



LAO PDR ME1

Mutual Evaluation Report

Anti-Money Laundering and Combating the
Financing of Terrorism

LAO PDR

July 2011

Lao PDR is a member of the Asia Pacific Group on Money Laundering (APG). This evaluation was conducted by the APG and was adopted as a 1st mutual evaluation by its Plenary on 21 July 2011.

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Acronyms

AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
AMLIU	Anti-Money Laundering Financial Intelligence Unit
BCP	Basel Core Principles
BOL	Bank of Lao PDR
CDD	Customer Due Diligence
CPL	Criminal Procedure Law
CSP	Company Service Provider
DNFBP	Designated Non-Financial Businesses and Professions
ERO	Enterprise Registration Office
FATF	Financial Action Task Force
FI	Financial institution
FIU	Financial Intelligence Unit
FT	Financing of Terrorism
IAIS	International Association of Insurance Supervisors
MOF	Ministry of Finance
MOFA	Ministry of Foreign Affairs
MOJ	Ministry of Justice
MOU	Memorandum of Understanding
ML	Money Laundering
MLA	Mutual legal assistance
NPO	Nonprofit organization
PACSA	Public Administration and Civil Service Authority
PEP	Politically-exposed person
SEC	State Securities and Exchange Commission
SRO	Self-regulatory organization
STR	Suspicious Transaction Report
UN	United Nations Organization
UNSCR	United Nations Security Council Resolution

PREFACE - information and methodology used for the evaluation of the Lao PDR

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of the Lao People Democratic Republic (hereinafter “Lao PDR”) was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (hereinafter “the FATF standards”), and was prepared using the AML/CFT Methodology 2004. The evaluation was based on the laws, regulations and other materials supplied by the Lao PDR, and information obtained by the evaluation team during its on-site visit to the Lao PDR from 11 to 22 October 2010, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant Lao 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, and an APG Secretariat staff member. The World Bank participated as an observer on the team. The assessment team consisted of:

Legal expert

- Ms Cristina Ferreira, Legal Adviser of the Secretary for Security, Office of the Secretary for Security, Macao, China

Financial experts

- Mr Bob Perry, Director Supervision Referrals Unit, Supervision Branch, AUSTRAC; and
- Ms Khin Saw Oo, Director, Banking Regulation Department, Central Bank of Myanmar

Law enforcement expert

- Mr Bernard Law, Chief Inspector, Financial Investigations 3, Narcotics Bureau, Hong Kong Police

World Bank observer

- Mr Jae Soo Yoo, Senior Financial Sector Specialist, Financial Market Integrity, World Bank

APG Secretariat

- Mr Lindsay Chan, Principal 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 during the period of the on-site visit (11-22 October 2010) or immediately thereafter. It describes and analyses those measures, sets out the Lao PDR levels of compliance with the FATF standards (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

Executive Summary

1. This report summarises the anti-money laundering (AML)/combating the financing of terrorism (CFT) measures in place in the Lao PDR as of the time of the on-site visit (11-22 October 2010), and shortly thereafter. The report describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened. It also sets out the Lao PDR's levels of compliance with the FATF standards (see the attached table on the Ratings of Compliance with the FATF Recommendations).

1. Key Findings

2. There is a lack of awareness of AML/CFT international standards and the required implementation measures, which is compounded by a lack of dedicated resources and insufficient political commitment to undertake the required reforms.

3. The Lao PDR has not undertaken a formal AML/CFT risk assessment, although drug related illicit proceeds is estimated to be about 10 percent of GDP or USD750 million. While opium cultivation fell by 94 percent and opium addiction by 80 percent in the last decade, the Lao PDR has emerged as a key transit and storage country for ATS, precursors and heroin from neighbouring countries.

4. There has been a significant expansion of the banking sector. In the past two years, six new commercial banks commenced operations. There are now 23 banks with total assets of USD 576 million that accounts for 99.2% of the financial sector's total assets.

5. There are major deficiencies in the criminalisation of ML in Article 64 of the Penal law, including the physical and material elements of the ML offence required in Article 3 of the Vienna Convention and Article 6 of the Palermo Convention; and gaps in predicate offences, notably organised crime, terrorism and financing of terrorism (FT). There is the absence of a freezing mechanism and a deficient mutual legal assistance (MLA) framework on criminal matters.

6. There is no terrorism or FT offence and the measures adopted to implement UN Security Council Resolutions (UNSCRs) are insufficient and contain major deficiencies. The absence of a FT offence has an impact on other related issues such as the investigative powers of law enforcement agencies; freezing, seizure and confiscation of terrorist funds; FT as a ML predicate offence; and the possibility of affording MLA.

7. There has been no confirmed case of ML investigation, prosecution or conviction.

8. Only 28 suspicious transaction reports (STRs) have been submitted to the Anti-Money Laundering Intelligence Unit (AMLIU) since 2007. Further, AMLIU has never disseminated a STR, and any report to be disseminated must first be approved by the Bank of Lao (BOL) senior management.

9. The key ML preventative instrument is AML Decree 55. The Decree contains a range of basic preventative measures but despite the wording of some provisions consistent with the FATF standards, the Decree does not meet the FATF definition of law, regulation or other enforceable means due to a lack of sanctions. The exception is the inclusion of sanctions in the Decree for STR reporting violations.

10. Implementation of AML Decree 55 has occurred only in the banking sector. The overall implementation of Decree 55 within the commercial banking sector is difficult to assess due to the absence of AML/CFT supervision by the AML regulator, AMLIU. There has been no implementation of AML Decree 55 provisions by competent authorities for the DNFBP sectors in the Lao PDR.

11. Key recommendations made to the Lao PDR include:

- criminalise ML and FT consistent with international requirements;
- provide a clear legal framework and mechanisms for freezing and confiscation, both for ML and FT;
- improve the operational effectiveness of AMLIU through enhanced STR reporting, analysis and autonomy with STR dissemination;
- introduce binding and enforceable requirements for preventative measures both for the financial and DNFBP sectors, beyond STR reporting;
- enhance regulation and supervision for AML/CFT purposes;
- ensure that the competent authorities are properly designated and provided with adequate funding, qualified staff and technical resources, and effective AML/CFT training;
- enhance licencing requirements for all financial institutions, particularly banks;
- introduce effective, proportionate and dissuasive civil or administrative sanctions, applicable to financial institutions and DNFBP; and
- provide an appropriate legal framework and mechanisms for MLA and extradition.

2. Legal systems and related institutional measures

12. Lao PDR's legal system belongs to the civil law family, which means that written law (codification) is the primary source of law. On top of the hierarchy of laws is the Constitution followed by other primary legislation (often organised in 'codes' - a collection of core laws organised in a systematic manner) and secondary legislation (e.g. regulations, orders). The core AML framework of Lao PDR is Article 64 of the Penal Law, as amended in November 2005, which provides for the ML offence, and the Criminal Procedure Law and AML Decree No. 55/PM, of 27 March 2006, which establishes the mechanisms, means and measures to counter ML within the Lao PDR, but with deficiencies as summarised in the following paragraphs and detailed in this report.

13. Article 64 of the Penal Law does not satisfy all the physical and material elements of the ML offence required in Article 3 of the Vienna Convention and Article 6 of the Palermo Convention (i.e. conversion or transfer, concealment or disguise, acquisition, possession or use of property with the knowledge at the time of receipt). Lao PDR has adopted a mixed threshold and list approach to predicate offences. However, not all predicate offences are criminalised in Lao PDR, including organised crime and racketeering, terrorism and financing of terrorism, smuggling, insider trading and market manipulation. There is a broad range of ancillary offences to the ML offences, though not all are sanctioned (e.g. preparation and attempt). In addition, one cannot find a clear and consistent definition of property, assets and proceeds of crime.

14. Liability for ML extends only to natural persons and sanctions are not dissuasive and proportionate to the seriousness of the offence since penalties range from one to three years imprisonment penalty and 3% of the money laundered. There are neither statistics to demonstrate the effectiveness of the existing system nor any ML investigation case law, prosecution or conviction. Based on the on-site visit, ML has been an object of inquiries associated with some predicate offences, such as drug trafficking.

15. There are seizure and confiscation mechanisms in place under the Criminal Procedure Law and Penal Law, respectively. Seizure is possible, whenever there are reasons to believe that the funds or assets are related to the commission of a crime or are important to its investigation or to produce material evidence. Seizure is a provisional measure that applies to all kinds of property and to all serious crimes, including ML offence and related predicate offences. Confiscation of items (connected to an offence) or property are additional penalties to the principal categories of punishment inflicted upon an offender in accordance with Article 28, paragraph b, sub-paragraph 2 and 3 of the Penal Law. Property derived from criminal activity or acquired with its proceeds may be confiscated under the Penal Law, except if necessary for the livelihood of the offender and his family. However, as explained earlier, the lack of consistency in the terminology used (e.g. property, assets or items) leads to a degree of uncertainty regarding what can be confiscated, in particular instrumentalities used or to intend to be used for ML as well as property of corresponding value.

16. There is no freezing mechanism to prevent assets being dealt with, transferred or disposed of within a short period of time, such as bank account transfers. Article 12 of AML Decree No. 55 establishes the possibility to freeze accounts, but there are no sanctions. In fact, there is neither a freezing mechanism, nor an adequate communication and coordination mechanism among the relevant agencies in place.

17. Given that there are no statistics on the seizure and confiscation of ML offence, it is not possible to demonstrate the effectiveness of the existing system.

18. Lao PDR has endeavored to ratify all the relevant CT Conventions, in particular the CFT Convention. Notwithstanding the international commitment, and in spite of a number of provisions in the Penal Law related to the crime of terrorism that would allow the punishment of some terrorist acts, Lao PDR has not yet criminalised terrorism, including terrorist acts, terrorist act committed by an individual or an organised group and FT. This hampers the effective implementation of the CFT Convention and UNSCRs 1267 and 1373. In the absence of criminalisation of terrorism, including FT, FT is not a ML predicate offence; and there is no freezing or confiscation mechanism in place.

19. Under Prime Minister Decision No. 63/PM, on 27 December 2002, a National Anti-Terrorism Ad-Hoc Committee was created with the mandate, inter alia: to act as an advisory body to the Government on Counter Terrorism issues; to make the national report to the 1373 Committee; to propose amendments to the domestic law to comply with UNSCR 1373 and to circulate and notify relevant the authorities of the UNSCR 1267 Consolidated List and to take actions accordingly (i.e. to freeze assets). However, there are a number of deficiencies in the existing system in particular: there is no legal framework; AMLIU and the working group are not yet empowered to deal with terrorism issues; the government agencies are not really certain of their powers and measures to adopt to fight terrorism (lack of empowerment and sanctions); there is also no monitoring compliance mechanism; and moreover, there is no clear guidance or instructions to financial institutions on how to report and to proceed in case there is a need to freeze an asset under UNSCR 1267 or upon request (under UNSCR 1373).

20. Lao PDR Government officials acknowledged the legal gaps and stated that legislation was being prepared. In December 2010, a “Committee for Drafting Counter the Financing of Terrorism Legislation” was established by the Governor of the BOL, and included all relevant ministries, with the exception of the Ministry of Justice.
21. Pursuant to Article 23 in AML Decree No. 55, the Governor of the BOL established the Anti-Money Laundering Intelligence Unit (AMLIU) in the BOL under Agreement No. 299 (“the AMLIU Establishment Agreement”) dated 14 May 2007. AMLIU has two arms to implement its dual roles of Financial Intelligence Unit (FIU) and AML/CFT supervisor. AMLIU’s FIU powers are provided under Article 23 of AML Decree No.55, and to a lesser extent under the AMLIU Establishment Agreement.
22. AMLIU has received only 28 STRs from a few commercial banks since October 2006. AMLIU’s analysis process is deficient as there is no analysis procedure in place, and it seeks no information from other agencies, or additional information from the reporting entities in facilitating STR analysis.
23. AMLIU has never disseminated a STR. A cursory review by the team during the on-site visit of some STRs stored in the AMLIU database would suggest further analysis might have resulted in different outcomes, given some STRs fitted known international ML typologies.
24. AMLIU is not operating as an autonomous FIU. AMLIU is required to seek endorsement from the management of BOL before an STR can be disseminated, and there is a lack of budget autonomy.
25. STR guidance is provided in the AMLIU issued Guideline on Reporting Suspicion Transactions (the “STR Guideline”) No. 66/AMLIU, dated 15 October 2007. It defines suspicious transactions and outlines the factors in identifying suspicious transactions. Overall, guidance on STR is inadequate.
26. AMLIU has never published any report, including on typologies, statistics and trends. AMLIU has not signed any international MOU. The Governor of the BOL, however, can give his discretion for information exchange on a case-by-case basis. So far, AMLIU has provided assistance only once - to the Vietnamese FIU under this policy.
27. The Director General of the Police Department in October 2009 designated the Financial Crime Investigation Division of the Economic Police Department as the ML investigation unit in the Lao PDR. Although FT has not been criminalised, authorities informed the assessment team that FT investigation also falls under the ambit of the Financial Crime Investigation Division. The Financial Crimes Investigation Department has not undertaken any ML investigation, although there is an unsubstantiated claim by authorities of two ML cases under investigation by the Drug Suppression Department.
28. The Office of the Public Prosecutor also has a supervisory and oversight role on ML investigation in accordance with Article 38 in the Law on Criminal Procedures. Under Articles 37 and 39, all investigators are required to report to the Office of the Public Prosecutor within 24 hours upon the opening, or receipt of credible information leading to the opening of a case. After investigation, if there is no evidence to proceed with a criminal charge and the case is closed, the head of an investigation organisation is obliged to report to the Public Prosecutor.

29. There is no legislative provision to allow competent authorities to postpone or waive the arrest of suspected persons and/or the seizure of the money for the purpose of identifying persons involved in ML/FT activities or for evidence gathering. The Lao PDR advised, however, that investigation agencies such as the Economic Police Department are able to exercise such authority in practice. No statistics were provided to support such a statement.
30. Article 51 of Law on Criminal Procedure empowers the Public Prosecutor or the People's Court to issue a written order to conduct a search of building, vehicles and individuals. Pursuant to Article 55 of the Law on Criminal Procedure, the head of an investigation organisation or the Public Prosecutor can issue an order to seize and detain such materials/assets related to the offence. Article 52 also goes on to say, "*if they are related to the offence or are things that contravene the laws.*" This could potentially include obtaining bank records or transactions for further action as part of any ML investigation.
31. No specific details or statistics were provided to the team on the number of search orders issued, including those issued to financial institutions, although banks met during the on-site meetings confirmed that it was not uncommon to receive such orders.
32. The investigation officer is authorized to take testimony from the injured party, civil plaintiff, accused person, witness and other concerned persons under the power vested in Article 24 of the Law on Criminal Procedure.
33. The Financial Crime Investigation Division has only 11 staff that could be involved in ML investigations. There are nine staff members in the Prosecution Division and Supervision Division of the Supreme Public Prosecutor responsible for overseeing any ML investigation.
34. The Decree Law and Instruction on Governing the Management of Foreign Exchange and Precious Metals regulates the physical cross border transportation of currency and precious metals by an individual or financial institution. There are, however, inconsistencies in the use of terminology. Article 14 of the Decree Law on Foreign Exchange imposes the declaration requirement on "foreign currency" and 'precious metal'. However, there is only a definition of "foreign exchange" but not a definition of "foreign currency" in the Decree Law. The definition of "foreign exchange" covers currencies and all forms of bearer negotiable instruments. The absence of a clear definition of "foreign currency" casts doubt on whether the declaration requirement has extended to bearer negotiable instrument or not.
35. There is no declaration form developed and no declaration requirement is included in the immigration arrival form. The assessment team observed that there were notices and warnings for declaration requirement affixed on the major customs check points. Customs has confirmed the declaration requirement is only mandatory for international and local customs check points but not traditional border crossings. The declaration requirement does not include mail or cargo.
36. Customs advised there were only 11 violations of the declaration requirement and all were punished administratively. The violations were detected based on intelligence and not voluntary declaration. If Customs detects a violation associated with criminal activities, it will be referred to the Economic Police Department for further investigation; none has been referred so far.
37. There is no provision in the Customs Law to empower Customs officers to request and obtain further information on the origin and intended use of currency or bearer negotiable instruments upon discovery of a declaration violation or suspicion of ML/FT. There is no provision in the Customs Law to penalise cross-border physical transportation of currency for purposes of ML/FT.

3. Preventive Measures—Financial Institutions

38. The key ML preventative measures are in Article 64 of the Penal Law, the AML Decree 55 and two Guidelines (i) the STR Guideline, and (ii) Guideline No.2/BOL on the AML Procedures and Operational Controls for Reporting Institutions under the BOL, dated 16 September 2008 (“The AML Guideline”).

39. Article 64, fifth paragraph, in the Penal Law provides criminal liability for natural persons for STR reporting violations. AML Decree 55 contains a range of basic preventative measures but despite the wording of some provisions consistent with the FATF standards, the Decree does not meet the FATF definition of law, regulation or other enforceable means due to a lack of sanctions. The one exception is sanctions attached for STR reporting violations.

40. AML Decree 55 does not cover all the preventative measures and it appears to omit Lao legal entities, and thus Lao owned reporting institutions. Furthermore, not all designated financial institutions are included as reporting entities. Finally, it is specific to AML and does not extend to CFT.

41. Implementation of AML Decree 55 has occurred only in the banking sector. The overall implementation of Decree 55 within the commercial banking sector is difficult to assess due to the absence of AML/CFT supervision by the AML regulator, AMLIU.

42. Lao PDR has not adopted any risk-based approach as outlined in the FATF standards but treats all circumstances in the same manner.

43. Commercial banks were well aware of the existence of the AML Decree and BOL Guidelines, and were implementing CDD measures because of various reasons and not because of the legal enforceability of the prevailing AML instruments. The basic CDD measures and record keeping measures were in place prior to the promulgation of AML instruments in the Lao PDR.

44. AML Decree 55 includes some fundamental CDD provisions but many of the required CDD measures are not provided in the Decree, including on anonymous accounts; when CDD is required; required CDD measures, including beneficial ownership; enhanced or reduced due diligence; timing of verification; failure to complete CDD satisfactorily; and existing customers.

45. The identification card is the primary customer identification document because it is required of all Lao nationals and financial institutions can check with the local commune authority. The identification card includes ID number, photo, full name, place originated, date of birth, place of residence, nationality, fingerprints and the signature and the stamp of the local police authority. If the customer is a legal entity, banks will obtain documents such as business licence, tax registration, foreign investment permission etc.

46. Lao PDR has no legislative obligations or other enforceable means covering: Politically Exposed Persons (PEPs); enhanced CDD in relation to correspondent banking obligations or relationships; and the misuse of technological developments for money laundering or terrorist financing, or to address any specific risks associated with non face-to-face transactions.

47. The Lao PDR laws currently do not contain specific provisions that would allow financial institutions to rely upon a third party in the process of implementing CDD. Under Article 13 of AML Decree, reporting institutions shall be responsible for the identification information of customers.

48. Article 35 on “Confidentiality” in the Law on Commercial Banks imposes confidentiality requirements on banks but correspondingly provides that information may be disclosed to the BOL, the auditors or other competent authorities as provided by law and regulation. It does not therefore inhibit the disclosure and sharing of confidential information with competent authorities.

49. The Accounting Law (Amendment Version) No.01/NA dated 2 July 2007; the Law on Enterprise Accounting promulgated on 5 November 1994; and the Law on Commercial Bank imposes record keeping requirements on financial institutions, although they were not promulgated specifically for AML/CFT purposes. The legal requirements are more limited in scope to transaction records but cover the designated five year period and have collectively influenced broader record keeping practices, including the non-binding AML Decree 55 record keeping provisions. In practice, financial institutions advised that records are normally kept for 10 years. Lao PDR does not have any specific legislation regarding availability of records “on a timely basis”.

50. There is no specific legislation that requires accurate and meaningful originator information to be maintained through the payment chain or to be verified if over the threshold limit.

51. There is no law, regulation or other enforceable means that requires financial institutions to pay special attention to all complex, unusual large or unusual patterns of transactions; to examine such transactions; and to keep records of such findings for at least 5 years.

52. Lao PDR has no requirement in law, regulation or other enforceable means to oblige financial institutions to give special attention to business relationships and transactions with persons from or in countries that do not or insufficiently apply the FATF standards.

53. Article 64 of the Penal Law and Article 11 of AML Decree 55 address STR reporting. The former provides a legal basis for STR reporting by imposing penal sanctions for failure to report. The latter designates reporting entities in its Annex 2 (of AML Decree 55) and outlines more detailed STR requirements. The requirement to submit a STR is based on a subjective test of suspicion and not an objective test of reasonable grounds to suspect, but there is no definition of suspicious transaction consistent with the FATF standards.

54. There are numerous deficiencies with the STR reporting regime: not all 20 FATF predicate offences are predicate offences for ML; attempted transactions are not covered; FT STR reporting is not included as FT is not criminalised; not all financial institutions are included as reporting institutions; the obligations on Lao owned reporting institutions are ambiguous; the STR Guideline appears to limit the scope of STR lodgment; and doubts concerning the requirement to submit STRs regardless of any amount restriction.

55. Since 2006, a total of 28 STRs have been submitted. This is low considering the size of the financial sector has grown rapidly over recent years. There have been no STRs submitted on FT.

56. There is no legal “safe harbour” protection for financial institutions and their directors, officers and employees reporting STRs in good faith. Further, there is no legal prohibition for all parties from disclosing a STR or related information. While Article 22 in AML Decree 55 attempts to address this legal gap by providing reassurance to reporting individuals and organisations when revealing secret information, and assistance to those making reports for any damages done to them, it is not clear what measures are actually available under this provision.

57. Lao PDR has considered the introduction of threshold reporting, although there has been no implementation.

58. The sole guidance material relevant to STRs has been the non-binding STR Guideline. This guidance material is considered very broad and high level and appears to be a “download” of international guidance rather than information tailored for this jurisdiction. Additionally, there appears to be no consideration for how this material will apply across all sectors within Lao PDR, but rather it is a generic application of this material.

59. Articles 9 and 10 of AML Decree 55 and AML Guideline No.2 contain some broad and limited reference to internal controls, compliance and audit requirements, although legally not enforceable in terms of FATF standards.

60. There are no binding requirements for the control of foreign branches and subsidiaries of Lao financial institutions.

61. There is no legal requirement that prohibits the establishment of shell banks in the Lao PDR. There are also no specific legislative requirements restricting financial institutions from entering into or continuing correspondent banking relationships with shell banks, and to satisfy themselves that their respondent banks are not dealing with shell banks.

62. The designated AML supervisors, pursuant to Article 2.3 of Decree 55 are the BOL, Ministry of Finance and Ministry of Commerce. The former two are prudential financial sector supervisors, while the Ministry of Commerce is responsible for some DNFBP sectors and has a broader business licensing role. The Securities and Exchange Commission is not a designated supervisory authority for AML under AML Decree 55. Nevertheless, the Lao authorities advised the assessment team that the Securities and Exchange Commission is a designated AML supervisor, together with the BOL and the Ministry of Finance. Authorities further added that within the BOL, it was AMLIU and not the BOL Supervision Department that was responsible for AML supervision of all financial sectors, except for insurance and securities.

63. The designated AML supervisors have not conducted any supervision, either off-site or on-site. The securities and insurance sectors are still considering how to implement AML Decree 55 obligations.

64. There is no designated CFT supervisor as FT has not been criminalised.

65. Under existing laws and regulations in the Lao PDR, there are licensing requirements before any financial institution may operate. These requirements are provided under the Law on Commercial Banks, the Law on Insurance, the Decree on Securities and Securities Markets, and in other regulations.

66. There are fit and proper test requirements for banks, insurance, securities and exchange bureaus. There are gaps in terms of preventing potential criminal control through nominee arrangements due to the lack of beneficial ownership requirements at the licensing and registration stage. There was a lack of knowledge of the concept of beneficial ownership in general, based on-site discussions with relevant ministries. There is no test against the source of funding for any financial institution, apart from the need to have “cleared funds” available within a commercial bank.

67. The AML Decree 55 provides direction in respect to AML monitoring, inspection and sanction powers under various articles within this Decree, noting that the Decree does not contain sanctions regarding inspection powers. There are more general, enforceable and sector specific powers in the Law on Commercial Banks, Law on Insurance and the Decree on Securities and Securities Market. However, since AML onsite inspections have not yet been conducted for any

financial sector, it is not possible to assess the effectiveness of available measures in terms of compliance with AML/CFT requirements.

68. Supervisory authorities lack effective, proportionate and dissuasive criminal, civil or administrative sanctions. Criminal sanctions for violation of preventative measures are limited to STR reporting violations and only for natural persons. The penalty referenced in the Penal Law ranges from fines to incarceration. The single administrative sanction provided for under AML Decree 55 is limited to the failure to report an STR, which may be applied to natural and legal persons. A “warning” may be issued for any minor administrative violations and graduating to monetary fines. The maximum penalty in AML Decree 55 is 30 million Kip, which is approximately USD3600. The available monetary sanctions are not considered proportionate and dissuasive. Additionally, the potential exclusion of legal persons from the scope of Decree 55 remains an area of concern.

69. There has been no application of sanctions under either AML Decree 55 or the Penal Law.

70. The providers of money or value transfer (MVT) services or remittance services are licenced by the BOL. MVT providers are listed under AML Decree 55 as “*currency transfer companies*” and as such are covered by the AML Decree, although AMLIU advised the implementation of this Decree has not been extended to this sector. However, there is no explicit legal coverage of this sector and it is deemed to be subject to the same requirements as ‘foreign exchange bureaux’. The difference between MVT and foreign exchange bureaux that specialise in note exchange is vast and should be reflected in legislation.

71. There has also been no attempt to quantify or identify any informal remittance system that may exist within this jurisdiction.

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

72. Annex 2 of the AML Decree 55 includes DNFBPs such as casinos, dealers in precious metals and antiques, and attorney offices and notary offices as subject to preventative measures such as CDD, record keeping and STR requirements. However, accountants, lawyers, real estate agents, precious stones dealers and company service providers are not covered in the Decree. Trust arrangements are not provided for in the laws of the Lao PDR.

73. The Lao PDR has approved licences for four small casinos and six other venues for slot machines. There are no internet casinos operating in Lao PDR. Casinos are all joint venture entities between the Lao PDR government and the private sector with access to casinos stated to be restricted to non-Lao nationals. The Ministry of Information and Culture is the designated supervisory ministry for casinos, although the operations of the casinos are overseen by an “Ad Hoc” committee comprising a number of agencies. These agencies issue licences under their own authority that form a combined approval for the establishment of a casino. The Committee is also responsible for on-going supervision.

