>• All state-owned and private banks</li> <li>• Authorised Dealer of Foreign Exchange</li> <li>• The Myanmar Small Loan Enterprise</li> <li>• The Myanmar Insurance Enterprise</li> <li>• The Myanmar Securities Exchange Company</li> </ul>

681. Based on discussions with the Foreign Exchange Management Department of the CBM, it is observed that there is no AML/CFT supervisory framework for Authorised Dealer Licensees (money changers) which are not financial institutions.

**Recommendation 30**

682. The CBM has two departments responsible for regulating and supervising banks. One is the Bank Supervision Department which has 10 examination and inspection teams with a total of 128 staff. This department conducts regular off-site supervision and on-site inspection. The second is the Banking Regulation Department, which issues prudential and AML/CFT instructions and guidelines and deals with special audit programs for state-owned banks in terms of AML/CFT. The Bank Regulation Department comprises a total of only 13 full-time staff, but it has a cooperation agreement with the state-owned banks to draw on their internal audit resources when conducting special audit programs. It appears that the Bank Regulation Department is inadequately resourced to undertake its functions.

683. In general, officers of both the Supervision Department and Regulation Department have backgrounds in finance, economics, accounting, statistics or computer science. The majority of these officials have received special AML training in-country.

684. CBM staff are subject to confidentiality requirements under Section 85 of the CBM Law. This requirement states that , “ all the CBM employee shall not, without permission under the law disclose

or publish information relating with transactions, identity, amount of income, profits, losses or expenditures of any person examined in performing of their duties, or allow such information to be seen or examined by another person.”

685. The Civil Servant Selection Board / Employee Recruitment Committee requires, as part of requirements to be met by the employee candidate, a recommendation issued by a township police officer on criminal record clearance and good moral standard, and attendance at a personal interview conducted by the Board/Committee.

686. The CBM stated to the ME team that all relevant staff of the Bank Supervision and Regulation departments have been provided with a range of training on ML and FT matters. This includes general awareness training as well as specific training relating to aspects of the AML/CFT supervisory role. In addition, since September 2004, the CBM has conducted a series of Socialization and Training Programs for CBM officials including bank supervisors and examiners. Up to May 2007, nine periodic training programs had been conducted for Central Bank's staff and officials.

687. The CBM has developed an examination manual for on-site supervision of the banks. The manual essentially covers the need to ensure compliance with provisions of sections 18 (a) - (b) and 19 in the CMLL and sections 39 (a)-(c) of the CMLR, and compliance with the Guidelines on AML/CFT issued by the CBM is also examined.

688. With AUSTRAC's assistances, five AML/CFT workshops and seminars were conducted during 2005-2007. These workshops and training programs were offered to staff from the CBM, four state-owned and private banks, and from other relevant ministries and committees.

### **Authorities Powers and Sanctions – R.29 & 17**

#### *Power for Supervisors to Monitor AML/CFT Requirement*

689. The following sections of various laws give the CBM the power to inspect, supervise and regulate banks and financial institutions in respect of AML/CFT requirements:

- Section 38(a) and (b), and Section 39 (i) and (j) of the CMLR;
- Section 57 of the CBM Law;
- Section 48 of the Financial Institutions of Myanmar Law; and
- CCB Order No.5/2007

#### *Authority to conduct AML/CFT Inspections by Supervisors*

690. There are provisions, under Section 38 (a) of the CMLR, for the CBM to inspect, supervise and control banks and financial institutions that transact business licensed by the CBM. The CBM Banking Supervision Department has an on-site inspection programme, which covers both AML/CFT compliance and prudential compliance, conducted on a semi-annual basis.

#### *Power for Supervisors to Compel Production of Records*

691. Pursuant to Section 38 (i) of the CMLR, the CBM may request from its regulated institutions to submit financial and economic information as well as data and records of deposits and withdrawals by sending a notice to the relevant banks and financial institutions.

692. Under section 39 (j), banks and financial institutions are required to be inspected by investigators of the CBM and auditors appointed by the CBM, and show them the necessary accounts, record books and documents. There is no requirement for a Court Order.

693. The CBM is also the competent authority for Authorised Dealer Licensees (money changers). As indicated before, with one exception they are state-owned banks. However, in respect with AML/CFT, the CBM has no regulatory and inspection powers in relation to Authorised Dealer Licensees.

### **Recommendation 17**

#### *Availability of Effective, Proportionate & Dissuasive Sanctions*

694. Sections 22 to 32 of the CMLL set out the criminal offences and penalties for natural persons who do not comply with AML requirements.

695. Section 22 states that whoever commits a money laundering offence may be fined, and the person who is directly in charge, and any other person who is directly responsible for the crime may be sentenced to fixed-term imprisonment of up to ten years or, in drug trafficking cases to criminal detention of a minimum 10 years to a maximum of unlimited period.

696. Section 24 states that any responsible person of banks and financial institutions who commit any acts of money laundering offence relating to the followings, shall be punished with imprisonment for a term of minimum three years to maximum seven years and also be fined.

- (1) refusing investigation body to inspect and to make copies of financial records and to seize illegally obtained money and property as exhibits;
- (2) releasing or transferring money and property obtained by illegal means without CCB's permission during the period of investigation;
- (3) Obliterating, altering, amending or transferring the financial records relating to the investigation.

697. Section 28 further states that, if any responsible person of banks and financial institutions fails to conduct KYC and CDD and fails to comply with reporting duties, it may be fined or be punished with imprisonment of a maximum three years or both fine and imprisonment

698. It appears the sanctions in Section 28 are applicable to natural persons (that is "any responsible persons of the banks or financial institution") and not to the institution or legal persons.

699. There is no administrative sanction power articulated under the CMLL or CMLR. Administrative sanctions are available pursuant to Section 76 of the Financial Institutions of Myanmar Law, which permits the CBM to impose the following administrative sanctions against financial institutions, share holders, directors and related officers:

- a. warnings;
- b. orders including these restricting the operations of financial institutions;
- c. fines;
- d. temporary or permanent termination from duties in the financial institutions;
- e. cancellation of the licence to operate

700. These provisions are meant to be applied in the context of the Financial Institutions of Myanmar Law and not directly to AML/CFT matters.

701. CBM Instruction of 14 March 2008, which was issued after the on-site but within the two month period following the on-site, sets out the imposition of administrative penalties regarding a failure to perform duties and functions to record and retain the financial transaction documents, and duties to make threshold and Suspicious transaction report under the CMLL. It lists the following administrative sanctions

- (a) warnings;
- (b) orders including those restricting the operations of financial institutions;
- (c) fines;
- (d) temporary or permanent termination from duties in the financial institutions;
- (e) cancellation of the licence to operate.

702. Given the newness of this Instruction, its effectiveness could not be established.

#### *Designation of Authority*

703. Section 7 (a) of the CMLL clearly assigns the CCB the duty of taking legal action in terms of money laundering violations in respect of criminal sanctions under the CMLL. The CBM is empowered to impose administrative sanctions under Section 76 of the Financial Institution of Myanmar Law for administrative breaches, although it is not totally clear whether the CBM can use all existing administrative sanctions for AML matters.

#### *Sanction Directors/Senior Management*

704. Sections 7 (a) and 76 of the CMLL provide for the competent authorities to impose sanctions on natural persons, including Section 28 of the CMLL which states that if any responsible person of banks and financial institutions fail to conduct KYC and CDD and fails to comply with reporting duty, they may be fined or be punished with imprisonment of a maximum three years or both fine and imprisonment.

#### *Range of Sanctions—Scope and Proportionality*

705. Given the gaps identified in the AML/CFT regime, the existing criminal sections are only applicable to currently stated requirements in the CMLL and its rules.

706. The CBM has not established a specific or comprehensive administrative enforcement framework for non-compliance with the CMLL, CMLR or the CBM Guidelines. These include a graded approach to supervisory or administrative sanctions depending on the severity of the non-compliance.

### *Powers of Enforcement & Sanction*

707. The CBM has issued Instruction 7/2006 to address areas of weaknesses uncovered arising from its on-site examinations of commercial banks. It is a supervisory warning that action will be taken under the CMLL and CMLR should these weaknesses not be rectified in due course. The CBM has also issued a number of supervisory letters to institutions that have undergone an on-site examination. The institutions are required to provide a written undertaking to rectify and address all the weaknesses identified during the on-site examination conducted by the CBM.

708. In October 2005, preliminary inquiries into the Asia Wealth Bank and Myanmar May Flower Bank on money laundering were completed. The findings of the investigation indicated the two banks breached provisions of the Financial Institutions of Myanmar Law. Myanmar revoked the licenses of these two banks in response.

709. On 15 May 2006, the major shareholder of Myanmar Universal Bank (MUB) involved in drug trafficking was convicted under section 22(a) and (b) of the CMLL. A number of his assets were seized. The MUB's Banking license was revoked and the assets of MUB were liquidated.

710. The authorities appointed administrators and liquidators for the three banks. The assets of the banks and management were subsequently placed into receivership.

### **Market entry**

#### **Recommendation 23**

##### *Proper Criteria and Prevention of Criminals*

711. The CBM Law empowers the Central Bank to grant licenses to financial institutions in Myanmar. Pursuant to section 14 of the Financial Institutions of Myanmar Law, a potential financial institution must first and foremost register at the Directorate of Investment and Company Administration (DICA) under the Ministry of National Planning and Economic Development as a limited liability Company, in accordance with the Myanmar Companies Act or the Special Company Act 1950.

712. After becoming a legal entity as a registered limited company, an applicant has to apply to the Central Bank for the issuance of a banking licence. The application must be submitted in a prescribed form to the Central Bank together with a feasibility study statement. The feasibility statement must contain: (i) the money resources required and how they may be acquired to ensure the invested capital is from legitimate sources; and (ii) the qualification and technical competence of management; and the type of financial services to be undertaken. The Central Bank may not permit the operating licence to be issued to any persons, either individuals or entities, without complying with these requirements.

713. The CMLL includes the offence of operating a financial institution without a CBM issued licence as money laundering predicate offence. The CMLL also empowers the CCB to guide and supervise the relevant government departments and organizations so that banks, financial institutions and economic enterprises may not be established and operated by using money and property obtained by illegal means.

714. For private insurance businesses, according to Section 8 and 9 of the Insurance Business Law, a company desirous of writing as an insurer or acting as an underwriting agent or insurance broker shall apply for a business licence to the Supervisory Board which is the Ministry of Finance and Revenue. To date, there has been no private insurance company established in Myanmar except the stated-owned insurance company, which is the Myanmar Insurance Enterprise, which is governed by a Board of Directors formed by the Government and composed of Department Heads of the Government and suitable citizens.

715. Myanmar Insurance is subject to annual audit by the Auditor General's Office in respect of its account, and the annual accounts and balance sheet must be certified by the Auditor-General's Office. This Auditor General's statement is submitted together with the annual report of the Myanmar Insurance to the Government through the Ministry of Finance and Revenue.

716. Section 14 (a .iv) of Financial Institutions of Myanmar Law requires the directors and senior management of financial institutions to be qualified and technically competent. Section 24 of that law also states that the CBM may prescribe qualifications of the senior management. That law has general provisions that directors and management must be qualified and technically competent. Specific criteria include criminal and bankruptcy records to be checked and scrutinized by the bank itself and for changes in management / appointment of senior officials to be submitted to the CBM for approval.

717. With respect to fit and proper test process, the CBM conducts an assessment on the application of Board of Directors and management which covers personal details, educational qualification, work experience in the banking area etc.

718. The CBM has a targeted plan to adopt a comprehensive Fit and Proper Test for existing and prospective major shareholders, management, and BOD members.

719. The CMLL also requires the CBM to ensure that banks and financial institutions are established and operated using money and property obtained by legal means. There is also the requirement under CCB Order 4/2006 which mandates the examination of any shares transfer or changes in ownership in excess of Kyats 100 million to ascertain whether the proceeds are from laundered funds.

720. The CBM has denied a high number of banking applications (approximately 95) when applying the criteria specified. It has only issued 20 banking licenses since 1990 and no new licenses have been issued recently.

### **Ongoing supervision and monitoring – R.23 & 32**

#### *Application of Prudential Regulations to AML/CFT*

721. The Central Bank's general regulatory and supervisory powers are also used in respect of meeting the AML functions assigned to the CBM in Section 38(a) and (b) of the CMLR, and ensuring banks and financial institutions meet their compliance obligations under Sections 39 (j) of the CMLR.

#### *Licensing or Registration of Value Transfer/Exchange Services*

722. The CBM administers the Foreign Exchange Regulation Act. The CBM issues the Authorised Dealer License under Section 83 (a) of the CBM Law. The CBM Foreign Exchange Regulations specify the terms and conditions of this licence, including the statement that the CBM Foreign Exchange Management Department and the Banking Supervision Department are empowered to inspect the foreign exchange dealings.

723. In the context of foreign exchange services, it is subject to control by the Foreign Exchange Management Department of the CBM. Therefore, the money changing service must be licensed by this Department of the CBM. However, it is observed that there are illegal foreign exchange operators operating anonymously on the streets.

724. In Myanmar, money or value transfer service can only be undertaken by three of the four stated-owned banks.

725. By reason of strict regulations, low costs, speed and cultural factors, the use of Hundi is a very popular, even though it is illegal. However, this sector is unrelated and unlicensed.

*Monitoring and Supervision of Value Transfer/Exchange Services*

726. Based on discussion with the Foreign Exchange Management Department of the CBM, it is observed that there is no AML/CFT supervisory framework for authorised Foreign Exchange Dealers. However, thus far only 42 licenses have been issued, of which 41 are to the branches of the three state-owned banks. The only non-bank licensed holder is the Andaman Club Resort Hotel.

727. On 13 March 2008, after the on-site visit, the CBB issued Order No. 1/2008 which designates the Andaman Club Resort Hotel as a reporting agency and is required to submit reports on threshold transactions as well as STRs. However, since the Order has just recently been issued by the CCB, the effectiveness of implementation has not been established.<sup>2</sup>

*Licensing and AML/CFT Supervision of other Financial Institutions*

728. There are no other legalised financial institutions beyond those already covered in the preceding paragraphs. As indicated, whilst banks and the two major non-bank financial institutions (MSEC and Myanmar Insurance) are covered in respect of AML, there is an absence of AML/CFT supervision of non-bank Authorised Exchange Dealers, although they are, as noted, subject to licensing and other supervisory requirements.

**Recommendation 32**

729. The following data reveal the on-site examinations conducted by Bank Regulation Department:

**Table: CBM On-site Examination Statistics**

No	Period of examination	Number of Stated owned Banks/ FI	Number of Total Branches

<sup>2</sup> The Authorised Foreign Exchange Dealers license to the Andaman Club Resort Hotel was withdrawn on 31 March 2008 .

1	December 2005 – January 2006	3 Stated owned Banks (MEB, MICB & MFTB)	32
2	August 21 – September 15, 2006	3 Stated owned Banks (MEB, MICB & MFTB)	20
3	June 13-15, 2007	3 FI (MADB, MSEC and Myanmar Insurance)	-
4	October 18-25, 2007	3 Stated owned Banks (MEB, MICB & MFTB)	13
5	October 29-30, 2007	2 FI (MSEC & Myanmar Insurance)	-

730. The following data exhibit the on-site examination conducted by Bank Supervision Department:

**Table: CBM On-site Examination Statistics**

No	Period of examination	Number of Banks/ FI	Number of Total Branches
1	2004 (September to December)	9 private banks	49
2	2005 (January to March)	6 private banks	14
3	2005 (August to November)	15 private banks	50
4	2005 (December) to 2006 (March)	15 private banks	51
5	21 <sup>st</sup> Augustus to 15 <sup>th</sup> September 2006	15	73
6	2006 (October) to 2007 (March)	16	63
7	2007 (April to September)	15	60

731. The CBM has yet to impose any fines for non-compliance. So far, the CBM has issued warning advices to banks and financial institutions to comply with its regulatory requirements and the FATF standards.

*Guidelines – R.25 (Guidance for financial institutions other than on STRs)*

732. Apart from the CMLL and Rules, the CBM has issued a series of instructions and guidelines to banks and financial institutions on how to comply with the overall AML obligations, including those relating to customer due diligence, maintenance of transaction records, large-value and suspicious transaction reporting, and establishing AML internal control mechanisms.

733. The CBM has not issued any guidelines on AML/CFT for the securities sector, which at this stage is only one small company.

### **3.10.2 Recommendations and Comments**

734. Myanmar should undertake the following:

#### **Recommendation 23**

- Establish an AML/CFT supervisory framework for all authorised foreign exchange dealers.
- The CBM is encouraged to develop a more comprehensive AML/CFT supervisory framework that assesses the effectiveness of the financial institution's management structure, including the Board of Directors and senior management; internal controls vis-à-vis compliance officer's role and responsibilities; and the STR mechanism.
- Enhance the fit and proper test criteria required for a banking licence.
- Adopt measures to control the operations of underground and illegal money changers.

#### **Recommendation 30**

- Increase resources including staff for the Regulation Department of the CBM to enhance AML/CFT supervision of banks and non-bank financial institutions.
- Consider developing a team of experts on AML/CFT within the Bank Regulation Department.
- Establish an adequate and comprehensive AML/CFT training programme for CBM staff. The CBM should also consider increasing training for staff in the Supervision Department to eventually undertake total responsibility for AML/CFT supervision.

#### **Recommendation 29**

- Myanmar should consider including broadening the legal definition of financial institutions in the CBM Law and Financial Institutions in Myanmar Law to include the insurance and securities sectors.
- Ensure the supervisory authority has powers to examine authorised foreign exchange dealers in relation to AML/CFT purposes.
- Amend Section 39 of the CMLR concerning the production of records to include all necessary records, and not limited to data on deposits and withdrawals but to include for instance, documentation on the analysis of suspicious transactions.
- Amend the same Section to include a clear statement that institutions must produce records within a stated period and specify appropriate administrative sanctions for non-compliance.

#### **Recommendation 17**

- Extend the current CMLL criminal sanctions in Sections 24 and 28 to include legal persons and not only to natural persons.
- Myanmar should consider developing an AML/CFT enforcement framework that is effective, proportionate and dissuasive and which includes civil and administrative sanctions for non-compliance with AML/CFT measures.

**Recommendation 32**

- Ensure that the CBM and other supervisors develop and maintain relevant statistics pertaining to on-site examinations for prudential and AML/CFT purposes, as well as sanctions against financial institutions for failure to comply with AML/CFT requirements.

**Recommendation 25**

- The CBM should issue a detailed regulatory guidance on wire transfer originator information requirements.
- The CBM should issue specific AML/CFT guidelines for the securities sector.