74. The Decree is silent on the CDD threshold limits for casinos and precious metals and stones.

75. The deficiencies in respect of the enforceability of AML Decree 55 and preventative measures such as CDD, PEPs, non face-to-face transactions, introduced business, record keeping, monitoring unusual transactions and STR reporting are also true for DNFBPs.

76. The only designated AML supervisors for DNFBPs are the Ministry of Commerce and the Ministry of Finance. They are designated under Article 3 of Decree 55: Organisation responsible for supervising the Reporting Institutions. Nevertheless, there has been no implementation on AML Decree 55 in their sector i.e. Ministry of Finance for accountants and Ministry of Commerce for precious stones and metals.

5. Legal Persons and Arrangements, Non Profit Organisations

77. Under Lao law, legal persons are governed by the provision of the Law on Enterprises 2005. This law applies to both domestic and foreign legal persons operating in the Lao PDR. There are four types of enterprises: private enterprises, state enterprises, joint enterprises and collective enterprises. Registration is mandatory. All commercial companies must be registered at and comply with the legal requirements established by the Enterprise Registration Office (ERO), which is a division of the Internal Trade Department in the Ministry of Industry and Commerce. Most relevant information such as the company name, the type of company, the act of incorporation, the registered and principal business office, the administrator, the secretary, share structure and members' shareholdings have to be provided.

78. Lao PDR has established a system of central registration and a database with relevant information related to legal persons. The database allows for real-time transfer of registrations from provincial offices to the central office. Changes in legal ownership and management must be kept up to date. All the contents of registration are public and any individual or legal person may access or request a copy of filed registration documents to the registration officers.

79. Shareholders or promoters of a company may be natural persons or legal entities (Article 79). Promoters are defined in Article 87 as persons who initiate the establishment of a limited liability company but are not representative of the company. There is no provision prohibiting nominee share ownership.

80. There is no explicit requirement in the Law on Enterprises for details of company directors to be provided to the ERO during the registration process, only the details of company promoters. However, Article 128 requires a register book of directors (identification details of all directors) to be maintained by the company, and under Article 117, certain categories of persons are prohibited from holding company directorship, including a legal entity, a bankrupt person and a person with no prior conviction for embezzlement or misappropriation of assets. The law does not require a director to be resident in the Lao PDR or preclude a nominee arrangement.

81. There is no requirement by the ERO for the declaration of beneficial ownership during the registration stage, or for companies/enterprises or company formation service providers to obtain and maintain such information.

82. Investigative authorities or other competent authorities can have access to the relevant information held by the ERO in a timely fashion and can be shared with foreign authorities. However, as there is no explicit requirement to declare or maintain beneficial ownership information, and nominee directors and share ownership are permitted, information on beneficial ownership may not be available or in a timely fashion.

83. Lao PDR has a system of bearer shares. The transfers of bearer shares have to be registered in the shareholder register book. It is possible for competent authorities to obtain information on the identity of the owners of bearer shares in some circumstances (i.e. from the minutes of company general meetings). At the moment, bearer shareholders who become dominant shareholders can be

identified due to the size-number and nature of companies in Lao PDR. However, such scenario may change with the economic boom and the establishment of foreign companies or shareholders.

84. Under the existing system, there are no specific measures on beneficial ownership to ensure that bearer shares are not misused in ML or FT, such as guidelines or instructions. There is no effective control of the number of companies with bearer shares.

85. Lao PDR law does not recognize the legal concept of a trust, including trusts created in other countries or any other legal arrangements of a similar nature to a trust or that meets the definition of 'legal arrangement' as defined in the FAFT standards. In addition, there is no evidence that trust service providers are operating in the Lao PDR.

86. There are two categories of NPOs in the Lao PDR. For international NPOs, the Prime Ministerial Decree on International Non Government Organisation (NGOs) No.13/PM, dated 8 December 2009 ("Decree 13 on International NGOs"), governs international and foreign NPOs, as defined in Article 2 of the Decree. For domestic NPOs, the Prime Ministerial Decree No.115 on Associations, issued on 29 April 2009 ("Decree 115 on Associations"), governs the operation of domestic NPOs.

87. The Lao PDR has undertaken a review of the regulatory framework for NPOs, both domestic and international and has enacted new decrees governing both categories. However, these new decrees do not address all the requirements as specified under SR.VIII. Overall, the Lao PDR has established an enhanced supervisory framework, especially for international NPOs or domestic NPOs with international connections. It should build on this framework to address SR.VIII requirements.

6. National and international cooperation

88. The AML Working Group was established in March 2008 by the BOL Governor's Decision No. 204/BOL, dated 27 March 2008, and No.56/BOL, dated 25 January 2010. The AML Working Group consists of 19 representatives from relevant ministries and agencies. The Director General of AMLIU is the Chair of the Working Group.

89. The AML Working Group has not produced a strategic framework for AML/CFT implementation. The effectiveness of the Working Group to achieve policy and operational level outputs is also questionable given there has been no documented case of ML investigation, very low STR reporting, no on-site supervision of the banking sector, and no implementation of AML Decree 55 beyond the banking sector.

90. Lao PDR acceded to the Vienna Convention on 11 October 2004, the Palermo Convention on 26 September 2003, and the CFT Convention on 29 October 2008. Of the nine sectoral CT conventions listed in the annex of the CFT Convention, Lao PDR is a State party to six.

91. Lao PDR has not yet adopted a comprehensive MLA legal framework on criminal matters. The main provisions related to international cooperation are set forth in Part XI of the Criminal Procedure Law, that states that international cooperation in criminal proceedings shall be afforded while complying with the principles of respect for the independence, territorial sovereignty of the States, non-interference in the domestic affairs, equality and mutual benefit, and consistent with the Constitution of Lao PDR and the fundamental principles of international law. Even if no bilateral or multilateral agreement exists and no comprehensive MLA regime exists, MLA may be afforded on a case-by-case basis; nonetheless such assistance has to be consistent with the national constitution and its fundamental principles. MLA may include extradition, transfer of sentenced persons, seizure of

assets of an accused person or defendant, enforcement of judgment, or general cooperation in combating of cross-border crime. However, it should be stressed that there is no concrete case to assess the existing modus operandi.

92. Lao PDR has signed a few MLA agreements with foreign countries, notably the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters; The bilateral extradition treaties with Vietnam, China, Thailand, Cambodia and Democratic People's Republic of Korea; the Treaty on Justice in Civil and Criminal Matters with Vietnam and the Democratic People's Republic of Korea; and the bilateral treaties on sentenced persons with Thailand and the United Kingdom.

93. The fact that there is no comprehensive ML legal framework in place hinders the implementation of the Vienna and Palermo Conventions in Lao PDR, as well as the CFT Convention and related terrorism conventions. Due to such absence, it is not possible to assess the range of MLA and if MLA requests are executed in a timely, constructive and effective manner or to assess the efficiency of the process. The lack of an adequate coordination mechanism also jeopardises the provision of MLA in an effective, constructive and timely manner. Lao PDR authorities are aware of such lacuna and are taking the necessary steps to adopt adequate legislation.

94. MFA is the focal point for all MLA agreements on criminal matters i.e. all MLA requests follow the diplomatic channels. Any MLA request shall be forwarded to the concerned agency to analyse the request and to provide the reply. Despite the previous, one cannot say that there is a coordination mechanism. Indeed, based on the information provided during the on-site visit, for each request a special ad-hoc committee is created. It is composed of Ministry of Foreign Affairs, Ministry of Justice, Ministry of Public Security, Public Prosecutor and Court that shall decide on the subject-matter, including whether to accept the request and to appoint an agency responsible for executing the request. The answer shall be forwarded through diplomatic channels.

95. There is no specific provision in the Criminal Procedure Law on the requirement (principle) of dual-criminality, which means that MLA may be afforded without the requirement of dual criminality on a case-by-case basis. Nevertheless, there are some restrictions that the Criminal Procedure Law refers to, namely the non-conformity with Lao PDR legislation or if the provision of the MLA would affect the sovereignty, security or stability of the nation, or any important interest of the Lao PDR. The dual criminality principle is provided for in bilateral agreements and in the ASEAN regional agreement.

96. The Criminal Procedure Law in Article 119, paragraph 2, states that extradition can be afforded. However, as mentioned, there is no extradition regime in place. Extradition can be afforded on a case-by-case basis, following the general principles established in Articles 117 to 120 of the same Law, and may be refused on the grounds of Article 120, whenever it would affect the sovereignty, security or stability of the nation or any important interest of the Lao PDR.

97. One cannot affirm that the extradition of nationals can be afforded in the absence of an extradition regime. During the on-site visit, Lao PDR authorities also reaffirmed that nationals would not be extradited on the grounds of Article 120 of the Criminal Procedure Law without prejudice of being prosecuted under Lao PDR law.

98. Section IV in AML Decree 55 establishes a set of provisions on international cooperation to combat and deter ML (Articles 28-31). The wording of this section, however, limits the agencies/ministries able to exchange information on ML, outside of the MLA process, to the AMLIU and the Interpol Department of the Ministry of National Security. There is no mention of other supervisory authorities i.e. Ministry of Finance and Ministry of Commerce and the Securities and

Exchange Commission. The current system does not provide gateways for direct exchanges with foreign counterparts for ML, but indirectly through the two designated agencies.

1. GENERAL

1.1. General Information on the Lao PDR

99. The Lao PDR is a landlocked country situated in Southeast Asia with a population of approximately six million people. The total area of the Lao PDR is 236,800 square kilometers of which two-third is mountainous. The Lao PDR shares borders with five countries, namely the People's Republic of China in the North, the Kingdom of Cambodia in the South, the Socialist Republic of Vietnam in the East, the Kingdom of Thailand in the West, and the Union of Myanmar in the North-West.

Economy

100. The Lao PDR is classified as a Least Developed Country (LDC) and relies heavily on donor assistance. Per capita gross domestic product was around USD 980 in 2010. The growth in GDP has averaged 7.5% per annum since 2001. The rate of inflation is about 4.2 % in 2009.

101. Foreign direct investment (FDI) projects approved amounted to USD 1.2 billion in 2008 and USD 4.3 billion in 2009. The global financial crisis (GFC) did not appear to have any significant direct impact on FDI in the Lao PDR, as FDI in the country has been gradually increasing.

102. Since 2006, the Bank of Lao (BOL) PDR has continued to pursue a managed floating exchange rate system. The BOL sets a daily reference rate for the local currency, the Lao Kip to the U.S. dollar. The official exchange rate in June 2010 between Kip and the U.S. dollar was 8 250 Kip.

103. The Lao PDR remains a cash based economy. Cash accounted for 49% of the value of transaction in 2007 and 53% in 2006. In 2009, the value of the total cash transaction was 39%. There is an increasing trend in non-cash payment systems and transactions through credit cards, debit cards and ATMs. The BOL is promoting non-cash payments in the country. This includes encouraging line ministries and business units/enterprises to pay salaries via the banking system. The central bank (BOL) is also encouraging the public to use the banking system.

104. Foreign currencies such as the US dollar, Thai Baht and the Euro are accepted at shops and commercial establishments.

105. Agriculture accounts for 30% of Gross Domestic Product, with industry and services at 31.4% and 38.6% respectively in 2010. There has been significant growth in the development of hydropower plants to utilise Lao's water resources, and significant growth in mining production of 19% in 2010 with copper, gold and silver production accounting for the growth. Tourism is one of the fastest growing industries in the country and the garment industry is a major export industry.

System of Government

106. The Lao PDR is ruled by the Lao People's Revolutionary Party (LPRP). The eleven-member Politburo of the LPRP, drawn from its Central Committee, is the key decision-making body. A National Assembly, which is elected by the people from a list of candidates approved by the Party, meets twice a year and is responsible for scrutinising proposed legislation.

107. **The National Assembly** represents the interests of the multi-ethnic people of the Lao PDR. The National Assembly is also the legislative branch with the power to make laws, and to oversee the

activities of the executive organs, the people's courts and the Office of the Public Prosecutor. The term of office of each National Assembly is five years. The National Assembly Standing Committee is the permanent body of the National Assembly. It acts on behalf of the National Assembly between the sessions of the National Assembly. The National Assembly Standing Committee consists of the Chairman, Vice-Chairmen and members.

108. **The Government** of the Lao PDR is the executive branch of the State, approved by and responsible to the National Assembly and the President of the State. Its role is to administer the State uniformly in all aspects. The government is composed of the Prime Minister, Deputy Prime Ministers, Ministers of ministries and Ministers to the Prime Minister's Office, and chairmen of ministry-equivalent organisations.

109. The Government reports to the National Assembly, or to the National Assembly Standing Committee when the National Assembly is not in session, and to the President of the State.

110. **Lao PDR** comprises 17 provinces; there are three levels of local administration in each province: the provincial, district and village administration.

Legal System

The Courts

111. **People's Courts:** The status and role of the People's Courts are determined in Article 17 and 18 of the amended Law on the People's Courts of Lao PDR 2009. The People's Courts are the judicial branch of the State, and they are responsible for adjudicating cases. The People's Courts play an important role in disseminating laws and regulations, preventing violation of laws, increasing the people's knowledge and public awareness of laws, and coordinating with relevant organisations both domestic and international.

112. **The People's Supreme Court** is the highest judicial organ of the Lao PDR and serves to adjudicate cases, to administer the organisation of the People's Courts, to supervise and examine the legal correctness of decisions in the lower courts. The People's Supreme Court also supervises the administrative work of the local courts and military courts.

113. The President of the People's Supreme Court is appointed and removed by the National Assembly based on the recommendation of the President of the State; the term of office of the President of the People's Supreme Court is the same as the term of office of the National Assembly. The vice-presidents of the People's Supreme Court are appointed or removed by the President of the State based on the recommendation of the President of the People's Supreme Court. Judges of the People's Supreme Court, presidents, vice-presidents, and local courts' judges are appointed, transferred and removed by the National Assembly based on the recommendation of the President of the People's Supreme Court.

114. The People's Supreme Court has the mandate to review cessation appeals of the decisions of the appellate courts when such reviews are required by the litigants or parties or by the public prosecutor. The People's Supreme Court can re-open all decisions of lower courts that have become final and consider the orders, decisions, and judgments of the People's Courts. Furthermore, it provides legal instructions to the local courts and military courts in advising on case law, interprets the laws under its responsibility, supervises and examines the legal correctness and uniformity of the proceedings of the local courts and military courts, considers the jurisdictional scope of all levels of

courts throughout the country, and works and cooperates with foreign countries relating to law and justice.

115. **The system of the People's Courts** consists of People's Supreme Court, regional courts, provincial and Vientiane capital city courts, juvenile courts, area courts, and military courts. The People's Courts make decisions by following the three levels: at first instance, on appeal and on the cessation.

Hierarchy of Laws

116. Lao PDR's legal system belongs to the civil law family, with written law (codification) as the primary source of law. Civil law proceeds from abstractions, formulates general principles, and distinguishes substantive rules from procedural rules. It holds legislation as the primary source of law, and the court system is usually inquisitorial, unbound by precedent, and composed of specially trained judicial officers. On top of the hierarchy of laws is the Constitution followed by other primary legislation (often organised in 'codes' - a collection of core laws organised in a systematic manner) and secondary legislation (e.g. regulations, orders).

117. In the Lao PDR, primary legislation includes the Lao PDR Constitution, laws enacted by the National Assembly and presidential decree laws issued by the President. Secondary legislation includes Prime Ministerial decrees, regulations, orders and guidelines issued by the Prime Minister and Ministers or equivalent.

Transparency, Good Governance, Ethics and Measures against Corruption

118. Lao PDR faces significant challenges from corruption. The Lao PDR was ranked 154 out of 178 countries in the Transparency International's Global Perception Index 2010. In the Asia/Pacific region, it was ranked number 30 out of 33 countries.

119. The Government of Lao PDR signed the UN Convention on Anti-Corruption on 10 December 2003 and ratified the Convention on 30 September 2009.

120. The National Assembly approved the Law on Anti-Corruption No.3/NA on 19 May 2005. The Anti-Corruption Law defines principles, rules, and measures for the prevention and countering of corruption. Article 4 provides the following main principles in the prevention of corruption:

- *The main focus shall be on preventing corruption, while countering corruption shall be regarded as an important;*
- *Inspection of corruption phenomena shall be conducted immediately, strictly, independently, objectively, and accurately;*
- *If there is an offence, the matter should be dealt with strictly, immediately, and with justice;*
- *To ensure that there is no interference, obstruction, or threat from any individual or organization;*
- *Individuals and organizations to be inspected shall cooperate, create conditions¹⁰, and facilitate the inspection; and*
- *The State shall create conditions for citizens, social organizations, and mass media to participate in the prevention and countering of corruption according to regulations.*

121. The functions for countering corruption are currently carried out by the Anti-Corruption Department in the State Inspection Authority. The Department, established in 2006, has an inspection

division with 11 personnel. Article 26 of the Law Anti-Corruption Law (Law 45/PO) provides for an asset disclosure system for persons in “positions of power or duty”. Such persons must declare his or her own property and debts, and that of the person’s husband or wife and children who are under his or her charge accurately, faithfully, and honestly and must be accountable under the law for the contents of the declaration. It is not clear that this asset disclosure system is yet in operation.

122. Since 2006 there have been two cases prosecuted successfully. The first case involved nine people convicted for illegal logging, and the second case involved a bribery conviction against a judge. The Department informed the assessment team that seized assets, including instrumentalities used were confiscated. In addition, there has been a number of non-criminal sanctions, e.g. reprimand, demotion, dismissal from civil service or demoted.

123. There are media reports of significant political influence in the judicial process that undermines attempts to prosecute corrupt party or senior government officials.

124. The law provides for freedom of the press. According to media reports, however, free speech is severely restricted and the government owns all the media. There are statutes that forbid slandering the state, distorting party or state policies, inciting disorder, or “propagating information or opinions that weaken the government.”

1.2. General Situation of Money Laundering and Financing of Terrorism

125. The Lao PDR has not undertaken a formal AML/CFT risk assessment. Based on discussions held during the on-site, government officials saw ML threat as limited and FT threat even more limited. There has been no typologies work undertaken on ML or FT, as there has been no ML or FT investigation, and only 28 STRs received to date.

126. Officials were either not fully aware or were not willing to pinpoint potential ML/FT vulnerabilities in the Lao PDR, including the nexus between significant proceeds generated by drug trafficking and other proceeds related crime. These predicate crimes are openly acknowledged with limited hesitation in the Lao PDR.

(i) ML/TF Threats

127. The following statistics provide an overview of the threats posed by major predicate crimes in the Lao PDR, including various sub-categories for drug-related offences.

Table: Statistics on Serious Crime (2006-2009)

No.	Charges	Cases	Prisoners	Fines (in Lao Kip)	US\$ Equivalent
1	Drug Trafficking	21	47	10,656,500,000	1,291,697
2	Human trafficking	2	4	1,170,000,000	141,818
3	Theft and mugging of the personal property	7	14	32,800,000	3,976
4	Embezzlement and swindle	7	11	546,900,000	66,291

5	Possession of Weapons	1	1	700,000	85
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Table: Statistic on the Seizure of drugs 2006 - 2009

Items	2006	2007	2008	2009
ATS (tablets)	1,755,989	1,272,815	1,227,205	2,335,330
Heroin (kg)	9.17	23.77	17.51	29.25
Opium (kg)	1.18	14.17	11.80	49.89
Marijuana (kg)	291.50	2,202.80	804.60	975.90
Cocaine (kg)	0	0	1.99	0.10
Ice (kg)	0	0	0	0

128. **Heroin Production:** 1998, Lao PDR was ranked the world's third largest illicit opium producer (UNODC Opium Survey, 1998). At the time, the Lao PDR also had one of highest opium addiction rates in the world. However, from 1998 to 2005, opium cultivation fell by 94 percent and opium addiction by 80 percent.

129. **Drug Trafficking:** According to publicly available reports by the United Nations Office on Drugs and Crime (UNODC), since the mid-1990s, drug trafficking has become a serious problem. Tighter law enforcement in China and Thailand has contributed to the Lao PDR's rapid emergence as a key transit and storage country for ATS and heroin from neighbouring countries and then onwards to other countries in the world, with precursors going in the opposite direction. The Lao PDR is also used for trans-shipment purposes of chemicals. The availability of precursor chemicals, technical chemical expertise and growing ATS local demand also raises the risks of domestic manufacturing of ATS and heroin within the remote and inaccessible border areas in Lao PDR.

130. The UNODC further notes that because of its geographical location and its vulnerability, the Lao PDR is attracting the attention of trans-national criminal organisations and is at risk of becoming a hub for storage, illicit transit trafficking and drug consumption in the region. Although there are no indications that large scale production of synthetic drugs currently occurs in the Lao PDR, strategic analysis indicate that it is only a matter of time before synthetic drugs are clandestinely produced in the country.

131. According to the U.S. State Department International Narcotics Control Strategy Report 2010, the value of the illicit drug economy is estimated to be about ten percent of GDP or up to USD750 million. The funds are reported to be invested in legitimate businesses.

132. **Human Trafficking:** The UNODC estimates that between 200,000 and 450,000 people are trafficked annually within the Greater Mekong Sub Region. Lao PDR is also severely affected. Human trafficking is not only a cross-border activity but also occurs within the boundaries of the Lao PDR. Many young people choose to migrate either internationally to Thailand or internally from rural locations to the cities, in search of better economic opportunities. It is believed that about 90% of trafficking from Lao PDR occurs to Thailand, where the majority of victims are girls aged between 12 and 18. Of those people trafficked from Lao PDR to Thailand, it has been estimated that about 35% end up in prostitution, 32% in situations of labour exploitation, 17% in factories and 4% on fishing boats.

133. **Illegal Logging and Other Environmental Crime:** Illicit trafficking is linked with transnational criminal groups and is trans-boundary in nature. The commodities being trafficked include illicit logs as well as many endangered species. In the Lao PDR, a great variety of wildlife is currently openly traded in northern areas, often in large volume.

134. **Corruption:** There have been public statements by Lao government officials of the seriousness of the corruption problem in the Lao PDR. Bribery and corruption is commonplace in the tender process for construction projects. Both domestic and international companies often bribe officials before bidding begins. Bribes to officials are generally used in construction projects involving major roads, large bridges and dams.

135. There have been media reports of the Lao State Inspection Agency stating that corruption costs the government over 100 billion Kip (approximately USD93 million) in revenue on an annual basis, with the most corrupt departments causing the largest losses being those responsible for investment and revenue collection.

(ii) ML/TF Attractiveness/Vulnerabilities

136. There are significant ML and TF vulnerabilities, as detailed and explained further in this report. The more salient elements are summarised below:

- lack of awareness of AML/CFT requirements and standards at all levels of the society;
- porous land borders with neighboring countries;
- poorly paid public servants and bribery is common;
- deficiencies in the AML/CFT legal framework - not fully consistent with the relevant Conventions and international standards;
- limited resources devoted to AML/CFT and technical skills are at the nascent stage; and
- a growing financial sector, particularly the banking sector and the newly established stock market.

137. The presence of four casinos close to Lao PDR's borders with neighboring countries may make the country more attractive for ML, given the empirical evidence globally of casinos being used to launder illicit proceeds. The absence of AML measures in place in Lao casinos further add to their relative attractiveness.

(iii) ML/TF Risks

138. There are significant illicit proceeds generated in the Lao PDR. Given the deficiencies noted in the AML framework, significant ML risks remain. The ML risks may be higher in the expanding financial sector. Due to the lack of an equivalent expanding supervisory framework, the banking sector may be attractive for the laundering of the proceeds of crime derived both domestically and offshore.

139. The threat of FT in the Lao PDR is perceived internationally to be lower than neighboring countries. Lao PDR is not generally regarded as a higher risk jurisdiction for FT. The absence of FT criminalisation could make Lao PDR a higher risk for FT, terrorists and/or terrorist entities.

1.3. Overview of the Financial Sector and DNFBP

140. According to a recent World Bank report, the financial system is dominated by banks, with non-bank financial institutions representing only 0.8% of overall financial sector assets as of June

2010.¹ There are 23 commercial banks with 63 branches, including domestic and foreign banks. There are 365 authorised foreign exchange bureaus, 18 authorised money value or transfer providers, and five insurance companies. There are also village development funds and poverty reduction funds, established by the mass organisations and local society organisations, with the participation of villagers and financial assistance provided by non-government organisations.

141. **Table: Financial Activity by Type of Financial Institution**

Type of financial activity (See glossary of the 40 Recommendations)	Type of financial institution that performs this activity	AML/CFT regulator & supervisor
1. Acceptance of deposits and other repayable funds from the public (including private banking)	Banks Micro-Finance Institutions	Bank of Lao PDR
2. Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))	Banks Finance companies Micro-Finance Institutions	Bank of Lao PDR
3. Financial leasing (other than financial leasing arrangements in relation to consumer products)	Non-Bank Credit Institutions	Bank of Lao PDR
4. The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds)	Banks Money remitters	Bank of Lao PDR
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	Banks	Bank of Lao PDR
6. Financial guarantees and commitments	Banks	Bank of Lao PDR
7. Trading in: (a) money market instruments (b) foreign exchange; (c) transferable securities	Banks Securities Companies	Bank of Lao PDR Securities and Exchange Commission
8. Participation in securities issues and the provision of financial services related to such issues	Securities Companies	Securities and Exchange Commission
9. Individual and collective portfolio management	Banks	Bank of Lao PDR
10. Safekeeping and administration of cash or liquid	Banks	Bank of Lao PDR

¹ Lao PDR Economic Monitor, World Bank

Type of financial activity (See glossary of the 40 Recommendations)	Type of financial institution that performs this activity	AML/CFT regulator & supervisor
securities on behalf of other persons		
11. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers)	Life insurance companies/agents	Insurance Department, Ministry of Finance
12. Money and currency changing	Banks, Financial Institutions	Bank of Lao PDR

Table: Categories and numbers of banks and financial institutions in the Lao PDR

Categories	No	Authorization Organisation
<u>Banking Sector:</u>	<u>23</u>	
State-Owned Commercial Bank	3	Bank of Lao PDR
Special Bank	1	Bank of Lao PDR
Joint Venture Bank (Foreign-State)	2	Bank of Lao PDR
Foreign Affiliate	3	Bank of Lao PDR
Domestic Private Bank	4	Bank of Lao PDR
Foreign Branches	10	Bank of Lao PDR
<u>Leasing Companies:</u>	<u>3</u>	
State-Owned Commercial Bank's Leasing Company	1	Bank of Lao PDR
Joint Venture (Foreign-Domestic)	2	Bank of Lao PDR
<u>Insurance Company:</u>	<u>05</u>	
Insurance Companies	05	Ministry of Finance
<u>Micro Finance Institution:</u>	<u>28</u>	
Deposit-Taking Microfinance Institution	7	Bank of Lao PDR
None-Deposit Taking Microfinance Institution	8	Bank of Lao PDR
Credit and Saving Union	11	Bank of Lao PDR
Funds for Cooperative	2	Bank of Lao PDR
<u>International Money Transfer:</u>	<u>18</u>	
Western Union	9	Bank of Lao PDR
Money Gram	5	Bank of Lao PDR
Coinstar Money Transfer	2	Bank of Lao PDR
HONG LAN SERVICES INC	1	Bank of Lao PDR
Sacombank	1	Bank of Lao PDR
<u>Money Changers</u>	<u>365</u>	Bank of Lao PDR

Banking Sector

142. According to the Lao PDR, the total assets of the entire banking system rose to 4,755 billion Kip or up by 32.03 percent as compared to 2008, which is the equivalent of USD 576 million. This is due to a significant expansion of the banking sector, which has taken place with the gradual expansion and liberalisation of the national economy. This reflects the Lao Government's decision to open up the sector to foreign competition and investment, as part of a regional agreement under the ASEAN to liberalise the banking sector.

143. Banks from Thailand, Australia, Cambodia, Vietnam and France have branches in the Lao PDR. Banks are offering ATM access.

144. The banking sector is dominated by state-owned banks with around 60% of total assets in 2010 (down from 69% in 2009), but the share is declining. The assets of private and joint venture banks have increased recently as new private banks emerged. In the past two years, six (6) new commercial banks commenced operations and brought the total number of banks to 23 as of March 2010, consisting of four state owned commercial banks, two joint venture banks, seven domestic and foreign private banks and 10 branches of foreign banks.

Table: Details of the Banking Sector
(December 2009)

Categories of Banks	Number	Network/ Branches	Asset Size (in billions of Kip)	Sharing or banking assets
State-owned Commercial Banks	4	49	12,639.36	67.42%
Joint Venture Banks (Foreign-State)	2	4	1,178.56	6.28%
Domestic Private Banks	4	3	1,296.93	(6.92%
Affiliated Banks	3	7	1,210.50	6.46%
Branches of Foreign Banks	10	-	2,422.17	12.92%

Source: Bank of the Lao PDR

Insurance sector

145. There are five insurance companies in Lao PDR authorized by the Lao government. They are mainly joint ventures between foreign companies and the Ministry of Finance on behalf of the Lao government. There is only one company that is 100% privately owned.

146. The following is a list of insurance companies authorized to operate in Lao PDR:

- (1) Assurance Generale du Laos (AGL) established in 1992 as a joint venture with registered capital of USD 2,000,000. Allianz and Ministry of Finance, each holds shares of 51% and 49% respectively. The company provides general and life insurance.
- (2) PCT ASIA INSURANCE CO, LTD established in 2009 is 100% privately owned.
- (3) Tokojaya Lao Assurance Co. Ltd is a joint venture between a Malaysian Conglomerate and the Government of Lao PDR through the Ministry of Public Security with the shareholding ratio of 80% - 20% respectively. The company was established in 2007 with USD 3 million registered capital.
- (4) Lao-Viet Insurance Company (LVI) is a Lao-Viet Insurance Joint Venture with registered capital of USD 3 million. LVI was launched in June 2008.

- (5) MSIG Insurance (Lao) Co Ltd is a joint venture between MSIG ,which owns 51% equity, and the Ministry of Finance, which owns 49% equity. The registered capital is US\$ 2 million.

147. Insurance Companies have branches in the larger provinces of Lao PDR, including Vientiane Capital, Champasak, Luang Prabang, Attapeu and Savanakheth.

Money Changers/Exchange Bureau

148. At June 2010, there were 365 BOL authorised foreign exchange bureaus in the country. Both commercial banks and financial institutions are authorised to operate foreign exchange trading.

Money or Value Transfers Systems (MVT)

149. There are 18 BOL authorised MVT providers in the Lao PDR. These include banks and international non-bank money remitters such as Western Union, Money Gram, Coinstar Money Transfer and Hong Lan Service. The Lao PDR has not undertaken a study of the size of the informal remittance sector.

Securities Sector

150. The government established the Securities and Exchange Commission (SEC) on 25 May 2009. In July 2009, a joint venture agreement was signed with the Stock Exchange of Korea for the establishment of Lao Securities Exchange, in cooperation with the Vietnam Stock Exchange and the Stock Exchange of Thailand.

151. At the time of the on-site no securities company had been established.

Micro-Finance

152. There are 28 BOL licenced microfinance institutions, including seven deposit-taking microfinance institutions, eight non-deposit taking microfinance institutions, 11 savings and credit unions and two funds for cooperatives.

Leasing Companies

153. There are three BOL licenced providers, one bank and two joint venture providers.

Overview of the DNFBP Sector

Casinos (which also includes internet casinos)

154. The Ministry of Information and Culture licences casinos. There are four licenced casinos in operation and all are in the form of a joint venture between the Lao PDR government and foreign investors. In addition, there are six licenced slot machine venues located near borders with neighboring countries. There are no casinos permitted in Vientiane.

155. The longest established casino is 10 years old and located near the capital, Vientiane. It is 100% Malaysian owned. Two other casinos are jointly owned by interests from China and another casino is owned by an investor based in the U.S. These three casinos were opened in 2009. There is a proposal for one more casino to open near the Cambodian border.

Real estate agents.

156. There were 301 real estate agents in Lao PDR in May 2010. The agencies are operated by Lao natural persons in the form of sole enterprises. Agents or brokers provide brokerage services only and are not involved in accepting payments. Payment is direct between the seller and buyer. There is no formal licensing requirement beyond basic business registration with the Enterprise Registration Office.

Dealers in precious metals

157. There are two (2) BOL authorised import-export enterprises for precious metals (gold and silver bars). For the domestic market, there are 80 association members of the Precious Metal and Stone Association - established under the National Chamber of Commerce and Industry. There are also precious metals businesses with a business permit but not part of the association.

Dealers in precious stones

158. Lao PDR is a significant gem producing country. The Lao Gem and Jewellery Association estimates that there are more than 600 jewellery traders, with over 200 based in Vientiane. The majority are retail traders. There are two BOL authorised traders involved in import and export. There are only 80 members of the association, although the latter is keen to grow the membership.

159. The values of products are normally under USD15,000. There is occasional demand for items over this amount, but it is not common. Only about 10 retail shops are able to service this top end of the market, but normally there would be only one or two sales a year over USD15,000. The average store capital is between USD15,000 and USD20,000.

160. The normal method of payment is in cash with the majority in the local currency, the Kip.

Lawyers

161. The Lao Bar Association was established in 1996. It is composed of an Executive Committee of nine members and an Audit Committee of five members. There are seven regional offices of the Bar Association nationwide and in nine offices in the capital, Vientiane. The Bar Association provides training and monitors lawyers' practices.

162. According to information obtained during the on-site, there are 129 lawyers and 51 trainee lawyers. Candidates who wish to obtain a licence from the Ministry of Justice to practice law must possess qualifications at a technical, bachelor or master's level, or otherwise have experience in working in the judicial system for at least five years. After a one year training program under the supervision of a mentor, trainee lawyers are subject to a final examination and upon successful completion, they may apply for a practice licence.

Notaries

163. The Law on Notary Offices was approved and promulgated in 1991. A Notary Office was created within the Ministry of Justice in 2000 and a notary office was established within the justice division in each province or prefecture in 2004. In 2009, the Law on Notary Office was amended. Notary officers are appointed and dismissed by the Minister of Justice.

164. Notary offices are governmental organisations. However, private agencies may be established and authorised by the government in accordance with specific regulations under the Amend Law on Notary Offices issued 2009.

Accountants

165. The Lao Institute of the Certified Public Accountants (LICPA) is a member of the ASEAN Federation of Accountants but is not a member of the International Federation of Accountants (IFAC). The accounting and audit laws lack clarification of LICPA's exact responsibilities regarding training, examination, and certification and licensing of accountants and auditors. With only three administrative staff, the LICPA lacks sufficient capacity to carry out its functions.

166. LICPA has about 150 individual members. There are 40 accounting firms operating in Lao PDR, including three local offices of the large international accounting firms. Large corporate entities are audited by local members of international firms. The small local audit firms concentrate mostly on tax and bookkeeping services, with only occasional audit work for medium-size and small companies.

167. The LICPA members are required to have completed a six-month training and examination program that includes 10 subjects. More than 400 certificates of completion have been issued since 1996 when the program was first introduced by the Ministry of Finance. However, only about 150 persons have LICPA membership. The training program is in the Lao language. No foreign persons have yet completed the program and obtained LICPA membership, and no foreign-based professional accountancy training program is active within Lao.

168. The Lao Association of Accountants and Independent Auditors (LAAIA) was established for accountants employed in state-owned enterprises and private firms, including accounting chiefs, accountants, and accounting and auditing professions employed with accounting firms licenced by the Ministry of Finance. The Association was established in accordance with the Law on Accounting No. 1/NA on 2 July 2007.

Trust and Company Formation Service Providers

169. There are no trust service providers in the Lao PDR. Company formation services are relatively new, given the Law on Enterprises was promulgated in 2006 and most businesses are still sole proprietorships; although there is a growing demand for such services as the economy grows.

1.4. Overview of commercial laws and mechanisms governing legal persons and arrangements

170. The Law on Enterprises No 11/PA, dated 9 November 2005, came into effect in 2006 to replace the 1994 Business Law. The Law on Enterprises determines the types, forms and categories of enterprises, number of shareholders, and registered capital of enterprises, including private, state-owned and joint enterprises. This law applies to private enterprises, both domestic and foreign, state enterprises and joint enterprises operating in the Lao PDR.

171. All prospective enterprises must be registered by the Enterprise Registry Office. The company must submit, among others, the company name, the type of company, the incorporation statutes, the registered and principal business office, manager/board of directors, share structure and member's share. Companies may be owned by one or more shareholders (which may be legal or natural persons).

172. There are two categories of NPOs and they are subject to different requirements. The Prime Ministerial Decree on International Non Government Organisation (INGO) No.13/PM, dated 8 December 2009, (“Decree 13 on International NGOs”) governs the operations for international NPOs. This Decree is applicable to International and foreign NPOs, as defined in Article 2, including non-governmental organisations in the form of association, foundation, charity, institutional and charitable clubs. For domestic NPOs, the Prime Ministerial Decree No.115 on Associations, issued on 29 April 2009 (“Decree 115 on Associations”), governs the operation of such NPOs. This Decree sets the rules and regulations governing the establishment, operation and management of associations registered as legal entities in the Lao PDR.

173. Association refers to a non-profit civil organisation set up on a voluntary basis, and operating on a permanent basis to protect the rights and legitimate interest of the association, its members or communities. An association formed and registered under Decree 115 is incorporated as a legal entity. It excludes unincorporated nonprofit organisations such as religious groups, micro finance funds and organisations associated with the communist party.

1.5. Overview of strategy to prevent ML and terrorist financing

a. AML/CFT Strategies and Priorities

174. The Lao PDR does not have a comprehensive national strategy to implement the FATF 40+9 Recommendations. According to Lao PDR authorities, it is currently focused on enhancing its legal framework to meet the requirements of the United Nations International Convention for the Suppression of the Financing of Terrorism, which was signed on 29 October 2008. It is in the process of drafting a legal instrument on the suppression of the FT.

b. The Institutional Framework for Combating Money Laundering and Terrorist Financing

175. **The AML Working Group:** This Group was established in March 2008 in accordance with the BOL Governor’s Decision No. 204/BOL, dated 27 March 2008, and No.56/BOL, dated 25 Jan 2010. The AML Working group consists of 19 representatives from relevant ministries and agencies. The head of AMLIU is the Chair of the Working Group.

176. **National Anti-Terrorism Ad-Hoc Committee:** Under Prime Minister Decision No. 63/PM, of 27 December 2002, a National Anti-Terrorism Ad-Hoc Committee was created with the mandate, inter alia: to act as an advisory body to the Government on CT issues; to make the national report to the 1373 (2001) Committee; and to propose amendments to the domestic laws. The Committee is chaired by the Deputy Prime Minister and includes the Minister of Foreign Affairs, Minister of Public Security, Minister of National Defense and Minister of Justice, and representatives from concerned departments within the MOFA (Department of International Organisations, Department of Law and Treaties, etc), the National Assembly, Public Prosecutor’s Office, Science and Technology Agency, Bank of Lao PDR, Civil Aviation Department, and National Drug Control Committee. The Committee has carried out several activities such as informing its member about latest developments and requests of the UN Security Council on terrorism.

Lead Agency

177. **Anti-Money Laundering Intelligence Unit (AMLIU):** The AMLIU is established within the BOL and is the lead agency for AML/CFT. AMLIU is the Financial Intelligence Unit (FIU) and

AML/CFT supervisor for all designated financial sector reporting entities except for insurance and securities.

FIU and law enforcement

178. **Economic Police Department:** This Department reports to the General Police Department (under Ministry of Public Security) and is the designated agency for investigating ML and predicate offences.

179. **Ministry of Public Security:** This is the Lao PDR police force and operates in accordance with the Law on Security Force under the direct supervision of the government and predicate offences.

180. **Ministry of Finance (Customs):** Customs is responsible for cross border control in accordance with relevant laws and regulations.

181. **Office of the Public Prosecutor:** This office is responsible for the oversight of criminal investigations and their subsequent prosecution, including for ML.

182. **People's Court and Supreme People's Court:** The People's Courts are the judicial branch of the State, and they are responsible for adjudicating cases, including potential ML cases.

183. **State Inspection Authority:** The State Inspection Authority, pursuant to Article 33 of the Law on State Inspection, is to prevent and suppress corruption. The State Inspection Authority has a role investigating predicate offences related to corruption.

Policy and Other Regulatory/Supervisory authorities

184. **Bank of Lao PDR (BOL):** The Bank is the central bank of the Lao PDR and prudential regulator and supervisor of the banking sector and certain financial institutions in the country.

185. **Committee for Non-Governmental Organisation Affairs:** This Committee consists of:

- 1) Deputy Minister of Ministry of Foreign Affairs, is a Chairman
- 2) Director General of INGO, Ministry of Foreign Affairs, is a Secretariat Head
- 3) Director General of Planning Department, Ministry of Planning and Investment
- 4) Representative of National Steering Committee for Rural Development and Poverty Eradication
- 5) Representative of Ministry of Education
- 6) Representative of Ministry of Health
- 7) Representative of Ministry of Forestry and Agriculture
- 8) Representative of Ministry of Labor and Welfare
- 9) Representative of Lao Women's Union
- 10) Representative of Lao People's Revolutionary Youth Union
- 11) Representative of Lao Front for National Construction
- 12) Representative of Ministry of Public Security
- 13) Chairmen of the Committee for Non- Governmental Organisation Affairs at capital city level and provincial level.

186. The Committee is responsible for approving and monitoring international NPOs operating in the Lao PDR. The Department of International Organisations, Ministry of Foreign Affairs, serves as the Secretariat to the Committee and is the lead operational agency.

187. **Ministry of Finance:** The Ministry has a role in supervising and regulating the insurance sector, including for AML/CFT.

188. **Enterprise Registration Office (ERO):** The Office is a division of the Internal Trade Department in the Ministry of Industry and Commerce. The ERO is responsible for the registration of legal persons, partnerships and sole traders.

189. **Ministry of Information and Culture:** The Ministry is responsible for licensing and supervising casinos in the Lao PDR.

190. **Ministry of Foreign Affairs:** The Ministry, together with Ministry of Justice, related ministries and organisations, are responsible for Lao PDR's obligations in relation to international treaties and conventions, including UN Security Council Resolutions.

191. **Ministry of Justice:** The Ministry is responsible for reviewing draft bills, ordinances and decrees to ensure their compliance and consistency with the constitution and the laws of Lao PDR, before submission of such instruments to the government and National Assembly for ratification.

192. The Ministry also plays a role in the administration and auditing of judgment implementation and the supervision of the legal profession.

193. **Public Administration and Civil Service Authority (PACSA):** This agency is responsible for the regulation and supervision of a certain category of domestic NPOs.

194. **Securities and Exchange Commission Office:** The Securities and Exchange Commission Office is responsible for overseeing and regulating the stock market, which commenced operations at the end of 2010.

Self-Regulatory Organisations

195. There are various self regulatory organizations, which at this stage do not have role in AML/CFT. These include the Lao Institute of the Certified Public Accountants (LICPA), The Lao Association of Accountants and Independent Auditors (LAAIA), the Lao Gem and Jewellery Association, the Precious Metal and Stone Association and the Lao Bar Association.

c. Approach Concerning Risk

196. Lao PDR has not applied AML/CFT measures under a risk-based approach. Those sectors that have not yet come under AML/CFT controls have not been excluded based on low risk. Lao PDR has not undertaken a national risk assessment of ML or the FT.

d. Progress since the Last Mutual Evaluation

197. This is the Lao PDR's first Mutual Evaluation. The Lao PDR was admitted to the APG as the 36th member in July 2007 at the APG Annual Meeting.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

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

2.1.1. Description and Analysis

Legal Framework:

198. Lao PDR criminalised ML through the Penal Law, as amended in November 2005. The ML offence is provided for and punished under Article 64 of the Penal Law, as follows:

“Any person conducting activities in order to convert money or items derived from corruption, illicit drug trading, human trafficking, trade in weapons of war or other offences into legal money by bank transactions, buying land, buying houses, lending to other persons or by other means shall be considered as performing money laundering, and shall be punished with deprivation of freedom from one to three years and shall be fined 3% of the amount laundered.

Where money laundering is habitually performed or done so as an organized group of persons or the amount being substantial punishment shall be prohibition of freedom from five to ten years and shall be fined 3% of the amount laundered.

Any preparation or attempt to commit such an offence shall also be punished.

Any person acting as an accomplice in the area of money laundering shall be punished by deprivation of liberty for a period of six months to two years and shall be fined 1 percent of the amount received as their share.

Persons responsible for reporting money-laundering such as bank or financial institution staff that does not report or deliberately report false information will be considered as concealing the infraction and shall be punished according to Article 154 of this law.

Money or assets used in money laundering including interest and other gains shall be confiscated as belonging to the state.”

[It should be noted that this version, as officially certified by the Ministry of Justice and provided to the team during the on-site visit, is different to the version appearing in the English translation of the consolidated Penal Code. The authorities advised that the translation appearing in the consolidated Penal Code is incorrect.]

Criminalisation of Money Laundering (c. 1.1—Physical and Material Elements of the Offence):

199. Article 64 of the Penal Law does not satisfy all the physical and material elements of the ML offence required in Article 3 of the Vienna Convention and Article 6 of the Palermo Convention (i.e. transfer, concealment or disguise, acquisition, possession or use of property with the knowledge at the time of receipt). Physical elements set out in Article 64 of the Penal Law are limited to conversion, but the first paragraph of Article 64 of the Penal Law has a conjunctive clause that appears to include examples of other physical elements including transfer and ‘by other means’. Although one may argue that the wording “or by other means” is broad enough to cover other acts

required in the said conventions such as: transfer, acquisition, and possession or use of property with knowledge at the time of receipt, the fact is that it is not clear that those actions are covered independent of an act of conversion into legal money.

200. The current offence of ML as defined in Article 64 extends to ‘money or items’. Property as referred in the Property Law (No.04/PO, 27 July 1990) may mean a “thing” or an asset itself or the rights derives of such things or assets (see explanation in c.1.2). There is no clear definition of property’ or ‘proceeds of crime’ under Lao PDR legislation.

201. Until now, there has been no prosecution or conviction for the crime of ML. There is no case law and it is difficult therefore to assess how such provision is being interpreted and applied. Based on the on-site visit, authorities indicated that the offender is usually prosecuted and punished for the predicate offence.

The Laundered Property (c. 1.2):

202. Based on the Vienna and Palermo Conventions, property should mean assets of every kind whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments title to, or interest in, such assets. And, proceeds of crime should mean any property derived from or obtained, directly or indirectly, through the commission of an offence.

203. Article 64, sixth paragraph, of the Penal Law states “*Money or assets used in money laundering including interest and other gains shall be confiscated as belonging to the state.*” The wording “*money or items*” is also used in the 1st paragraph of the same Article. While AML Decree 55, which is an Administrative Regulation, adopts the term “*money or assets*”.

204. Article 34 (“*Confiscation of Property and [connected items]*”) of the Penal Law adopts the term “*property and item*”. Article 55 (*Seizure and Sequestration of Assets*) of the Criminal Procedure Law adopts the term “*material and assets*” and Article 174 (“*Corruption*”) of the Penal Law mentions “*assets and interests derived from corruption*”. From the reading of other Articles of the Penal Law, such as Article 121 (“*Embezzlement of Citizen’s Assets*”), Article 124 (“*Concealment and Unlawful Trade of Citizens Property*”) and Article 125 (“*Loss of Assets to Fire Caused by Carelessness*”) the term ‘assets’ and ‘property’ are used indistinctively.

205. Article 1 (“*Definition of Property*”) of Property Law states that property “*[in respect of any asset,] means the total and definite right of the State, collectives, individuals, and private persons and entities over such asset in terms of possession, use, usufruct and disposition, within the limits provided for by the laws*”. Based on the provisions of this law property may mean ‘things’ movable or immovable, tangible or intangible. Article 14 to 16 of the same Law refers to property as including goods or things as well as capital, income or other assets. And, Article 34 defines property over gains and income as: “*gains and income generated from an asset (...)*”.

206. Article 56 of the Criminal Procedure Law prescribes that an “*exhibit is an asset (tangible or intangible) relating to the offence, [an asset] that was used or would have been used in the offence, [or an asset] that was received or would have been received from the offence.*”

207. During the on-site visit, authorities explained that the terms mentioned in Article 64 “money or items’ or ‘money or assets’ cover funds or assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, evidencing title to, or interest in, such assets. There are no limits imposed for the nature of the property or for its value that directly or indirectly (“as well as any assets obtained there from”)

represent the proceeds of crime. Nevertheless, the terminology used in the Article 64 provision is not consistent nor it is consistent with other Articles of the Penal Law that mention ‘property’ or ‘assets’, as exemplified.

208. Although the term “item” can be interpreted in a very broad manner as covering any type of property, regardless of its value, or if directly or indirectly, represents the proceeds of crime, and not simply cash, the fact is there is neither a definition of property, assets, funds or proceeds of crime in line with the latest conventions (i.e. incorporating all the characteristics therein referred to); nor a consistent use of terminology assuring legal coherence and certainty among criminal and administrative legislation. Example of this situation is precisely the absence of a clear and accurate definition of ‘assets’ or ‘property’ as well of ‘proceeds of crime’ in Article 64 of the ML offence.

Proving Property is the Proceeds of Crime (c. 1.2.1):

209. The offender can be convicted of ML without any correspondent conviction of a predicate offence proving the illicit origin of the proceeds. Money laundering is an autonomous offence from the predicate offence. The prosecution must only prove beyond a reasonable doubt that the proceeds are the proceeds of crime. The gathering of sufficient and reliable evidence that such proceeds are the result of a criminal activity is sufficient basis for law enforcement authorities or the Public Prosecutors Office to take action.

210. Article 21 of the Criminal Procedures Law, third paragraph, states that “*Criminal proceedings should seek additional evidence to prove the guilt of such persons. Even if the accused person or defendant denies or does not admit [such guilt], if there is strong and reliable evidence, he may be regarded as the wrong-doer*”.

211. According to Article 55 of the Criminal Procedure Law, the head of the investigation organisation or the public prosecutor are the entities responsible to collect evidence and to issue an order to seize or sequester such assets.

The Scope of the Predicate Offences (c. 1.3)

212. Article 64 of the Penal Law adopts a mixed system - a threshold and a list approach - by stating that: “*Any person conducting activities in order to convert money or items derived from corruption, illicit drug trading, human trafficking, trade in weapons of war or other offences into legal money (...)*”.

213. There was no clarification on the on-site visit whether all predicate offences are considered serious offences in Lao PDR .

214. According to Article 6 of the Lao PDR Penal Law, the definition of criminal offence is as follows:

“All acts and abstentions deemed dangerous to the political, economic or social system of the Lao People's Democratic Republic, to the property of the State, collectives or individuals, to the lives, health, integrity, rights or freedom of the people, or to national security or public order as provided in the Criminal Law or in other laws of the Lao People's Democratic Republic that define criminal penalties shall be considered offences.

All acts or abstentions with all the components of offences but resulting in damage under 500,000 Kip shall not be considered offences, except for acts of recidivism or acts performed

as a profession.” [Equivalent to approximately USD60]

215. Moreover, according to its Article 8, criminal offences are divided in three categories as follows:

- “Minor offences” are offences punished under the law by public criticism or fine;
- “Major offences” are offences punished under the law by re-education without deprivation of liberty, and imprisonment from 3 months to 10 years, and fines; and
- “Crimes” are offences punished under the law by imprisonment from 5 years up to the death penalty.