**3.10.3 Compliance with Recommendations 23, 30, 29, 17, 32, & 25**

	<b>Rating</b>	<b>Summary of factors relevant to s.3.10 underlying overall rating</b>
<b>R.17</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Lack of effective, proportionate and dissuasive sanctions.</li> <li>• There is no criminal sanction for legal persons (Financial Institutions) under the CMLL.</li> </ul>
<b>R.23</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• There has been no effective enforcement of the CBM licensing requirement for Hundi operators or to consider other options of regulating this sector.</li> <li>• There is no AML/CFT supervisory framework for Authorised License Dealers.</li> <li>• Lack of effective regulation and supervision.</li> </ul>
<b>R.25</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• The guideline issued by the CBM on AML/CFT is not comprehensive.</li> <li>• There is no guideline on AML/CFT for authorised foreign exchange dealers.</li> </ul>
<b>R.29</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The CBM has inadequate powers of enforcement and administrative sanctions in regard to the AML/CFT supervisory framework.</li> <li>• The power for the CBM to compel production of records is limited to information, data and records of deposits and withdrawals.</li> <li>• Insufficient AML supervisory powers for authorised foreign exchange dealers.</li> </ul>
<b>R.30</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The Bank Regulation Department has not been resourced properly to fulfil its supervisory and regulatory function.</li> <li>• The training programmes on AML/CFT for the CBM staff have been insufficient.</li> </ul>
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Statistics on on-site examination conducted by Bank Regulation Department</li> </ul>

		and Bank Supervision Department of the CBM are maintained by the CBM.
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### **3.11 Money or value transfer services (SR.VI)**

#### **3.11.1 Description and Analysis (summary)**

735. Myanmar workers are increasingly present in neighbouring countries such as Thailand and Malaysia because of employment opportunities. This is not unique to Myanmar, as it is true of other countries in the region and globally.

736. Myanmar has stringent controls on the import, export and use of the U.S. dollar. These conditions include: a non-tradable kyat currency, restriction on money transfer services to state-owned banks only, a tax payable on remittances from abroad and conditions attached to their withdrawal, the prohibition on Myanmar nationals from owning U.S. dollar currency unless licensed for business purposes or unless travelling abroad on official business, and significant differences in the official exchange rate as compared to the market exchange rate for the kyat to the U.S. dollar.

737. In addition, the formal banking sector, like in many other cash-based economies, is not an attractive option for international money remittance because of its extensive requirements.

738. The above factors have contributed to a significant alternative remittance system or Hundi. The authorities acknowledge the use of Hundi amongst Myanmar nationals living abroad who use it in remitting funds home. Though no official statistics are available for money transfers through informal channels, it is apparent that in view of the large population of Myanmar workers abroad, Myanmar's economy would include a sizable portion of inflows through informal channels.

#### *Designation of Registration or Licensing Authority*

739. The CBM is responsible for licensing financial institutions under section 57 of the CBM Law. Furthermore, under section 83, the CBM is also responsible for administering the relevant law (i.e. Foreign Exchange Regulation Act 1947) relating to the control of foreign exchange. This includes issuing, inspecting, regulating, supervising and revoking licenses.

740. Currently, State-owned banks are the only institutions permitted to have correspondent banking relationships, operate foreign currency accounts and to carry out remittance or money value transfer services. This includes domestic wire transfers.

741. Given the existing laws, the "Hundi" dealers are operating illegally in Myanmar.

#### *Application of FATF Recommendations*

742. The CBM Instruction of 30 January 2004 requires banks, when performing inland or foreign remittances by way of telegraphic transfer or demand draft, to obtain and record the profile of customers such as Name, Registration Card number or Passport number, and the full address of remitters or beneficiaries as well as the reason for remitting.

743. Relevant provisions of the CMLL, CMLR, CCB Orders and CBM Instructions and Guidelines are all applicable to money transfer services. However, given the shortcomings highlighted in other

sections of this report in existing laws and regulations and their enforcements, not all the FATF requirements are met.

#### *Monitoring of Value Transfer Service Operators*

744. The Foreign Exchange Management Department undertakes inspection of each license holder twice a year. The 41 branches of state-owned banks are therefore checked by the Foreign Exchange Management Department's inspection team twice a year.

745. There is also extensive monitoring of individual foreign exchange transfers. The Controller of Foreign Exchange, who is the Deputy Governor of the CBM, must approve each cross-border wire transfer. There is an extensive process requiring checking of the wire transfer request by the CBM Foreign Exchange Management Department and then approval by the Foreign Exchange Controller. All requests are checked and audited if necessary.

#### *List of Agents*

746. The three state-owned banks do not have agents but 41 of its branches have been licensed to deal in foreign exchange, and therefore branch foreign currency account holders can engage in international wire transfers, subject to meeting all the conditions.

747. There is no list of the informal Hundi operators.

#### *Sanctions*

748. Section 80 of the Financial Institutions of Myanmar Law provides that no person shall carry out the activities of a financial institution without a licence granted by the CBM.

749. Section 5 of the CMLL stipulates that it is a money laundering offence if a natural person or a legal person operates or provides the services of a financial institution without a licence issued from the CBM. Thus, it is strictly prohibited to operate a financial institution or provide financial services without a license in Myanmar.

750. There has been no systematic prosecution or conviction of Hundi dealers for operating without a banking license. There have been investigations and prosecutions based on their involvement in facilitating drug trafficking payments.

#### *Additional Element—Applying Best Practices Paper for SR VI*

751. The authorities have not initiated efforts to identify and regulate Hundi operators. The CBM has not formally considered the registration option or an alternative licensing regime for non-bank remittance operators due to the large gap between the official and informal market exchange rates. However, there are some cases and criminal action taken by the authorities under the Central Bank of Myanmar Law and Financial Institutions of Myanmar Law.

### **3.11.2 Recommendations and Comments**

752. Myanmar should undertake a study on the size and impact of the informal remittance sector, including its use for trade settlement.

753. Myanmar should consider either the registration option or a less demanding licensing option as an alternative to the current banking licensing approach in order to promote the movement of underground remittance operators into the formal regulated economy.

### 3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	NC	<ul style="list-style-type: none"> <li>• Existence of significant inflow and outflow from informal and unregulated channels.</li> <li>• There is no provision in Law, Regulation and other enforceable means, which require the licensing or registration of informal money remitters other than as financial institutions.</li> <li>• Operators of informal channels are not identified and existing laws enforced.</li> <li>• Operators of informal channels are not subjected to AML/CFT measures.</li> <li>• No efforts by the authorities to recognize these informal sectors and take action to prevent this sector from being used as a conduit for money laundering or terrorist financing.</li> <li>• Inadequate AML framework for regulated providers.</li> </ul>

#### **4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS**

754. There are three hotels located in the border areas that provide legalised casino gaming operations, mainly with slot machines. There are also illegal casinos in some hotels in the border areas.

755. Private sector real estate agents are relatively new. Real estate agents are required to register with the Ministry of Home Affairs but there are no regulatory requirements.

756. There are a total of 1,200 government licensed retail gem shops selling gems and jewellery.

757. There are about 300 gold mining companies licensed by the Department of Mines. They are permitted to sell gold domestically but not to export. There are no licensing requirements for retail dealers beyond the normal business registration requirements.

758. As noted earlier there are two classes of lawyers: High Grade lawyers and Advocates. There are 6,000 Advocates in Myanmar registered with the Bar Council of which 1,700 lawyers who are prosecutors.

759. There are a total of 328 Certified Public Accountants registered with the Myanmar Accountancy Council.

760. There are no trust providers in Myanmar. Neither accountants nor lawyers provide trust accounts for clients. Real estate agents do not hold any money in trust as payment is made directly by the buyer to the seller of the property.

761. Accountants and lawyers provide company formation services and may act on behalf of any persons provided appropriate mandate is given. The office of the accountant and/or lawyer may be used as a temporary address for receiving mails etc.

##### **4.1 Customer due diligence and record-keeping (R.12) (applying R.5, 6, 8 to 11, & 17)**

###### **Description and Analysis**

###### **Recommendation 12**

762. The current CDD, record keeping and sanctions requirements under the CMLL, CMLR, CCB Orders and CBM Instructions and Guidelines do not extend to DNFBPs. DNFBPs are subject to limited CDD and record-keeping requirements as part of other non-AML specific processes. These include basic identification requirements for real estate transactions, licensing requirements by the Department of Mines and the Myanmar Gems Trading Enterprise respectively, and seller and buyer registration requirements for the wholesale gems market.

763. There are no AML requirements in respect of casinos. The Ministry of Tourism and Hotels, which licenses hotel operations, has given exemptions for casinos (slot machines) to operate in three

hotels located in the border areas. Gambling is not normally permitted under the licensing conditions imposed by the Ministry of Hotels and Tourism. It is understood that up to 190 slot machines are operating in each of these three hotels.

764. The Ministry of Hotels and Tourism advised the clientele of these three hotels is limited to foreign guests only, who are subject to basic identification requirements. The biggest single payment is limited to 3,000 Baht (less than US\$100).

#### 4.1.2 Recommendations and Comments

765. Myanmar should undertake the following:

- Amend the CMLL and CMLR to extend the FATF standards of CDD and record-keeping requirements to the DNFBP sector.
- Consider introducing CDD and record keeping requirements for any hotels or other service providers with approved casino operations when they are involved in cash transactions with players of equal or more than US\$3,000.
- Require Real Estate agents to undertake CDD and record keeping when they are involved in the buying and selling of real estate for clients.
- Introduce CDD requirements for wholesale and retail dealers in precious metals and stones (gems and jewellery) when they are involved in any cash transactions with a customer equal or over a designated threshold level consistent with the FATF requirements, or where there is suspicion of ML or other criminal activity.
- Introduce CDD requirements for Advocates of the Supreme Court, Higher Grade Lawyers, Certified Accountants, Auditors and Notaries Public when they are involved with clients in buying and selling real estate; managing client’s money or other assets; managing a client’s bank accounts; providing company formation services; providing an office, mailing or business address for a client; acting as a nominee shareholder for a client in his absence; and buying and selling businesses.

#### 4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	NC	<ul style="list-style-type: none"> <li>• There are no requirements in the CMLL, CMLR, or CCB orders requiring compliance with any of the FATF standards in regards to CDD and record keeping.</li> <li>• Casino/slot machine operations at the three gambling exempted hotels are not required to conduct CDD and record keeping.</li> </ul>

## 4.2 Suspicious transaction reporting (R.16)

(applying R.13 to 15, 17 & 21)

### 4.2.1 Description and Analysis

#### *DNFBP in Recommendation 13*

766. There are no STR requirements for hotels operating gaming operations such as slot machines.

767. Myanmar has, nevertheless, taken some preliminary steps in meeting STR reporting requirements for the DNFBP sector. While the relevant reporting requirements, namely Section 20 (b) of the CMLL and CBB Orders No. 1/2006 and 4/2007, encompass lawyers and accountants, they did not previously include private sector real estate agents or dealers in precious metals and stones as defined and required by the FATF Recommendations until after the on-site visit. Instead, until March 2008, government agencies or state-owned enterprise in the real estate and precious metals and stones sectors were the designated reporting entities.

768. The STR (and CTR) reporting obligations of the relevant agencies and professions are as follows:-

**Table: DNFBP Reporting Obligations**

Categories	Reporting institutions	CCB Order Date	Reporting obligations
Real estate	State, Divisional, District and Township Department of Settlements and Land Records under the Dept of Settlements and Records.	2/2004 12 Jan 2004	Report transactions exceeding threshold of 100 million Kyats for sale, gift, charity, disowning and exchanging of immoveable property  Transferring of immovable property which is unusual or of suspicious nature. (refer to rule 9-11 of CMLR)
Real estate	Nay Pyi Taw City Development Committee, Yangon City Dev Comm., Mandalay City Development Committee, Internal Tax Revenue Dept Human Settlement and Housing Development, Development Affairs Dept.	1/2006 20 Mar 2006	Report transactions of real estate sales and transfers exceeding threshold of 100 million Kyats. This includes selling, donating, giving, forfeiting the right of ownership, exchanging or transferring. Undertake a construction project or other economic business.  Report suspicious

			transactions
Lawyers, notaries public and accountants	Advocates of the Supreme Court, High Grade Lawyers Certified Accounts Auditors Notaries Public	5/2006 13 Sept 2006	Advocates of Supreme Court and High Grade lawyers – performing duties concerning criminal cases; Certified accountants and auditors – performing duties auditing accounts of private companies and associations; Notaries public – performing duties of translating, putting on record and issuing certification attesting the truth; If they notice there are grounds for suspicion of ML/TF.
Dealers in precious metals and stones	Department of Mines and Myanmar Gems Trading Enterprise.	4/2007 11 July 2007	Production, sale and transfer of precious metal, including gold, silver and gems when:- Exceeding threshold of 100 million Kyats and above or Suspicious or unusual
Dealers in precious metals and stones	Retail and hold sale shops and companies of precious metal	1/2008 13 March 2008	Report transactions exceeding threshold of 100 million Kyats, $\geq$ US\$10,000 or equivalent as well as unusual or suspicious for sale or purchase of precious metal

769. The obligation of STR reporting for DNFBPs is regulated under CCB Orders except for the Settlements and Land Records Department (SLRD).

770. STR reporting for SLRD is prescribed under Section 20 (b) of the CMLL and Section 9 (a) (3) of the CMLR, which require the responsible person of the SLRD and its respective subordinate offices to report any unusual or suspicious transactions relating to the transfer of immovable property to the CCB. Pursuant to the Law and Rules, the CCB issued Order No. 2/2204 dated 12 January 2004 on STR and CTR reporting for the SLRD.

771. The CCB Order 1 /2006 issued on 20 March 2006 extends the threshold and suspicious transaction reporting obligations to include the Yangon City Development Committee, Mandalay City Development Committee, Internal Tax Revenue Department and the Department of Human Settlements and Housing Development. They are required to report real estate sales and transfers which exceed the threshold amount of Kyat 100 million and suspicious transactions.

772. Myanmar has neither issued any STR nor CTR reporting requirements for real estate agents.

773. The CCB Order 5/ 2006 issued on 13 September 2006 extends the suspicious transaction reporting obligations to Advocates of the Supreme Court, Higher Grade Lawyers, Certified Accounts, Auditors and Notaries Public.

774. The CCB issued Order No. 1/2008 dated 13 March 2008 requires the retail and wholesale shops and companies of precious metal including gold, silver, gem, pearl and jewel, to submit reports on sale or purchase if they are or in excess of either 100 million Kyats, US\$10,000 or equivalent. There is also the requirement to submit STR reports. But since the Order has just recently been issued by the CCB, the effectiveness of its implementation cannot be assessed at this stage.

775. The CCB Order No.4/2007 issued on 11 July 2007 extends the threshold and STR reporting obligations to the Department of Mines and Myanmar Gems Enterprise.

*STR to their appropriate self-regulatory organisations (SRO)*

776. The CMLL law does not permit STR reports to be submitted to SROs, only to the relevant competent authority in the CCB as delegated to the MFIU.

*Recommendations 14, 15 and 21 should apply in relation to DNFBP*

777. The Law Amending the CMLL, which is the State Peace and Development Council Law No. 8/2004 enacted on 2 November 2004, inserted the tipping-off provision as section 31-A of the CMLL. The deficiencies noted in Section 3.7 are also applicable to DNFBPs. It is not clear that lawyers and accountants are subject to the anti-tipping off provision.

778. There is no specific provision in the CMLL, CMLR and other enforceable means which requires DNFBPs to establish and maintain internal procedures, policies and control to prevent money laundering and financing of terrorism.

779. The criminal sanction as prescribed in the CMLL is limited in scope to persons of banks and financial institutions and the SLRD. It is not clear whether they can be applied to DNFBPs.

780. There are no specific AML/CFT measures in law, regulation or other enforceable means in respect of DNFBPs. There are existing professional accreditations and business licensing requirements which could be invoked, but these are not in the context of AML/CTF.

781. The capability of competent or supervisory organization to enforce any administrative sanctions against DNFBPs that fail to comply with the reporting requirements is doubtful given the lack of enforceable measures.

*Additional Elements: Reporting Requirement*

782. The CCB Order 5/2006 issued on 13 September 2006, which extends the suspicious transaction reporting obligations to Advocates of the Supreme Court, Higher Grade Lawyers, Certified Accountants, Auditors and Notaries Public, limits the scope of reporting to the following:

- Lawyers – performing duties concerning criminal cases;
- Certified accountants and auditors – performing duties auditing accounts of private companies and associations;
- Notaries public – performing duties of translating, putting on record and issuing certification attesting the truth.

783. There is no obligation to report if suspicious transactions are outside of these areas, including company formation services provided by the two professions.

*Additional Element: Reporting of All Criminal Acts*

784. The constraints identified in respect of STR reporting under recommendation 13 are also applicable to DNFBPs. There is no direct requirement to report suspicious transactions when funds are suspected of being the proceeds of crime.

**4.2.2 Recommendations and Comments**

785. Myanmar should undertake the following:

- Require hotels or other service providers with legalised gaming or casino operations to submit STR reports on suspicious transactions.
- Consider extending STR reporting to real estate agents.
- Broaden the scope of STR reporting for lawyers and accountants to include company formation services.
- Issue regulations to DNFBP to establish and maintain policies and procedures to control and prevent ML/TF.
- Establish “safe harbour” provisions for all DNFBP STR reporting.
- Establish effective, proportionate and dissuasive sanctions to ensure compliance with AML/CFT requirements.

**4.2.3 Compliance with Recommendation 16**

	<b>Rating</b>	<b>Summary of factors relevant to s.4.2 underlying overall rating</b>
<b>R.16</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• The coverage of DNFBPs does not include all private sector dealers as defined by the FATF Recommendations.</li><li>• There is no specific provision in the CMLL, Rules and other enforceable</li></ul>

		<p>means which require DNFBPs to establish and maintain internal procedures, policies and control to prevent money laundering and financing of terrorism.</p> <ul style="list-style-type: none"> <li>• The existing provision in the CMLL does not provide adequate “safe harbour” to reporting entities and is insufficient to include DNFBPs.</li> <li>• No effective, proportionate and dissuasive measures or sanctions.</li> </ul>
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### **4.3 Regulation, supervision and monitoring (R.24-25)**

#### **Recommendation 24**

##### *Regulation and Supervision of Casinos*

786. The only casino operations both legal and illegal are in hotels. The Ministry of Hotel and Tourism is responsible for licensing and supervising hotels.

787. The Ministry has not undertaken any AML/CFT regulatory or supervisory actions in relation to hotels, including the three with legalised casino or slot machine operations.

788. The Ministry also acknowledges there are a few hotels in the border areas operating casino or gaming operations without an appropriate exemption from the Ministry to the “no gambling” licensing requirement.

##### *Monitoring Systems for Other DNFBPs*

789. As previously noted, the CCB is the designated competent authority for all matters relating to AML in Myanmar. There are also regulatory and supervisory authorities for various DNFBPs other than casinos. These include the Ministry of Home Affairs which registers real estate dealers, and the Department of Mines and the Myanmar Gems Enterprise for the precious metals and stones sector. However, there is very limited AML/CFT oversight given the current arrangements i.e. lack of mandate and some regulatory agencies have also been the designated reporting institutions for STRs.

790. The Bar Council and Myanmar Accountancy Council are not involved in monitoring compliance with AML requirements. The Accountancy Council has been involved in the education of its members regarding the current AML requirements. It also issued an advice in December 2007 to its members to confirm the “duty of confidentiality clause” in the Accountancy Law is overridden by the CCB Order requiring the profession to submit STR reports.

##### *Guidelines for DNFBPs*

791. Myanmar has yet to set out the AML/CFT programme for DNFBPs. The CCB has yet to provide guidance on AML/CFT to DNFBPs. There has yet to be a process to provide feedback to the DNFBPs.

#### **Recommendations and Comments**

792. Myanmar should consider organizing outreach sessions with DNFBPs and provide feedback as necessary.

793. Myanmar should extend AML/CFT regulatory and supervisory responsibilities to DNFBP regulatory and supervisory agencies.

794. Myanmar authorities should engage the relevant self regulatory organizations, such as the Bar Council and the Myanmar Accountancy Council, and involve these SROs actively in ensuring that members implement an effective AML/CFT system that includes STR monitoring system and adequate CDD.

#### 4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
<b>R.24</b>	NC	<ul style="list-style-type: none"> <li>• AML CFT requirements have not been extended to the DNFBP sector.</li> <li>• No supervision of hotels with gambling or casino operations.</li> </ul>
<b>R.25</b>	NC	<ul style="list-style-type: none"> <li>• No guidance has been issued to DNFBPs.</li> <li>• No outreach or awareness programme has been conducted.</li> <li>• No consultation or engagement with the SROs has been undertaken to develop appropriate guidance for their members.</li> </ul>

#### 4.4 Other non-financial businesses and professions

##### Modern secure transaction techniques (R.20)

##### 4.4.1 Description and Analysis

###### *Other Vulnerable DNFBPs*

795. Myanmar has extended its AML STR and CTR requirements to government agencies involved in immovable assets such as real estate, and movable assets such as precious metals and stones and motor and marine vehicles.

796. Given the structure of government in Myanmar, these agencies are efficient sources of financial transaction information, particularly the offices dealing with both immovable and movable properties.

797. The requirements in respect to movable motor and marine vehicles are outlined in the table below:

**Table: Other DNFBP Reporting**

Categories	Reporting institutions	CCB Order Date	Reporting obligations
Motor and marine vehicles	Road Transport Admin Dept and Marine Admin Dept.	2/2006 20 Mar 2006	Registering motor vehicle/marine vehicle, Registering of application

	Trade Administration Dept.		<p>for licence to import/export large machinery, if the value exceeds 100 million Kyats as stated on the document</p> <p>Although the value of MV/MV large machinery is not stated having value of 100 million Kyats or above, but on field inspection it is determined to be of 100 million or more;</p> <p>Transaction is unusual or suspicious.</p>
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*Modernization of Conduct of Financial Transactions*

798. The CBM and the banking institutions are encouraging the use of cheques in order to reduce the use of cash for business transactions.

799. The highest denomination of bank notes issued by Myanmar authorities is only 1000 kyats which is equal to approximately US\$1 (market rate). To date, the Government of Myanmar has not undertaken any specific actions to encourage the development of modern and secure techniques for conducting financial transaction such as the use of ATMs, telephone banking or internet banking. At this moment, banks in Myanmar do not provide ATMs for their customers.

**4.4.2 Recommendations and Comments**

800. The CBM should consider developing secure electronic funds transfer or payment systems to lessen the use of cash.

801. Myanmar should consider measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML/FT.

**4.4.3 Compliance with Recommendation 20**

	Rating	Summary of factors underlying rating
<b>R.20</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>Myanmar has not carried out a formal risk assessment of vulnerabilities posed by other non-financial businesses and professions.</li> <li>No particular measures have been taken to reduce reliance on cash and encourage secure automated transfer system.</li> </ul>

## **5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS**

### **5.1 Legal Persons – Access to beneficial ownership and control information (R.33)**

#### **5.1.1 Description and Analysis**

##### *Legal Framework:*

802. Legal persons in Myanmar are established under one of the following statutes: the Myanmar Companies Act (1914), the Special Company Act (1950), The Union of Myanmar Foreign Investment Law (1988), and the Myanmar Citizens Investment Law (1994). Legal persons can exist in the form of:

- Local Private Company Limited;
- Local Public Company;
- Foreign Company incorporated in Myanmar and wholly Owned by Foreign Investor (Sole Proprietorship); and
- Joint Venture (Foreign Investor/ Local partner).

803. A company is formed by the issue of a certificate of incorporation by the Directorate of Investment and Company Administration (DICA), which is under the Ministry of National Planning and Economic Development. There are two main types of companies in Myanmar:

- a private company; and
- a public limited liability company.

804. In a private company the transfer of shares is restricted. The public cannot be called upon to subscribe for shares, and the number of members is limited to 50 and there must be at least two shareholders. In a public limited company, the number of shareholders must be at least seven, and after registration/incorporation it must also apply for a Certificate of Commencement of Business to enable business operations to start.

805. Most companies are formed by registration under the Myanmar Companies Act 1914. A company with share contribution of the Government of Myanmar must be registered under the Special Company Act 1950. If a company has one share owned by a foreign partner, the company is regarded as a foreign company and are subject to the requirements of the Union of Myanmar Foreign Investment Law 1988, in addition to the Companies Act. There is a minimum foreign share equity requirement of 35%. This applies to both joint venture and wholly owned foreign company incorporated in Myanmar. A branch office of a foreign company is also subject to the Foreign Investment Law and Myanmar Companies Act.

806. There are an estimated 16,882 companies registered with DICA, of which 1,259 are considered foreign companies. There are only two publicly listed companies with the MSEC.

*Measures to Prevent Unlawful Use of Legal Persons*

807. An applicant for company registration must file with DICA the following documents:

- Memorandum of association;
- Articles of association;
- Statement in the prescribed form;
- List of Directors; and
- Statutory declaration.

808. The following documents must be lodged with an application to incorporate a foreign company in Myanmar:

- Memorandum and Articles of Association in both the Myanmar and English languages;
- a specific statement of the main object of the company;
- a lawyer's translation certificate (certifying that the English translation of the Memorandum and Articles of Association is correct);
- the full address of the registered office of the company in Myanmar;
- consents of the directors to act; and
- list of directors and managers including nationality and addresses.

809. An application for the incorporation of a foreign company must first be submitted in the first instance to the Myanmar Investment Commission for approval under the Myanmar Foreign Investment Law. There is also a requirement for a list of shareholders, including names and addresses to be provided during this process. In the case of the incorporation of a joint venture company in which a State-owned economic enterprise is a shareholder, under the Special Companies Act 1950, the Memorandum and Articles of Association must first be approved by the Attorney General's Office.

810. If the registrar considers the documents are formally in order and the objects specified in the memorandum appear to be lawful, the DICA give the company a "registered number", issues a certificate of incorporation and publishes a notice in the Gazette.

811. The vetting process of DICA includes checking the backgrounds of the members of the board of directors with the Department of General Administration of the Ministry of Home Affairs. This includes verifying the identity and personal particulars including the residential address of members of the board of directors. The checks undertaken by the Department of General Administration include the sources of funds for the major share owners and their backgrounds, the latter similar to the board of directors if they are not the same.

812. There is no explicit requirement in the registration process for a comprehensive list of all shareholders. This checking process may not identify "silent partners" or beneficial owners who may not want to be identified and have nominees to represent their interests on the board of directors. There is no requirement for officers to be physically present during the submission of registration papers or to be interviewed by DICA. There are also no explicit requirements to check whether the

shareholders or board of directors are the actual or representing the actual beneficial owners respectively.

813. DICA can only proceed with the incorporation process once the Ministry of Home Affairs has provided a formal clearance letter. There is an annual reporting process to DICA by incorporated companies. This includes the requirement to file with DICA an annual return, which should include the following information:

- latest details of capital structure of the company;
- information on shareholders; and
- a list of directors and managers.

814. Companies are also required to advise DICA of any change in the board of directors, managers and managing agents in Form XXVI provided by DICA. According to Section 87 (2) of the Myanmar Companies Act, the specified timeframe is 14 days from the appointment of any new director or any change in the board of directors.

#### *Access to Information on Beneficial Owners of Legal Persons*

815. DICA does not make publicly available the list of companies incorporated by DICA although a newly incorporated company is published in the Government Gazette. Individuals are unable to access basic information on a company.

816. The Myanmar Police Force can only access DICA records through a formal request to the Director General of DICA. Only the Director General can approve the release of information.

#### *Prevention of Misuse of Bearer Shares*

817. There is no central registry of shares in Myanmar. However, CCB Order No 4/2006 requires DICA to examine all share sales and transfers and determine whether they are over 100 million kyats and whether the source of funds are assets derived from money laundering, and if so, submit threshold and STR reports respectively to the CCB.

818. The effectiveness of this process depends on companies informing DICA of such transactions and DICA enforcing the requirement for companies to inform DICA of share sales or transfers.

#### *Additional Element—Access to Information on Beneficial Owners of Legal Persons by Financial Institutions*

819. The current arrangements by DICA prohibit banks, except for state owned banks, from accessing company ownership information to assist in undertaking CDD.

### **5.1.2 Recommendations and Comments**

820. Myanmar should undertake the following:

- DICA should make publicly available the list of all companies incorporated in Myanmar to enhance transparency. It should also consider making publicly available basic company information, including the names of the board of directors, nature of business etc.
- Law enforcement should have access to company registration documents held by DICA without the need to obtain the prior approval of its head.
- DICA should introduce, as a requirement for company registration, for an applicant to include the list of all shareholders and details of any nominee arrangements.
- DICA should introduce a mechanism for the sharing of company information with other competent authorities, both domestically and internationally, and which approval for information dissemination can be made at the operational level.

### 5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	PC	<ul style="list-style-type: none"> <li>• Lack of transparency.</li> <li>• Lack of beneficial ownership requirements and information.</li> <li>• Lack of timely access to information by competent authorities on information of ownership and control of legal persons.</li> </ul>

## 5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

### 5.2.1 Description and Analysis

821. There are no laws regarding legal arrangements such as trusts in Myanmar. Myanmar authorities, including the Attorney General Office, advised that legal arrangements such as trusts no longer operate in the country. While Myanmar has a modified common law system based on a legal framework first adopted in India, there have been significant changes to the legal structure in the country since 1988.

822. There was no evidence of trust accounts held in state owned and private banks. This was also clearly reiterated by the CBM to the team. The lawyers and accountants met by the ME team advised that they do not manage funds or assets or accept funds in trust. The same applies to real estate agents. They do act under instruction for foreign investors not domiciled in Myanmar but not under a trust arrangement.

### 5.2.2 Recommendations and Comments

### 5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	NA	

## 5.3 Non-profit organisations (SR.VIII)

### 5.3.1 Description and Analysis

*Legal Framework:*

823. The law governing NPOs and other associations (“NPOs”) is the Law Relating to Forming Organizations (LRFO) which was enacted on 30 September 1988. The LRFO defines an organisation as an association, society, union, party, committee, federation, group of associations, front, club and similar organisation that is formed with a group of people for an objective or a programme either with or without a particular name. The law excludes organisations formed for religious, economic (companies and partnerships) and political parties.

824. The LRFO, however, explicitly prohibits: a) the formation of political parties not already permitted to register under the Political Parties Registration Law 1988; b) any organisation that would undermine law and order; and c) organisations consisting of officers of the armed and police forces.

825. There are 302 NPOs registered under the LRFO. It is estimated that 78 have international connections. According to Myanmar authorities, funding for NPOs usually comes from annual membership fees and donor contributions. Most of the funds are spent for education, health and socially-related expenses. 78 out of the more than 300 NPOs (plus four new ones) have been reclassified into religious, social or socio-religious categories. The classification/category of the NPOs based on the amount of funding are provided as follows:

- 56 - No funds
- 114 - one thousand to one million kyats
- 94 - one million to 10 million kyats
- 25 - 10 million to 50 million kyats
- 12 - 50 million to 500 million kyats

*Review of Adequacy of Laws & Regulations of NPOs*

826. There has been no comprehensive review of the LRFO or the NPO sector including any review to assess the vulnerabilities of NPOs to terrorist financing.

827. There was a partial assessment of the International NPOs working in Myanmar by the UNDOC in 2005. In December 2005, the UNODC Representative in Myanmar reported to the latter’s Minister of Foreign Affairs that there were 22 International Non-Governmental Organizations (INGOs) engaged in Myanmar’s Southern Shan State. The UNODC Representative further noted that there had been no collaboration or coordination among these INGOs. Neither were they aware of the each other’s presence in the area. In February 2006, upon recommendation of the UNODC Representative, the Ministry of National Planning and Economic Development (MNPED) issued the, “Guidelines for UN Agencies, International Organizations and NGO/INGOs on Cooperation Programme in Myanmar”.

828. Under the Guidelines, MOUs were executed between the UN Agencies, etc., and the MNPED to govern project proposals and their implementation. Project implementations are now coordinated with the Central Coordination Committee composed of Ministers and Deputy Ministers. State, Division and Townships Committees are likewise formed to coordinate with the NGOs/INGOs. Other

matters, e.g., internal travel of organization officials, importation of equipment and vehicles, are coordinated with the MNPED.

*Outreach to the NPO Sector to Protect it from Terrorist Financing Abuse*

829. There has been no outreach undertaken by the Department of General Administration or by other members of the CCB, including the FIU to NPOs. However, at the township level, there have been some awareness raising undertaken to ensure NPOs comply with the requirements of registration, which is conducted as part of the government's on-the-ground monitoring of NPO activities.

*Supervision/Monitoring that Account for Significant Share of Resources/International*

830. Myanmar's current administrative arrangements permit authorities to monitor NPO activities at the township level. Myanmar has not implemented, however, a monitoring program focused on NPOs with international funding sources or which account for significant financial resources of the sector. The supervision and monitoring are not necessarily focused on these two high risk areas.

831. The fund and balance sheet statements submitted by registered organisations are examined to ascertain whether any illegal activities are involved, including possible money laundering and terrorist financing. Myanmar advised that as of December 2007, no organisations were found to have engaged in illegal financial activities.

*Information maintained by NPOs and availability to the public thereof*

832. NPOs are required to maintain internal governance information for its own purposes as a requirement for registration. However, there are no public transparency requirements under the LRFO for NPOs to make such information, including any annual reports and financial statements, available to the public for scrutiny.

*Measures in place to sanction violations of oversight rules by NPOs*

833. Under the LFRO the penalty of five-year imprisonment is imposed for violation of the following:

- Under Section 3 (c) of the LRFO, all applications to form an organization shall be filed with the Ministry of Home and Religious Affairs. NPOs formed prior to 30 September 1988 were still required to re-apply thirty days from the LRFO's promulgation.
- Any person found guilty of being a member of or aiding an abetting an organisation that are not permitted to form or not permitted to continue to exist.

834. Section V also allows for cancellation of registration if an organisation changes its objectives from those originally approved and if it fails to meet its six monthly reporting requirements which include any changes to executive members, meetings records including decisions and balance of account.

*Licensing or registration of NPOs and availability of this information*

835. NGOs/INGOs are required to register with the Department of General Administration in the Ministry of Home Affairs. Township officers are required to scrutinize the applications of all organizations desiring to operate in their district/locality. The application is then submitted to the township Peace and Development Council and thereafter to the state or division administrative officer. The process could go up to the concerned Ministry, if necessary.

836. The vetting process at the township level includes a check on the backgrounds of all members of the board of directors, including a fit and proper assessment to ascertain any known association with criminal and unlawful political activities.

837. Duly authorized NPOs are required, on a semi-annual basis, to report on the following to the township, district and state/division:

- Latest list of executive members;
- Meetings;
- Decisions of the Meetings;
- Activities of the organizations; and
- Financial situation and balance sheet.

838. UN Agencies, International Organizations and NGOs/INGOs are required to submit monthly and quarterly reports to the MNPED and concerned ministries. Since January 2004, reports and financial balance sheets are submitted on a quarterly basis.

839. Myanmar government's involvement in the sector is extensive - from the time of an NPO's application for registration until its winding up or closure. Applications are scrutinized from the township level where the applicant organization intends to operate. The Myanmar authorities advised that the registration and six monthly reports submitted by NPOs are readily available and shared amongst the Department of General Administration, the township SPDC, the Myanmar Police Force and the Bureau of Special Investigations.

*Maintenance of records by NPOs, and availability to appropriate authorities*

840. The LRFO does not mandate that NPOs should maintain and make its records available to the appropriate authorities. The requirement only relates to six monthly reporting but there is no requirement that the financial reports/balance sheets should be audited.

*Measures to ensure effective investigation and gathering of information*

841. There seems to be close collaboration between the various competent authorities involved in the registration and monitoring of NPOs, from the Central Government level down to the township level. There are no provisions in the LRFO for the competent authorities to undertake spot checks or audit the records of NPOs. The Department of General Administration advised that they are able to access NPO bank account records, if necessary for an investigation. This is exercised under existing powers by the law enforcement agencies to access bank account details.

*Responding to international requests regarding NPOs - points of contacts and procedures*

842. There are no specific points identified for international requests regarding NPOs, although the Department of General Administration would be the agency responsible for preparing a response.

### 5.3.2 Recommendations and Comments

843. Myanmar should:

- Conduct a review of the adequacy of its existing NPO-related laws with emphasis on TF vulnerability of the sector.
- Grant relevant authorities access to NPO books and accounts, not only through the latter's periodic submission of reports but through the conduct of on-site inspections if necessary.
- Introduce explicit obligations requiring NPOs to maintain its records, for a period of at least five years, and make the same available to the appropriate authorities.
- Undertake outreach to the NPO sector through the conduct of AML/CFT awareness seminars/workshops, issuance of updates on trends, guidance and advisories.
- Introduce administrative penalties in respect of non-compliance with reporting obligations or providing misleading information.

### 5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
<b>SR. VIII</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The sector and its related laws and regulations have not been reviewed to check TF vulnerabilities.</li> <li>• No comprehensive outreach to NPO sector.</li> <li>• No requirements to maintain records for 5 years.</li> </ul>

## **6. NATIONAL AND INTERNATIONAL CO-OPERATION**

### **6.1 National co-operation and coordination (R.31 & 32)**

#### **6.1.1 Description and Analysis**

Legal Framework:

##### *Mechanisms for Domestic Cooperation and Coordination in AML/CFT*

844. The Central Control Board on Money Laundering (CCB) created under the CMLL is the competent authority and policy making body for advancing AML/CFT in Myanmar. The CCB is comprised of Ministers, Deputy Ministers and high ranking officials of the key agencies involved in combating ML and FT. The CCB is chaired by the Minister of Home Affairs with the Minister of Finance and Revenue as Vice Chairman.

845. The CCB is empowered under the CMLL to issue legally binding directives and rules. At the more operational level, the FIU consists of representatives from the Myanmar Police Force, Bureau of Special Investigations, Customs, the CBM, Attorney General's Office, Internal Revenue, and the Settlements and Land Records Department. In addition, the Investigation Body formed by the CCB consists of officials drawn from relevant agencies.

846. The CCB holds interagency meetings with the aim of sharing information and case experience. There are three to four plenary meetings each year. In addition, there are daily meetings amongst the law enforcement agencies chaired by the Chief of Police. This mechanism provides for information sharing and coordination among the key management staff involved in AML implementation.