216. As far as the list of the designated categories of offences is concerned, the following Penal Code offences are included as predicate offences:

- Trafficking in human beings and migrant smuggling is provide for in Article 75 (*“Mobilization of Unlawful Migration or Immigration”* - punished with a imprisonment penalty of 6 months to 5 years), Article 100 (*“Trade and Abduction of Human Beings”* - punished with a imprisonment penalty of 5 to 15 years) and Article 134 (*“Human Trafficking”* - punished with a minimum imprisonment penalty of 5 years, being the maximum penalty life imprisonment);
- Sexual exploitation, including sexual exploitation of children is provided for in Article 132, (*“Procuring”* – punished with an imprisonment penalty of 6 months to 5 years), Article 133 (*“Forcing to Prostitution”* - punished with an imprisonment penalty of 5 to 20 years), Article 136 (*“Pornography”* punished with an imprisonment penalty of 3 months to 1 year);
- Illicit trafficking in narcotic drugs and psychotropic substances is provided for in Article 146 (*“Production, Trade, Consumption or Possession of Narcotics”* - punished with a minimum penalty of 10 years of imprisonment, being the maximum penalty the death penalty);
- Illicit arms trafficking is provided for in Article 77 (*“Unlawful Trade in Weapons or Explosives”* - punished with an imprisonment penalty of 6 months to 5 years) and Article 80 (*“Offences relating to Chemical Weapons”* – punished with an imprisonment penalty of 6 to 12 years);
- Illicit trafficking in stolen and other goods is provided for in Article 124 (*“Illicit Traffic of Stolen Goods”* - punished with an imprisonment penalty of 3 months to 1 year)
- Corruption is provided for in Article 157 (*“Bribery and corruption”* – passive corruption is punished with an imprisonment penalty of 1 to 3 years; active corruption is punished with an imprisonment penalty of 6 months to 5 years); and Article 174 (*“Corruption”*) – punished with a minimum imprisonment penalty of 1 year, being the maximum penalty life imprisonment;
- Fraud is provided for in Article 120 (*“Swindle of Citizens”* - punished with an imprisonment penalty of 6 months to 5 years), Article 109 (*“Swindle of State or Collective Property”* - punished with an imprisonment penalty of 6 months to 7 years);

- Counterfeiting currency is provided for in Article 63 (*“Forgery of bank or use of Forged bank Notes”*) - punished with an imprisonment penalty of 5 to 20 years); Article 151 (*“Falsification of Bank Cheques, Unlawful Use of bank Cheques or other Bonds”* - punished with an imprisonment penalty of 6 months to 3 years;
 - Environmental crime is provided in Article 139 (*“Destruction of Forests”*) - punishable with imprisonment penalty of 3 months to 1 year and Article 140 (*“Destruction of Crops”*) punished by a fine of 50 000Kip to 2 000 000Kip 500 000Kip and an imprisonment penalty of 3 months to 2 years;
 - Murder is provided for in Article 88 (*“Murder”* - punished with an imprisonment penalty of 10 to 20 years). The offender may also be sentenced to life imprisonment or death penalty according with the aggravated circumstances), Article 90 (*“Battery”* - punished with an imprisonment penalty of 3 months to 10 years);
 - Kidnapping is provided for in Article 100 (*“Trade and Abduction of Human Beings”*) and Article 101 (*“Taking of Hostages”* - punished with an imprisonment penalty of 10 to 20 years. The offender may also be sentenced to life imprisonment according with the aggravated circumstances.);
 - Robbery or theft is provided for in Article 118 (*“Robbery of Personal Assets”* - punished with an imprisonment penalty of 4 to 15 years), Article 119 (*“Theft and Mugging of Personal Property”* - punished with an imprisonment penalty of 6 months to 5 years), Article 107 (*“Robbery of State or Collective Property”* – punished with an imprisonment penalty of 4 to 20 years of imprisonment), Article 108 (*“Theft and Misappropriation of State or Collective Property”* – punished with an imprisonment penalty of 6 months to 7 years;
 - Extortion is provided for in Article 97 (*“Duress”* - punished with an imprisonment penalty of 3 months to 10 years).
217. Additional corruption offences that apply to offending by government staff are set out in the Anti-Corruption Law (2005):
- *Article 47 sets out an offence of Cheating or Falsification Relating to Technical Construction Standards, Design and Calculation. The penalty is 1 to 5 years’ imprisonment, and a fine of 1% of the value of the damage. Offending on a regular basis which causes severe damage shall render the government staff member liable to 5 to 15 years’ imprisonment, and 1% of the value of the damage. Offending as part of an organised group increases liability to 15-20 years.*
 - *Article 48 sets out an offence of Deception in Bidding or Concessions. The sanctions for the offence are as per Article 47.*
 - *Article 49 sets out an offence of Disclosure of State Secrets for Personal Benefit. Sanctions are one to 1 to 3 years’ imprisonment, and a fine from 2,000,000 Kip to 10,000,000 Kip (up to approx US\$1250).*

- *Article 50 sets out an offence of Holding Back or Delaying Documents for any benefit, which shall be punished by three months' to one year's imprisonment, and shall be fined from 1,000,000 Kip to 5,000,000 Kip (up to approx US\$625).*

218. The Lao PDR authorities were able only to demonstrate coverage of offences in 13 of the 20 designated categories of predicate offences. Not all the 20 designated predicate offences of ML are criminalised in the Lao PDR legislation, in particular organised crime, terrorism and financing of terrorism and insider trading. Although an organised group of persons can be punished for the crime of ML in accordance to 2nd paragraph of Article 64 of the Penal Law, there is no criminalisation per se of participation or organisation of a criminal group as required under Article 5 of the Palermo Convention. Some offences, if committed by an organised group, are aggravated in terms of penalty, but organised crime is not an autonomous offence. For other predicate offences such as counterfeiting and piracy of products, smuggling, forgery and piracy, the team was not provided with the relevant legislation to demonstrate either criminalisation and/or penalties for the offences.

219. Terrorism is not an autonomous offence, although one can find some provisions in the Penal Law related to terrorism, such as: Article 59 “Physical Harm against the Interests of National Security”, Article “Destruction”, Article 61 “Disruption of the State or Social Undertakings”, Article 67 “Civil Commotion”, Article 70 “Offences against Friendly Countries”, Article 76 “Unlawful Production, Possession and Use of Weapons or Explosives”, article 80 “Offence relating to Chemical Weapons”, Article 98 “Violation of Safety Regulations relating to Air (transport), Airports and Harbors”, Article 101 “Taking of Hostages”) and Article 175 (“An Act is Dangerous to the Security of Boats, Airplanes Ships, Cars, Airports, Harbors or Stations).

Extraterritorially Committed Predicate Offences (c. 1.5):

220. There is neither specific provision nor prohibition for an offender to be convicted of ML even if the predicate offence has been committed in another jurisdiction (extraterritoriality of committed predicate offences).

221. Article 4 of the Penal Law (*Application of Criminal Law outside the Territory of the Lao People's Democratic Republic*) states that:

Lao citizens who commit offences outside the territory of the Lao People's Democratic Republic shall be charged with and punished for such offences if they are defined [as offences under] the Criminal Law of the Lao People's Democratic Republic.

Aliens and apatrids residing in the Lao People's Democratic Republic ³ who commit offences outside the territory of the Lao People's Democratic Republic shall also be charged and punished.

Foreign individuals who commit offences outside the territory of the Lao People's Democratic Republic shall be charged and punished as provided in the Criminal Law of the Lao People's Democratic Republic if such a case is provided for in international conventions.

222. In other words, it is possible to prosecute someone for an offence committed outside Lao PDR as long the conduct is also punishable under Lao PDR criminal law. So, it is possible to punish someone that has committed the ML offence outside the territory of Lao PDR. However, it is not clear that someone can be prosecuted in Lao PDR for ML when the predicate offence was committed outside Lao PDR.

223. According to Lao PDR authorities, they advised that, although not expressly stated, there is room to allow the investigation and prosecution of ML, even if the predicate offence has not been committed in Lao PDR. However, this would depend on the reliability of the evidence presented to the Lao PDR law enforcement authorities and the Public Prosecutors Office by foreign counterparts. Such a scenario would fall within the scope of mutual legal assistance in criminal matters.

Laundering One's Own Illicit Funds (c. 1.6):

224. The offence of ML applies to those who commit the predicate offence (including, self-laundering (Article 64, first paragraph). It also covers attempt and preparation (Article 64, third paragraph) and participation (which includes aiding and abetting -Article 64, fourth paragraph) to commit the ML offence. Participation is punished with six months to two years of imprisonment.

Ancillary Offences (c. 1.7):

225. The General Part of the Penal Law establishes ancillary offences to all the criminal offences in Lao PDR, including ML.

226. Article 13 of the Penal Law on the preparation to commit offences refers 'to the preparation of materials, conditions or other factors in order to commit an intentional offence' and that 'shall be punished according to the articles prescribing penalties for the offence itself.' However, Article 64 of the ML provision does not establish any concrete sanction/penalty.

227. Article 14 of the Penal Law on attempt states as follows:

"Attempt to commit an offence" refers to the taking of intentional acts which are components of an offence but where the offence was not completed because of circumstances outside the control of the offender, making such acts not successful.

Such attempts to commit an offence shall only be charged or punished if deemed dangerous for society, as provided in the specific part of this law.

Attempts to commit an offence shall be punished according to the articles prescribing penalties for the offence itself.

228. Article 17 of the Penal Law prescribes participation in an offence as follows:

"Participation in an offence" refers to intentional participation in an offence by two or more persons.

Participants in an offence are:

- *Authors;*
- *Implementers;*
- *Inciters; and*
- *Accomplices.*

The author is the one who has planned, organized or given instructions to commit the offence;

The implementer is the one who has directly committed the offence;

Inciters are persons persuading others to commit offences; [and]

Accomplices are persons who have intentionally assisted in the offence, or who have previously agreed to hide the offender, to hide instruments and tools of the offence, to efface traces of the offence or to conceal any proceeds from the offence

229. Under the terms of Article 37 of the Penal Law, “*The court prescribes penalties on the basis of legal provisions on the punishment of offences. In prescribing penalties the court must consider the nature and degree of the social threat posed by the offence, the personality of the offender, and the circumstances conducive to the reduction or the increase of penal responsibilities.*”

230. Article 42 on the “*Prescription of Penalties for the Preparation of and Attempts to Commit Offences*” states that:

Prescription of penalties for the preparation of and attempts [to commit] offences must take into consideration their nature and degree of social threat, the degree of implementation of the offender's ill intentions, and the causes of such unsuccessful offences. The court may impose sentences with lighter penalties than those legally prescribed.

231. Article 43 on the “*Prescription of Penalties for Accomplices to and Inciters of Offences*” states that:

Prescription of penalties for complicity in and incitement of offences must be considered on an equal basis as other forms of participation in such offences, but, taking into consideration the nature and degree of the complicity and incitement, the court may sentence lighter penalties than those prescribed.

232. A person may be prosecuted for the ancillary offences of ML (*i.e.* participation, aiding, abetting and facilitating) based on the Penal Law. The prosecution of these offences is directly linked to ‘association’, since it refers that participation in an offence has to be performed by *two or more persons* (Article 17 of the Penal Law). However, it is also limited to this requirement. Moreover, although from the reading of Article 17 it would appear that this provision precludes “conspiracy” to ML, the fact is that the law does not explicitly provide for the criminalisation of the conspiracy of ML.

233. There is no penalty (sanction) for some of the ancillary offences; for instance, there is no penalty for attempt and preparation of the ML offence under article 64, third paragraph.

234. According to Article 42 of Penal Law, it is up to the judge’s discretion to set up the penalties for such actions; however, the law has to establish the boundaries, in other words the correspondent penalty for the illicit act (principle of legality and legal certainty), and the judge based on such boundaries and their range has the discretion to decide on the concrete penalty for the concrete case, that is why the law allows the court to impose lighter penalties than the ones prescribed by law. On the current scenario of ML there is no prescribed penalty.

235. The Penal Law also provides for in its Article 165 the punishment of any person who conceals an offence (knowingly or witnessing) as well as in its Article 166 the punishment of any person, “*who did not make any previous agreement or promise with an offender but who provides shelter or assistance to such an offender [allowing the offender] to evade arrest or trial.*”

Recommendation 2

Liability of Natural Persons (c. 2.1):

236. Natural persons are liable for the ML offence under Article 64 of the Penal Law in articulation with Article 2 of the Penal Law (individual criminal responsibility). The penalty is imprisonment from one to three years and a fine penalty of 3% of the money laundered.

237. When the ML offence is committed by an organised group of persons, the imprisonment penalty may range from five to 10 years and a fine penalty of 3% of the money laundered.

The Mental Element of the ML Offence (c. 2.2):

238. The Lao PDR criminal law requires the mental element within criminal offences. As stated, the ML offence only applies when the offender knows, or should have known, that he is committing that offence and when he has the intention to commit it (articulation of Articles 2, 7, 9 and 17 of the Penal Law).

239. Article 2 of Penal Law establishes the “*Basis of Penal Responsibility*” as follows:

“An individual can only be charged with and punished for an offence based on intentional or negligent acts deemed dangerous for society as defined in the Criminal Law or in other laws of the Lao People's Democratic Republic that define criminal penalties, and [such individual can be punished] only when a decision is rendered by a court.”

240. Article 7 of Penal Law establishes the “*Components of Offences*” as follows:

The components of an offence [refer to] those objective and subjective characteristics of behaviour that the Penal Law defines as together constituting an offence.

An offence consists of four components as follows:

- *Material component;*
- *Objective component;*
- *Subjective component;*
- *Actor's component.*

The material component of an offence [refers to] the social relationship that is regulated by the Penal Law, and that is affected by the offence.

The objective component of an offence [refers to] the external characteristics of the behaviour that has caused, or [is evidence of] an intention to cause, damage to a social relationship that is regulated by the Penal Law, including the time, location, vehicles, equipment, circumstances and means used for committing the offence

The subjective component of an offence [refers to] the characteristics of the attitude and state of mind of the offender regarding his act of offence, as expressed externally through the behaviour that constitutes the offence.

The actor's component of an offence refers to the fact that in order to be liable, the offender must be mentally competent, must not be insane, and must have reached the age of majority, that is, at least 15 years of age"

241. The Penal Law distinguishes intentional offences (Article 9) from negligent offences (Article 10). Article 17 also distinguishes authors, implementers, inciters and accomplices as already mentioned. The author is the one who has planned, organised or given instructions to commit the offence; the implementer is the one who has directly committed the offence; inciters are persons persuading others to commit offences; and accomplices are persons who have intentionally assisted in the offence, or who have previously agreed to hide the offender, to hide instruments and tools of the offence, to efface traces of the offence or to conceal any proceeds from the offence.

242. The mental element shall be inferred from objective factual circumstances as provided for in Article 21 of the Law on Criminal Procedure (*i.e.* evaluation of the evidence). Prosecution must prove to the criminal standard of proof that the offender knew, or should have known, that he was committing a ML offence.

Liability of Legal Persons (c.2.3)

243. Legal persons are not criminally liable under Lao PDR criminal legislation, only natural persons. The Lao authorities did not provide any evidence to prove that this is based on a fundamental principle of law.

244. Legal persons may be subject to civil and administrative sanctions in accordance with Article 33, first paragraph, of AML Decree 55, which states that: "*Any individual, entity or organization carrying out or partaking in money laundering shall be duly punished in accordance with the existing laws and regulations.*" However, the AML Decree 55 has some deficiencies; most notably it does not have any concrete administrative sanctions. Only civil proceedings may be filed.

Sanctions for ML (c. 2.5):

245. Sanctions provided for natural persons are not dissuasive and proportionate to the seriousness of the offence - 1 to 3 years imprisonment penalty and 3% of the money laundered. If committed by an organised group, on a regular basis or of substantial amount, an imprisonment penalty of five to 10 years may be imposed.

246. The penal sanctions of one to three years are generally lower than the sanctions for majority of the predicate offences. The monetary penalties of 3% of the laundered property is not dissuasive and in the absence of effective confiscation provisions and mechanisms, would not be effective

247. There are no criminal or administrative sanctions for legal persons.

Statistics

248. There are no statistics to assess effectiveness of the existing system. Investigations authorities initially reported that two ML investigations had commenced, but were unable to confirm. No prosecutions for ML have yet been commenced.

2.1.2. Recommendations and Comments

249. Lao PDR is party to the relevant Conventions. However, the ML offence provision under Article 64 of the Penal Law is not consistent with all the required elements of the Conventions (i.e. conversion or transfer, concealment or disguise, acquisition, possession, or use of property with knowledge at the time of receipt). In addition, not all the predicate offences are provided for and punished under the criminal legislation of Lao PDR, such as organised crime, terrorism and terrorism financing, and insider trading. Extraterritoriality of the predicate offences should also be clearly stated. It is also not clear if all predicate offences are serious offences, and there is neither a clear nor consistent definition of property, assets and proceeds of crime.

250. Penalties for natural persons are not dissuasive and proportionate. Further, there is no criminal liability of legal persons or an effective, dissuasive and proportionate administrative sanction regime in place.

251. There are neither statistics to demonstrate the effectiveness of the existing system nor any investigation case of ML, prosecution or conviction.

252. Lao PDR should address the identified deficiencies and improve the existing legal framework or to adopt a comprehensive AML legal framework, *inter alia*:

Recommendation 1

- Criminalise ML in keeping with the international standards;
- Amend Article 64 of the Penal Law with all the material and physical elements;
- Establish a clear definition of property, assets and proceeds of crime;
- Criminalise all predicate offences and include as predicate offences for ML;
- Clarify the extraterritoriality of the predicate offences;
- Criminalise all appropriate ancillary offences;

Recommendation 2

- To adopt dissuasive and proportionate criminal sanctions for natural persons;
- Establish criminal liability and sanctions for legal persons;
- To adopt dissuasive and proportionate administrative sanctions for natural and legal persons;
- Prosecute and convict the ML offence.

253. The Lao PDR should also improve the statistics by separating data related to the predicate offence and to the ML offence, and by prosecuting the ML offence.

2.1.3. Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating
R.1	PC	<ul style="list-style-type: none"> • Absence of comprehensive ML offence. • The ML offence provided for in Article 64 of the Penal Law is not consistent with all the required elements of the Vienna and Palermo Conventions.

		<ul style="list-style-type: none"> • No clear definition of property, assets and proceeds of crime. • Not all the predicate offences are punished under the criminal legislation of Lao PDR or provided for as predicate offences for ML, such as organised crime, terrorism and terrorism financing and insider trading. • Lack of clarity on the extraterritoriality of the predicate offences. • Lack of coverage of ancillary offences. • There are no statistics to show effectiveness of the existing system.
R.2	PC	<ul style="list-style-type: none"> • Legal persons are not criminally liable and no effective administrative sanctions. • Sanctions provided for natural persons are not dissuasive and proportionate to the seriousness of the offence. • There are no statistics to assess effectiveness of the existing system.

2.2. Criminalisation of Terrorist Financing (SR.II)

2.2.1. Description and Analysis

Legal Framework and Criminalisation of Financing of Terrorism (c. II.1)

254. Lao PDR is committed to fight terrorism in all its forms. As a result, it has endeavored to ratify all the relevant CT Conventions, in particular the CFT Convention (29/10/2008). Notwithstanding the international commitment, the Lao PDR has not yet implemented the CFT Convention.

255. There is no criminalisation of terrorism in the Lao PDR, including FT.

256. Despite this, a number of provisions in the Penal Law are related to the crime of terrorism and that would allow the punishment of some terrorist acts e.g. Article 59 “*Physical Harm against the Interests of National Security*”, Article 61 “*Destruction*”, Article 62 “*Disruption of the State or Social Undertakings*”, Article 67 “*Civil Commotion*”, Article 70 “*Offences against Friendly Countries*”, Article 76 “*Unlawful Production, Possession and Use of Weapons or Explosives*”, Article 80 “*Offence relating to Chemical Weapons*”, Article 98 “*Violation of Safety Regulations relating to Air (transport), Airports and Harbors*”, and Article 101 “*Taking of Hostages*”. However, there are no provisions of terrorism per se, including terrorist acts committed by an individual or by an organised group or financing of terrorism.

Predicate Offence for Money Laundering (c. II.2):

257. As there is no criminalisation of FT, FT cannot be a predicate offence of ML (due to the lack of legal framework).

Jurisdiction for Terrorist Financing Offence (c. II.3):

258. In the absence of criminalisation of FT, there is no provision to address criterion III.3 i.e. FT.

The Mental Element of the TF Offence and Criminal liability of legal persons (c.III.4 -applying c. 2.2-2.4):

259. Given that there is no criminalisation of FT, there is no provision to address criterion III.4.

2.2.2. Recommendations and Comments

260. During the on- site visit, Lao PDR officials acknowledged the legal gaps and stated that legislation is being prepared. The Lao PDR advised in December 2010 of the establishment of a “Committee for Drafting Counter the Financing of Terrorism Legislation”, which was established by the Governor of the Bank of Lao, and includes all relevant ministries, with the exception of the Ministry of Justice.

261. The Lao PDR should implement a comprehensive legal framework on counter terrorism and FT, wherein the following elements should be considered:

- Adopt and implement legislation to comprehensively criminalise FT in accordance with the international standards;
- Include TF as a predicate offence for ML;
- Establish extra-territoriality jurisdiction for terrorism and FT offences;
- Adopt dissuasive and proportionate sanctions for natural persons for TF;
- Establish the criminal liability of legal persons for TF; and
- Adopt a comprehensive statistics system to assess the effectiveness of the legal system in place.

2.2.3. Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	NC	<ul style="list-style-type: none"> • Lao PDR has not criminalised FT in accordance with the international law and international standards (i.e. SR.II)

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

2.3.1. Description and Analysis

Legal Framework:

262. The Lao PDR has seizure and confiscation mechanisms in place through the Penal Law and Criminal Procedure Law. Seizure is possible, whenever there are reasons to believe that the funds or assets are related to the commission of a crime or are important to its investigation or to produce material evidence. Seizure is a provisional measure that applies to all kinds of property and to all serious crimes, including ML offence and related predicate offences.

263. Article 12 of AML Decree 55 establishes the possibility of freezing accounts; however, there is neither freezing mechanism, nor an adequate communication and coordination mechanism among the relevant agencies.

264. According to Article 55 (*Seizure and Sequestration of Assets*) of the Criminal Procedure Law, relevant authorities (Public Prosecutor or the law enforcement authorities) may seize the assets of predicate offences and ML offence, as follows:

In the event that the type, amount, and location of the place where materials related to the offence are being kept are clearly known and such materials are useful for the proceedings, the head of the investigation organization or the public prosecutor shall issue an order to seize or sequester such assets. For materials which are immovable, there shall be an order to sequester them.

In the event that illegal objects, especially drugs, have been seized, the head of the relevant organization shall immediately appoint an expert to verify the quality, type, and composition of such drugs in accordance with Article 50 of this law.

The methods for seizure and sequestration and the methods for recording such seizure or sequestration shall be in accordance with Articles 51, 52, and 54 of this law.”

265. Articles 51, 52 and 54 establish the rules concerning searches, building searches and record of searches, respectively. Paragraph 6 of Article 52 on “*Building Searches*” states that “*material items and other documents can be seized as exhibits in a criminal case only if they are related to the offence (...)*”.

266. Article 56 (“*Protection of Exhibits*”) of the same Law states that:

An exhibit is an asset relating to the offence, an asset that was used or would have been used in the offence, or an asset that was received or would have been received from the offence.

Such exhibits are obtained from seizures, searches, inspections, and the use of other investigative measures.

Exhibits shall be protected, managed, kept in safe and appropriate places, and recorded in detailed lists. Exhibits which are objects that can be packaged shall be packaged in bags, [affixed with a] wax seal, stamped with the relevant organization’s seal, and kept properly.

An exhibit that is money, foreign currency, a check or negotiable instrument, or precious metal shall be deposited in a bank according to regulations. For money that is evidence in proceedings, the serial number of each note shall be recorded. Perishable or degradable exhibits shall be sold and the proceeds shall be kept.

(...)

Any individual who uses, damages, loses, exchanges, or embezzles any exhibit shall be subject to penalties as provided in Articles 112 and 157 of the Criminal Law.

The list of exhibits shall accompany the case file. The level that the case file has reached is the level that has the authority to deal with the exhibits.

267. Article 55 uses the term “*materials and assets*” which can be tangible or intangible, movable or immovable, while Article 56 uses the term “*assets*” as property in general. As previously stated Article 64 of the Penal Law uses different terminology (“*Money or items*” and “*money or assets*”). Although the property seized broadly comprises any object which was used or was meant to be used to commit an offence, or which constituted the proceeds of an offence, there is no clear definition and consistency of what is property, funds or assets or proceeds of crime (see comments in c.1.1 on this issue).

Confiscation of Property related to ML, FT or other predicate offences including property of corresponding value (c. 3.1):

268. The deficiencies and inconsistencies in the definition of property have been analysed under c1.3 above. As noted, during the on-site visit, authorities explained that the terms mentioned in Article 64 “*money or items*” or “*money or assets*” cover funds or assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, evidencing title to, or interest in, such assets. There are no limits imposed for the nature of the property or for its value that directly or indirectly (“*as well as any assets obtained there from*”) represent the proceeds of crime. Nevertheless, the terminology used in the Article 64 provision is not consistent nor it is consistent with other Articles of the Penal Law that mention ‘property’ or ‘assets’.

269. Confiscation of items (connected to an offence) or property are additional penalties to the principal categories of punishment inflicted upon an offender in accordance with Article 28, paragraph b, sub-paragraph 2 and 3 of the Penal Law. Property derived from criminal activity or acquired with its proceeds may be confiscated according with the Penal Law, except if necessary for the livelihood of the offender and his family.

270. As mentioned, the lack of consistency in the terminology regarding and assets and property may lead to uncertainty as regards of what can be confiscated. This relates in particular to instrumentalities used or to intend to be used for ML as well as property of corresponding value.

271. Article 34 “*Confiscation of Property and Connected Items*” of the Penal Law states:

Confiscation of properties consists in properties belonging to offenders seized in totality or in part by the state without any compensation.

Confiscation of properties may only be sentenced in case of serious cases as mentioned in the specific part of this Criminal Law.

In case a seizure of the totality of properties is decided, exception must be made for properties necessary for the livelihood of the offender and his family according to the list attached to this Criminal Law. In case partial seizure of properties is sentenced, the court must set up a clear list.

Confiscation of items relates to items which were used in the infraction or prepared for the commitment of the infraction or obtained from an intentional infraction by the state. Items belonging to other individuals used in the infraction will be seized by the state if the owner lending them is not in good faith or if seen necessary for social security.

State and collective items will not be seized but returned to the relevant authorities.

272. The last paragraph of Article 64 of the Penal Law states “money or assets used in money laundering including interest and other gains shall be confiscated as belonging to the state”. Under this provision, all seized assets are subject to confiscation after the sentence and are declared lost in favor of the State and collective items shall be returned to the relevant authorities.

Provisional Measures (c. 3.2) and Ex Parte Application for Provisional Measures (c. 3.3):

273. As already mentioned, Article 51 *et seq.* of the Criminal Procedure Law allow the seizure of assets as one of the preventive measures within the investigation stage (Article 42). Searches may be only conducted when there is an order in writing of the court or of the Public Prosecutor. In exceptional circumstances, searches may be conducted by law enforcement authorities without a court order.

274. The head of the relevant law enforcement agency may open an investigation and seize without delay the assets (for purposes of gathering evidence) whenever there are substantial grounds to believe that it is a situation that requires urgent investigation.

275. If reliable evidence is found, the head of the investigation shall make a summary within 24 hours and forward the file and exhibits to the Public Prosecutor’s Office (Article 39, first, third and fifth paragraphs of the Criminal Procedure Law). The Public Prosecutor will then give further instructions for the next steps in the procedure.