##### *Additional Element - Mechanisms for Consultation Between Competent Authorities and Regulated Institutions*

847. All banks in Myanmar belong to the Myanmar Bankers Association which meets with the CBM on a monthly basis. The monthly meetings allow both parties to discuss regulatory and supervisory issues. The CBM advised the evaluation team that during these meetings AML requirements are reviewed and explained to members. However, compliance officers which are normally the branch managers do not attend these meetings, although general managers in charge of compliance do attend.

848. Coordination with the DNFBP sector is more limited. The Myanmar Gems Emporium and the Department of Mines (which have a licensing and registration role) are not actively involved in policy or operational discussions on AML/CFT implementation. The Settlements and Land Records Department and Customs (participants in operational meetings) do not regularly participate in policy discussions. Given AML risks in Myanmar as discussed in Section 1 of this report, the Customs Department should have a higher profile in policy making.

849. Myanmar's implementation of AML/CFT standards has been in response to international pressure and recommendations. It has not undertaken a comprehensive review of AML/CFT implementation across relevant government agencies. Consequently there is a lack of coordination and multi-agency coordination, including with the Attorney General's Office.

*Statistics (applying R.32)*

850. There are four plenary meetings of the CCB each year. In addition, there are regular operational meetings of the key AML implementing agencies either to discuss investigations, training workshops, responses to FATF monitoring requirements etc. Myanmar does not keep statistics for these operational meetings, but reports are prepared and maintained for the more substantive meetings.

### **6.1.2 Recommendations and Comments**

851. Myanmar should:

- Provide for greater participation by Customs in the policy making and coordination of AML/CFT
- Allow participation by DNFBP responsible agencies in policy discussions.
- Require the Attorney General's Office to check the legal consistency of instruments issued.

### **6.1.3 Compliance with Recommendations 31 & 32 (criteria 32.1 only)**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.31</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• Lack of identification of key structural issues related to effective AML and CTF implementation.</li><li>• Customs do not take a lead role in AML activities.</li><li>• Insufficient involvement of the DNFBP sector.</li></ul>
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• Statistics are not comprehensive</li></ul>

## **6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)**

### **6.2.1 Description and Analysis**

852. In 1991, Myanmar acceded to the Vienna Convention and to the Palermo Convention in 2004. Importantly, and as noted and discussed in the section on extradition, in acceding to these important Conventions, Myanmar expressed reservations in relation to the extradition frameworks and obligations provided in both Conventions. It signed the International Convention for the Suppression of the Financing of Terrorism on 12 November 2001 but has not yet ratified this instrument.

853. To comply with these Conventions, Myanmar enacted the Narcotic Drugs and Psychotropic Substances Law (NDPSL) on 27 January 1993 and the Control of Money Laundering Law (CMLL) criminalizing money laundering as discussed in section 2. These enactments provide the basic institutional framework required by these instruments; however, as noted elsewhere in this report, there are deficiencies with respect to both statutes.

854. The current system needs further fine-tuning to fully implement the Vienna and Palermo Conventions. Important issues include the following: the list of predicate offences should be further expanded to include, among others, the crimes of murder, terrorist financing, piracy, and insider

trading and market manipulation; there are reservations with respect to extradition; and CMLL does not specifically cover legal persons.

855. Myanmar is a signatory to the 1999 International Convention for the Suppression of the Financing of Terrorism. However, implementation has been limited to the dissemination of the UNSCR lists to banks.

856. The CMLL lists *acts of terrorism* as a predicate offence to money laundering. It does not, however, include TF. As noted earlier in this report, Myanmar has not enacted a law criminalizing terrorist financing and designating it as one of the predicate offences to money laundering, as well as making it an extraditable offence as required under Article 11 of the TF Convention. It is noted that a draft anti-terrorism law is currently being prepared and will be duly submitted to the Myanmar Cabinet. However the authorities were not able to provide the evaluation team with a time line for final passage of this new law.

### 6.2.2 Recommendations

857. Myanmar should ratify/accede to the TF Convention and implement its full range of obligations, including criminalisation of terrorist financing as well as:

- Amend its CMLL to cover all the designated categories of predicate offences; and
- Enact an extradition law compliant with Article 16 of the Palermo Convention and Article 6 of the Vienna Convention.

### 6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
<b>R.35</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The provisions of the NDPSL, CMLL and MACML are not fully compliant with the Vienna and Palermo Conventions.</li> <li>• Doubts exist on the applicability of the CMLL to legal persons.</li> <li>• Extradition law needs updating to include money laundering, terrorism and terrorist financing as extraditable offences.</li> </ul>
<b>SR.I</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Myanmar has not yet criminalized TF</li> <li>• Provisions in the CMLL referring to acts of terrorism are not compliant with the TF Convention</li> </ul>

## 6.3 Mutual Legal Assistance (R.36-38, SR.V, R.32)

### 6.3.1 Description and Analysis

858. Myanmar's Mutual Assistance in Criminal Matters Law (MACML) 2004 Act provides that Myanmar can provide assistance to:

- a. State parties to an international convention or regional agreement to which the Union of Myanmar is a State party;

- b. A State which has entered into a bilateral agreement with the Union of Myanmar; or
- c. A State which is neither a party to any international convention, regional agreement nor to a bilateral agreement, on the basis of reciprocity.

859. Under the MACML, a request for legal assistance may include the following matters:

- a. Taking evidence or statements from any person;
- b. Rendering service so that judicial documents shall have effect;
- c. Examining objects and sites;
- d. Identifying and tracing money or property to be used for evidentiary purpose to be relevant to the offence;
- e. Executing searches, seizures, control, issuing restraining order and confiscation of exhibit;
- f. Obtaining information, documents to be used for evidentiary purpose, records and expert opinion;
- g. Providing originals or certified copies of relevant documents and records to be used for evidentiary purposes;
- h. Exposing the residential address of offender, location of the exhibit and other necessary information; and
- i. Other matters in respect of which the Central Authority has agreed to give assistance.

860. On 17 January 2006, Myanmar signed the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. Under Article 1 of the ASEAN MLA a wide range of assistance is available, including:

- a. taking evidence or obtaining voluntary statements from persons;
- b. making arrangements for persons to give evidence or to assist in criminal matters;
- c. effecting service of judicial documents;
- d. executing searches and seizures;
- e. examining objects and sites;
- f. providing original or certified copies from relevant documents, records and items of
- g. evidence;
- h. identifying or tracing property derived from the commission of an offence and
- i. instrumentalities of crime;
- j. restraining dealings in property or the freezing of property derived from the commission of
- k. an offence that may be recovered, forfeited or confiscated;
- l. recovery, forfeiture or confiscation of property derived from the commission of an offence;
- m. locating and identifying witnesses and suspects; and
- n. provision of such other assistance as may be agreed and which is consistent with the objects of this Treaty and the laws of the Requested Party.

861. Section 15 of the MACM provides for the grounds upon which assistance can be provided. They include:

- the offence relating to the request being an offence punishable with imprisonment for a term of one year and above under the existing law;
- having no infringement with any fact that is ground for refusal in section 18;
- the request being in conformity with the forms terms and means and ways prescribed by the Central Authority; and
- upon the expenses incurred by the union of Myanmar for rendering assistance having been coordinated and agreed between the two countries.

862. Under Section 17 (MACM), Myanmar may postpone any action on a request by a state, either in whole or in part, in consultation with the requesting state, if the Myanmar competent authority is of the opinion that the request will interfere with an ongoing investigation, prosecution or proceeding in Myanmar. Section 18 states that the Central Authority shall not refuse the request of any State on the ground of it being a bank and financial institutions secrecy. Provided that if it is found on scrutiny that it infringes one of the following facts, the request may be refused in whole or in part:

- not being in conformity with the stipulations of [the MACM] Law;
- encroaching on the sovereignty of the State, its security prevalence of law and order or public interests;
- there being cause to believe that the race, sex, religion, nationality, ethnic origin, political opinion or personal stand of any individual is encroached;
- there being a prohibition of conducting investigation, prosecution and judicial proceedings of an offence similar to the offence requested, under the existing laws of the Union of Myanmar;
- being an offence of military nature actionable under the Defence Services Act, 1959;
- the subject matter relating to the request being contrary to the laws of Myanmar; and
- being a request incidental to matters reserved in the international convention to which Myanmar is a State Party (Section 18, a-g, *ibid.*)”

863. Article 3 of the ASEAN MLA Treaty contains similar provisions including the political/military nature of the offence, offence already tried, amongst which is the fact that the offence does not constitute an offence under the requested state’s law. While the MACM has not been the subject of judicial consideration, the provisions for refusal do not seem to be unduly unreasonable or restrictive except in relation to the requirement for dual criminality under the ASEAN MLA Treaty.

864. To handle requests for assistance in criminal matters, the Central Authority (CA) is the Minister of Home Affairs together with other senior officials. The granting of, or refusal to render assistance is within the CA’s authority. Although the CA’s actions are based on consensus, it may (when necessary) delegate its powers and duties to any of its members or to a body headed by any of the CA’s members (Section 7). The establishment of the Central Authority is consistent with Article 4 of the ASEAN MLA Treaty (article 4) which requires each contracting party to appoint a Central Authority to make and receive requests pursuant to the treaty.

865. The MACM law and the MACM Rules sets out the process for responding to an international request. In urgent circumstances, the MACM Law and Rules allow a request to be made orally, by telephone, facsimile, electronic mail or any other electronic means. The timeliness and effectiveness of this process, however, is yet to be tested as Myanmar has yet to receive a request under this law.

866. There is no provision in the MACM Law for Myanmar to refuse assistance solely on the ground that a request relates to fiscal matters.

867. Under Section 18 of the MACM Law, the Central Authority shall not refuse the request of any foreign state on the ground of it being a bank and financial institutions secrecy. While there are circumstances listed under Section 18 to refuse such a request, the circumstances listed would most likely not be applicable in straight forward law enforcement investigations and neither do they relate directly to banking nor financial secrecy.

868. Myanmar's MACM Law was patterned, to a large extent, after Article 18, Sections 3 and 21 of the Palermo Convention.

869. There does not seem to be any prohibition in the MACM law and rules that would preclude the use of law enforcement powers in undertaking mutual legal assistance.

870. There are no provisions in the MACM law to determine the best venue for prosecution of defendants in cases that are subject to prosecution in more than one country.

### **Recommendation 37**

871. The provision of mutual legal assistance is subject to the requirement of dual criminality. There is no provision of less intrusive and no compulsory measures to be taken in the absence of dual criminality.

872. The non-criminalization of terrorist financing, the limited number of predicate offences in the CMLL, and dual criminality requirement significantly limit the extent of assistance that Myanmar may provide.

### **Recommendation 38**

873. The framework for mutual legal assistance on freezing seizing and confiscation measures is the MACML, the ASEAN MLA treaty and the CMLL. As noted in Section 2 of this report, Myanmar has no terrorist financing law.

874. The CA is also empowered to act on requests to search, seize, control, restrain or confiscate exhibits (property) which shall be administered by the CA. However, since the scope of predicate offences for money laundering is limited, terrorist financing is not criminalized and there is a requirement for dual criminality, measures to freeze seize and confiscate cannot be rendered in the context of investigations or prosecutions into those offences.

875. There is no provision for equal value confiscation and therefore cannot be provided in response to an MLA request. Likewise, there are no arrangements for coordinating seizure and confiscation actions with other countries.

876. It would seem that the MACM law allows some sort of "asset sharing". Section 26 (b) of the law states that, "if there exists no bilateral agreement between the two States, the confiscated property shall vest in the State." No asset forfeiture fund has been considered to date.

877. There is no legal basis to respond to requests by foreign countries to identify, freeze, seize and confiscate property used for the financing of terrorism, terrorist acts or terrorist organisations.

### **Statistics (applying R.32):**

878. Myanmar authorities have expressed their willingness to cooperate and utilize the MACM law but it has yet to receive a specific request for mutual legal assistance.

### **Effectiveness**

879. It is noted that the Guidelines for UN Agencies, etc., as well as the MACM Law were issued based on the observations and assistance provided by the UNODC. It is observed that the quality of the regulation and/or legislation greatly improve with assistance. There is a sound structure in place that would benefit from further refinement and from any technical assistance that would be extended in this regard.

880. The effectiveness of the system has not been tested, as Myanmar advised that no mutual legal assistance has been received to date. It is also constrained in respect of terrorism financing since it has not been criminalised in the country.

**Recommendations and Comments**

**Recommendation 36**

881. Myanmar should:

- Include provisions for equal value confiscation in the MACM law;
- Devise mechanisms for determining the best value for prosecution of defendants in the interests of justice that are subject to prosecution in more than one country; and
- Extend the list of predicate offences to cover all designated categories.

**Recommendation 37**

882. Myanmar should adopt measures to provide mutual legal assistance in the absence of dual criminality particularly for less intrusive and non compulsory measures.

**Recommendation 38**

883. Myanmar should also:

- Include provisions for equal value confiscation;
- Implement arrangements for coordinating seizure and confiscation actions with other countries; and
- Consider establishing an asset forfeiture fund that could be used for law enforcement training purposes.

**Special Recommendation V**

884. Myanmar should review its draft Anti Terrorism Law to ensure that it complies with international requirements and enact it as soon as possible.

**6.3.3 Compliance with Recommendations 36 to 38, Special Recommendation V, and R.32**

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
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<b>R.36</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Inability to provide the widest possible range of assistance because of the absence of specific TF legislation and the limited list of ML predicate offences.</li> <li>• MACM law has yet to be utilized. Effectiveness could not be measured as of this time.</li> </ul>
<b>R.37</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• No mechanism to provide assistance in the absence of dual criminality particularly for less intrusive and non compulsory measures.</li> </ul>
<b>R.38</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Provisions for search, seizure and confiscation of property are not in place for all of the designated predicate offences for money laundering.</li> <li>• No equal value confiscation.</li> <li>• No arrangement for coordinating seizure and confiscation actions.</li> </ul>
<b>SR.V</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Terrorism and TF are not yet criminalized in Myanmar and is thus excluded from the coverage of the term “offence” under Section 3 (a), Chapter I , MACM Law</li> </ul>
<b>R.32</b>	<b>NA</b>	<ul style="list-style-type: none"> <li>• Statistics not available.</li> </ul>

## **6.4 Extradition (R.37, 39, SR.V, R.32)**

### **6.4.1 Description and Analysis**

#### *Legal Framework:*

885. Myanmar’s extradition law is contained in the old Burma Extradition Act 1901. Authorities have, however, indicated that this statute is no longer used or enforced despite not being repealed. Authorities indicated that a new law is being prepared, although a time line for enactment was not provided. At the moment there is no enforceable extradition law in Myanmar.

886. And while Myanmar has ratified the Vienna and Palermo Conventions, it has (importantly) expressed reservations in relation to the entirety of Articles 6 and 16 respectively which are both of the Conventions’ comprehensive frameworks on extradition. The content of the reservation with respect to the Vienna Convention is that Myanmar does not consider itself bound with respect to its own nationals while the content of the reservation for the Palermo Convention is unconditional. The UN Convention Against Corruption contains similar extradition articles to the other Conventions named but Myanmar has not yet moved to ratify or accede to that Convention.

887. Accordingly Myanmar has no framework within which to provide extradition to a requesting country or request extradition from another country. Myanmar has resorted, however, to deportations with its neighbours China and Thailand and did provide statistics in relation thereto. From the period covering 2004-2007, China handed over 12 Myanmar nationals back to Myanmar; 4 Myanmar nationals were handed over by Thailand in 2005.

### **6.4.2 Recommendations and Comments**

888. Myanmar authorities should:

- Enact an extradition law in accordance with the requirements of the Palermo and Vienna Conventions; and
- Withdraw its reservations to Articles 6 and 16 of the Vienna and Palermo Conventions respectively.

#### 6.4.3 Compliance with Recommendations 37 & 39, Special Recommendation V, and R.32

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	NC	<ul style="list-style-type: none"> <li>• No enforceable extradition law – existing extradition law is not used</li> <li>• Reservations to Vienna and Palermo Conventions on extradition are inconsistent with AML/CFT obligations.</li> </ul>
R.37	PC	<ul style="list-style-type: none"> <li>• Limited by dual criminality.</li> </ul>
SR.V	NC	<ul style="list-style-type: none"> <li>• No anti-terrorism and terrorist-financing legislation in place.</li> </ul>
R.32	PC	<ul style="list-style-type: none"> <li>• Statistics not comprehensive.</li> </ul>

### 6.5 Other Forms of International Co-operation (R.40, SR.V, R.32)

#### 6.5.1 Description and Analysis

##### Recommendation 40

889. Myanmar has signed a number of international, regional and bilateral agreements and is able to provide assistance to international counterparts. The Ministry of Home Affairs, including the Myanmar Police Force and Department of General Administration; the Ministry of Foreign Affairs; the Ministry of Immigration and Revenue; Deputy Attorney General; and the Ministry of Finance and Revenue are all members of the Myanmar’s MLA Central Authority. The Attorney General’s Office is the designated contact point for MLA assistance.

890. There are clear and efficient mechanisms on assistance and information sharing, particularly in the areas of drug trafficking, money laundering and human trafficking. Three distinct coordinating bodies have been established namely: the Central Committee for Drug Abuse Control (CCDAC), the Central Control Board on Money Laundering (CCB), and the Central Body for Suppression of Trafficking in Persons (CBSTP). They have been formed and empowered to share information under their respective legislation.

891. In the past four years, officers of CCDAC have undertaken joint investigations with law enforcement agencies of the PRC, Thailand, Lao PDR, and the United States.

892. The CCDAC and the FIU (under the CCB) have undertaken a total of 64 cases of information-sharing in relation to three law enforcement concerns as detailed in the table below:

**Table: Information Exchange in relation to Drug Trafficking, Money Laundering and Human Trafficking**

	Country/Agency	Number of Exchanging Information	Remarks
1	Australia Australian Police force	6	Drug Trafficking
2	United States Drug Enforcement Administration	13	Drug Trafficking
3	Hong Kong Hong Kong Police Force	4	Drug Trafficking & Money Laundering
4	India	3	Drug Trafficking
5	Thailand Office of the Narcotic Control Board Anti-Money laundering Office	10 7	Drug Trafficking & Repatriation Drug Trafficking & Money Laundering
6	Taiwan	1	Drug Trafficking
7	China China National Narcotics Control Board Yunnan Provincial Narcotic Control Board	8 10	Drug Trafficking Drug Trafficking & Human trafficking
8	Singapore Singapore Police Force	2	Drug Trafficking

893. Myanmar is also a member of INTERPOL and ASEAN INTERPOL and provides cooperation in international and regional activities. Most recently it was involved “Operation Jupiter-Southeast Asia”, involving the police in China and Myanmar with INTERPOL’s support. This resulted in the arrests of four key suspects involved in the distribution of fake anti-malarial medicines across the China-Myanmar border and the seizure of 24,720 boxes of counterfeit drugs.

894. The CCB (FIU) has entered into Memoranda of Understanding (MOUs) with Thailand’s AMLO and Indonesia’s FIU (PPATK). It is currently negotiating other MOUs including with the People’s Republic of China. Myanmar’s FIU has also taken steps to apply for membership in the Egmont Group of FIUs with the co-sponsorship of Japan’s Financial Intelligence Centre (JFIC) and Thailand’s Anti-Money Laundering Office (AMLO).

895. Myanmar Customs has established contact points with Customs authorities in the region, including members of ASEAN. The information exchange has focused on illegal drugs and avoidance of customs taxes. Myanmar has also entered into a bilateral agreement with the People’s Republic of China in February 2007 to further strengthen the cooperation in combating drug and human trafficking, smuggling, fighting against transnational crimes and terrorism, and exchange of information on cross border crimes in order to safeguard the border areas. It also entered into an agreement with the Lao PDR in June 2007 to combat drug trafficking, to fight against trans-national crime and terrorism, and to secure safety and security of the shared border areas.

896. There have been limited information exchanges in the regulatory and supervisory areas, as there are neither local financial institutions operating offshore nor international financial institutions operating in Myanmar.

### 6.5.2 Recommendations and Comments

897. Myanmar authorities should:

- Consider developing information exchange gateways between the CBM and other banking sector regulators in ASEAN; and
- Develop appropriate mechanisms for information exchange on terrorism and terrorism financing.

### 6.5.3 Compliance with Recommendation 40, Special Recommendation V, and R.32

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
<b>R.40</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• No clear gateway for counter terrorism or financing of terrorism information sharing due no terrorism and terrorism financing legislation.</li> <li>• Scope of information sharing has been mostly limited to two categories of predicate offences.</li> </ul>
<b>SR.V</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• No anti-terrorism and terrorist-financing legislation in place.</li> </ul>
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Limited statistics</li> </ul>

## 7. OTHER ISSUES

### 7.1 Other relevant AML/CFT measures or issues

#### 7.1 Resources and Statistics

##### Recommendation 30 – Resources

898. There are dedicated resources deployed to implement the CMLL. Staff are committed and work long hours, and at times under difficult conditions.

899. There is an ongoing need for training and capacity building, particularly in the areas of financial investigation and prosecution of ML cases, and in areas beyond drug related money laundering. There is also a need to understand the Hundi system, trade based money laundering and smuggling techniques.

900. Continued training should be provided to enhance the skills of CBM regulatory staff, particularly in respect of AML/CFT compliance.

901. Greater resources should be devoted to regulating the DNFBP sectors, particularly the precious metals and stones dealers, and hotels with gaming operations.

##### Recommendation 32 – Statistics

902. A centralised coordination point, probably in the FIU, would ensure consistency and adequate reporting of accomplishments by Myanmar.

	Rating	Summary of factors relevant to Recommendations 30 and 32 underlying overall rating
<b>R.30</b>	PC	<ul style="list-style-type: none"><li>• Lack of independence</li><li>• Lack of technical skills</li><li>• Customs not resourced adequately</li></ul>
<b>R.32</b>	PC	<ul style="list-style-type: none"><li>• Limited statistics</li><li>• Discrepancies in statistics</li></ul>

#### 7.2 General framework for AML/CFT system (see also section 1.1)

903. Myanmar authorities and officials do not have a detailed technical understanding of the requirements of an effective AML/CFT framework. Myanmar's response on AML issues has been ad hoc, and without balancing or considering broader AML/CFT requirements. However, the ME team observed and noted a willingness and keenness to understand the requirements of the FATF AML/CFT international standards. Myanmar has been a very willing partner in the very limited technical assistance and training afforded to the country.

904. Myanmar's AML/CFT competent authorities would benefit from additional international technical cooperation and sharing of implementation experiences with foreign competent authorities, not only in the areas of FIU and law enforcement, but also in the regulatory and supervisory domains in both the financial and DNFBP sectors.

## TABLES

**Table 1: Ratings of Compliance with FATF Recommendations**

**Table 2: Recommended Action Plan to improve the AML/CFT system**

**Table 3: Authorities' Response to the Evaluation (if necessary)**

**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
<b>Legal systems</b>		
1. ML offence	PC	<ul style="list-style-type: none"> <li>• The ML offence lacks some of the elements outlined in Article 3(1)(b)(c) of the Vienna Convention and Article 6(1) of the Palermo Convention.</li> <li>• Definition of property does not include all types of property.</li> <li>• Not all designated categories of offences are included.</li> <li>• Ancillary offence of aiding and abetting is limited to financial assistance.</li> </ul>
2. ML offence – mental element and corporate liability	PC	<ul style="list-style-type: none"> <li>• ML offence does not effectively extend to legal persons.</li> <li>• Lack of effective, proportionate and dissuasive civil or administrative sanctions.</li> </ul>
3. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> <li>• Lack of use of available powers to confiscate the proceeds of non-drug crime in Myanmar.</li> <li>• Myanmar law does not provide for the confiscation of instrumentalities intended for use in any money laundering offences.</li> <li>• Property in Myanmar law does not mean all the “property subject to confiscation”.</li> </ul>

		<ul style="list-style-type: none"> <li>Myanmar law does not provide provisions to prevent or void actions, whether contractual or otherwise</li> </ul>
<b>Preventive measures</b>		
4. Secrecy laws consistent with the Recommendations	PC	<ul style="list-style-type: none"> <li>Section 19(b) of the CMLL has not explicitly overridden all secrecy provisions.</li> <li>The sharing of CDD information between banks is not allowed except by the approval of the CBM.</li> <li>Potential obstacles to information sharing on TF.</li> </ul>
5. Customer due diligence	NC	<ul style="list-style-type: none"> <li>Circumstances for mandatory CDD as defined in 5.2 (b) – (e) are not set out in law, regulations or other enforceable means.</li> <li>Reliability of citizen registration card as a source of verification is inadequate as it is not legally mandatory to update information in the registration card.</li> <li>Verification of any person purporting to act on behalf of the customer is stated in the CBM Guidelines only and not in law or regulation.</li> <li>Identification and verification of beneficial owner is not set out in law, regulation or other enforceable means.</li> <li>Ongoing due diligence is a banking practice only and not set out in law or regulation.</li> <li>Information on the purpose and intended nature of the business relationship is a banking practice only.</li> <li>Risk profiling of customers for enhanced CDD has not been considered.</li> <li>No requirement to terminate business relationship should subsequent CDD be unsatisfactory.</li> <li>CDD on existing customer is not implemented.</li> </ul>
6. Politically exposed persons	NC	<ul style="list-style-type: none"> <li>Not obligated by way of laws, regulations or guidelines.</li> </ul>
7. Correspondent banking	NC	<ul style="list-style-type: none"> <li>Not obligated by way of laws, regulations or guidelines.</li> </ul>

8. New technologies & non face-to-face business	C	<ul style="list-style-type: none"> <li>Myanmar has a policy of not permitting electronic or internet banking, ATM, or any form of non face-to-face customers.</li> </ul>
9. Third parties and introducers	PC	<ul style="list-style-type: none"> <li>No explicit regulatory requirements and guidance issued on third party introducers.</li> </ul>
10. Record keeping	PC	<ul style="list-style-type: none"> <li>The law does not specifically require all designated reporting entities to maintain information on customer records and business correspondence for five years following the termination of an account of business relationship.</li> <li>Effective implementation of new requirements not demonstrated.</li> </ul>
11. Unusual transactions	PC	<ul style="list-style-type: none"> <li>Limited requirement to pay special attention to unusual patterns of transactions.</li> <li>No guidance or requirement for financial institutions to document the analysis of unusual transactions.</li> <li>No requirement to keep documentation on the analysis of unusual transactions for at least 5 years.</li> <li>Lack of effective implementation of a system of monitoring transactions.</li> <li>No requirement or guidance given to other non-bank financial institutions, such as the insurance and securities sectors.</li> </ul>
12. DNFBP – R.5, 6, 8-11	NC	<ul style="list-style-type: none"> <li>There are no requirements in the CMLL, CMLR, or CCB orders requiring compliance with any of the FATF standards in regards to CDD and record keeping.</li> <li>Casino/slot machine operations at the three gambling exempted hotels are not required to conduct CDD and record keeping.</li> </ul>
13. Suspicious transaction reporting	PC	<ul style="list-style-type: none"> <li>A lack of definition of what is “suspicious” under the CMLL.</li> <li>The scope of STR reporting is limited to a checklist.</li> <li>TF has not been criminalised; therefore, there is no mandatory obligation for financial institutions to file a STR in relation to terrorism, terrorist acts, terrorist organisations or those who finance terrorism.</li> </ul>

		<ul style="list-style-type: none"> <li>• No provision in Law, regulation and other enforceable means to report a STR on an attempted transaction.</li> <li>• No STR reporting obligations to all holders of Authorised Dealer Licenses (Money Changer) including potential new licensees.</li> </ul>
14. Protection & no tipping-off	PC	<ul style="list-style-type: none"> <li>• It appears that the tipping off provision does not apply to investigation officer, attorney, notary public, legal professional, accountant or any other person in discharging his duty in conformity with law.</li> <li>• A lack of clear protection for Directors as well as for a reporting institution itself if they report STR in good faith.</li> </ul>
15. Internal controls, compliance & audit	NC	<ul style="list-style-type: none"> <li>• No mandatory obligations for reporting institutions to establish an AML/CFT internal compliance programme.</li> <li>• No mandatory requirements for independent audit function.</li> <li>• No guidance on the functions and responsibilities of a compliance officer.</li> <li>• No enabling powers for compliance officer to access relevant records on a timely basis.</li> <li>• No guidance on employees screening.</li> <li>• No mandatory requirement for on-going training for employees.</li> <li>• Securities sector not subjected to requirements for an internal AML/CFT programme.</li> <li>• Unable to ascertain if the CBM Guidelines on AML/CFT has been effectively implemented since the revised guidelines were issued in January 2008</li> </ul>
16. DNFBP – R.13-15 & 21	PC	<ul style="list-style-type: none"> <li>• The coverage of DNFBPs does not include all private sector dealers as defined by the FATF Recommendations.</li> <li>• There is no specific provision in the CMLL, Rules and other enforceable means which require DNFBPs to establish and maintain internal procedures, policies and control to prevent money laundering and financing of terrorism.</li> <li>• The existing provision in the CMLL does not provide adequate “safe harbour” to reporting entities and is insufficient to</li> </ul>

		<p>include DNFBPs.</p> <ul style="list-style-type: none"> <li>• No effective, proportionate and dissuasive measures or sanctions.</li> </ul>
17. Sanctions	PC	<ul style="list-style-type: none"> <li>• Lack of effective, proportionate and dissuasive sanctions.</li> <li>• There is no criminal sanction for legal persons (Financial Institutions) under the CMLL.</li> </ul>
18. Shell banks	PC	<ul style="list-style-type: none"> <li>• Absence of regulatory guidance to prohibit business relationship with shell banks either directly or indirectly.</li> <li>• No requirements for financial institutions to satisfy themselves that their respondent financial institutions do not allow their accounts to be used by shell banks.</li> </ul>
19. Other forms of reporting	C	<ul style="list-style-type: none"> <li>• This recommendation is fully observed</li> </ul>
20. Other NFBP & secure transaction techniques	PC	<ul style="list-style-type: none"> <li>• Myanmar has not carried out a formal risk assessment of vulnerabilities posed by other non-financial businesses and professions.</li> <li>• No particular measures have been taken to reduce reliance on cash and encourage secure automated transfer system</li> </ul>
21. Special attention for higher risk countries	NC	<ul style="list-style-type: none"> <li>• No guidance from the authorities in dealing with countries which have not sufficiently applied the FATF Recommendations</li> <li>• No specific measures for higher risk countries.</li> </ul>
22. Foreign branches & subsidiaries	N/A	<ul style="list-style-type: none"> <li>• Myanmar currently has no financial institutions operating overseas and does not allow foreign banks to set-up branches in Myanmar.</li> </ul>
23. Regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> <li>• There has been no effective enforcement of the CBM licensing requirement for Hundi operators or to consider other options of regulating this sector.</li> <li>• There is no AML/CFT supervisory framework for Authorised License Dealers.</li> <li>• Lack of effective regulation and supervision.</li> </ul>
24. DNFBP - regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> <li>• AML CFT requirements have not been extended to the DNFBP sector.</li> <li>• No supervision of hotels with gambling or</li> </ul>

		casino operations.
25. Guidelines & Feedback	NC	<ul style="list-style-type: none"> <li>• The FIU / CBM does not provide detail guidance for banks on STR reporting.</li> <li>• There is no guidance issued on STRs for the non-bank financial institution.</li> <li>• Deficiencies in reporting form issued by the FIU.</li> <li>• Inadequate feedback from the CCB/ Myanmar FIU to Financial Institutions regarding STRs submitted.</li> <li>• The guideline issued by the CBM on AML/CFT is not comprehensive.</li> <li>• There is no guideline for authorised foreign exchange dealers.</li> <li>• No guidance has been issued to DNFBPs.</li> <li>• No outreach or awareness programme has been conducted.</li> <li>• No consultation or engagement with the SROs has been undertaken to develop appropriate guidance for their members.</li> </ul>
<b>Institutional and other measures</b>		
26. The FIU	PC	<ul style="list-style-type: none"> <li>• The role of the CCB undermines the independence of the MFIU.</li> <li>• Very limited guidance or feedback provided to reporting institutions.</li> <li>• Gaps in the analysis process of STRs, and no analysis of CTRs and PTRs is made.</li> <li>• Limited number of cases referred to law enforcement authorities for investigation.</li> </ul>
27. Law enforcement authorities	LC	<ul style="list-style-type: none"> <li>• No dedicated team to investigate TF.</li> </ul>
28. Powers of competent authorities	LC	<ul style="list-style-type: none"> <li>• There is no power to investigate the financing of terrorist groups outside of the predicate offences they commit.</li> </ul>
29. Supervisors	PC	<ul style="list-style-type: none"> <li>• The CBM has inadequate powers of enforcement and administrative sanctions in regard to the AML/CFT supervisory framework.</li> <li>• The power for the CBM to compel production of records is limited to the information, data and records of deposits and withdrawals.</li> <li>• Insufficient AML supervisory powers for</li> </ul>

		authorised foreign exchange dealers.
30. Resources, integrity and training	PC	<ul style="list-style-type: none"> <li>• The MFIU lacks sufficient technical infrastructure to deal with the analysis process of STRs.</li> <li>• There is no independent budget for the MFIU.</li> <li>• Despite considerable training the results of the MFIU analysis process has not resulted in many cases of overt prosecution action being taken.</li> <li>• Lack of resources for financial investigations of non-drug crimes.</li> <li>• The Bank Regulation Department has not been resourced properly to fulfil its supervisory and regulatory function.</li> <li>• The training programmes on AML/CFT for the CBM staff have been insufficient.</li> </ul>
31. National co-operation	PC	<ul style="list-style-type: none"> <li>• Lack of identification of key structural issues related to effective AML and CTF implementation.</li> <li>• Customs do not take a lead role in AML activities.</li> <li>• Insufficient involvement of the DNFBP sector.</li> </ul>
32. Statistics	PC	<ul style="list-style-type: none"> <li>• The MFIU does not retain statistics on the number of spontaneous referrals made by the MFIU.</li> <li>• Limited non-drug related restraint and confiscation in Myanmar.</li> <li>• There are only declaration statistics for Yangon International Airport.</li> <li>• There are limited statistics over the last four years suggesting that the declarations made are not readily searchable.</li> <li>• Statistics on on-site examination conducted by Bank Regulation Department and Bank Supervision Department of the CBM are maintained by the CBM.</li> <li>• Statistics are not comprehensive.</li> </ul>
33. Legal persons – beneficial owners	PC	<ul style="list-style-type: none"> <li>• Lack of transparency.</li> <li>• Lack of beneficial ownership requirements and information.</li> <li>• Lack of timely access to information by competent authorities on information of ownership and control of legal persons.</li> </ul>
34. Legal arrangements – beneficial owners	NA	

<b>International Co-operation</b>		
35. Conventions	PC	<ul style="list-style-type: none"> <li>• The provisions of the NDPSL, CMLL and MACML are not fully compliant with the Vienna and Palermo Conventions.</li> <li>• Doubts exist on the applicability of the CMLL to legal persons.</li> <li>• Extradition law needs updating to include money laundering, terrorism and terrorist financing as extraditable offences.</li> </ul>
36. Mutual legal assistance (MLA)	PC	<ul style="list-style-type: none"> <li>• Inability to provide the widest possible range of assistance because of the absence of specific TF legislation and the limited list of ML predicate offences.</li> <li>• MACM law has yet to be utilized. Effectiveness could not be measured as of this time.</li> </ul>
37. Dual criminality	PC	<ul style="list-style-type: none"> <li>• No mechanism to provide assistance in the absence of dual criminality particularly for less intrusive and non compulsory measures.</li> <li>• Limited by dual criminality.</li> </ul>
38. MLA on confiscation and freezing	PC	<ul style="list-style-type: none"> <li>• Provisions for search, seizure and confiscation of property are not in place for all of the designated predicate offences for money laundering.</li> <li>• No equal value confiscation.</li> <li>• No arrangement for coordinating seizure and confiscation actions.</li> </ul>
39. Extradition	NC	<ul style="list-style-type: none"> <li>• No enforceable extradition law – existing extradition law is not used</li> <li>• Reservations to Vienna and Palermo Conventions on extradition are inconsistent with AML/CFT obligations.</li> </ul>
40. Other forms of co-operation	PC	<ul style="list-style-type: none"> <li>• No clear gateway for counter terrorism or financing of terrorism information sharing due no terrorism and terrorism financing legislation.</li> <li>• Scope of information sharing has been mostly limited to two categories of predicate offences.</li> </ul>
<b>Nine Special Recommendations</b>		<b>Rating</b>
SR.I Implement UN instruments	PC	<ul style="list-style-type: none"> <li>• Myanmar has not yet criminalized TF</li> <li>• Provisions in the CMLL referring to acts of terrorism are not compliant with the TF Convention</li> </ul>
SR.II Criminalise terrorist financing	NC	<ul style="list-style-type: none"> <li>• There is no law specifically criminalizing</li> </ul>

		terrorist financing (TF) as required under the TF Convention.
SR.III Freeze and confiscate terrorist assets	NC	<ul style="list-style-type: none"> <li>• No mechanism in place to give effect to UNSCRs 1267 and 1373.</li> <li>• No mechanism in place that would enable authorities to take action on funds intended to be used for terrorism.</li> </ul>
SR.IV Suspicious transaction reporting	NC	<ul style="list-style-type: none"> <li>• There is no Terrorist Act in Myanmar.</li> <li>• No mandatory obligation for financial institutions to submit STRs in relation to terrorist financing, terrorist act or terrorist organisations.</li> <li>• No sanction provisions.</li> </ul>
SR.V International co-operation	NC	<ul style="list-style-type: none"> <li>• Terrorism and TF are not yet criminalized in Myanmar and is thus excluded from the coverage of the term “offence” under Section 3 (a), Chapter I , MACM Law.</li> <li>• No anti-terrorism and terrorist-financing legislation in place.</li> </ul>
SR VI AML requirements for money/value transfer services	NC	<ul style="list-style-type: none"> <li>• Existence of significant inflow and outflow from informal and unregulated channels.</li> <li>• There is no provision in Law, Regulation and other enforceable means, which require the licensing or registration of informal money remitters other than as financial institutions.</li> <li>• Operators of informal channels are not identified and existing laws enforced.</li> <li>• Operators of informal channels are not subjected to AML/CFT measures.</li> <li>• No efforts by the authorities to recognize these informal sectors and take action to prevent this sector from being used as a conduit for money laundering or terrorist financing.</li> <li>• Inadequate AML framework for regulated providers.</li> </ul>
SR VII Wire transfer rules	NC	<ul style="list-style-type: none"> <li>• There is no detailed instruction issued by the CBM to the banks in relation to domestic and cross-border transfers.</li> <li>• There is no requirement for the ordering bank to ensure that information relating to the originator be transcribed onto the wire transfer message and to accompany the message.</li> </ul>