276. The law does not require prior notice to allow the seizing of property subject to confiscation. It only requires a rule of legitimacy as far as the intervention of the competent judiciary authorities is concerned.

277. Although, Article 12, paragraph 3, of AML Decree 55 also determines the freezing or confiscation of assets, there is no prescribed sanction in case an entity decides not to obey the order. It is possible to affirm that there is no *ex-parte* mechanism in place.

Identification and Tracing of Property subject to Confiscation (c. 3.4):

278. The investigative powers to identify and trace the property that is or may become subject to confiscation, including seizing, fall on Lao PDR law enforcement authorities. The investigation is supervised by the Public Prosecutors Office.

279. Articles 23 and 24 of the Criminal Procedure Law enumerate the law enforcement agencies with investigative powers and establish their rights and duties. Chapter 3 of the same Law establishes the different type of investigative measures that law enforcement authorities may use, such as taking testimony, enquiries, inspection, searches (including financial institutions) and seizure. Detailed information is provided for in section 2.6 of this report in relation to law enforcement agencies.

280. According to the information collected during the on-site visit, law enforcement authorities may collect financial records, waive financial secrecy and use electronic means of surveillance (video, computer).

281. Articles 19, 20 and 21 of the Criminal Procedure Law determine that ‘evidence’ are the facts that demonstrate the guilt (or not) of the accused person or defendant, i.e. if he committed the criminal offence. The presumption of innocence is a fundamental principle of the Lao PDR criminal

law (Article 8 of the Criminal Procedure Law). Evidence can be physical, documentary and from persons. Criminal proceeding should seek both evidence to prove the guilt or the innocence of a person. After conviction, assets are confiscated.

282. In accordance to Article 21, the prosecution “(...) shall examine, weigh, and evaluate evidence based on a comprehensive, thorough, and objective consideration of the case and with confidence. In the examination and evaluation of evidence, if the evidence indicates doubt whether the accused person or defendant committed the offence, such person must be released from charges.” Moreover, “Criminal proceedings should not mainly take into account the admission of the accused person or defendant but should seek additional evidence to prove the guilt of such [persons]. Even if the accused person or defendant denies or does not admit [such guilt], if there is strong and reliable evidence, he [may be] regarded as the wrong-doer.”

Protection of Bona Fide Third Parties (c. 3.5):

283. There is no specific provision to protect bona fide third parties. However, one can find in Article 34 of the Penal Law that “(...) Items belonging to other individuals used in the infraction will be seized by the state if the owner lending them is not in good faith (...) State and collective items will not be seized but returned to the relevant authorities. Its Article 174 also states regarding corruption that, “Assets and interests derived from corruption shall be seized by the State or returned to the organizations, individual or legal entity who is the rightful owner of such assets”.

284. Bona fide third parties rights are protected under Articles 23 and 28 of Civil Procedure Law. Article 23 sets out that third parties may be parties to civil proceedings. Article 28 sets out that third parties who have filed a claim themselves may exercise the same rights and have the same obligations as plaintiffs.

Power to Void Actions (c. 3.6):

285. Apart from the measures established in the Criminal Procedure Law to seize tangible and intangible goods to void any actions that would prejudice the course of investigation and undermine the ability to recover property subject to confiscation, the Lao PDR Contract Law (Law 41/PO, 27 July of 1990) also establishes some rules in this respect.

286. Articles 5 to 17 of the Contract Law stipulate that the purposes and basis of all contracts have to be legal (Article 5), i.e., the purpose of contract must be clear, exist, and in conformity with the law (see Articles 8 and 9). Parties should act on a voluntary basis and in good faith. Any contract that is inconsistent with the conditions provided in Article 5 shall be deemed null and void (Article 13). Under Article 13, contracts may be absolutely null or relatively null. Article 14 states that a contract is absolutely null if it conflicts with State or public interest, in concealment, etc.

287. A contract that conflicts with the State or public interests (such as covering the nature or illicit origin of assets) or made in concealment (i.e. a “secret act” where the parties agree secretly to arrangements that contradict the apparent state of affairs) are absolutely null and void (Article 14 (2)) and may be invoked at any time by the State, and the assets confiscated (Articles 16 and 17 (2) and (3)). That said, the Public Prosecutions Office has civil legitimacy to proceed against the perpetrator and prevent or void actions, agreement or contracts that a criminal perpetrator makes in order to prejudice the authorities’ ability to seize or confiscate property.

Additional Elements : organizations principally criminal in nature; civil forfeiture; and, reverses burden of proof (c. 3.7):

288. Lao PDR has no civil forfeiture regime and no information was provided regarding the inversion of the burden of proof.

289. Article 51 of the Anti-Corruption Law sets out civil measures that may be taken in cases of corruption, including confiscation.

Article 51. Civil Measures

In addition to penal measures, the government staff who commits an offence relating to corruption[,] as provided in Article 10 of this law, that causes damage to the interests of the State and society, or the rights and interests of citizens, shall pay compensation for damages in full and all of the assets acquired from the offence shall be confiscated.

290. During the onsite visit authorities did not identify that Article 51 provisions would be used in relation to confiscation proceeds of corruption offences.

291. Article 26 of the Law Anti-Corruption Law (Law 45/PO) states that, “*Before or after receiving position, power, or duty, the person who has position, power, and duty must declare his or her own property and debts, and that of [the person’s] own husband or wife and children who are under his or her charge accurately, faithfully, and honestly and must be accountable under the law for the contents of the declaration.*” Such income declaration demonstrates the lawful origin of the income or property. False declarations may be subject to criminal and civil sanctions and income or property of unlawful origin can be seized or confiscated according with the law.

Statistics

292. No statistics were provided on the seizure and confiscation of instruments, proceeds of crime or property associated with the ML offence. As such, it is not possible to demonstrate the effectiveness of the existing system. Lao PDR should improve the data collection regarding the predicate offences and ML offence.

2.3.2. Recommendations and Comments

293. There is no freezing mechanism to prevent assets being dealt with, transferred or disposed of within a short period of time, such as bank account transfers. As explained, the provision established in AML Decree 55 (Article 12) it is not sufficient to state that there is a freezing mechanism in place.

294. No statistics were provided of use of provisional measures of confiscation of instrumentalities or property derived from predicate offences or ML to demonstrate the effectiveness of the existing system.

295. Lao PDR should adopt comprehensive provisional measure to combat ML and proceeds of crime. The powers and procedures for freezing/seizing should, inter alia:

- Define freezing (distinct from seizure);
- Determine which property can be frozen;
- Define clearly property or assets, proceeds of crime, instrumentalities and property of corresponding value;
- Specify freezing and unfreezing procedures;

- Protect the rights of bona fide third parties;
- Identify clearly the legal authority for the issuing of a freezing and unfreezing order or other instrument, and for the application of ex parte measures; and
- Establish a coordination and communication mechanism among relevant agencies.

296. Lao PDR should improve the data collection regarding property and instrumentalities for predicate offences and the ML offence.

2.3.3. Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	PC	<ul style="list-style-type: none"> • The gaps in the scope of coverage of the ML offence and absence of TF offence undermine the scope of confiscation. • Inconsistent definitions of property mean it is uncertain if instrumentalities used or to intend to be used for ML as well as property of corresponding value can be confiscated. • Lack of a freezing mechanism/procedure, including for ex parte. • There is no data to demonstrate effectiveness of the existing system.

2.4. Freezing of funds used for terrorist financing (SR.III)

2.4.1. Description and Analysis

Legal Framework:

297. In the absence of criminalisation of terrorism, including FT, there is no freezing or confiscation mechanism in place. There is no mechanism in place to freeze assets to comply with UNSCRs 1267 (1997) and 1373 (2001).

298. Special Recommendation III requires the adoption of two different measures: the first one concerns the implementation of measures to freeze funds or assets according to relevant UNSCR (i.e. temporarily and without undue delay, restrain the transfer, conversion, disposition and movement, of goods or assets, but the property remain on the person or held by an institution); the second concerns the implementation of measures to seize and confiscate terrorist funds through any judicial order or other (i.e. to temporarily take control of his/hers assets or funds and/or to permanently deprive the owner from his/hers assets or funds, respectively).

299. Lao PDR has not adopted legislation or efficient practical measures to implement the first obligation. Lao PDR Penal Law and Criminal Procedure Law set up the respective legal framework for confiscation and seizure of funds and assets. However, the absence of criminalisation of FT means that these provisions cannot be used for FT as previously noted.

Freezing Assets under S/Res/1267 (c. III.1) and under S/Res/1373 (c. III.2):

300. UNSCR 1267 (1999) imposes on jurisdictions the obligation to freeze terrorist funds or assets (apart from travel ban and arms embargo) concerning Al-Qaida and the Taliban and associated individuals and entities associated with the Taliban, Usama Bin Laden and the Al-Qaida organisation. The Consolidated List of Individuals and Entities subject to the sanctions measures is regularly updated by the Al-Qaida and Taliban Sanctions Committee (UNSCRs 1333 (2000), 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1735 (2006), 1822 (2008) and 1904 (2009).

301. UNSCR 1373 (2001) imposes the obligation to “freeze assets without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities”.

302. Under Prime Minister Decision No. 63/PM, of 27/12/2002, a National Anti-Terrorism Ad-Hoc Committee (MOFA) was created with the mandate, inter alia: to act as an advisory body to the Government on CT issues; to make the national report to the 1373 Committee; and to propose amendments to the domestic law to comply with UNSCR 1373.

303. During the on-site visit, it was explained that the Secretariat of the National Anti-Terrorism Ad-Hoc Committee (MOFA) circulates a notice to the relevant agencies, and in particular to AMLIU, notifying the authorities of the UNSCR 1267 Consolidated List and to take actions accordingly (i.e. to freeze assets). The MOFA’s notice is an administrative communication (instruction), which acts under Prime Minister Decision No. 63/PM, of 27/12/2002.

304. The Lao PDR authorities indicated that the mechanism to freeze assets under UNSCR 1267 is the notice from MOFA to the AMLIU requesting all the Bank and financial institutions to freeze the assets of the persons listed under UNSCR 1267. These lists are not published in the official journal.

305. Following the MOFA’s notice, the AMLIU circulates and disseminates through a Circular Letter with the same list to all the entities under its supervision, as well as to all the relevant AML agencies represented in the AML working group. There is no specific provision for non-compliance with such instruction. Until now only two notices were issued to request banks and financial institutions to monitor and check the identity of designated persons.

306. The authorities advised there has never been a match with an entity on the 1267 Consolidated List. In a hypothetical scenario under UNSCR 1267, the financial institution would inform the AMLIU of the existence of an account of a person listed in the Consolidated List. The AMLIU would inform the Governor, who after consideration would notify the MOFA, as the Secretariat of the Ad-Hoc Committee. Then a meeting of the Ad-Hoc Committee would be held to analyze and to decide if the assets could be frozen. After this decision, an order would be issued to the financial institution. This process clearly does not meet the aim of freezing without delay.

307. According to the Lao PDR authorities, there are coordination, communication and freezing mechanisms in place for the process described. However, the authorities were not able to indicate a legal basis to freeze assets in this scenario.

308. There are a number of significant deficiencies in the measures to freeze funds as per UNSCR 1267: (i) there is no legal framework; (ii) AMLIU and the working group are not yet empowered to deal with terrorism issues; (iii) the Government agencies are not really certain of their

powers and measures to adopt to fight terrorism (lack of empowerment and sanctions), and especially UNSCR 1373 (2001); (v) there is no monitoring compliance mechanism; and moreover, (vi) there are no clear guidance or instructions to financial institutions on how to report and to proceed in case there is a need to freeze an asset under UNSCR 1267 or upon request under UNSCR 1373.

309. Not all financial institutions are aware of the 1267 Consolidated List. A number are aware through their main branches (especially if they are foreign financial institutions), rather than through the AMLIU. Financial institutions have no instructions on how to proceed in a concrete case, the nature of their responsibilities and any powers or legal obligation to freeze.

310. Since there is no concrete case, one cannot assess the efficiency of such coordination mechanism nor the timeframe for a decision/freezing order. After consideration, it should be concluded that there is no freezing mechanism in place.

Freezing Actions Taken by Other Countries (c. III.3):Extension of c. III.1-III.3 to funds or assets controlled by designated persons (c. III.4):

311. There are no laws and procedures to examine and give effect to freezing requests from other jurisdictions under UNSCR 1373.

Communication to the Financial Sector (c. III.5):

312. The AMLIU circulates and disseminates through a notice the MOFA list to all the entities under its supervision. Until now there are only two notices.

Guidance to Financial Institutions (c. III.6):

313. There is no guidance provided to financial institutions and other persons that may be holding targeted funds on the process to follow in relation to freezing of accounts.

De-Listing Requests and Unfreezing Funds of De-Listed Persons (c. III.7) to Enforcing the Obligations under SR III (c. III.13):

314. There is no FT provision or a freezing mechanism in place, therefore c.III.7 to c.III.13 cannot be addressed.

Additional Element (SR III)—Implementation of Procedures to Access Frozen Funds (c. III.15):

315. MOFA is holding general consultations to adopt adequate legislation on CT and CFT. The Governor of the Bank of Lao has established, in December 2010, a Committee to draft CFT laws.

2.4.2. Recommendations and Comments

316. There is no freezing mechanism in place and no legal powers to implement UNSCR 1267 and 1373. There is also lack of dissemination of UNSCR 1267 among the financial institutions and supervisory entities and lack awareness of the UNSCRs 1267 and 1373 obligations as well.

317. Lao PDR should adopt adequate legislation and procedures to comprehensively implement SR.III.

318. Lao PDR should implement communication and coordination mechanisms among the relevant agencies as well as awareness raising and training on CT and CFT measures.

319. Lao PDR should adopt freezing provisions and procedures as a provisional and effective measure to fight against FT. The procedure for freezing should, among other elements:

- Stipulate legal framework for freezing terrorist funds and other assets;
- Provide for the freezing of terrorist funds and assets without delay and prior notice to the designated persons involved as required under UNSCRs;
- Allow cooperation with foreign counterparts in terms of giving effect, if appropriate, the actions under the freezing mechanisms of other countries;
- Provide clear provision of terrorist funds and assets that can be frozen;
- Establish clear mechanisms and guidance to communicate actions undertaken to the financial sector;
- Specify freezing and unfreezing procedures (the latter should be publicly known);
- Identify clearly the legal authority for the issuing of a freezing and unfreezing order or other instrument;
- Establish an internal coordination mechanism;
- Implement an effective freezing, seizing and confiscation regime in other circumstances (as described in c.III.11);
- Protect the rights of *bona fide* third parties; and
- Implement appropriate measures to monitor effectively compliance with relevant legislation, rules or regulations governing the obligations under SR.III, once enacted.

2.4.3. Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	NC	<ul style="list-style-type: none"> • The lack of criminalisation of terrorism and FT means that freezing and confiscation is not available in relation to those offences. • Absence of laws and effective procedures to freeze funds and other assets without delay and prior notice to the designated persons involved as required under UNSCRs. • Absence of a freezing mechanism and procedures (including associated measures such as communicating to financial sector, unfreezing, authorising access and protecting bona fide third parties). • Lack of coordination among the concerned agencies as regards to implementing UNSCR 1267. • Effectiveness of the existing system cannot be demonstrated.

2.5. The Financial Intelligence Unit and its Functions (R. 26)

2.5.1 Description and Analysis

320. Article 23 of AML Decree No. 55/PM provides for the establishment of the Anti-Money Laundering Intelligence Unit (“AMLIU”) as the Financial Intelligence Unit in the Lao PDR. It is extracted as follows:-

“The Anti-Money Laundering Intelligence Unit shall form part of the Bank of Lao P.D.R., having mandates and responsibility in collecting, analyzing and reporting information on ML taken place within the country or aboard, to be submitted to the authorities for taking legal action to combat and deter ML”

Establishment of FIU as national centre (c.26.1)

321. Pursuant to AML Decree No. 55, the Governor of the BOL Agreement No. 299 (“the AMLIU Establishment Agreement”), dated 14 May 2007, established AMLIU within the BOL. The AMLIU Establishment Agreement stipulates the functions and responsibilities of AMLIU, with some important areas extracted from Article 2 of the Agreement as follows:-

- “2. Collaborate with related agencies, collect and examine reported ML information or that reported by individuals, organizations or institutions having the responsibility to report;*
- 3. In accordance with permission from the management committee, deal and cooperate with international agencies in the areas of anti-ML;*
- 4. Extract and analyze information related to anti-ML received from the agencies involved;*
- 5. Document ML activities of individuals and organizations submitting them to authorities so as to conduct legal proceedings.”*

322. The AMLIU can only deal with STRs on ML because FT is not criminalised and the AML Decree 55 and the AMLIU Establishment Agreement cover only ML.

323. AMLIU is an administrative model FIU with no investigative role. However, AMLIU is not solely an FIU but also an AML/CFT supervisor. This section will focus only on AMLIU’s FIU role.

324. The functions of the key FIU Division are as follows:-

Information Analysis Division

- 1. Analyze activity reports of all reporting institutions to ensure reporting clarity and trustworthiness and that it can be used as an information reference base for concerned agencies;*
- 2. Monitor and collect all financial transactions, on a regular basis, of reporting institutions via computer and other documentation then recommend and in situ investigation by the control and inspection unit in cases of suspected ML;*
- 3. Collect and obtain information from reporting institutions for the purpose of analysis and regular reporting to the unit committee problems or unresolved issues resulting from the analysis as well as recommending resolution measures in cases of suspected ML;*
- 4. Monitor activities of reporting institutions suspected of activities that contravene the decree on anti money-laundering and all other statutes issued by the bank of the Lao*

- PDR in each period documenting such as then referring it to*
5. *all the rise to organizations authorized to execute legal proceedings;*
 6. *Collect and retain analyse intelligence information for the purpose of informer protection, to prevent damaging reports, or effects to the activities of the ML prevention unit as well as associated agencies;*
 7. *Supply information and documentation regarding ML of individuals, legal entities and other agencies to authorized organizations so as to execute legal proceedings;*
 8. *Improve and develop reports by the anti money-laundering unit to harmonize with the actual situation in each period;*
 9. *To operate within their rights and responsibilities as mandated by the unit's committee and the management committee.*

STR Receipt, Analysis and Dissemination Process

325. AMLIU receives STRs from a number of reporting institutions as listed in Annex 2 of AML Decree No. 55. The reporting institutions are required to complete the standard STR form in the format prescribed by AMLIU. The STRs are required to be reported as soon as possible. During the on-site meeting, AMLIU advised that all STRs submitted to AMLIU were dispatched in person by reporting institutions. STRs, however, can be sent to AMLIU in writing via mail or fax in an emergency situation. Contrary to AMLIU's version, visits to some commercial banks during the on-site confirmed the STRs were dispatched via mail instead of in person. AMLIU acknowledges the receipt of reports as required under Article 7 of AML Decree No. 55.

326. Article 12 of the Guideline on AML Procedures and Operational Controls of Reporting Institutions (the "AML Guideline") under No. 02/BOL, dated 16 September 2008, empowers AMLIU to implement a CTR reporting system and issue guidelines accordingly. AMLIU advised the assessment team during the on-site that funding and technical problems had prevented the establishment of an IT system needed for implementation of CTR reporting.

327. Since the establishment of AMLIU in 2007, only 28 STRs had been received as at October 2010. Nine commercial banks, out of 24 banks operating in the Lao PDR, accounted for the total; the last STR was reported in June 2010.

328. All STR information is stored in an MS Excel file in a standalone computer in AMLIU. The information is inputted into a MS Excel table developed for storage only. The Excel table stores the information in different fields such as name, address, ID document No., reason for suspicion, etc. There is no analytical function or connection to other databases in facilitating STR analysis. AMLIU advised the upgrading of the computer system would be done as part of the future implementation of CTR reporting.

329. AMLIU has no STR analysis procedure. The basic approach is to compare the information received from the latest STR report with any links to earlier STRs and with the UNSCR 1267 list. Beyond that basic approach, no other information is considered. During the on-site meeting, AMLIU advised they have not sought assistance, or made requests, to other agencies or use any open source information, such as from the internet, in their STR analysis.

330. Once the assessment is completed by the Information Analysis Division, the STR is either filed for "no further action" or disseminated to investigation agencies for action. There is no requirement for the AMLIU Director to endorse a "no further action" conclusion by the FIU staff undertaking the analysis. To date, no STR has been disseminated out of the 28 received.

331. A cursory review by the team during the on-site visit of some of the STRs stored in the database would suggest further analysis might have resulted in different outcomes, given some STRs fitted known international ML typologies. It would seem that AMLIU staff lack sufficient analytical skills and information input from other sources to assist them in conducting proper STR analysis. It may be a possible reason for the zero dissemination of STRs to the Economic Police Department for ML investigation.

Guideline to Financial Institutions on Reporting STR (c.26.2)

332. AMLIU issued the STR Guideline No. 66/AMLIU, dated 15 October 2007. It defines suspicious transaction and outlines the factors in identifying suspicious transactions. The reporting procedures for STR are also included in the Guideline with a standard STR reporting form attached. The STR form requires information to identify both the natural and legal persons and the reasons for suspicion.

333. In addition to the STR Guideline, AMLIU has conducted one training course on AML/CFT, CDD and STR reporting for 54 participants from the banking sector in July 2010.

334. As indicated, the BOL has also issued the AML Guideline. Chapter VI of the Guideline stipulates the requirement for CTR and STR reporting but provides no further guidance on both, although there is provision for detailed guidance to be provided on CTR, once introduced.

335. In terms of effectiveness, as indicated, total STRs received was 28 at the time of the on-site and only from a few banks. Considering the number of reporting institutions in the Lao PDR, the low number of STRs may be due to inadequate guidance and outreach.

Access to Information on Timely Basis by FIU (c.26.3)

336. Article 2.2 of the AMLIU Establishment Agreement empowers AMLIU with the following mandate:

“Collaborate with related agencies, collect and examine reported ML information or that reported by individuals, organizations or institutions having the responsibility to report.”

337. While the AMLIU has the authority to seek information from other agencies in analyzing a report, there are no procedures, MoUs or other arrangements with other authorities to seek information. No such request has ever been made by the AMLIU to other agencies in obtaining additional information. The non-use of external intelligence, such as criminal or other intelligence information from police, undermines the conclusions of STRs analysed to date.

Additional Information from Reporting Parties (c.26.4)

338. The following Articles from the AMLIU Establishment Agreement allow AMLIU to obtain additional information from Reporting Institutions:-

“Article 2.2:

Collaborate with related agencies, collect and examine reported ML information or that reported by individuals, organizations or institutions having the responsibility to report.

Article 4.2.3:

Collect and obtain information from reporting institutions for the purpose of analysis and regular reporting to the unit committee problems or unresolved issues resulting from the analysis as well as recommending resolution measures in case of suspected ML.”

339. AMLIU claimed that previous attempts have been made to obtain further information from reporting institutions. Since no response was received, AMLIU then presumed no further information could be provided. However, discussion with banks during the on-site indicated that AMLIU only provided acknowledgement of STRs received and not request for additional information.

340. The effectiveness of the above powers remains untested and given the lack of sanctions in Decree 55, AMLIU may have to rely on broader BOL powers. AMLIU, as a unit within the BOL, has powers under the Law on the BOL and under the Law on Commercial Banks to lift secrecy provisions to access additional customer information, if needed.

Dissemination of Information (c.26.5)

341. As indicated, AMLIU is authorised to disseminate STRs to other agencies such as the police for further action. This is provided in Article 25 of AML Decree No. 55 and Article 2.5 of the AMLIU Establishment Agreement. As noted, however, there has been no dissemination since the establishment of AMLIU. There is also no legal basis to disseminate (or receive) STRs on FT as the latter is not criminalised and not included in the AML Decree 55 or the AMLIU Establishment Agreement.

Operational Independence (c.26.6)

342. Despite AMLIU’s powers to disseminate financial intelligence, the assessment team was informed that in practice, approval or endorsement is required in the first instance from the Deputy Governor or Governor of the BOL. The AMLIU has not submitted an STR for dissemination.

343. There is a lack of budget autonomy. The budget of AMLIU is controlled by the Governor of the BOL. AMLIU is required to submit its budget to the Governor for approval, as required by the BOL’s internal procedures.

344. AMLIU is a section in the BOL and is responsible to the Bank Management Committee on the effective implementation of AML Decree No. 55. It is not exempt from any BOL reporting or management processes. This includes staffing appointments. The Director General, Deputy Directors and Divisional Heads are all appointed (or removed) by the Governor of the BOL following the recommendation from the Organisation & Personnel Department of the BOL.

Protection of Information held by FIU (c.26.7)

345. Article 16 of AML Decree No. 55 requires “any act of serving a notice or making a report on ML shall be kept confidential”. In addition, Article 26 of the same Decree stipulates the requirement of keeping and destroying information and documents. It states that, “AMLIU shall keep all information and documents on ML cases which have been transmitted to the Investigating Agency of the Police Force for legal proceedings. Other information which has not been transmitted to the Investigating Agency, shall be kept for five years before they could be destroyed”. There is no sanction provided in AML Decree 55 if a staff member breaches this requirement, although AMLIU staff, as BOL employees, would be covered partly by Article 22, Maintaining Confidentiality, in the Law on BOL.

346. AMLIU is situated in a separate building from the BOL main headquarters. It occupies half of the 1st floor of a two storey building. The other space is occupied by an international technical adviser to the BOL, but unrelated to AML/CFT. There is only one main entrance to the office and is locked after office hours.

347. There is a locked cabinet in the office of AMLIU to store all the reported STRs. Only one staff from the Information Analysis Division keeps the key to the cabinet. The Excel MS database on STRs is stored in the desktop computer in AMLIU's office and access is by a password. Only the same staff from Information Analysis Division holding the cabinet key has the password.

348. There is neither an off-site backup of the information contained in the database, nor is there an alternative keeper of the password in the event the password keeper fails to attend work, either temporarily or permanently, for whatever reason.

Publication of periodic reports (c.26.8)

349. One of the responsibilities of AMLIU under Article 25 of AML Decree No. 55 is, “to warn the Reporting Institution about the serious offence which forms the publishing documents on ML typologies and methods to detect ML to serve as reference for the Reporting Institution in carrying out its reporting duty”. Despite this obligation, AMLIU has never published any report.

Membership of Egmont Group (c.26.9)

350. AMLIU is not a member of the Egmont Group. AMLIU has no plan to join the Egmont Group in the near future. AMLIU has given consideration to applying but decided against it because it does not meet the membership requirements as yet.