		<ul style="list-style-type: none"> <li>• There is no requirement in law, regulation or other enforceable means for beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfer without complete originator information.</li> <li>• There is no sanction mechanism related to the implementation of SR VII.</li> </ul>
SR.VIII Non-profit organisations	PC	<ul style="list-style-type: none"> <li>• The sector and its related laws and regulations have not been reviewed to check TF vulnerabilities.</li> <li>• No comprehensive outreach to NPO sector.</li> <li>• No requirements to maintain records for 5 years.</li> </ul>
SR.IX Cross Border Declaration & Disclosure	PC	<ul style="list-style-type: none"> <li>• There is a lack of effectiveness in implementing Myanmar's currency and valuable item control regime outside of Yangon International Airport.</li> <li>• The declarations received are not computerized making any meaningful analysis virtually impossible.</li> <li>• Declaration data is not readily made available to the MFIU.</li> <li>• UNSCRs 1267 and 1373 are not provided to Myanmar Customs.</li> <li>• Myanmar has no law in respect to the importation of funds to be used to support terrorist organizations.</li> </ul>

**Table 2: Recommended Action Plan to Improve the AML/CFT System**

AML/CFT System	Recommended Action (listed in order of priority)
<b>1. General</b>	<b>No text required</b>
<b>2. Legal System and Related Institutional Measures</b>	
Criminalisation of Money Laundering (R.1, 2 & 32)	<p>Myanmar should amend the CMLL to criminalise the following:</p> <ul style="list-style-type: none"> <li>i. assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;</li> <li>ii. the concealment or disguise of the true nature, source, location, disposition, movement, or ownership of, or with respect to property knowing that such property is the proceed of crime; and</li> <li>iii. the acquisition, possession, or use of property, knowing, at the time of receipt, that such property is the proceeds of crime.</li> </ul> <p>Myanmar should amend the CMLL to extend the definitions of property to provide for all types of property, including property:</p> <ul style="list-style-type: none"> <li>ii. that is wholly or partly derived or realised, whether directly or indirectly, from the commission of the predicate offence; and</li> <li>iv. property situated outside of Myanmar.</li> </ul> <p>Myanmar should amend the CMLL to include a specific provision that a person may be charged with a money laundering offence in circumstances where that person was not involved in the commission of the predicate offence.</p> <p>Myanmar should also expand further list of predicate offences to include terrorism and terrorist financing, sexual exploitation, illicit trafficking in stolen and other goods, bribery, environmental crimes, murder, robbery or theft, piracy, insider trading and market manipulation.</p> <p>While a draft CCB notification is already submitted for Cabinet consideration, there is still room to further improve the draft’s provisions. Myanmar should consider defining each of the additional predicate offences as well as the scope of some of the crimes mentioned therein. For instance, the draft notification could provide a glossary defining the term “racketeering” or providing the scope of “environmental</p>

	<p>crimes”. This will greatly assist the authorities in the implementation of the law.</p> <p>Myanmar should also amend the following two Sections of the CMLL:</p> <ul style="list-style-type: none"> <li>• Section 2 of the CMLL to delete the words “any offence cognisable under this Law” and substitute the words “any offence mentioned in Sections 5(a) and 5(b) of this Law”; and</li> <li>• Section 32 of the CMLL to remove reference to “financial assistance” so as not to limit the scope of the ancillary offence of aiding and abetting.</li> </ul> <p>Myanmar should amend the CMLL to extend criminal liability to legal persons and include provisions for effective, proportionate and dissuasive criminal, civil or administrative sanctions in respect of such persons.</p>
Criminalisation of Terrorist Financing (SR.II, R.32)	Myanmar should criminalise terrorist financing in accordance with the Terrorist Financing Convention and designate TF as a predicate offence to money laundering.
Confiscation, freezing and seizing of proceeds of crime (R.3, R.32)	<p>Myanmar should:</p> <ul style="list-style-type: none"> <li>• apply its laws more extensively to the confiscation of assets beyond drug related offences; and</li> <li>• amend the CMLL to cover all property subject to confiscation, including proceeds from, instrumentalities used or intended to be used in the commission of ML, FT or other predicate offences.</li> </ul>
Freezing of funds used for terrorist financing (SR.III, R.32)	<p>Myanmar should:</p> <ul style="list-style-type: none"> <li>• ensure that the proposed Anti-Terrorism law currently being drafted incorporates all the required elements to freeze terrorist funds or other assets of persons designated in accordance with UNSCRs 1267 and 1373; and</li> <li>• include other measures in the draft law to give legal effect to freezing actions taken by other countries; de-listing requests and unfreezing funds of de-listed persons; unfreezing funds of persons inadvertently affected by freezing mechanism; access to frozen funds for expenses and other purposes; review of freezing decisions; freezing, seizing ,and confiscation in other circumstances; protection of rights of third parties; enforcing the required obligations; and other provisions under Special Recommendation III.</li> </ul>
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	<p>Myanmar should implement the following in respect of its FIU:</p> <ul style="list-style-type: none"> <li>• The Head of the FIU should have the power to form</li> </ul>

	<p>the IB without having to submit the matter to the CCB. Members of the IB should be distinct from those involved in the analysis process. The role of the CCB should be limited to a National Coordination Committee and a policy role, and to its existing quasi-judicial role in the process of asset restraint and confiscation when illegally obtained property is discovered and the matter referred to the PSB.</p> <ul style="list-style-type: none"><li>• The MFIU should retain statistics on the number of spontaneous referrals to foreign FIUs made by the MFIU.</li><li>• The MFIU should provide a standard reporting form to all persons and bodies in Myanmar that are required to report CTRs, PTRs and STRs.</li><li>• The MFIU should release an Annual Report at a minimum to all persons and bodies in Myanmar that are required to report CTRs, PTRs and STRs. The Annual Report should contain CTR, PTR and STR statistics, qualitative and quantitative analysis of these statistics, as well as case studies and current money laundering typologies.</li><li>• All persons and bodies who file STRs should be given at a minimum an acknowledgement that the STR has been received.</li><li>• The MFIU should allow CTRs, PTRs, and STRs to be filed by fax. Consideration should be given to an electronic means of filing STRs in line with the circumstances of Myanmar's overall development.</li><li>• STRs should be entered into the same database as the CTRs and PTRs to allow automatic cross-referencing of individuals and entities.</li><li>• Myanmar should consider seconding additional customs staff to work in the FIU to enhance cross border strategic and operational analysis.</li><li>• The MFIU should move to Nay Pyi Taw or the Head of the FIU and his deputies should be based in Yangon. If the MFIU moves to Nay Pyi Taw, the method of receipt of CTRs, PTRs and STRs needs to be changed to a more efficient system.</li><li>• The head of the MFIU should have a specific budget which is either drawn from the main budget of the MPF or independently assigned by the CCB from the Ministry of Home Affairs. This would allow the head of the MFIU to plan for growth and</li></ul>
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	development of the MFIU as reporting of CTRs, PTRs and STRs increases.
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	<p>Myanmar should undertake the following in relation to law enforcement investigations:</p> <ul style="list-style-type: none"> <li>• Increase financial investigation resources to cover human trafficking, corruption, fraud, smuggling, in addition to drug related cases.</li> <li>• Allocate dedicated resources to investigate cases of financing of terrorism following the enactment of Myanmar’s proposed law in relation to the financing of terrorism.</li> <li>• Consider establishing a financial investigation unit which has a mandate to undertake financial investigations into a range of predicate crimes, including the financing of terrorist acts.</li> <li>• Myanmar Customs should have the power to obtain banking records for investigations without having to involve the MFIU.</li> <li>• Identify from various sources, and not limited to STRs, cases for investigation and prosecution under the CMLL.</li> </ul>
Cross Border declaration or disclosure (SR.IX)	<p>Myanmar should undertake the following to enhance the operations of its Customs agency:</p> <ul style="list-style-type: none"> <li>• Increase resources in the border areas of Myanmar to interdict the smuggling of currency and valuable items. To this end awareness training should be given to those units of the Myanmar law enforcement agencies and military who conduct operations on the border areas in respect of the smuggling of currency and valuable items.</li> <li>• Keep statistics of declarations received for every border crossing point not just Yangon International Airport.</li> <li>• Computerize the declarations received by Myanmar Customs to allow both the Myanmar Customs and the MFIU to conduct analysis of disclosures below US\$10,000, as well as the production of effective statistics.</li> <li>• Make available the lists of those persons and organizations subject to UNSCRs 1267 and 1373 to Myanmar Customs in order that some examination can be made of those submitting declarations. This could be done in cooperation with the Myanmar Immigration Department.</li> </ul>

<b>3. Preventive Measures – Financial Institutions</b>	
Risk of money laundering or terrorist financing	
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	<p>Myanmar should undertake the following in respect of CDD and record keeping:</p> <ul style="list-style-type: none"> <li>• Authorities should consider implementing a risk-based approach to CDD. It is recommended that customer risk profiling be done to enable financial institutions to identify higher risk customers, and undertake enhanced CDD for PEPs, nationals from high risk jurisdictions, foreign incorporated legal entities, and other customers in the same category.</li> <li>• Institutions should request other types of identification to further verify the customer information as and when appropriate. Myanmar nationals are not required by law to update their information in the Registration card. Therefore, potentially, the information contained in the Registration card may be outdated. Reliance on verification of customer information should not only be based on the Registration card alone.</li> <li>• Myanmar should amend its CMLL and CMLR to include explicit mention of beneficial ownership. The CBM could provide more clarification to financial institutions (including insurance and securities) on the concept and process of identifying beneficial ownership. Financial institutions need to ensure that changes in beneficial ownership are captured and recorded promptly.</li> <li>• Myanmar should provide greater clarity on the action required where the reporting entity is unable to satisfactorily complete the CDD before or after commencing a business relationship. There is a lack of guidance from the CBM on what actions are permissible if the required CDD is not satisfactorily completed; for example, what constitutes “significant” business is not further elaborated in the CBM Guidelines on AML/CFT.</li> <li>• Myanmar should include the need for conducting ongoing CDD in the CMLL and CMLR.</li> <li>• The CBM should issue guidance to financial institutions on going CDD for existing customers based on materiality and risks. It should be mandatory for</li> </ul>

	<p>financial institutions to update their customer records based on money laundering / terrorism financing risk.</p> <ul style="list-style-type: none"> <li>• Authorities should provide adequate and appropriate sanctions in the CMLL for non-compliance with any guidelines issued by the relevant authorities.</li> <li>• Myanmar should consider harmonising the AML/CFT Guidelines issued to the banks and financial sectors, where appropriate. The current guidance to the insurance sector is much less comprehensive and lacking in some of the applicable FATF Recommendations when compared to that issued to the banks.</li> <li>• Myanmar authorities should consider providing greater clarity in the CMLL (as well as other relevant laws) so there is no ambiguity in relation to the applicability of AML requirements to the insurance sector.</li> <li>• The Myanmar authorities should consider putting in places the relevant legislative provisions that would oblige the MSEC to perform required CDD measures. The CBM should consider issuing appropriate guidance notes that relate more specifically to the securities sector.</li> <li>• The three banking institutions in Myanmar authorized to deal in foreign exchange should consider sending out questionnaires on AML/CFT to their foreign counterparts to ensure that the banks they are dealing with have adequate CDD measures and are not shell banks.</li> </ul>
Third parties and introduced business (R.9)	The authorities need to provide regulatory guidance on circumstances where third party and introduced business is allowed, and the extent to which the institution could rely on the CDD conducted by third parties.
Financial institution secrecy or confidentiality (R.4)	<p>Myanmar should amend the CMLL or CMLR to require financial and reporting institutions to comply with the requirements of Myanmar’s AML/CFT laws, notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by any written law or otherwise.</p> <p>Myanmar should consider issuing exemptions for financial institutions to undertake information sharing, in particular in relation to FATF Recommendations 7, 9 and SRVII.</p>
Record keeping and wire transfer	Myanmar should consider amending the Law to specifically

<p>rules (R.10 &amp; SR.VII)</p>	<p>require all designated reporting entities to maintain records of identification data, account files and business correspondence for at least five years following the termination of an account or business relationship.</p> <p>Myanmar should consider issuing a CBM Order for financial institutions to make available records on a timely basis by indicating a clear timeframe.</p> <p>The CBM should issue detailed regulations, consistent with international standards, to ensure that wire transfers, both domestic and cross border, are accompanied by accurate and meaningful originator information through the payment chain.</p> <p>The CBM should require the beneficiary financial institutions to adopt risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. These procedures must cover whether a wire transfer or related transactions without complete originator information are suspicious enough to be reported to the FIU, and whether the beneficiary financial institutions should consider restricting or terminating relationship with financial institutions that do not comply with SR VII</p> <p>The CBM should establish a sanction mechanism for financial institutions that are not in compliance with SR VII.</p>
<p>Monitoring of transactions and relationships (R.11 &amp; 21)</p>	<p>Myanmar authorities should consider issuing specific regulatory requirements and guidance to ensure banks and financial institutions establish a mechanism to monitor transactions and relationships with customer. There should be an emphasis on scrutinising large value transactions or transactions that do not fit into a customer's profile.</p> <p>Myanmar should consider issuing regulation to make it mandatory for documentation of findings arising from the examination of unusual or complex transactions, including the requirement for such findings to be kept for five years for competent authorities and auditors. Similar requirements should be extended to the securities and insurance sectors.</p> <p>The authorities should consider issuing guidance to financial institutions on the appropriate measures that should be applied when dealing with higher risk countries, including</p>

	<p>more extensive examination of the background and purpose of transactions.</p> <p>The CBM should consider providing the banks and financial institutions with more information on countries' implementation of the FATF Recommendations, such as summaries of weaknesses in AML/CFT programmes as highlighted in Mutual Evaluation Reports.</p>
<p>Suspicious transaction reports and other reporting (R.13-14, 19, 25 &amp; SR.IV)</p>	<p>Myanmar should amend the CMLL as well as issue a regulation to provide clarity on the STR obligation to ensure that : (i) all financial institutions are obliged to file an STR to the CCB when it suspects or has reasonable ground to suspect that funds are the proceeds of all criminal acts; (ii) all financial institutions are obliged to file an STR to the CCB when it suspects or has reasonable ground to suspect that funds are linked or related to terrorists, or to be used for terrorism, terrorist act or by terrorist organisations or those who finance terrorism; and (iii) all suspicious transactions, including attempted transactions, should be reported by financial institutions.</p> <p>Myanmar should criminalise TF and issue orders for the reporting of TF transactions.</p> <p>The definition of Financial Institutions in the CMLL should be clarified to cover other financial institutions such as insurance companies, securities companies and Authorized Dealer Licenses.</p> <p>Myanmar should subject STR reporting obligations to all holders of Authorized Dealer Licenses, including any new licensees.</p> <p>Redraft the tipping off provision as stated in Section 31 A of the CMLL so that it is clear that “tipping off” applies to suspicious transactions and not to the disclosure of information relating to investigation</p> <p>Myanmar should amend the CMLL in order to provide clarity on the safe harbour provision for directors and the reporting institution itself.</p> <p>The FIU and the CBM should provide Financial Institutions with detailed guidance and appropriate feedback with regard to all AML/CFT measures including STR.</p> <p>The FIU should consider providing a specific reporting</p>

	format for STR and CTR related to transfer transactions respectively.
Internal controls, compliance, audit and foreign branches (R.15 & 22)	<p>The CBM should consider providing more regulatory guidance with regard to the duties, responsibilities and enabling powers for compliance officers to access records in a timely manner.</p> <p>The CBM should consider providing some criteria for employee screening to ensure that bank officers meet the necessary professional and integrity standards.</p> <p>Myanmar is strongly encouraged to incorporate in the CMLL, the requirement for reporting institutions to establish and develop an internal AML/CFT programme in order to implement effectively the requirements of the CMLL. The internal programme should be required to include CDD requirements, record keeping, and on-going training for all relevant employees.</p> <p>Myanmar should consider incorporating in the CMLL a requirement to designate the compliance officer at management level and with independence to lodge STRs directly with the MFIU. There should also be a legal obligation to conduct independent audits to check the AML/CFT internal compliance programme is effective.</p>
Shell banks (R.18)	<p>The CBM should consider issuing regulatory guidance with regards to the prohibition of establishing business relationships or dealing with shell banks.</p> <p>The CBM should consider making it mandatory for financial institutions to implement measures to satisfy themselves that their respondent financial institutions do not deal with shell banks.</p>
The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)	<p><b>Recommendation 23</b></p> <p>Establish an AML/CFT supervisory framework for all authorised foreign exchange dealers.</p> <p>The CBM is encouraged to develop a more comprehensive AML/CFT supervisory framework that assesses the effectiveness of the financial institution's management structure, including the Board of Directors and senior</p>