Egmont Principles of Exchange of Information Among FIUs (c.26.10)

351. AMLIU is empowered under Article 27 of AML Decree 55 so that it, “...receives, sends and exchanges information on money laundering with foreign Anti-Money Laundering Intelligence Unit with which the Lao P.D.R has signed an agreement, been or not been party thereof. The Sending, receipt and exchange of information on money laundering, shall require prior approval of the Government, through the Ministry of Foreign Affairs”. Furthermore, the team was informed that similar to domestic dissemination, any international dissemination would require approval of the Deputy Governor or Governor of the BOL.

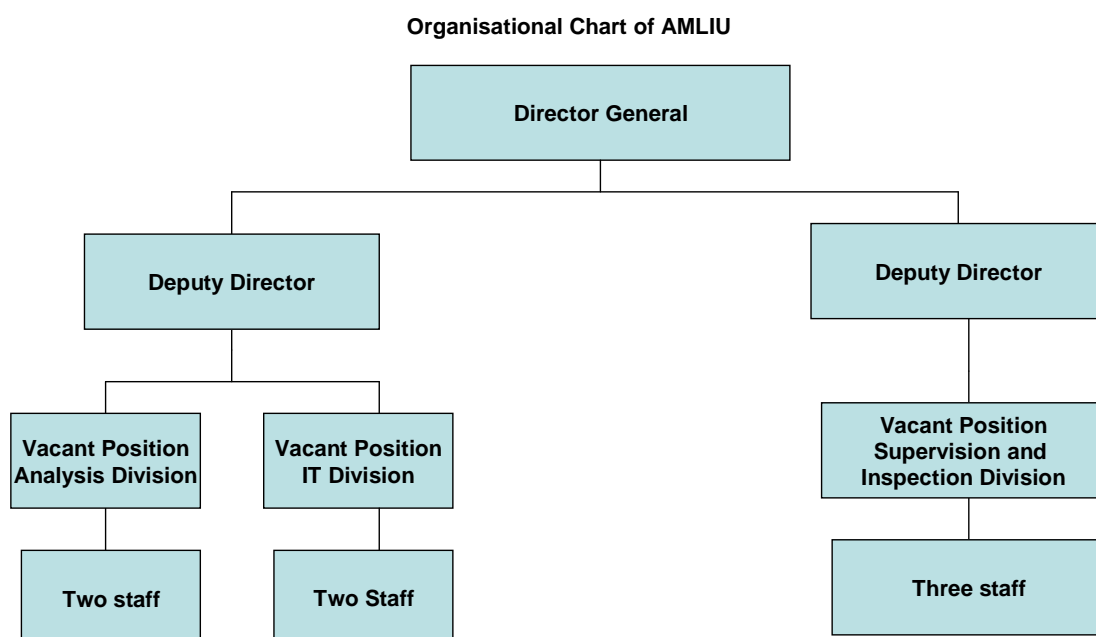
352. So far, AMLIU has signed no international MOU. The BOL is planning to sign a MOU with the State Bank of Vietnam to facilitate the exchange of information between the two FIUs. The Governor of the BOL can give his discretion on a case-by-case basis to accede to a request from a foreign FIU in the absence of a written agreement. AMLIU has provided assistance on one occasion - to the Vietnamese FIU under this policy.

Adequacy of Resources to FIU (c.30)

353. AMLIU is led by one Director General who is appointed by the Governor of the BOL. He is responsible to the management committee of the BOL for AMLIU's functions, as described in Article 2 of the AMLIU Establishment Agreement, including implementation of AML Decree 55.

354. AMLIU is divided into three divisions: Information Technology Division, Information Analysis Division, and Supervision and Inspection Division. The Director of AMLIU is assisted by two Deputy Directors, who are also appointed by the Governor of the BOL.

355. The first two divisions, namely the Analysis and IT divisions are under the direction of one of the two AMLIU Deputy Directors. This is essentially the FIU arm of AMLIU. The other Deputy Director manages the Supervision and Inspection Division, which is the supervisory arm of AMLIU.



356. Currently, there are 13 staff positions in AMLIU including the Director General and two Deputy Directors. However, as indicated, only two of the three divisions are devoted to FIU functions. The breakdown of human resources in the two FIU divisions is as follows:-

- (a) Information Technology Division: 3 staff with 1 vacant
- (b) Information Analysis Division: 3 staff with 1 vacant

357. Since the number of STRs handled is small and the full analytical functions are yet to be developed, the existing staffing resources of AMLIU's FIU divisions are more than sufficient. However, it should be noted that AMLIU has not performed the functions of analysis, typology study and outreach to its full extent. With the planned implementation of CTR reporting, and receipt of cross border declaration forms, and the expected growth in STRs received, it is envisaged that the existing staffing resources of AMLIU would have difficulties coping with the additional workload.

Integrity of FIU Authorities

358. There is no special integrity vetting requirement for AMLIU staff. AMLIU has issued no separate FIU code of conduct or guidelines on integrity/discipline for its staff. However, the AMLIU staff is required to observe the Articles stipulated in The Anti-Corruption Law.

359. In case of the need to fill a vacated post, AMLIU would refer the requirement to the Personnel Department of the BOL for processing. No interference can be made by AMLIU in the recruitment process.

Training for FIU staff

360. The management of AMLIU has attended a long list of training activities or workshops on STR analysis, AML/CFT issues and related areas. The very low level of implementation suggests that the knowledge acquired from such capacity building events have not been put into practice.

Statistics (c.32)

361. Since the establishment of AMLIU in 2007, only 28 STRs had been received as at October 2010. Nine commercial banks, out of 24 banks operating in the Lao PDR, accounted for the total; the last STR was reported in June 2010.

362. AMLIU can only provide the number of STRs received and disaggregated by the types of financial institution, DNFBP and others. It is tabled as follows:-

Table: STR statistics

	2007	2008	2009	2010*
Banks	0	17	6	5
NBFIs	0	0	0	0
DNFBPs	0	0	0	0

* As at 11 October 2010

(Note: No STR has been disseminated to other agencies.)

Effectiveness

363. The AMLIU has not performed its FIU functions properly. The performance of AMLIU against the following standard FIU performance indicators has been unsatisfactory:

- **STR received and disseminated:** The total number of STRs reported is very low and there has been no dissemination of STRs to date. This is low figure relative to the statistics on serious crime convictions (section 1 of this report) and the number of reporting institutions in the Lao PDR.
- **STR Analysis:** There is no STR procedure, and as discussed, the zero dissemination of STRs reflects poor analytical technique. The decision on whether to action a STR or not is based solely on whether there is a positive match with a prior STR submitted on the reported individual or entity. No other intelligence is included in the analysis.
- **Operational Independence:** There are serious concerns about the operational independence of the FIU given the FIU head cannot disseminate STRs without reference to higher authorities within the BOL. Although AMLIU advised that no STRs have been submitted to management to date, the operational independence of the AMLIU is clearly constrained. Further, there is a lack of budget autonomy.

- **STR Guidance:** AMLIU lacks a holistic approach in raising reporting institutions' awareness of STR reporting obligations. There is inadequate outreach to both the banking and non-banking sectors and there are no sector specific guidelines on AML/CFT.
- **Resources:** The human resources of AMLIU are inadequate to discharge its FIU functions effectively. While the current resources might be sufficient to cover its existing workload, it is probably not sufficient to meet the demands associated with the implementation of CTR cross border declaration and expected growth in STR reporting.

2.5.2 Recommendations and Comments

364. The Lao PDR should implement the following recommendations:

- Expand the legal authority of AMLIU to include the receipt and dissemination of STR on FT once the latter has been criminalised;
- Develop a strategic plan for AMLIU that sets out objectives, actions required and resources needed;
- Enhance the operational independence of AMLIU within the BOL, particularly concerning the dissemination of STRs;
- Raise the awareness of STR reporting among all reporting institutions;
- Provide additional or sector specific STR guidelines to non-bank financial institutions;
- Adopt STR analysis and processing procedures to enhance the quality of STR analysis;
- Provide hands on STR analysis training to AMLIU staff;
- Take a proactive approach in seeking information from other agencies and open sources to enhance STR analysis;
- Coordinate or establish a formal mechanism for timely dissemination of STRs to the Economic Police Department for investigation;
- Ensure data security, including backup, of FIU data; and
- Increase the resources of the AMLIU by filling the three vacant positions to ensure full operation of the unit.

2.5.3. Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	NC	<ul style="list-style-type: none"> • No legal basis to receive and disseminate STR on FT • There is no STR analysis procedure • STR analysis is limited to information contained in other STR reports and information from other competent authorities and open sources are not used • No STR dissemination • Lack of STR guidance to non-bank reporting institutions and awareness raising among all reporting institutions • No typology report and trend analysis have been published • AMLIU lacks sufficient operational independence • Lack of effective implementation

R.30	NC	<ul style="list-style-type: none"> • AMLIU lacks the adequate skill and resource in conducting STR analysis
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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)

2.6.1. Description and Analysis

365. The Law on Criminal Procedure No. 01/NA, dated 15 May 2004, defines the roles and powers of investigation organisations and public prosecutors in handling an investigation or a complaint to the final stage of court proceedings, including ML investigation and prosecution under Article 64 of the Penal Law.

Recommendation 27 (Designated law enforcement authorities)

Designation of Authorities ML/FT Investigations (27.1)

366. The designated authority for ML is the Financial Crime Investigation Division of the Economic Police Department. There is no formal designated authority for FT investigation.

Economic Police Department

367. The Economic Police Department specialises in the investigation of economic crime and is a department in the General Police Department. The Economic Police Department is divided into five divisions with the following three divisions responsible mainly for combating economic crime: (1) Financial Crime Investigation Division, (2) Economic Crime Division, and (3) Environment and Natural Resource Crime Division.

368. The Economic Police Department informed the assessment team during the on-site meeting that the Financial Crime Investigation Division of the Economic Police Department is the designated unit in the Economic Police Department responsible for conducting ML investigations. This designation was made by the Director General of the Police Department in October 2009. Furthermore, the assessment team was informed that, although not formally designated, FT investigation also falls within the charter of the Financial Crime Investigation Division.

369. The Division is further divided into three units with the aim of preventing and suppressing financial crime. The three units are listed as follows:-

- Prevention, Suppression and Information Unit
- Prevention, Suppression Informal Loan and Illegal Gambling Unit
- Prevention, Suppression Counterfeit Check, Bond and Currency Usage Unit

370. The Economic Police Department established a Coordinating Committee pursuant to Action Plan No. 316/PL, dated 26 March 2009, for the purpose of sharing information and closely monitoring the effectiveness of AML/CFT investigation. The Coordinating Committee, which meets on a monthly basis, comprises representatives from the Economic Police Department, Narcotics Suppression Department, Investigation Department and Criminal Intelligence Department.

371. The Financial Crime Investigation Division has not investigated any ML or terrorism financing case. The authorities indicated that there were two active ML cases, but the team was

advised that the investigating body was another unit (i.e. Drug Suppression Department of the Police) and not the Financial Crime Investigation Division.

Office of Public Prosecutor

372. The Office of the Public Prosecutor has a supervisory and oversight role in ML investigation. The public prosecutor has the authority to supersede the decision of a head of an investigation organisation to open or close an investigation, in accordance with Article 38 of The Law on Criminal Procedure. Under Articles 37 and 39, all investigators are required to report to the public prosecutor within 24 hours upon the opening, or receipt of credible information leading to the opening of a case. After investigation, if there is no evidence to proceed with a criminal charge and the case is closed, the head of an investigation organisation is obliged to report to the public prosecutor. On the other hand, if there is sufficient evidence to proceed with a prosecution, the head of an investigation organisation shall summarise the investigation and submit the case file together with the exhibits to the public prosecutor for action.

373. The powers of a public prosecutor to supervise an investigation are provided under Articles 73 and 74 of The Law on Criminal Procedure. The salient points of the powers are listed as follows:-

Article 73

- *To monitor and inspect the adherence to regulations regarding investigation;*
- *To demand the criminal case file, documents and other information relating to an offence from the Investigation Organization for review;*
- *To participate in investigations and, when it is necessary, to himself conduct investigations;*
- *To cancel an order of the Head of Investigation Organization that is in conflict with the laws or that it is not supported by sufficient reasons;*
- *To send the case file to investigators or interrogators together with instructions for additional investigation;*

Article 74

- *If it is deemed that the investigation of the case is still incomplete, the public prosecutor shall send the case file back to the investigation organization or interrogator together with his written instructions for additional investigations;*
- *If it is deemed that there is sufficient information and evidence, the public prosecutor shall issue an order to prosecute the accused person in court.*

Ability to Postpone/Waive Arrest of Suspects or Seizure of Property (c.27.2)

374. There is no legislative provision to allow competent authorities to postpone or waive the arrest of suspected persons and/or the seizure of the money for the purpose of identifying persons involved in ML/FT activities or for evidence gathering. The Lao PDR advised, however, that investigation agencies such as the Economic Police Department are able to exercise such authority in practice. No statistics were provided to support such a statement.

Additional elements - Special investigative techniques (c.27.3)

375. Chapter 3 of the Law on Criminal Procedures provides for general investigative measures, including interviews of witnesses/arrested persons and searches of places for evidential purpose. There is no specific mention of special investigative techniques, such as undercover operations or controlled delivery, when investigating ML or other offences. Nevertheless, the Economic Police Department advised during the on-site meeting that such special investigative techniques could be used if so required.

Additional elements – specialised investigation groups & conducting multi-national cooperative investigations (c.27.5)

376. Both the Economic Police Department and the Office of Public Prosecutor have not established any specialised investigation groups.

377. Pursuant to Article 118 of the Law on Criminal Procedures, international cooperation in criminal proceedings with other jurisdictions is subject to conditions stated in bilateral agreements or international conventions. There is no specific reference to the use of special investigation technique in joint operations between Lao investigation organisations and foreign investigation agencies.

Additional elements – review of ML & FT trends by Law Enforcement Authorities (c.27.6)

378. The Economic Police Department is unable to conduct any ML/FT trends as there has been no completed ML investigation or conviction.

Recommendation 28 (Investigative powers)

Ability to compel production of and searches for documents and information (c.28.1)

379. Article 51 of Law on Criminal Procedure empowers the public prosecutor or the people's court to issue a written order to conduct a search of building, vehicles and individuals. There are certain exemptions to this requirement, including in an emergency, or when an individual is already arrested, detained or suspected of concealing objects. Article 24 also gives the powers to investigators to "to conduct searches of buildings, vehicles, and persons, [and] to collect evidence relating to the offence".

380. Pursuant to Article 55 of the Law on Criminal Procedure, the head of an investigation organisation or the public prosecutor can issue an order to seize and detain such materials/assets related to the offence. Article 52 also goes on to say, "if they are related to the offence or are things that contravene the laws." This could potentially include obtaining bank records or transactions for further action as part of any ML investigation.

381. During on-site meetings, the team was advised that the Economic Police could always make a request directly to a bank for records. If required, the public prosecutor can issue an order to a bank for the release of bank records for investigation purpose.

382. No specific details or statistics were provided to the team on the number of search orders issued, including those issued to financial institutions, although banks met during the on-site meetings indicated that it was not uncommon to receive such orders.

Power to take witness statement (c.28.2)

383. Once an investigation is commenced, the investigation officer is authorised to take testimony from the injured party, civil plaintiff, accused person, witness and other concerned persons under the power vested in Article 24 of the Law on Criminal Procedure. Article 43 of the Law on Criminal Procedure requires an investigating officer to inform the accused person or witness of their charges and rights, and the consequences or liabilities in giving or not giving a statement. A testimony is required to be taken either in writing or recorded in video/audio, depending on the location of an interview.

Resources

Economic Police Department

384. The Economic Police Department is part of the General Police Department that reports to the Ministry of Public Security. At the central level, there is about 1,000 staff in the General Police Department. Among the five divisions in the Economic Police Department, the Financial Crime Investigation Division, which is designated for ML and FT investigations, has 11 persons.

Office of the Public Prosecutor

385. The Office of the Public Prosecutor comprises the following five sub-offices:

- (i) The Office of the Supreme Public Prosecutor
- (ii) Office of the Appellate Public Prosecutor
- (iii) Office of the Provincial or City Public Prosecutor
- (iv) Office of the District or Municipal Public Prosecutor
- (v) Office of the Military Prosecutor.

386. There are 700 staff in the Office of the Public Prosecutor with 100 staff posted to The Office of the Supreme Public Prosecutor. The two divisions in the Office of the Supreme Public Prosecutor, namely the Prosecution Division and Supervision Division, have a total staffing establishment of nine persons that are responsible for overseeing any ML investigation.

Integrity of Competent Authorities

387. Article 21 of the Security Force Law stipulates the criteria to be a police inspector and police officer. The criteria are reproduced as follows:-

- (i) Must be a Lao nationality of 18 years old;*
- (ii) Have strong political view, loyalty of Party-State-Civilian, socialism ideology, nationalism, civilian democracy prospect, able to discrete who is friend or enemy, moral revolution, brave heart and sacrifice, high awareness for organization, respect and compliance with law and regulations;*
- (iii) Have a high school degree, technical degree and good curriculum vitae. For any Lao citizen who lives in rural and remote areas without any degree would also take into account;*
- (iv) Have basic knowledge about the Party-State policy and guidance, some specific technique and foreign language;*
- (v) Have good health and perfect body.*

For a police inspector, the following additional requirements are required:-

- (i) Lieutenant level: have a minimum degree of upper secondary school or experience in leading, instructing and commanding of a certain work with successful outcome.*
- (ii) Major level: have a minimum degree of college and have a certificate of political course at the middle or higher level.*

388. Article 25 of the Security Force Law stipulates the minimum criteria for the Head of Public Prosecutor and Police. These criteria are reproduced as follows:-

- (i) Be Lao citizens who are 25 years of age or above;*
- (ii) Have strong political commitment, good motion, honor or innocent in performing;*
- (iii) Have legal education and certificate. Public Prosecutor must finish study vocational training.*
- (iv) Not to perform punishment in committed intention*
- (v) Have a good health*

389. The Anti-Corruption Law 2005 applies to police officers and other government officials. Article 10 includes taking bribes, abuse of power (personal gain for self or family/relatives or clan), embezzlement and swindling of state property as corruption offences. The Law also covers certain potential conflict of interest concerns such as accepting gifts, private employment and nepotism. The Anti-Corruption Department informed the assessment team that no public prosecutor or police officer has been convicted for corruption. However, this statement is based only on a few (i.e. single digit) investigations conducted in 2009 and 2010, due to the recent establishment of the Anti Corruption Department.

Training for Competent Authorities

390. The Economic Police Department sent 15 officers to attend a UNODC conducted ML investigation training in 2009. The Public Prosecutor relies on internal training and training conducted by the Bank of Lao PDR.

Statistics

391. The Economic Police Department confirmed that it has not conducted any ML or FT investigation. The Public Prosecutor indicated that the Drug Suppression Department of the General Police Department was conducting two drug trafficking related ML investigations. However, during the on-site visit, the Drug Suppression Department could not confirm the existence of the two drugs related ML cases.

Effectiveness

392. The Lao PDR lacks a focus on "follow the money" to tackle profit driven crime. The police and public prosecutor have sufficient powers to conduct criminal investigations effectively, including ML. However, there has been no confirmed case of ML investigation.

393. The Financial Crime Investigation Division is the only designated unit in the General Police Department for ML investigation. However, the Financial Crime Investigation Division has not assumed responsibility for all ML investigations from other departments within the General Police Department, which are responsible for the investigation of serious predicate crime. The Drug

Suppression Department, as indicated, might have been involved in two possible ML investigation cases. It raises a number of issues, including whether the Financial Crime Investigation Division is implementing its mandate as the designated unit for ML investigation, or whether other police departments are following this mandate.

394. The Economic Police Department holds monthly coordination meetings with other stakeholders, such as the Drug Suppression Department, Investigation Department and Criminal Intelligence Department for intelligence sharing and effectiveness monitoring of AML measures. It seems the coordinating meeting has not been functioning properly, in particular, in the area of intelligence sharing.

395. The training provided to both the public prosecutor and the police in the areas of ML is insufficient. The obvious gap is found in the understanding of ML. It is important to stress that ML should be investigated in addition to the investigation of predicate crime. The aim of ML prosecution is to penalise the money launderer and confiscate the proceeds of crime, whether as a result of self-laundering or not. ML conviction is an effective tool in combating serious crime as it takes away the monetary incentive.

2.6.2. Recommendations and Comments

396. The Lao PDR should implement the following recommendations:-

- The Financial Crime Investigation Division should be formally designated for FT investigation;
- The Economic Police Department should take a proactive approach in pursuing ML investigation;
- The Coordinating Committee should be used to enhance coordination between the Economic Police Department and other police departments in conducting investigations;
- The Economic Police Department should work closely with the Office of the Supreme Public Prosecutor in any ML and FT investigation;
- The Lao authorities should consider defining clearly in law the powers to (i) postpone or waive arrest of suspected persons and the seizure of money for the purpose of identifying person involved, and (ii) use of special investigative technique;
- The Police and Public Prosecutor should be given additional training on ML and FT investigation to enhance their investigation capability;
- The Financial Crime Investigation Division should be expanded; and
- The Office of the Supreme Public Prosecutor should designate and establish a specialised division for ML investigation and prosecution.

2.6.3. Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	PC	<ul style="list-style-type: none"> • No formal designation of a law enforcement authority responsible for FT investigation. • Lack of coordination between the designated ML investigation unit and other departments in the Police. • Lack of effective implementation as there is no confirmed case of ML investigation.

R.28	LC	<ul style="list-style-type: none"> • There is a lack of effective implementation of available powers as demonstrated by a lack of statistics on investigation and prosecution.
R.30	NC	<ul style="list-style-type: none"> • Lack of application of resources to actual ML investigation. • Doubts concerning financial investigation skill.

2.7. Cross Border Declaration or Disclosure (SR. IX)

2.7.1. Description and Analysis

397. The Presidential Decree Law on Governing the Management of Foreign Exchange and Precious Metals No. 01/P, dated 17 March 2008 (“Decree Law on Foreign Exchange”), in conjunction with the Instruction on Implementation of Decree Law on Management of Foreign Currency and Precious Metals No. 01/BOL, dated 2 April 2010 (“the Instruction on Foreign Exchange”), regulate the physical cross border transportation of currency and precious metals by an individual or financial institution in or out of the Lao PDR.

398. Article 17 of AML Decree includes cross border declaration requirements for cash, payment instruments and precious metals exceeding a certain threshold, as determined periodically by the concerned authorities.

399. The Customs Law 2005 governs the cross border movement of goods and services in general, including the structure and powers of the Lao Customs Department.

Institutional framework

400. The Lao Customs Department is the enforcement agency of the Decree Law on Foreign Exchange regarding the physical cross border movement of currency and precious metals. The Lao Customs Department reports to the Ministry of Finance and consists of following offices and divisions:-

- Legislative Division;
- Import & Export Division;
- Anti-Smuggling Division;
- Administrative Division;
- Information, Communication & Technology Division;
- International Cooperation Division;
- Post Clearance Administration Division; and
- 5 Regional Customs Offices.

401. The Director General of Customs is assisted by two Deputy Directors to command seven divisions and five regional customs offices in the Lao PDR. Under the five regional customs offices, they cover 21 International customs check points, 23 local customs check points and 27 traditional customs check points. Regarding the 21 International customs check points, there are three air and 18 land control points. The 50 local customs and traditional check points are used mainly by the local people. For the 27 traditional customs check points, they are opened two to three times a week and no declaration requirement is required.

Mechanism to monitor cross-border physical transportation of currency (c.IX.1)

Foreign Currency

402. Article 14 of the Decree Law on Foreign Exchange, in conjunction with Article 13 of the Instruction on Foreign Exchange, outlines the declaration system by requiring incoming and outgoing passengers to truthfully declare to customs officers the physical movement of foreign currency and/or precious metals exceeding the value equivalent of 100 million Kip (about USD10,000 depending on the exchange rate). For those passengers leaving the Lao PDR with foreign currency and/or precious metals exceeding the threshold, they must present the inward declaration slip issued by the customs officers as evidence that the amount has been previously declared while entering the Lao PDR. However, there is no separate declaration or disclosure requirement for foreign currency or bearer negotiable instruments sent via mail or cargo.

Local Currency – Lao Kip

403. There is no declaration requirement for carrying the local currency (the Kip) across the border. However, there is a limit of 20 million Kip that can be brought into or out of the Lao PDR. Any amount in excess of 20 million Kip requires the prior approval from the BOL.

404. Article 2 of the Decree Law on Foreign Exchange defines currency, foreign exchange, commercial papers and cash as follows:

“Currency” means the Lao national currency whose unit of value is Kip;

“Foreign exchange” means the bank notes, the traveler's checks, other commercial papers expressed in foreign currencies and precious metals which are acceptable for international settlements;

“Commercial paper” means all types of bank checks and payment orders, bills of exchange, promissory notes, other documents or means for debt settlement equivalent to foreign exchange that can be tradable or used for the international settlements;

- “Cash in foreign exchange” means the bank notes, the traveler's checks and other documents which are equivalent to cash;

- “Precious metal” means gold which may be used as a means for international settlement;

405. There are, however, inconsistencies in the use of terminology. Article 14 of the Law on Foreign Exchanges imposes the declaration requirement on “foreign currency” and “precious metal”. However, there is no definition of “foreign currency” in Article 2 of the same law, only “foreign exchange” and “currency”. If we interpret foreign currency to mean the same as foreign exchange as defined in Article 2 of the Law on Foreign Exchange, the declaration requirements cover all forms of bearer negotiable instruments as other forms of bearer negotiable instruments are included under the definition of “commercial paper”. However, it is not totally clear that we can regard “foreign currency” the same as “foreign exchange”.

406. There are notices of the declaration requirement affixed to the major customs check points regarding the cross border movement of foreign currency and/or precious metals exceeding 100 million Kip equivalent. Warning has been included in the notices for violations of the declaration requirement. However, as noted, the declaration requirement is not printed in the Immigration Form to alert incoming or outgoing passengers. The declaration is voluntary, and based on passengers either declaring to customs or choosing between the red declaration or green no declaration exit where available.

407. Article 24 also gives the powers to investigators to “*to conduct searches of buildings, vehicles, and persons, [and] to collect evidence relating to the offence*”.

408. Customs also informed the assessment team the declaration requirement is only mandatory for international and local customs check-points, not traditional border crossings.

409. Article 17 of AML Decree 55 introduces a similar declaration requirement for a person entering or leaving Lao PDR with cash, payment instruments or precious metals. AML Decree 55 is, however, not enforceable. Article 17 differs from the existing arrangements as it does not distinguish between foreign currency and the Lao Kip, and allows authorities to determine the threshold periodically. Despite its intent, there are deficiencies as there is no definition in AML Decree 55 of cash, payment instruments or precious metals. Moreover, there has been no implementation of Article 17 because AMLIU has not developed the new declaration form.