	<p>management; internal controls vis-à-vis compliance officer's role and responsibilities; and the STR mechanism.</p> <p>Enhance the fit and proper test criteria required for a banking licence.</p> <p>Adopt measures to control the operations of underground and illegal money changers.</p> <p><b>Recommendation 30</b></p> <p>Increase resources including staff for the Regulation Department of the CBM to enhance AML/CFT supervision of banks and non-bank financial institutions. Consider developing a team of experts on AML/CFT within the Bank Regulation Department.</p> <p>Establish an adequate and comprehensive AML/CFT training programme for CBM staff. The CBM should also consider increasing training for the staff in the Supervision Department to eventually undertake the total responsibility of supervision for AML/CFT, including making an assessment of the adequacy of a financial institution's AML/CFT measures and the issuance of supervisory letters accordingly.</p> <p><b>Recommendation 29</b></p> <p>Myanmar should consider including broadening the legal definition of financial institutions in the CBM Law and Financial Institutions in Myanmar Law to include the insurance and securities sectors.</p> <p>Ensure the supervisory authority has powers to examine authorised foreign exchange dealers in relation to AML/CFT purposes.</p> <p>Amend Section 39 of the CMLR concerning the production of records to include all necessary records, and not limited to data on deposits and withdrawals but to include for instance, documentation on the analysis of suspicious transactions.</p> <p>Amend the same Section to include a clear statement that institutions must produce records within a stated period and specify appropriate administrative sanctions for non-compliance.</p> <p><b>Recommendation 17</b></p>
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	<p>Extend the current CMLL criminal sanctions in Sections 24 and 28 to include legal persons and not only to natural persons.</p> <p>Myanmar should consider developing an AML/CFT enforcement framework that is effective, proportionate and dissuasive and which includes civil and administrative sanctions for non-compliance with AML/CFT measures.</p> <p><b>Recommendation 32</b></p> <p>Ensure that the CBM and other supervisors develop and maintain relevant statistics pertaining to on-site examinations for prudential and AML/CFT purposes, as well as sanctions against financial institutions for failure to comply with AML/CFT requirements.</p> <p><b>Recommendation 25</b></p> <p>The CBM should issue a detailed regulatory guidance on wire transfer originator information requirements.</p> <p>The CBM should issue specific AML/CFT guidelines for the securities sector.</p>
Money value transfer services (SR.VI)	<p>Myanmar should undertake a study on the size and impact of the informal remittance sector, including its use for trade settlement.</p> <p>Myanmar should consider either the registration option or a less demanding licensing option as an alternative to the current banking licensing approach in order to promote the movement of underground remittance operators into the formal regulated economy.</p>
<p><b>4. Preventive Measures –Non-Financial Businesses and Professions</b></p>	
Customer due diligence and record-keeping (R.12)	<p>Myanmar should undertake the following:</p> <ul style="list-style-type: none"> <li>• Amend the CMLL and CMLR to extend the FATF standards of CDD and record-keeping requirements to the DNFBP sector.</li> <li>• Consider introducing CDD and record keeping requirements for any hotels or other service providers with approved casino operations when they are involved in cash transactions with players of equal or more than US\$3,000.</li> <li>• Require Real Estate agents to undertake CDD and record keeping when they are involved in the buying</li> </ul>

	<p>and selling of real estate for clients.</p> <ul style="list-style-type: none"> <li>• Introduce CDD requirements for wholesale and retail dealers in precious metals and stones (gems and jewellery) when they are involved in any cash transactions with a customer equal or over a designated threshold level consistent with the FATF requirements, or where there is suspicion of ML or other criminal activity.</li> <li>• Introduce CDD requirements for Advocates of the Supreme Court, Higher Grade Lawyers, Certified Accountants, Auditors and Notaries Public when they are involved with clients in buying and selling real estate; managing client’s money or other assets; managing a client’s bank accounts; providing company formation services; providing an office, mailing or business address for a client; acting as a nominee shareholder for a client in his absence; and buying and selling businesses.</li> </ul>
<p>Suspicious transaction reporting (R.16)</p>	<p>Myanmar should undertake the following:</p> <ul style="list-style-type: none"> <li>• Require hotels or other service providers with legalised gaming or casino operations to submit STR reports on suspicious transactions.</li> <li>• Consider extending STR reporting to real estate agents.</li> <li>• Broaden the scope of STR reporting for lawyers and accountants to include company formation services.</li> <li>• Issue regulations to DNFBP to establish and maintain policies and procedures to control and prevent ML/TF.</li> <li>• Establish “safe harbour” provisions for all DNFBP STR reporting.</li> <li>• Establish effective, proportionate and dissuasive sanctions to ensure compliance with AML/CFT requirements.</li> </ul>
<p>Regulation, supervision and monitoring (R.24-25)</p>	<p>Myanmar should consider organizing outreach sessions to DNFBPs and provide feedback as necessary.</p> <p>Myanmar should extend AML/CFT regulatory and supervisory responsibilities to DNFBP regulatory and supervisory agencies.</p> <p>Myanmar authorities should engage the relevant self regulatory organizations such as the Bar Council and the Myanmar Accountancy Council and involve these SROs actively in ensuring that members implement an effective AML/CFT system that includes STR monitoring system and</p>

	adequate CDD.
Other designated non-financial businesses and professions (R.20)	The CBM should consider developing secure electronic funds transfer or payment systems to lessen the use of cash. Myanmar should consider measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML/FT.
<b>5. Legal Persons and Arrangements &amp; Non-Profit Organisations</b>	
Legal Persons – Access to beneficial ownership and control information (R.33)	<p>Myanmar should undertake the following:</p> <ul style="list-style-type: none"> <li>• DICA should make publicly available the list of all companies incorporated in Myanmar to enhance transparency. It should also consider making publicly available basic company information, including the names of the board of directors, nature of business etc.</li> <li>• Law enforcement should have access to company registration documents held by DICA without the need to obtain the prior approval of its head.</li> <li>• DICA should introduce, as a requirement for company registration, for an applicant to include the list of all shareholders and details of any nominee arrangements.</li> <li>• DICA should introduce a mechanism for the sharing of company information with other competent authorities, both domestically and internationally, and which approval for information dissemination can be made at the operational level.</li> </ul>
Legal Arrangements – Access to beneficial ownership and control information (R.34)	
Non-profit organisations (SR.VIII)	<p>Myanmar should:</p> <ul style="list-style-type: none"> <li>• Conduct a review of the adequacy of its existing NPO-related laws with emphasis on TF vulnerability of the sector.</li> <li>• Grant relevant authorities access to NPO books and accounts, not only through the latter's periodic submission of reports but through the conduct of on-site inspections if necessary.</li> <li>• Introduce explicit obligations requiring NPOs to maintain its records, for a period of at least five years, and make the same available to the appropriate authorities.</li> </ul>

	<ul style="list-style-type: none"> <li>Undertake outreach to the NPO sector through the conduct of AML/CFT awareness seminars/workshops, issuance of updates on trends, guidance and advisories.</li> </ul>
<b>6. National and International Co-operation</b>	
National co-operation and coordination (R.31 & 32)	<p>Myanmar should:</p> <ul style="list-style-type: none"> <li>Provide for greater participation by Customs in the policy making and coordination of AML/CFT</li> <li>Allow participation by DNFBP responsible agencies in policy discussions.</li> <li>Require the Attorney General's Office to check the legal consistency of instruments issued.</li> </ul>
The Conventions and UN Special Resolutions (R.35 & SR.I)	<p>Myanmar should ratify/accede to the TF Convention and implement its full range of obligations, including criminalisation of terrorist financing as well as:</p> <ul style="list-style-type: none"> <li>Amend its CMLL to cover all the designated categories of predicate offences; and</li> <li>Enact an extradition law compliant with Article 16 of the Palermo Convention and Article 6 of the Vienna Convention.</li> </ul>
Mutual Legal Assistance (R.36-38, SR.V, and R.32)	<p><b>Recommendation 36</b></p> <p>Myanmar should:</p> <ul style="list-style-type: none"> <li>Include provisions for equal value confiscation in the MACM law;</li> <li>Devise mechanisms for determining the best value for prosecution of defendants in the interests of justice that are subject to prosecution in more than one country; and</li> <li>Extend the list of predicate offences to cover all designated categories.</li> </ul> <p><b>Recommendation 37</b></p> <p>Myanmar should adopt measures to provide mutual legal assistance in the absence of dual criminality particularly for less intrusive and non compulsory measures.</p> <p><b>Recommendation 38</b></p> <p>Myanmar should also:</p> <ul style="list-style-type: none"> <li>Include provisions for equal value confiscation;</li> <li>Implement arrangements for coordinating seizure and confiscation actions with other countries; and</li> <li>Consider establishing an asset forfeiture fund that could be used for law enforcement training purposes.</li> </ul> <p><b>Special Recommendation V</b></p> <p>Myanmar should review its draft Anti Terrorism Law to ensure that it complies with international requirements and</p>

	enact it as soon as possible.
Extradition (R.39, 37, SR.V & R.32)	Myanmar authorities should: <ul style="list-style-type: none"> <li>• Enact an extradition law in accordance with the requirements of the Palermo and Vienna Conventions; and</li> <li>• Withdraw its reservations to Articles 6 and 16 of the Vienna and Palermo Conventions respectively.</li> </ul>
Other Forms of Co-operation (R.40, SR.V & R.32)	Myanmar authorities should: <ul style="list-style-type: none"> <li>• Consider developing information exchange gateways between the CBM and other banking sector regulators in ASEAN; and</li> <li>• Develop appropriate mechanisms for information exchange on terrorism and terrorism financing.</li> </ul>
<b>7. Other Issues</b>	
Other relevant AML/CFT measures or issues	<p>There is an ongoing need for training and capacity building, particularly in the areas of financial investigation and prosecution of ML cases, and in areas beyond drug related money laundering. There is also a need to understand the Hundi system, trade based money laundering and smuggling techniques.</p> <p>Continued training should be provided to enhance the skills of CBM regulatory staff, particularly in respect of AML/CFT compliance.</p> <p>Greater resources should be devoted to regulating the DNFBP sectors, particularly the precious metals and stones dealers, and hotels with gaming operations.</p>
General framework – structural issues	Myanmar’s AML/CFT competent authorities would benefit from additional international technical cooperation and sharing of implementation experiences with foreign competent authorities, not only in the areas of FIU and law enforcement, but also in the regulatory and supervisory domains of both the financial and DNFBP sectors.

**Table 3: Authorities' Response to the Evaluation (if necessary)**

**Response by Dr. Tun Shin, Deputy Attorney General,  
Leader of Myanmar Delegation**

To understand our legal system one need to know the roots of our legal system. It belongs to the Common Law legal family but it is not a replica of the English Common Law System as mostly presumed. It is a near replica of the Indian Legal System. We have some English Common Law principles with developments after the promulgation of the Government of Myanmar the then Burma Act 1935. We had more legal developments after 1948 and the system stands as it is today with different developments. Thus as Lord Denning the Master of the Rolls of England says the laws of South Asia are “Peculiar creatures”. It would be fair to see our laws in the eyes of our own legal system and not in the eyes of English Common Law system.

We appreciate the MEA Team for their good advice and recommendations and we are pleased to say that there will be every spirit of cooperation on our part as a responsible member of the APG.

In our system, the law is the main skeleton of legal framework. However, like in a human body there are Rules, Regulation, Directives and Notification that form the body as blood, flesh, limbs etc. Thus whatever is dealt with in skeleton by law can be developed with rules etc. which we call subordinate legislation. In the current situation, we find a sufficient skeleton as Law and the areas of financial regulatory and enforcement are dealt with only by subordinate legislation. This system is successfully used in our jurisdiction.

**Legal Development**

In the case of our CMLL, it was promulgated on 17 June 2002. The Rules were issued in December 2003 with the help and advice of UNODC experts and the FATF Review Group. The Law and the Rules started their operation only on 25th December, 2003. Thus, compared to legislation of other jurisdictions it is still in its infant stage. It needs time to grow and be tested with cases. We now only have one case viz **Union of Myanmar vs U Tin Sein**, which applied the Law for the first time in Myanmar. As the ME team very pertinently pointed out Myanmar has “good legal framework and to make good use of them.” As Laws amended soon after promulgation are indeed bad laws and definitely not a product of good legal framework. Give it a test of time for this Law is a little over 4 years with just one case and is still an infant law that does not merit amendment.

In the area of terrorist financing Myanmar is legally committed to combating it having ratified 12 terrorist conventions. Bearing in mind the legal obligation to abide by the treaty and on the **Doctrine of Pacta Sunt Servanda** in international law, we are in the process of drafting a comprehensive domestic law on terrorism. This Law drafting will come to its final version soon.

The orders suggested by the MEA Team to add more predicate offences have been submitted to our authorities. We discovered that some offences are already covered by our laws and the others need new orders and they are under study by our law enforcers and government lawyers or law officers.

### **Institutional Development**

The Central Control Board on Money laundering (CCB) created under the CMLL is the competent authority and policy making body for advancing AML/CFT in Myanmar. The CCB comprises ministers, deputy ministers and high ranking officials of the key agencies involved in combating ML and FT. The CCB is chaired by the Minister of Home Affairs and Minister of Finance and Revenue is leading the Committee as Vice Chairman. The CCB serves a number of AML/CFT policies, regulatory and operational functions including the FIU.

The CCB issued a series of directives to prescribe threshold amount for cash and property transactions; to report the threshold, unusual and suspicious transactions, to declare the cross border cash movement, to extending the reporting agencies such non bank financial institutions and DNFBPS, and to report the sales or transfer of shares of the banks with regard to capital injection in order to scrutinize the source of funds.

Since the Control of Money Laundering Law was enacted in June 2002, there has been an Anti Money Laundering provisions for financial institutions. The Law created a legal framework for unusual and suspicious transaction reporting, customer identification and record keeping. Myanmar has also been constantly updating and improving its AML legal and regulatory framework since the time in order to keep up with the international AML/CFT standards.

### **Financial Regulatory Development**

Since 2004, the Central Bank of Myanmar (CBM) has issued a series of instructions and guidelines to banks and financial institutions to effectively implementing the directives issued by the CCB. These instructions and guidelines cover customer due diligence, record keeping, threshold and suspicious transaction reporting requirements, guidance on wire transfers, designate compliance officer internal AML program, tipping off, and training.

The Central Bank of Myanmar (CBM) is the primary regulatory and supervisory authority for banks and financial institutions in respect of AML/CFT. With the approval of CCB, the Ministry of Finance and Revenue delegates the CBM auditing and overseeing of the securities industry and non

bank financial institutions for AML compliance since there is no regulatory authority agency for these institutions. The CBM has conducted on site examinations on all private banks and special audit program toward state-owned banks and non bank financial institutions in terms of AML/CFT issues.

The CBM has, moreover, issued a number of warning letters to the banks which are non-compliant to the AML requirements. The banking licenses of three private banks were terminated in 2005 in response to the findings of an internal investigation into potential abuses of bank licensing requirements and its money laundering law.

On 14 March 2008 the CBM issued a memorandum to banks and financial institutions on the imposition of administrative penalties for failure to comply with record-keeping and reporting provisions in the CMLL. The administrative sanctions include:-

- Warnings;
- Orders including restricting the operations of financial institutions;
- Fines;
- Temporary or permanent termination from duties in the financial institutions;
- Cancellation of the license to operate.

#### **Adoption of Risk based Approach**

Myanmar has not implemented yet enhanced customer due diligence based on a risk assessment. However, it intends to implement a risk-based approach in the future with international technical assistance.

#### **Efforts to set up a Control Mechanism on illegal casinos in Border Area**

The MFIU has discussed the issues with the Directorate of Hotel and Tourism and the regional officials concerned to adopting a control mechanism on illegal casinos in the border area. Moreover, Myanmar has also held discussions with its neighbours on this problem.

Officials concerned of MFIU and Thai AMLO held a bilateral meeting on 29 November 2007 during the course of FATEF/APG Typology Meeting in Bangkok, Thailand to discuss the issue on illegal casinos along the Thai- Myanmar border area. Both sides agreed at the meeting to exchange information on frequent customers and suspicious cash couriers across the border.

As recommended by the APG Mutual Evaluation Team visited Myanmar in January 2008 to extend AML CDD and reporting requirements to cover the Andaman Club, the CBB issued the Order No. 1/2008 dated 13 March 2008, which designates Andaman Club Resort Hotel as a reporting agency and it is required to submit reports on threshold transactions (US \$10,000 or equivalent) as well as STRs.

The Central Bank of Myanmar withdrew the Authorized Foreign Exchange Dealers license to the Andaman Club Resort on 31 March 2008 and reissued the downgraded money changer license on 16 May 2008. The CBM has planned to send out the on-site inspection team in September this year.

### **International Cooperation**

Up to end of 2007, the Central Committee for Drug Abuse Control ( CCDAC) and Myanmar FIU has identified 69 cases of cooperation involving drug trafficking, trafficking in persons, smuggling, cash courier, money laundering and repatriation with other countries including U.S., Singapore, Australia, P.R. China, Hong Kong (SAR), India, Thailand, Taipei China and others.

### **Repatriation of Fugitives**

Repatriation of fugitives between *Myanmar*, Thailand and China are arranged on bilateral basis.

### **Step to Egmont Group membership**

Myanmar FIU has taken necessary steps to apply for the membership of Egmont with the co-sponsorship of Japanese JAFIO and Thai AMLO.

### **Enhancing cooperation with neighbouring countries**

Myanmar has agreed with P.R China and India in principle to enhance the cooperation between FIUs on AML/CFT and combating drug and human trafficking; smuggling; fighting against transnational crimes and terrorism and exchange of information on cross border crimes. Border Liaison Offices are established in Myanmar and China border area to exchange of information on trafficking in persons.

### **Future priorities/ planned initiatives**

Myanmar has developed an implementation plan in order to implement and enhance the AML/CFT policy. The plan includes the following priorities:

- Updating the AML/CFT Law and legislation in line with international standards.
- Updating the financial regulation in line with international standards;
- Enhancing the capacity of the FIU;
- Improving the reporting system to receiving quality reports;
- Socialization/seminars/workshops for banks, non-bank financial institutions and DNFBPs;
- Capacity building and enhancing the skills of the CBM regulators, supervisors financial institutions' internal auditors and external auditors;
- AML/CFT awareness raising training for government officials involved in the anti-money laundering regime; and
- Training and socialization for investigators and prosecutors to enhance their capacity to conduct money laundering cases.

**ICRG monitoring process**

Our delegation at this juncture would like to seek clarification from the FATF. Myanmar was delisted from NCCTlist in October 2006 and the ICRG' monitoring process on Myanmar is still ongoing. There is no primary source of NCCT system and how can there be a secondary aspect as medical doctors say? We feel that it is neither fair nor just. The Jurisdiction is also not in the "KNOW" of any carried over authority to ICRG of the expired NCCT system to monitor the jurisdiction with some legal mechanism. If there be such a legal mechanism or a legal authority we shall be glad to hear from the FATF.

I thank you very much for your kind attention.