Request information on origin and use of currency (c.IX.2)

410. Article 61 of Customs Law specifies the investigative power of customs officers, including the seizure of goods and vehicles and arrest of offenders. There is no specific article in the Customs Law that empowers Customs to request and obtain further information on the origin and intended use of currency or bearer negotiable instruments upon discovery of a declaration violation or suspicion of ML/FT. There is reference in Article 14 of the Decree Law on Foreign Exchange that, “*Customs officers at an immigration check-point shall inspect the declaration of Kip, foreign currency and precious metals to be brought in or out of the Lao PDR.*”

411. According to the Lao Customs Department, officers at the border check points randomly stop passengers for checking of possible violation of declaration requirements. In addition, they have stopped passengers based on intelligence given by rival traders, tourism authority, Airport Authority and Economic Police Department. Customs has detected 11 violations of declaration requirement.

412. If a violation is detected, customs officers will take a statement from the offender and the currency will be seized and deposited into a designated bank for future disposal. Although there is no specific provision for customs officers to ascertain the origin of the smuggled cash/precious metals, they do normally enquire to the source from the offender as a normal practice.

Restraint of currency (c.IX.3)

413. There is no specific Article in the Customs Law that stipulates the power of seizure by Customs officers based on false/non-declaration of cash/precious metals. There is a general provision in Article 61 of the Customs Law that stipulates, “*it is found that there have been violations of laws and regulations relating to customs, customs officers have the right to arrest offenders together with goods and vehicle used in committing the offence, as well as relevant documents for investigation and to serve as evidence in the prosecution.*”

414. During the on-site, Customs informed the assessment team that upon detection of violation, the Lao Customs Department would seize the cash/precious metals under Article 61 of the Customs Law. If there is no crime detected, the cash or precious metals will be disposed administratively by Customs. If there is a detection of crime, the seized cash or precious metals and the case will be referred to the Economic Police Department for further action. The disposal of seized cash and/or precious metals will be under the discretion of the Economic Police Department.

Retention of information of currency and identification data (c.IX.4)

415. Since there has never any declaration made by any passenger, no such information is currently kept by Lao Customs Department. However, they have maintained information of a few violators (failure to declare) in their database in a standalone computer.

Access of information to FIU (c.IX.5)

416. As mentioned, there is no declaration information for sharing with AMLIU. It is possible for AMLIU to request information from Customs, but as discussed under Recommendation 26, AMLIU has never requested information from Customs to support its analysis of STRs.

Domestic cooperation (c.IX.6)

417. Customs officers are required under Article 62 of Customs Law to render assistance and cooperation to civil servants, military, police or other people bound by duty in the monitoring and seizure of goods. According to Customs, they have sought assistance from other agencies such as the Army, particularly in remote control points such as traditional customs check points. However, no such request has ever been extended to illegal cash smuggling activities. Other than referring the case to the Economic Police Department, there is no established mechanism for the Lao Customs Department to cooperate and coordinate with other agencies in the implementation of SR IX.

International cooperation (c.IX.7)

418. Article 9 of Customs Law states that, *“The government extends and promotes international cooperation on customs work on the basis of respect for each other’s sovereignty and mutual benefit in order to develop the customs sector such as exchange of experience on technical matters, human resource development, exchange of information, facilitating trade and others in accordance with international treaties and conventions that the Lao PDR has signed or become a party to”*.

419. Customs do not share information with other agencies, except in a criminal case in which the information and the seized cash or precious metals are referred to the Economic Police Department for further investigation. The Economic Police Department will then decide whether the information is shared with overseas agencies, depending on whether the case has any international dimension.

420. The Customs Law is silent on the sharing of cash and precious metals smuggling activities with other countries. The Lao Customs Department claimed that they have maintained good cooperation with neighbouring countries and information sharing could be done via the World Customs Organisation. The Lao Customs Department has not shared with other foreign agencies any information regarding bulk cash smuggling activities.

Sanctions for making false declarations/disclosures(c.IX.9)

421. Article 31 of the Instruction on Foreign Exchange outlines the punishment in respect of violation of the declaration threshold. It is reproduced as follows:-

- *Violations for bringing in and out of the country cash in Kip for the first time which is not serious or unintentional, the violator will be warned. Upon the second violation or the first violation with the value of 50 million or more, the penalty rate will be 50% of the value involved. Upon further violation after the first penalty, the*

violation will be fined 100% of the value involved.

- *Violation bringing in and out of the country cash in foreign currency and precious metals with the value of equivalent 100 million Kip or more without any evidence of declaration for bringing money in the Lao PDR or without an approval from the Bank of the Lao PDR, the violator will be warned. Upon second violation or the first violation with the value of 200 million Kip or more, the penalty rate will be 50% of the value involved. Upon further violation after the first penalty, the violator will be fined 100% of the value involved by the customs officer and concerned agency.*

422. The same Article also stipulates that if the violation impacts on the economic, financial and monetary system of the country, the violator will be prosecuted in accordance with the laws of the Lao PDR, even it is the first contravention.

423. Between 2009 and 2010, there were 11 violations and all the violators were sanctioned administratively by the Customs authority. No case has been referred to the Economic Police Department for investigation during the same period.

Sanctions for cross-border physical transportation of currency for purposes of ML or FT (c.IX.10)

424. There are no sanctions to penalise the cross-border physical transportation of currency for purposes of ML /FT. In practice, Customs Officers will detain the suspects believed to have committed ML/FT offences and seize the cash/precious metals in question. Afterwards, the case together with the seized valuables will be referred to Police for further investigation. No ML/FT case has been detected and referred to Police for investigation.

425. There is no special provision in the Customs Law to allow customs officers to seize and confiscate currencies relating to ML/FT. There is no record of currency confiscation related to ML/FT across the border.

Confiscation of currency pursuant to UNSCR (c.IX.11)

426. The Lao PDR is still drafting the legislation on FT. The Customs Department expressed that Immigration in the control point is responsible for checking the passengers against the designated terrorist list. Nevertheless, there is no legal provision under Customs Law empowering Customs to freeze, seize or confiscate funds in connection with terrorist financing.

Notification of foreign agency of unusual movement of precious metals and stones (c.IX.12)

427. No notification of unusual movement of precious metals and stones has been made to other foreign counterparts. If such notification is deemed necessary, the information can be shared by making use of the established channel in the World Customs Organisation.

Safeguards for proper use of information (c.IX.13)

428. Article 75 of Customs Law stipulates that customs staff must observe strictly the confidentiality of official secrets.

Training targeting, data collection and enforcement (c.IX.14)

429. Customs has undergone relevant training.

Supra-national approach (c.IX15)

430. The Lao PDR is not party to any supra-national arrangement on customs.

Additional element – implementation of SR IX Best Practices(c.IX.16-17)

431. The Lao PDR has implemented some measures in detecting and preventing the illicit cross-border transportation of cash and bearer negotiable instrument by reference to SR IX Best Practices. The implemented measures include the declaration system, the detection of false or non-declaration and the sanction of false or non-declaration. Nevertheless, the best practices on record keeping and information sharing, the measures to detect and investigate of ML/FT offence, and the power to restraint and confiscate currency are yet to be implemented.

Additional element – computerization of Database

432. The Department maintains a record of violators in a database stored in a standalone computer. There are plans for the development of a more comprehensive database using a mainframe.

Recommendation 30.1

433. According to the Lao Customs Department, there are 541 staff posted to 21 International Customs check points including three air and 18 land border crossing points. Another 23 Local and 27 traditional customs check points are scattered around the Lao PDR.

Recommendation 30.2

434. Article 74 and Article 75 of the Customs Law stipulate the caliber required to be a customs officer and the requirements to observe official secrets. Both Article 74 and 75 are reproduced as follows:-

Article 74

“Customs staff must have a clear background, be faithful and be in accord with policies, laws and regulations of the State, have a good personality, loyalty, healthy living habits, never been involved in embezzlement, corruption or misappropriation, be observant of their organization, be disciplined, be in solidarity, be fair, be hardworking, be responsible for their duties, be interested in studying, be in good health, possess good technical knowledge relating to customs and have a good grasp of other relevant laws and regulations.”

Article 75

“Customs staff who perform duties or who have been appointed to perform any duties must strictly maintain the confidentiality of official secrets.”

435. According to the Anti-Corruption Department, no customs officers have ever been criminally sanctioned for bribery offences.

Recommendation 30.3

436. In 2009, officers from Customs participated in four training events on ML/FT related areas. One was organised by the Lao Customs Department and the other three were workshops organised by BOL.

Recommendation 32

437. There are no declaration statistics because no passenger has ever declared voluntarily to Customs. On the other hand, Customs has detected 11 violations of declaration requirement, in which all the violations were sanctioned administratively.

Effectiveness

438. The assessment team observed on arrival that no declaration requirement is included in the current immigration arrival form. The team observed also no requirement to complete a declaration form on departure.

439. There are notices of declaration requirement affixed to the major customs check points regarding the cross border movement of foreign currency and/or precious metals exceeding 100 million Kip equivalent. Warning has been included in the notices for violations of the declaration requirement. However, as noted, the declaration requirement is not printed in the Immigration Form to alert incoming or outgoing passengers. The declaration is voluntary, and based on passengers either declaring to customs or choosing between the red declaration or green no declaration exit where available.

440. Lao Customs Department confirmed there has been no declaration made pursuant to Article 13 of the Regulation. However, there are 11 detections of non-declaration between 2009 and 2010 but no detection of any cash smuggling via post and cargo in the Lao PDR.

441. Article 24 also gives the powers to investigators to *“to conduct searches of buildings, vehicles, and persons, [and] to collect evidence relating to the offence”*.

442. Customs also informed the assessment team that the declaration requirement is only mandatory for international and local customs check-points, not traditional border crossings.

2.7.2. Recommendations and Comments

443. The following recommendations are proposed for the Lao PDR to comply with the requirements under SR IX:-

- Amend existing laws and regulation to introduce declaration requirements that include currency and bearer negotiable instruments and cover all cross border channels including mail and cargo streams;
- Include in the declaration form provisions that refer to sanctions for violations;
- Introduce systems to ensure information held by Customs is shared with AMLIU;
- Amend the Customs law to stipulate clearly the powers of Customs Officers in discharging their duties, including the power of arrest & seizure and confiscation of the currency/precious metals in violation of the declaration requirement;

- Amend current legislation to include sanctions for cross-border physical transportation of currency for purposes of ML or FT and the corresponding power of confiscation;
- Enhance the intelligence sharing of illegal smuggling of cash/precious metals activities with both local and overseas agencies;
- Implement the new declaration requirements at all check points, in particular at traditional customs check points that are vulnerable to cash smuggling activities; and
- Provide more training to Customs Officers on ML/FT and techniques in detecting illegal smuggling of cash/precious metals activities.

2.7.3. Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	NC	<ul style="list-style-type: none"> • Declaration requirement does not clearly include all bearer negotiable instruments. • No requirement for declaration via mail or cargo. • There is no cross border declaration form for incoming and departing passengers. • No provision in Customs Law that empowers customs officers in discharging their duties on declaration requirements. • Sanctions of cross-border physical transportation of currency for purposes of ML or FT and its corresponding power of confiscation are not stipulated in law. • There is no strict declaration requirement at some customs check points. • The lack of effectiveness of the current system is highlighted by the fact that no voluntary declaration has ever been made by passengers. • Lack of intelligence sharing with both local and overseas agencies.
R.30	NC	<ul style="list-style-type: none"> • No allocation of staffing resources to traditional border crossings.

3. PREVENTIVE MEASURES —FINANCIAL INSTITUTIONS

444. The key documents in relation to preventative measures on AML/CFT are noted below. However, not all can be considered to be law, regulation or other enforceable means:

(a) AML/CFT Specific Laws/Regulations/OEM/Guidelines

- Penal Law, Article 64 on Money Laundering
- AML Decree 55 on Anti Money Laundering issued by the Office of the Prime Minister, March 2006 (“AML Decree 55”)
- The Bank of Lao PDR Guideline No.2 on Anti Money Laundering Procedures and Operational Controls of Reporting Institutions under Supervision of the Bank of Lao PDR, September 2006 (“AML Guideline ”)
- The Guideline No. 66 on Reporting Suspicion Transactions issued by the Director of AMLIU, 15 October 2007 (“STR Guideline”)
- Agreement on the Establishment and Activities of AMLIU issued by the Governor of the Bank of Lao, 2007 (“AMLIU Establishment Agreement”)

(b) Other Laws/Regulations/OEM/Guidelines Relevant to AML/CFT Obligations

445. There are also other laws, decrees and supporting legislations that address the required preventative measures and regulatory powers of competent authorities in the financial sector, as follows:

- Accounting Law, 2007
- Law on Commercial Banks, 2007
- Law on Enterprise Accounting, 2004
- Law on Insurance and Decree, 1990
- Law on Bank of the Lao PDR, 1995
- Law on Securities Sector
- Presidential Decree Law Governing the Management of Foreign Exchange and Precious Metals, 2008
- Decree on the Organisation Structure and Operation of the BOL
- Bank of Lao PDR Regulation on the Organisation and Operation of the Bank and Financial Institution Supervision Department 2005
- Regulation for Deposit-Taking MFIs, 1999
- Regulation for Saving and Credit Unions, 1999
- Regulation on the Supervision of Foreign Exchange Bureaus, 2004
- Guideline No 01.April 2009 to implement the Decree Law on Foreign Exchange and Precious Metals Controls.
- Instruction on Implementation of Decree Lao on Management of Foreign Currency and Precious Metals, 1999

Law

446. The only preventative measure included in a law in the Lao PDR is a reference in Article 64, fifth paragraph, in the Penal Law to criminal liability for natural persons for AML STR reporting violations. It states, “Any person having *responsibility and duties to report the activities of money laundering such as bank officials or other finance institute officials who do not promptly report or intentionally report the incorrect activities of money laundering shall be regarded as the concealment of offence and shall be punished in according to penalties prescribed in Article 165 of the Criminal Law.*” The penalty referenced in the Penal code is three months to two years of imprisonment or re-education without deprivation of liberty and shall be fined from 300,000 Kip to 5,000,000 Kip (approximately USD625).

Regulation and Other Enforceable Means

447. The key AML preventative instrument is AML Decree 55, which contains a range of basic preventative measures. Decree 55 does not meet the FATF definition of law, regulation or other enforceable means due to a complete lack of sanctions to support obligations set out in the Decree. The one exception is the STR reporting requirement contained in Decree 55, which includes sanctions for non-compliance.

448. Article 33 of Decree 55 outlines the following available STR sanctions for failure to report STRs (and CTRs):

Article 33. Punishment measures for the offenders.

Reporting Institutions which fail to report as stipulated under this Decree, shall be reprimanded by the agency in charge of supervising the Reporting Institutions. After the reprimand and upon continued violation, the offender shall be penalized with the fine amounting from ten to thirty million Kip and duly punished in accordance with the existing law.

449. The monetary sanctions referred to in the Decree are minuscule. In U.S. dollar equivalent, it ranges from USD 1200 to USD 3600.

450. There is a cross reference to “*the existing law*” in the last sentence of Article 33 of the Decree, which could refer to any law, but most likely the Penal Law given it refers to only one law and not laws. As indicated earlier, a natural person can incur a criminal liability for a reporting violation based on the ML Article 64, fifth paragraph in the Penal Law.

451. Further, the financial institutions met during the on-site indicated the reason for implementing AML/CFT measures was because of either home jurisdiction requirements, and/or on a voluntary basis to maintain good relationship with the BOL.

Non -Binding Guidance

452. The BOL has issued two non-binding Guidelines: (1) STR Guideline; and (2) AML Guideline. The STR Guideline includes no sanctions but is issued pursuant to AML Decree 55. The AML Guideline includes Article 19 (Measures Against Violators). However, the sanction is limited to, “*If any reporting institution violates any requirements of this Guideline shall be taken action in accordance with the article 33 of the Anti ML Decree No. 55/PM dated 27 March 2006*”. The limitations of Article 33 in AML Decree 55 have already been discussed.

Scope

453. The unenforceable requirements in AML Decree 55 fall significantly short of the preventative measures required under the FATF Recommendations, both in scope and depth. The definition of “Reporting Institutions” in Annex 2 of Decree 55 essentially mirrors that for “financial institutions” under the FATF standards; however, the list of designated financial institutions subject to the Decree 55 as outlined in Annex 2 differs slightly from the FATF’s definitions. For example, the safe keeping and administration of cash or liquid securities on behalf of other persons is potentially not covered within the present definition of Reporting Institutions.

454. Further, in Article 2 (2) of the Decree, it states that, “*Reporting Institution refers to individuals or entities such as commercial banks, financial institutions, insurance companies, casinos and others, as specified in Annex 2 of this Decree, which are obligated to report any suspicious transaction to the AMLIU*”. However, in Article 3 under “Scope and application of this Decree”, it states, “*This Decree applies to: - Lao citizens, foreign residents, stateless individuals, foreigners living in the Lao PDR: - Foreign individual or entity not residing in the Lao PDR, who has entered into a transaction in the Lao PDR*”. It omits a Lao legal person or entity, which potentially limits the coverage of this legislative instrument to exclude such entities as Lao owned reporting institutions as defined in Annex 2, and that are required to report under Articles 2 (2) and 11. Thus any Lao based legal person is potentially not covered by the Decree. This restriction appears to be in conflict with the intent of the Decree, which is to cover the designated reporting entities listed in Annex 2.

455. Finally, in terms of preventative measures, not all the preventative measures required by the FATF are included. For example, there is no requirement for enhanced or ongoing due diligence, beneficial ownership, or identifying the source of funds when establishing a presence within Lao PDR.

Implementation of the Preventive Measures

456. AML Decree 55 came into effect in June 2006, 90 days after signing pursuant to Article 35 of the Decree. Lao PDR has undertaken a very high level approach to regulation and supervision, including guidance, with little implementation of Decree 55 in evidence, despite the Decree being enacted for over five years. Implementation of Decree 55 has occurred only in the commercial banking sector regulated by the BOL.

3.1. Risk of ML or terrorist financing

457. Lao PDR has not adopted a risk based approach, as outlined in the FATF standards but rather treats all circumstances in the same manner.

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

3.2.1 Description and Analysis

Legal Framework:

458. As stated earlier, AML Decree 55 is not considered law, regulation or OEM for the purposes of preventative measures, with the exception of R.13. The following analysis focuses on whether Decree 55 has included the required preventative measures, even though unenforceable.

Recommendations 5

Prohibition of Anonymous Accounts (c. 5.1):

459. There is no requirement in law or regulation, or provision in Decree 55, prohibiting the opening of anonymous accounts. The AMLIU advised that Article 13 of the AML Decree and Article 13 in the AML Guideline are interpreted to prohibit the opening of anonymous accounts. But as noted, neither Decree 55 nor AML Guideline 2 meets the FATF requirements and there is no specific reference to anonymous accounts in Article 13.

460. During the on-site visit, discussions with several banks indicated that anonymous or numbered accounts did not exist in Lao PDR. Since the BOL or AMLIU has conducted no on-site AML inspection, these statements cannot be substantiated.

When is CDD required (c. 5.2):

461. There is no requirement in law or regulation for identification and verification measures. There is provision, although not enforceable, in Article 13 of the AML Decree that states reporting institutions, including banks and financial institutions, need to conduct customer identification and verification when entering into a transaction.

462. However, a number of core requirements of CDD are not provided in Decree 55, in the following circumstances:

- threshold requirement for occasional or one-off transaction;
- specification of a de minimis threshold in conducting CDD for wire transfers;
- CDD requirements when there is suspicion of ML or FT; and
- CDD measures when the bank has reasonable doubts about the veracity of previously obtained customer's identification.

Identification measures and verification sources (c. 5.3):

463. There is no requirement in law or regulation for identification and verification measures. There is provision, although not enforceable, in Article 13 of AML Decree 55 for the collection of detailed information on customers as follows:

“The Reporting Institutions shall require the customers or their assignees to show identity card, family log book, passport or other documents certifying the identity of the customers or their assignees when entering into a transaction. Photocopies of the documents shall be made to serve as proofs, particularly for transactions that are of high value or suspicious nature. Details on information collection are set out under a separate regulation.”

464. The assessment team met with several banks during the on-site, and those banks explained they have internal policies and procedures whereby they check the original of a citizen's identity card, which is the primary means of identification. The identification card includes ID No., photo, full name, place originated (supported by the family record book, which is registered by local commune authority), date of birth, place of residence, nationality and holder's signature. This is the most reliable identification document in Lao PDR because financial institutions can check with the local commune authority.

465. Those banks also indicated that if the customer is a legal entity, documents such as business licence, tax registration, foreign investment permission and application are obtained, or request are made to the department or ministry concerned to verify such documents.

Identification of Legal Persons or Other Arrangements (c. 5.4):

466. There is no requirement in law, regulation or enforceable means, or provision in Decree 55, for financial institutions to verify that any person purporting to act on behalf of the customer is so authorised, and to identify and verify the identity of that person; and to verify the legal status of the legal person or legal arrangements.

Identification of Beneficial Owners (c. 5.5; 5.5.1 & 5.5.2):

467. There is no requirement in law or regulation for the identification of beneficial ownership information. Article 14 of AML Decree does provide a provision, although not enforceable, for reporting entities to retain information on beneficiaries of transactions. This non-enforceable provision does not specify what kind of relevant information or data must be obtained and from which reliable source(s).

Information on Purpose and Nature of Business Relationship (c. 5.6):

468. There is no requirement in law, regulation or enforceable means, or provision in Decree 55, for the reporting institutions to obtain information on the purpose and intended nature of the business relationship.

Ongoing Due Diligence on Business Relationship (c. 5.7; 5.7.1 & 5.7.2):

469. There is no requirement in law or regulation, or provision in Decree 55, that requires financial institutions to perform ongoing due diligence, including for higher risk categories of customer, business relationships or transactions. Financial institutions are not required, as part of their due diligence measures, to scrutinize their customers' transactions during the course of the business relationship to ensure that the transactions are consistent with the institution's knowledge of the customer, their business, and risk profile, and where necessary, source of funds.

Risk—Enhanced Due Diligence for Higher Risk Customers (c. 5.8):

470. There is no requirement in law, regulation or enforceable means, or provision in Decree 55, that requires financial institutions to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction.

Risk—Application of Simplified/Reduced CDD Measures when appropriate (c. 5.9):

471. There is no requirement in law, regulation or enforceable means, or provision in Decree 55 that provides for financial institutions to apply any reduced CDD or simplified measures in the identification of their customers.

Risk—Simplification / Reduction of CDD Measures relating to overseas residents (c. 5.10):

472. There is no requirement in law, regulation or enforceable means, or provision in Decree 55, for financial institutions to have simplified or reduced CDD measures for customers resident in another country.

Risk—Simplified/Reduced CDD Measures -ML/FT or other high risk scenarios exist (c. 5.11); Consistent with Guidelines (c.5.12):

473. As mentioned above, there is no risk based legislation in place that would allow reduced or enhanced CDD, including where there is suspicion of ML or specific high risk scenarios.

Timing of Verification of Identity—General Rule (c. 5.13):

474. There is no requirement in law, regulation or enforceable means specifying the timing of CDD verification. Under the AML Decree 55, there is provision, although not enforceable, for reporting entities to obtain customer information all the time when establishing a relationship or conducting a transaction. However, this provision does not expressly include the timing of verification. It is not stated clearly when reporting entities are expected to "verify" the identity of the customer or beneficial owner, and whether they have to verify it before or during the course of establishing a business relationship or conducting transactions for occasional customers.

475. On-site discussions with banks indicated that according to their practice, accounts would not be opened and/or operated on before full identification was obtained. This cannot be confirmed in view of the non-existent supervision/monitoring for AML compliance in Lao PDR.

Timing of Verification of Identity—Treatment of Exceptional Circumstances (c.5.14 & 5.14.1):

476. There is no requirement in law, regulation or enforceable means, or provision in Decree 55, permitting financial institutions to complete the verification of the identity of the customer and beneficial owner following the establishment the business relationship in specified cases.

Failure to Complete CDD before or after commencing the Business Relationship (c. 5.15):

477. There is no requirement in law, regulation or enforceable means to prevent the opening of an account and to consider making a STR, if a financial institution is not able to satisfactorily complete CDD. AML Decree 55 is silent on the measures to be taken if a financial institution is not able to satisfactorily complete CDD for a customer.

Failure to Complete CDD after commencing the Business Relationship (c. 5.16):

478. There is no requirement in law, regulation or enforceable means, or provision in Decree 55, to terminate the business relationship and consider to lodging a suspicious transaction report where inadequacies in customer identification are detected.

Existing Customers—CDD Requirements (c. 5.17):

479. There is no requirement in law, regulation or enforceable means, or provision in Decree 55, requiring financial institutions to apply CDD requirements to existing customers on the basis of materiality or risk, or to conduct due diligence on such existing relationships at appropriate times.

480. During on-site meeting with banks, they advised the assessment team that as a matter of banking practice, they 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.

Existing Anonymous-account Customers – CDD Requirements (c. 5.18)

481. There is no requirement in law, regulation or other enforceable means, or provision in Decree 55, to perform CDD measures on existing anonymous account customers.

Recommendation 6

Foreign PEPs—Requirement to Identify (c. 6.1):

482. There is no requirement in law, regulation or other enforceable means concerning measures to identify politically exposed persons (PEPs). Foreign banks established in Lao PDR indicated that they have measures to identify and conduct enhanced due diligence on customers who are PEPs. There is, however, no requirement for financial institutions to identify or take any specific measures (i.e. risk management systems) in respect of PEPs, either domestic or foreign.

Foreign PEPs—(c. 6.2; 6.2.1;6.3;6.4):

483. There is no requirement in law, regulation or other enforceable means that would require reporting entities to obtain senior management approval for establishing business relationships with a PEP, to take reasonable measures to establish the source of wealth or funds of a PEP, or to conduct enhanced ongoing monitoring on any business relationship with a PEP.

Domestic PEPs—Requirements (Additional Element c. 6.5):

484. Lao PDR has not addressed the issue of CDD for domestic PEPs.

Domestic PEPs—Ratification of the Merida Convention (Additional Element c. 6.6):

485. Lao PDR signed the United Nations Convention against Corruption on 10 December 2003 and ratified it on 30 September 2009.

486. The National Assembly approved the Law on Anti-Corruption Number 03/NA on 19 May 2005. The law was promulgated by Presidential Decree. The functions for countering corruption are currently carried out by the State Inspection Authority.