## ANNEXES

### Annex 1: List of abbreviations

ADs	Authorized Dealer Licenses
AML/CFT	Anti-Money Laundering and Counter Financing of Terrorism
BSI	Bureau of Special Investigation
CBM	Central Bank of Myanmar
CCB	Central Control Board on Money Laundering
CCDAC	Central Committee of Drug Abuse Control
CDD	Customer Due Diligence
CMLL	The Control of Money Laundering Law
CMLR	The Control of Money Laundering Rules
CTR	Cash Transaction Report
DICA	Directorate of Investment and Company Administration
DNFBPs	Designated Non-Financial Businesses and Professions
DTC	Department against Transnational Crime
FATF	Financial Action Task Force on Money Laundering
FIU	Financial Intelligence Unit
FEMD	Foreign Exchange Management Department
FERA	Foreign Exchange Regulation Act
IB	Investigation Body
GDP	Gross Domestic Product
MFIU	Myanmar Financial Intelligence Unit
MHA	Ministry of Home Affairs
ML	Money Laundering
MPF	Myanmar Police Force
MLA	Mutual Legal Assistance
MSEC	Myanmar Securities Exchange Centre Company
NBFI	Non-bank financial institutions
NDPS	Narcotics Drugs and Psychotropic Substances Law 1993
NPOs	Non-profit Organisation
PSB	Preliminary Scrutiny Body
SLRD	Settlements and Land Records Department
SPDC	State Peace and Development Council
SRO	Self-Regulatory Organisation
STR	Suspicious Transaction Report
TF	Terrorist Financing
UN SCR	United National Security Council Resolution

**Annex 2: Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others.**

Attorney General Office  
Audit Firms and Public Accounts Associations  
Central Bank of Myanmar Banking Regulation Department  
Bar Council (Association of Professional Lawyers)  
Bureau of Special Investigation  
Central Bank of Myanmar  
Central Committee on Drug Abuse Control  
Customs Department  
Department against Transnational Crimes  
Department of Human Settlements and Housing Development  
Department of Mines  
Department of Religious Affairs  
Department Social Welfare  
Department of Marine Transportation  
Directorate of Hotel and Tourism  
Directorate of Investment and Company Administration  
General Administration Dept. (MOHA)  
Governor, Central Bank of Myanmar  
Internal Revenue Department  
International Organizations and Economic Department, Ministry of Foreign Affairs  
Mandalay City Development Committee  
Ministry of Finance and Revenue  
Ministry of Foreign Affairs  
Ministry of Forestry  
Ministry of Home Affairs  
Ministry of Hotel and Tourism  
Ministry of Mining  
Ministry of Rail Transportation  
Ministry of Transports  
Mutual Evaluation Coordination Group (all relevant departments and agencies)  
Myanmar Gems Enterprise  
Myanmar Insurance  
Myanmar Securities Exchange Company Ltd.  
Myanmar Bankers Association  
Myanmar Financial Intelligence Unit  
Myanmar Police Force  
Road Transport Administration Department  
Settlement and Land Records Department  
State owned and commercial banks  
Supreme Court  
Union of Myanmar Federation of Chambers of Commerce and Industry  
Vice Chairman of Central Control Board, Minister for Finance and Revenue  
Yangon City Development Committee

**Annex 3: Copies of key laws, regulations and other measures**

**Note: Please note the Control of Money Laundering Law (CMLL) provided below has been subsequently amended and supplemented through subsidiary legislations and other enforceable means (Rules, Orders and Instructions) since its enactment in June 2002.**

The State Peace and Development Council  
The Control of Money Laundering Law  
(The State Peace and Development Council Law No. 6/2002)  
The 7th Waxing Day of Nayon, 1364 M.E.  
(17th June, 2002 )

The State Peace and Development Council hereby enacts the following Law:-

Chapter I  
Title, Jurisdiction and Definition

1. This Law shall be called the Control of Money Laundering Law.
2. This Law shall have jurisdiction on any person who commits any offence cognizable under this Law in the territory of the Union of Myanmar, or on Myanmar citizen or any person residing permanently in the Union of Myanmar who commits the said offence outside the country, or on any person who commits the said offence on board a vessel or an aircraft registered under its existing law.
3. The following expressions contained in this Law shall have the meanings given hereunder -
  - (a) Money laundering offence means an offence of laundering money and property obtained by illegal means in respect of any offence mentioned in sub-sections (a) and (b) of section 5 of this Law.
  - (b) Money and property obtained by illegal means mean money and property obtained by converting, transferring, concealing, obliterating or disguising of money or property obtained from committing the money laundering offence.
  - (c) Banks and financial institutions mean the organizations established in the State, whose corporate purpose is intermediation on the money or capital markets through the collection of financial resources from third parties for investment on their own account in credit operations, credit and public debt instruments, securities, or other authorized financial activities. This expression also includes the commercial banks, investment or development banks and finance companies.
  - (d) Money means legal tender coins, their lower denominations and currency notes issued by the Central Bank of Myanmar, promissory notes, bills of exchange and cheques being negotiable instruments, bonds, treasury bills and debentures instruments, and foreign currencies and any kind of instruments or certificates related to foreign currencies.

(e) Property means movable or immovable property in any form, being corporeal or incorporeal and tangible or intangible. This expression also includes profits, rights and titles pertinent to property.

(f) Central Control Board means the Central Control Board on Money Laundering formed under this Law.

## Chapter II Objectives

4. The objectives of this Law are as follows

(a) to control and enable taking of effective action against money and property obtained by illegal means and to prevent offences arising therefrom;

(b) to prevent interference in the executive, economic and social sectors of the State, using money and property obtained by illegal means;

(c) to carry out measures in conformity with the international conventions that Myanmar has acceded, in implementing control of money and property obtained by illegal means

(d) to co-operate with international organizations, regional organizations and neighbouring countries for controlling money and property obtained by illegal means.

## Chapter III Money Laundering Offences

5. (a) This Law shall apply to the offences of illegally converting, transferring, concealing, obliterating or disguising of money and property obtained from the commission of any of the following offences to legalize the same:

(1) offences committed under the Narcotic Drugs and Psychotropic Substances Law;

(2) trafficking in and smuggling of women and children;

(3) undertakings of a financial institution without the licence issued by the Central Bank of Myanmar.

(4) theft and smuggling out of the country of antiques and articles of cultural heritage;

(5) illegal trafficking in arms, ammunition and explosives; (6) counterfeiting money, using and possessing thereof;

(7) hijacking of aircraft, vessel or any type of vehicle

(8) cyber crimes committed by electronic means;

(9) offences committed by acts of terrorism

(10) offences prescribed by the Government by notification from time to time.

(b) This Law shall also be applicable to the commission of transnational offences contained in sub-section (a).

(c) The amount of value of money and property relating to offences contained in sub-sections (a) and (b) shall be as prescribed by the Central Control Board.

#### Chapter IV

#### Formation of the Central Control Board and Duties and Powers thereof

6. The Government shall form the Central comprising the following persons

(a)	Minister Ministry of Home Affairs	Chairman
(b)	Minister Ministry of Finance and Revenue	Deputy Chairman
(c)	Ministers or Deputy Ministers of relevant Ministries	Members
(d)	Deputy Chief Justice	Members
(e)	Deputy Attorney General Control Board on Money Laundering	Members
(f)	Governor of the Central Bank of Myanmar	Members
(g)	Director General Department of Settlements and Land Records	Members
(h)	Police Director General Myanmar Police Force	Secretary
(i)	Director General Bureau of Special Investigation	Joint Secretary

7. The duties of the Central Control Board are as follows

(a) laying down the policies of control of money and property obtained by illegal means and taking legal action in accordance with the said policies, in co-ordination with the government departments and organizations concerned;

(b) supervising and directing in taking action under this Law;

(c) directing the Investigation Body to investigate and reveal information relating to converting transferring, concealing, obliterating and disguising of money and property obtained by illegal means;

(d) directing the Preliminary Scrutiny Body to scrutinize the report of findings submitted by the Investigation Body;

(e) co-operating with the States Parties of the United Nations conventions, international and regional organizations and neighbouring countries in respect of control of money and property obtained by illegal means, exchange of information, investigation, taking legal action and adjudication;

(f) guiding and supervising the relevant government departments and organizations so that banks, financial institutions and economic enterprises may not be established and operated by using money and property obtained by illegal means;

(g) guiding and supervising the responsible persons of the banks and financial institutions to conduct training courses as may be necessary for enabling to reveal and take action against money and property obtained by illegal means;

(h) submitting the report of its activities to the Government in accordance with the stipulations.

8. The powers of the Central Control Board are as follows

(a) prescribing the amount of value of money and property obtained by committing any offence contained in sub-sections (a) and (b) of section 5 and revising thereof from time to time;

(b) prescribing, with the approval of the Government the amount of value of money and property to be reported to the Central Control Board;

(c) forming the Investigation Body and Preliminary Scrutiny Body and prescribing their functions and duties, and making arrangement to enable aiding of necessary money and technical know how to such bodies;

(d) assigning duties to the Investigation Body to carry out investigation, enter a building and conduct inspection, search, and seize as exhibit in respect of money and property obtained by illegal means, in accordance with the stipulations;

(e) passing an order permitting the return of the property seized as exhibit under a bond, and revoking the permission;

(f) issuing an order to the responsible persons of the banks and financial institutions to allow search and seizure of money and property obtained by illegal means as exhibit, at the relevant banks and financial institutions, examining and making copy of the financial records and if necessary to allow search and seizure thereof as exhibit by the Investigation Body;

(g) issuing the prohibitory order to the relevant departments, organizations and persons not to convert, transfer, conceal, obliterate and disguise money and property obtained by illegal means during the investigation period under this Law, and directing the attachment and sealing thereof;

(h) revoking the order issued under sub-section (f), and the prohibitory order and sealing directive under sub-section (g);

(i) passing an order confiscating money and property obtained by illegal means

(j) giving necessary protection and deserving reward to an informer in respect of money and property obtained by illegal means;

(k) forming the staff office comprising experts to assist the Central Control Board in performing its functions and duties.

## Chapter V

### Formation of the Investigation Body and Functions and Duties thereof

9. The Central Control Board shall:-

(a) form the Investigation Body comprising not less than three members from suitable persons of relevant government departments and organizations to investigate and reveal the money and property obtained by illegal means;

(b) change the members on case-by-case basis or time limit instead of on a fixed basis in forming the Investigation Body.

10. In investigating and examining under the directive of the Central Control Board in respect of money and property obtained by illegal means in accordance with the stipulations, the Investigation Body:

(a) may make necessary investigations and gather intelligence;

(b) may call for and examine necessary documents from the person who is under investigation or any other person or the government departments and organizations or the banks and financial institutions;

(c) may summon and examine the person who is under investigation or other necessary persons;

(d) has the right to enter, inspect, search and seize as exhibit building, land and work-site of the person who is under investigation;

(e) has the right to enter, inspect, search and seize as exhibit building, land and work-site under the name of other person and derived from the money and property obtained by illegal means.

11. The Investigation Body shall

(a) submit the report on findings to the Central Control Board in accordance with the stipulations;

(b) submit the case of seizure of property as exhibit under subsection (d) or (e) of section 10 to the Central Control Board in accordance with the stipulations;

(c) keep secret each and every matter under investigation.

12. The Central Control Board may, on receiving the report on findings of the Investigation Body, assign duty to the original Investigation Body or newly formed Investigation Body to investigate the whole case or the necessary facts, if it considers that further investigation is required.

## Chapter VI

### Formation of the Preliminary Scrutiny Body and Functions and Duties thereof

13. The Central Control Board shall, subject to the report on findings of the Investigation Body, form the Preliminary Scrutiny Body comprising not less than three members chaired by one Deputy Minister to scrutinize and submit in respect of money and property obtained by illegal means.

14. The Preliminary Scrutiny Body

- (a) shall inform and give the right of defence to the person who is under investigation in respect of the report on findings of the Investigation Body;
- (b) may summon and examine the necessary persons and take necessary evidence in respect of the report on findings of the investigation;
- (c) shall submit to the Central Control Board with its findings and recommendations after considering the report of the Investigation Body and defence made by the person under investigation;
- (d) shall keep secret each and every matter under investigation.

## Chapter VII Appeal and Revision

15. A person who is under investigation may, if he is dissatisfied with any order of the Central Control Board appeal to the Government within 90 days from the date on which the said order is received.
16. The Government may pass any suitable order for confirmation, revision or setting aside the said order or cause re-investigation to be made, upon an appeal submitted by the aggrieved person or at its discretion on any order passed by the Central Control Board.
17. The decision of the Government shall be final and conclusive.

## Chapter VIII Functions and Duties of the Banks and Financial Institutions

18. The responsible persons of the banks and financial Institutions:
- (a) shall obtain, scrutinize and record the names, addresses and registration card numbers of passports of persons who open accounts, deposit, withdraw and transfer cash, and the required particulars in respect of opening accounts, cash deposit and cash withdrawal in accordance with the stipulations;
  - (b) after carrying out the opening of accounts and transactions in accordance with the stipulations, supporting documents, accounts and records shall be kept for at least 5 years;
  - (c) shall allow the Investigation Body to inspect financial records, make copies, seize money and property obtained by illegal means as exhibit;
  - (d) shall not, without the permission of 'The Central Control Board release or transfer money and property obtained by illegal means, during the period of investigation and taking legal action;
  - (e) shall not, without the permission of the Central Control Board obliterate, alter, amend or transfer the financial records relating to the investigation.

Chapter IX  
Duties to Report

19. The responsible persons of the banks and financial institutions:-

(a) shall, notwithstanding anything contained in existing laws in respect of bank secrecy, report to the Central Control Board without delay, any deposit, withdrawal or transfer of cash in an amount which is in excess of the amount prescribed by the Central Control Board. Provided that this shall not apply to transfer and succession in accordance with the right to inheritance under any existing law or customary law.

(b) shall report any unusual or suspicious transaction to the Central Control Board without delay, and in accordance with the stipulations.

20. The responsible persons of the Department of Settlements and Land Records and its respective subordinate offices in performing the registration of documents relating to the transfer of immovable property:-

(a) shall report the transfer of property the value of which exceeds the amount prescribed by the Central Control Board without delay and in accordance with the stipulations. Provided that this shall not apply to transfer and succession in accordance with the right to inheritance under any existing law or customary law.

(b) shall report any unusual or suspicious transfer to the Central Control Board without delay and in accordance with the stipulations.

21. The responsible persons of the relevant government departments or organizations, on declaring to him the foreign currency brought into the country by any person who enters the Union of Myanmar shall, if the amount exceeds the amount prescribed by the Central Control Board, report the matter to the Central Control Board without delay, and in accordance with the stipulations.

Chapter X  
Offences and Penalties

22. Whoever commits any of the following acts in committing any offence contained in the Narcotic Drugs and Psychotropic Substances Law shall, on conviction, be punished with imprisonment for a term which may extend from a minimum of 10 years to a maximum of an unlimited period:-

(a) concealing or obliterating of money and property obtained by commission of an offence, so that action may not be taken.

(b) converting, transferring or disguising of money and property relating to an offence so as to appear to have been acquired from a legitimate source.

23. Whoever converts, transfers, conceals, obliterates or disguises money and property obtained by committing any offence contained in subsections (a) and (b) of section 5, so as to appear to have been acquired from a legitimate source except any offence contained in section 22 shall, on conviction, be punished with imprisonment for a term which may extend to 10 years and may also be liable to a fine.

24. Any responsible persons of the banks and financial institutions who commits any of the following acts in respect of an offence relating to this Law shall, on conviction, be punished with imprisonment

for a term which may extend from a minimum of 3 years to a maximum of 7 years and may also be liable to a fine: -

- (a) refusing to grant permission to the Investigation Body to carry out official duty in accordance with sub-section (c) of section 18;
- (b) violating the prohibition contained in sub-section (d) of section 18 and releasing or transferring money and property obtained by illegal means, without the permission of the Central Control Board
- (c) violating the prohibition contained in sub-section (e) of section 18 and obliterating, altering, amending or transferring the financial records, without the permission of the Central Control Board.

25. Any member of the Investigation Body who commits any of the following acts or omissions in investigating money laundering offence shall, on conviction, be punished with imprisonment for a term which may extend from a minimum of 3 years to a maximum of 7 years and may also be liable to a fine:-

- (a) demanding or accepting money or property either for himself or for any other person as a gratification;
- (b) substitution of an offender with any other person so that action cannot be taken against him or misprision of an offender without taking action against him;
- (c) concealment, obliteration, conversion, transfer in any manner or disguising of money and property obtained by illegal means so that action may not be taken against them.

26. Whoever violates a prohibitory order issued by the Central Control Board not to convert, transfer, conceal, obliterate or disguise money and property obtained by illegal means, during the investigation period under this Law shall, on conviction, be punished with imprisonment for a term which may extend to 7 years and may also be liable to a fine.

27. Whoever destroys or acts with the intention of damaging the property returned under a bond with the permission of the Central Control Board, during the investigation period under this Law shall, on conviction, be punished with imprisonment for a term which may extend to 7 years and may also be liable to a fine.

28. If any responsible person of the banks and financial institutions commits any of the following omissions, he shall, on conviction, be punished with imprisonment for a term which may extend to 3 years or with fine or with both : -

- (a) failure to carry out any of the functions and duties contained in subsections (a) and (b) of section 18 in accordance with the stipulations;
- (b) failure to report to the Central Control Board under section 19 in accordance with the stipulations.

29. Any responsible persons of the Department of Settlements and Land Records and its respective subordinate offices who fail to report to the Central Control Board under section 20 in accordance

with the stipulations shall, on conviction, be punished with imprisonment for ~a term which may extend to 3 years or with fine or with both.

30. Any responsible persons of the relevant government departments and organizations who fail to report to the Central Control Board under section 21 in accordance with the stipulations shall, on conviction, be punished with imprisonment for a term which may extend to 3 years or with fine or with both.

31. Whoever opens an account under a false name, deposits and draws money, transfers money or delegates authority to any person to do such activities shall, on conviction, be punished with imprisonment for a term which may extend to 3 years or with fine or with both.

32. Whoever attempts, conspires, organizes or administers to commit any offence or abets or aids financially in committing any offence contained in this Law shall be liable to the punishment provided in this Law for such offence.

#### Chapter XI Miscellaneous

33. A person under investigation has the responsibility to prove clearly with valid evidence of how he legally obtained the money and property under investigation or by which income they were obtained.

34. In respect of money and property obtained by illegal means, if any other person who is not under investigation is able to prove clearly that such money and property were transferred by certain means with consideration and in good faith, his right shall not be affected.

35. No suit or prosecution shall lie against a person who reports according to his duty in good faith under section 19, 20 or 21, notwithstanding that his report has caused injury to any person.

36. (a) During the investigation period under this Law on money and property obtained by illegal means, the relevant government departments and organizations shall keep pending any action being taken in respect of the said money and property under the Income Tax Law or the Profit Tax Law or the Commercial Tax Law or laws relating to customs duty or any other existing laws against a person under investigation.

(b) When the Central Control Board has passed an order according to the findings in respect of money laundering offence, the relevant government departments and organizations shall proceed in accordance with the stipulations.

37. In cases of taking action under this Law on money and property obtained by illegal means, search, arrest, seizure as exhibits, return of the same under a bond, prohibition of the immovable property during the investigation period, sealing, perusing the financial records of the banks and financial institutions and confiscation thereof shall be carried out in accordance with this Law and rules, procedures, notifications, orders and directives issued hereunder.

38. In respect of money or property obtained by committing any offence under sub-sections (a) and (b) or section 5

(a) action shall be taken only under this Law upon offences relating to money and property obtained by illegal means such as conversion, transfer, concealment, obliteration and disguising of money and property, after this Law comes into force.

(b) action shall not be taken under this Law upon offences relating to money and property obtained by illegal means such as conversion, transfer, concealment, obliteration and disguising of money and property, before this Law comes into force.

39. (a) Action shall be taken against a person who commits any offence not being money laundering offence contained in sub-sections (a) and (b) of section 5 under any relevant existing law provided for such offence.

(b) Action shall not be taken under this Law upon the exhibits in respect of which action had been taken under sub-section (a) and which have been confiscated.

40. In prosecuting an offence under this Law, prior sanction of the Ministry of Home Affairs shall be obtained.

41. For the purpose of implementing the provisions of this Law: -

(a) the Ministry of Home Affairs may, with the approval of the Government, issue such rules and procedures as may be necessary;

(b) the Central Control Board, the Ministry of Home Affairs, the Ministry of Finance and Revenue and the relevant government departments and organizations may issue such notifications, orders and directives as may be necessary.

(Sd.) Than Shwe  
Senior General  
Chairman  
The State Peace and Development Council

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