Recommendation 7

Respondent Institution (c. 7.1 -7.5):

487. There is no requirement in law, regulation or other enforceable means that address the requirement of FATF Recommendation 7 on cross border correspondent banking relations.

488. Notwithstanding, Article 19 of AML Decree includes provision, although not enforceable, requiring financial institutions to have the following in maintaining cross-border correspondent banking and other similar relationships:

- *Verify the correspondent banks' legitimacy as entities with which business relation has been established;*
- *Collect information on the nature of business operations of their correspondent banks abroad;*
- *Assess the credibility and conduct of supervision and control activities of their correspondent banks abroad, based on the information disclosed to the public;*

- *Ensure that prior approval from the Management of the Bank has been obtained, each time that the business relation with a foreign correspondent bank is to be established; and*
- *Evaluate the record of ML control performance of the correspondent banks.*

489. Banks met during on-site meetings advised the assessment team that they have internal policies and procedures in place where approval from senior management is always required before establishing new correspondent relationships, and in practice, assess and document respondent institutions' AML/CFT controls before establishing relationships, as part of their broader risk management approach. The banks also indicated that they do not maintain payable-through accounts.

Recommendation 8

Misuse of New Technology for ML/FT (c. 8.1):

490. There is no requirement in law, regulation or enforceable means that address the risks associated with new technologies. Further, AML Decree 55 is silent on any potential abuse of new technologies, non face- to-face business relationships/transactions and additional CDD.

Risk of Non-Face to Face Business Relationships (c. 8.2 & 8.2.1):

491. Article 36 of the Law on Commercial Bank No.03/NA , (dated 26 December 2006) requires commercial banks to determine measures to prevent and counter ML in accordance with laws and regulation. But it does not specifically require the banks to have policies in place to prevent the misuse of technological developments in ML and FT.

492. Article 59 and 60 of this law focuses primarily on the safety of the electronic banking transactions and internet banking, rather than any potential abuse of new technologies or non face- to-face transactions.

3.2.2. Recommendations and Comments

493. Overall, Lao PDR's compliance with the FATF Recommendations 5-8 on CDD shows a number of significant deficiencies, in terms of scope, lack of mandatory requirements and enforceability.

494. During the on-site, the assessment team met with several commercial banks (two state owned banks, two foreign affiliate banks and one foreign bank branch). Commercial banks were well aware of the existence of the AML Decree and BOL Guidelines and were implementing CDD measures because of various reasons and not because of the legal enforceability of the prevailing AML instruments. The basic CDD measures were in place prior to the promulgation of AML instruments in the Lao PDR. However, banks' internal requirements appeared less stringent than international recommendations and primarily oriented towards collecting customer identification documents and monitoring credit risks. No bank had undertaken an AML /CFT risk assessment for its business activities.

Recommendation 5

495. It is recommended that Lao PDR introduce mandatory requirements by passing specific legislation or regulations to:

- Prohibit the existence (opening or maintenance) of numbered or anonymous accounts;
- Impose the applicable designated thresholds for occasional or one-off transactions, including a de minimis threshold for wire-transfers;
- Introduce CDD requirements when there is suspicion of ML or FT;
- Undertake CDD measures when the bank has reasonable doubts about the veracity of previously obtained customer's identification;
- Introduce a requirement to verify customers identity using reliable, independent source documents (whether regular or occasional);
- Include expanded requirements/guidance covering how financial institutions should identify the veracity or adequacy of any previously obtained customer identification;
- Include a requirement to identify the beneficial owner, and for a legal person or arrangement, the operating mind or ownership and controlled;
- Include a legal requirement for the reporting institutions to obtain information on the purpose and intended nature of the business relationship;
- Introduce on-going due diligence requirements;
- Introduce risk based CDD measures including enhanced due diligence for higher risk customers and the capacity to apply reduced CDD for lower risk customers;
- Specify the timing for verification of customers and to prohibit account opening when CDD requirements are unable to be met;
- Introduce the requirement to terminate, and report an STR, on any account already activated, where relevant CDD requirements are unable to be met;
- Introduce CDD requirements for existing customers on the basis of materiality and risk; and to maintain up to date information such as address; and
- Introduce appropriate sanctions for violations (see Recommendation 17).

Recommendation 6

496. It is recommended the Lao PDR introduce enforceable requirements that would require reporting entities to put in place appropriate risk management systems to:

- Determine a PEP;
- Obtain senior management approval for establishing business relationships with a PEP;
- Take reasonable measures to establish the source of wealth or funds of a PEP; and
- Conduct enhanced ongoing monitoring on any business relationship with a PEP.

Recommendation 7

497. It is recommended that Lao PDR introduce enforceable requirements to require financial institutions to take the following measures:

- Gather information about a respondent institution's business and reputation;
- Assess the respondent institution's AML/CFT controls;
- Necessitate senior management approval before establishing relationships;
- Document the respective responsibilities of the financial institution and its respondent institution; and
- Satisfy that payable through accounts are subject to CDD requirements.

Recommendation 8

498. It is recommended that:

- The reporting entities be required to have policies and procedures in place to prevent the misuse of technological developments in ML or FT schemes and to address any specific risks associated with non -face- to- face business relationships or transactions; and
- The BOL and other supervisory authorities issue detailed and enforceable regulations on what specific CDD procedures must be applied to non- face- to- face customers.

3.2.3. Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	NC	<ul style="list-style-type: none"> • Financial institutions are not explicitly prohibited by law or regulation from opening or maintaining anonymous accounts, or accounts in fictitious names. • Financial institutions are not required to conduct CDD when carrying out occasional or one-off transactions, including wire transfers, when above the applicable designated threshold. • The thresholds for occasional transaction and wire transfer are not designated yet. • Financial institutions are not required to conduct CDD measures when there is suspicion of ML or FT. • There is no legal requirement to undertake CDD measures when the bank has reasonable doubts about the veracity of previously obtained customer's identification. • There is no explicit requirement for financial institutions to verify a customer's identity to using reliable, independence source documents, data or information. • There is no requirement to identify customers who are legal persons. • No requirement for financial institutions to identify any person said to be acting on behalf of another person if so authorised. • No requirement to verify the identity of any person acting on behalf of another person. • No requirement to identify beneficial ownership. • There is no legal requirement for the reporting institutions to obtain information on the purpose and intended nature of the business relationship. • No legislative or other enforceable means to require enhanced due diligence for higher risk categories of customer business relationship or transaction. • No ongoing due diligence obligations. • No specific requirement to ensure CDD is kept up to date. • No legislation requiring the termination of a business relationship where certain criteria have not been applied. • No specific legislative requirement for financial institutions to apply CDD requirements on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times. • There is no legal requirement specifying the timing of CDD verification

		for customers. <ul style="list-style-type: none"> No AML inspections conducted to gauge effectiveness of implementation of AML Decree 55.
R.6	NC	<ul style="list-style-type: none"> There is no legislative, regulatory or other enforceable requirement in respect of politically exposed persons.
R.7	NC	<ul style="list-style-type: none"> There is no specific legal requirement or enforceable mean that address the requirement on cross border correspondent banking relationships.
R.8	NC	<ul style="list-style-type: none"> Lao PDR does not have specific legislation or requirement in relation to the misuse of technological developments in ML or FT, or to address any specific risks associated with non face-to-face transactions.

3.3. Third Parties and Introduced Business (R.9)

3.3.1. Description and Analysis

Legal Framework:

499. Lao PDR laws do not currently have specific provisions that would allow financial institutions to rely upon a third party in the process of implementing CDD. Under Article 13 of AML Decree 55, reporting institutions shall be responsible for the identification of customers.

500. The assessment team found no evidence that any financial institutions had relied upon any introducer or third party in the CDD process. The banks met by the team indicated that in practice, all identification obligations are conducted face-to-face in the account opening process and do not rely on any introducer or third party in the CDD process. CDD obligations are still required to be conducted even if a client is referred by one of its subsidiary or correspondent bank. Even agents working for insurance companies must provide copies of identification details of new customers to their insurance companies.

3.3.2. Recommendations and Comments

3.3.3. Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	NA	

3.4. Financial Institution Secrecy or Confidentiality (R.4)

3.4.1. Description and Analysis

Inhibition of Implementation of FATF Recommendations (c. 4.1):

501. Article 35 on “Confidentiality” in the Law on Commercial Banks contains confidentiality requirements on information held by banks or their agents. The same Article allows for the disclosure of such information to the BOL, the auditors or other competent authorities as provided by law and regulation. Decree 55 does not represent an enforceable regulation, and would not overcome Article 35 confidentiality requirements.

502. The BOL and the AMLIU are authorised to obtain information from financial institutions and share the information with other competent authorities. BOL, through part IV of the Law on Commercial Banks, is given broad powers to call for reports, to supervise and inspect banks and to demand and examine various records that would overcome Article 35 confidentiality provisions. There are also broad powers under Article 5 of the Law on the BOL. As the AMLIU is within the BOL these powers would appear to be available to FIU staff. Article 35 does not, therefore, inhibit the disclosure and sharing of confidential information with competent authorities.

503. Article 35, as worded, does not permit the sharing of information between financial institutions where this is required under R.7, R.9 and SR.VII.

504. Since there were no statistics available to show the use of regulatory or law enforcement powers to override secrecy provisions, effectiveness could not be fully established.

3.4.2. Recommendations and Comments

505. It is recommended that Lao authorities should lift the barriers to the sharing of information between financial institutions in relation to correspondent banking (R7), third party transactions (R.9) and wire transfer (SRVII).

3.4.3. Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	LC	<ul style="list-style-type: none"> Article 35 in Law on Commercial Banks inhibits sharing of information between financial institutions where this is required under R.7, R.9 and SR.VII. Lack of statistics demonstrating access to information by competent authorities.

3.5. Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1. Description and Analysis

Recommendation 10

Record-Keeping & Reconstruction of Transaction Records (c. 10.1 & 10.1.1):

506. The following laws are relevant to Recommendation 10, although they are not promulgated specifically for AML/CFT purposes:

- Article 41, Chapter VII “Record Keeping: Timeframe for Record Keeping”, in the Accounting Law (Amendment Version) No.01/NA dated 2 July 2007, states, “*Any certifying documents to be used for accounting evidence shall be maintained at least ten (10) years*”.
- Article 8, “Binding Provisions”, in the Law on Enterprise Accounting promulgated on 5 November 1994, requires each independent business unit to keep accounting and certifying document for a period of ten years. Article 23 of this Law on Enterprise Accounting also describes that failure to keep compulsory accounting documents will entail fines as prescribed by decrees of the Government.
- Article 45, “Corporate Records and Records of Transactions”, in the Law on Commercial Banks, requires banks to prepare and maintain written records, including records showing on a daily basis particulars of transactions with or for each customer, and the balance owned to or by that customer; accounting records exhibiting clearly and correctly the state of its business affairs, its transactions and financial condition; and such other records as are required by this law and by regulations of the BOL. However, no timeframe is specified for the retention of those records.
- Regulations for other non-bank financial institutions (i.e. Regulation for Deposit-Taking MFIs, Regulation for Saving and Credit Unions, Regulation on the Supervision of Foreign Exchange Bureaus) contain requirements to maintain accounting records for 10 years. Both the Law on Insurance and Decree on Securities state that accounting records must be kept in accordance with the Law on Enterprise Accounting, with sanctions for violations.

507. There is a provision, although not enforceable, in Article 14 of AML Decree 55 that:

“requires the reporting institutions to retain and make available to the concerned authorities, all information and documents relating to the reported transactions as follow:

- *Information on the customers themselves and the beneficiaries of the transaction collected through the Customers Due Diligence process, shall be retained for at least ten (10) years in accordance with the document retention regulation, starting to count from the date of account closing or the terminating date of the transaction relation;*
- *Information on customers’ transactions shall be retained for at least five (5) years starting from the completion date of the transaction.”*

508. The Law on Commercial Bank is not specific as to the retention of transaction records for any specified time period. The Accounting Law and Enterprise Accounting Law do include specific requirements to maintain records for 10 years but are limited to accounting records, whereas the Law on Commercial Bank has broader scope to include records that might not be considered accounting records. The recording keeping requirements of non-banking financial institutions supervised by the BOL are limited to accounting records but for a period of 10 years. The insurance and securities sectors, as stated, are subject to the Law on Enterprise Accounting.

509. The authorities did not provide any case or demonstrate that existing requirements would be sufficient to permit reconstruction of individual transactions.

Record-Keeping for Identification Data (c. 10.2):

510. There is no legal requirement for the retention of identification data such as account files and business correspondence for at least five years following termination of accounts.

511. There is a provision, although not enforceable, in Article 14 of AML Decree 55 that covers information related to customer profile, transaction profile and the beneficiary of the transaction following the termination of an account or business relationship. Decree 55 does not contain any provision for the identification of beneficiary ownership information.

Availability of Records to Competent Authorities (c. 10.3):

512. Currently, Lao PDR does not have any specific legislation regarding availability of records “on a timely basis”. There is also no statistical data to demonstrate timely access to information.

Special Recommendation VII

Obtain Originator Information for Wire Transfers (c.VII.1, applying c. 5.2 & 5.3 in R.5.):

513. There is no specific legislation that requires full originator information to be maintained or to be verified if over the threshold limit.

Inclusion of Originator Information in Cross-Border Wire Transfers and Domestic Wire Transfers (c. VII.2 &c.VII.3):

514. There is no requirement in law, regulation or other enforceable means for ordering financial institutions to include full originator information in the message or payment form accompanying cross-border wire transfers. There is also no such requirement for domestic wire transfers.

Maintenance of Originator Information (c.VII.4):

515. There is no requirement in law, regulation or other enforceable means for intermediary and beneficiary financial institutions in the payment chain of wire transfers to transmit all originator information with the transfers.

Risk Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5):

516. 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 transfers that are not accompanied by complete originator information.

Monitoring and sanctions (c. VII.6, VII.7):

517. As Lao PDR has not implemented any legal requirements, there are no corresponding measures to monitor compliance and impose sanctions.

518. The BOL stated it did not assess any wire transfer record keeping requirements as part of its supervisory activity.

Incoming wire transfers (c. VII.8):

519. There is no specific legislation addressing in-coming cross border wire transfers.

Threshold (c. VII.9)

520. There is no designation of threshold for wire transfer.

Effectiveness

521. Various banks and international financial institutions met by the assessment team during the on-site confirmed they have made a policy decision to maintain records for 10 years, as provided for in AML Decree 55. However, as mentioned, the record keeping requirements in AML Decree 55 are not enforceable. In this respect, when asked further why they had complied, banks mentioned numerous reasons, including compliance on a voluntary basis because of a broader imperative to maintain sound relationship with the BOL, beyond AML/CFT purposes; other legal requirements extended to 10 years, and therefore it was easier to make a blanket policy to keep all records for 10 years; and/or because of head office requirements in their home jurisdiction.

522. The accounting and other legal requirements on record keeping, which are more limited in scope to transaction records, have collectively influenced record keeping practices among financial institutions.

3.5.2 Recommendations and Comments

Recommendation 10

523. It is recommended that Lao PDR introduce mandatory and enforceable requirements in either law or regulation to:

- Expand record keeping obligation to cover all requirements of FATF Recommendation 10, including for 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; and
- Ensure financial institutions make available records to competent authorities on a timely basis by indicating a clear timeframe.

Recommendation SR VII

524. It is recommended the Lao PDR should establish enforceable requirements covering all aspects of SRVII for reporting entities:

- Implement CDD measures prior to carrying out occasional transaction or wire-transfers above a threshold to be set by the supervisory authority (the threshold has not yet been set);
- Ensure that wire transfers are accompanied by proper identification information (name and address of the originator, and where an account exists, number of that account);

- Pay special attention to wire transfers that do not contain complete originator information and to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information;
- Obtain and maintain information relating to the originator of wire transfers;
- Verify the identity of the originator for all wire transfers;
- Require ordering financial institutions to include full originator information in the message or payment form accompanying cross-border wire transfers;
- Require intermediary and beneficiary financial institutions in the payment chain of wire transfers to transmit all originator information with the transfers, or to keep a record of that information for five years if there are technical limitations to transmit any of it;
- Require beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information, and to take measures such as restricting or even terminating their business relationship with financial institutions that fail to meet the SR.VII standards; and
- Put measures in place to effectively monitor the compliance of ordering, intermediary or beneficiary financial institutions, and establish sanction mechanisms against non-compliance.

3.5.3. Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	PC	<ul style="list-style-type: none"> • The legal obligations relating to record keeping are limited to transaction records for financial institutions regulated by the BOL. • No requirement for maintenance of records of identification data, account files and business correspondence. • No requirement for maintenance of records after termination of business relationship. • There is no requirement for information to be provided to competent authorities on a timely basis. • It is not clear that effective implementation of the few obligations in the banking sector have been confirmed through supervision.
SR.VII	NC	<ul style="list-style-type: none"> • No specific requirement to ensure complete originator information is included in outgoing wire transfers. • There is no requirement for the originator's account number or unique reference number if no account number exists to be included in an outgoing payment instruction. • No threshold requirements. • No legislative requirement or other enforceable means that require full originator information to accompany or be made available within the required timeframe for domestic transfers. • No specific requirements for financial institutions in the payment chain to ensure that all originator information accompanies a wire transfer. • No obligation for the beneficiary financial institution to assess incoming wire transfers that are missing complete originator information for any AML/CFT risk exposure. • There are no measures in place to effectively monitor the compliance of financial institutions with rules and regulations implementing SRVII. • No sanctions to be applied against the various obligations under SRVII.

3.6. Monitoring of Transactions and Relationships (R.11 & 21)

3.6.1. Description and Analysis

Recommendation 11

Special Attention to Complex, Unusual Large Transactions (c. 11.1):

525. There is no requirement in law, regulation or other enforceable means that requires financial institutions to pay special attention to all complex, unusual large or unusual patterns of transactions; to examine such transactions; and to keep records of such findings for at least 5 years.

Examination of Complex & Unusual Transactions (c. 11.2):Record-Keeping of Findings of Examination (c. 11.3):

526. Although not enforceable, Article 20 in AML Decree 55 provides for reporting institutions to pay special attention to every transaction that is complex and of particularly high value, and transaction that appears irregular and lacks legitimate objective. There is no provision, however, in the AML Decree that provides for reporting institutions to examine the background and purpose of such transactions and to set forth findings in writing and keep them available for competent authorities and auditors for at least five years.

Recommendation 21

Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1 & 21.1.1):

527. Lao PDR has no requirement in law, regulation or other enforceable means to oblige financial institutions to give special attention to business relationships and transactions with persons from or in countries that do not or insufficiently apply the FATF Recommendations.

528. Article 20 of the AML Decree 55 provides for, “reporting institutions to pay special attention to business relation and transaction entered into with an individual and entity, domiciling in a country which does not have ML laws and regulations, or having such laws and regulations which have not been strictly enforced”. However, this is not an enforceable obligation.

Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2):

529. There is no requirement for financial institutions to examine the background and purpose of financial transactions having no apparent economic and visible lawful purpose, and document and make available written findings to assist competent authorities.

Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):

530. There is no provision in AML Decree 55 for Lao authorities to implement countermeasures against countries that do not or insufficiently apply the FATF Recommendations. Further, the Lao PDR has no mechanism nor has it issued any advisories to financial institutions in this regard.

3.6.2. Recommendations and Comments

531. It is recommended that Lao PDR should set out enforceable requirements to require financial institutions to undertake the following :

Recommendations 11

- Pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, and to examine and make available findings to help competent authorities and auditors;
- Keep such findings available to competent authorities and auditors for at least five years;

Recommendation 21

- Give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries that do not or insufficiently apply the FATF Recommendations;
- Examine the background and purpose of financial transactions, and document and make available written findings to assist competent authorities; and
- Implement countermeasures issued by the competent authority and for the latter to have the legal basis to issue such measures.

3.6.3. Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	NC	<ul style="list-style-type: none"> • There is no enforceable requirement for financial institutions to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, and to examine and make available findings to help competent authorities and auditors. • There is no requirement to keep such findings available to competent authorities and auditors for at least five years.
R.21	NC	<ul style="list-style-type: none"> • There is no requirement for reporting institutions to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries that do not or insufficiently apply the FATF Recommendations. • There is no requirement for financial institutions to examine the background and purpose of financial transactions, and document and make available written findings to assist competent authorities. • There is no mechanism or legal basis for the competent authority to apply appropriate counter measures.

3.7. Suspicious Transaction Reports and Other Reporting (R.13-14, 19, 25 & SR.IV)

3.7.1. Description and Analysis

Legal Framework:

532. Article 64 of the Penal Law and Article 11 of AML Decree 55 address STR reporting. The former provides a legal basis for STR reporting by imposing penal sanctions for failure to report. The latter designates reporting entities in its Annex 2 (of AML Decree 55) and provides more detailed STR requirements.

533. The scope deficiencies issues noted in the introduction to the Preventative Measures section 3 are applicable to STR and other reporting measures.

534. A non-binding STR Guideline, dated 15 October 2007, was issued by the BOL pursuant to AML Decree 55. This Guideline is broad and general in nature and content. It is intended to cover all sectors and reporting institutions, as defined under Annex 2 of Decree 55, without consideration for AML/CFT risks associated with each of the specific sectors.

Requirement to Make STRs on ML and FT to FIU (c. 13.1 & IV.1):

535. Article 11 of AML Decree 55 places a mandatory obligation to lodge an STR where, “Control Officers of Reporting Institutions, who know of any act or information, behavior of an individual or individual or organization suspected of having committed a money laundering offence, shall be required to immediately report in writing”. The requirement is therefore a subjective test of suspicion and not an objective test of reasonable grounds to suspect.

536. The application of this provision is limited by scope deficiencies, as not all 20 designated categories of offences are included as predicate offences for ML.

537. There is no definition of a suspicious transaction within Article 2, “Definition of Terms” in Decree 55. However, clarity is provided in Article 2 “Definition of STR” in the STR Guideline which states, “A suspicious transaction is any transaction or attempted transaction of a customer that is not matching with the customer’s profile or usual business activity, suspicion may arise from action of the customer or other persons accompanying with the customer during making the transaction.” This guidance material appears to have limited the scope for STR lodgment and makes no reference to criminal activity, but rather relies on a deviance from a customer profile or activity. The assessment team considers that this restriction in scope may, in some degree, have contributed to the extremely low STR volume in Lao PDR.

538. In terms of scope, in Article 2 (2) of the Decree, it states that, “Reporting Institution refers to individuals or entities such as commercial banks, financial institutions, insurance companies, casinos and others, as specified in Annex 2 of this Decree, which are obligated to report any suspicious transaction to the AMLIU”. However, in Article 3 under “Scope and application of this Decree”, it states, “This Decree applies to: - Lao citizens, foreign residents, stateless individuals, foreigners living in the Lao PDR: - Foreign individual or entity not residing in the Lao PDR, who has entered into a transaction in the Lao PDR”. The Decree definition omits a Lao legal person or entity that potentially limits the coverage of this legislative instrument to exclude such entities as Lao owned reporting institutions as defined in Annex 2, and which are required to report under Articles 2

(2) and 11. While noting there is this conflict, in practice, based on STRs submitted, Lao legal entities have submitted STR reports.

Monetary thresholds for STR reporting

539. Further, Article 15 “Content of the Report” of the AML Decree states, “Details of the transactions, namely the transactions with value greater than the limit set by the Anti-Money Laundering Intelligence Unit or any transaction relating to cash deposits and withdrawals, currency exchanges, transfer, buying–selling of checks and other transactions which appear suspicious of money laundering.” This statement raises concerns that financial institutions may believe that only transactions above a certain limit should be reported. It is possible that this limit may be identical to the threshold reporting limit referenced in Recommendation 19 and again this anomaly may also have contributed to the low STR reporting levels. The content of Article 15 of the AML Decree is repeated at Article 8.3 “Content of the Report” in the STR Guideline. The assessment team noted that Lao PDR stated there was no monetary limit for an STR despite the anomaly in AML Decree 55 and the STR Guideline.

STR’s Related to Terrorism and its Financing (c. 13.2, SRIV):

540. Lao PDR has not criminalised the financing of terrorism, hence there is no direct mandatory obligation either in law or regulation for the submission of STR where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism.

541. The AML Decree 55 is silent on STR reporting for FT.

542. The authorities advised the assessment team that no STRs have been received in relation to any terrorist activity or FT.

Attempted Transactions (c. 13.3):

543. There is no specific mention of STR reporting for attempted transactions in AML Decree 55. However, as previously noted, Article 2 of the STR Guideline, “Definition of Suspicion Transaction”, includes attempted transactions, but with the deficiencies as highlighted in criteria 13.1. Additionally, the STR Guideline does not define “attempted” transactions and how that attempted activity may apply across the various products offered by reporting institutions. Most importantly, while the Guideline can provide clarification of certain aspects of STR reporting such as indicators and processes, the FATF standards stipulate this requirement to be a direct mandatory obligation either in law or regulation.

544. During the on-site, discussions with financial institutions revealed the concept of an “attempted” transaction was not well understood. Discussions with some commercial banks interviewed during the on-site mission indicated that they would only consider a completed transaction as one worthy of raising an STR.

545. To date, of the 28 STRs received, none are for “attempted transaction”.

Making of ML and TF STRs Regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2):

546. Tax violation is listed in the Penal Code as a predicate offence; however, to date no STRs have been received for any tax related concerns.

Additional Element - Reporting of All Criminal Acts (c. 13.5):

547. The reporting obligation in AML Decree 55, as indicated, refers to the acquisition of money or assets derived from offenses as specified in Annex 1 of this Decree. The last item on this list states, “*And any other crimes in respect of which a penalty may include a sentence to prison for a period of one year or more*”. However, as noted, AML Decree 55 cannot create predicate offences for ML, only the Penal Law or other laws can.

Recommendation 32

548. The following table was provided to the assessment team during the on-site component of the ME.

Table: STR Statistics

YEAR	MONTH												TOTAL
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
2007													0
2008				4	2	1	1	5	3		1		17
2009	2			2		1	1						6
2010		2		1	1		1						5
	TOTAL												28

549. The assessment team notes that only nine banks have lodged STRs during the past three years, with the highest contributor providing six STRs. No NBFIs have provided any reports. There were 17 STRs reported in 2008, which is higher than in the preceding or subsequent years. The assessment team also notes a lack of any proactive attempt by AMLIU to encourage greater compliance with STR reporting requirements.

Recommendation 14*Protection for Making STRs (c. 14.1):*

550. There is no protection in law, as required by Recommendation 14, for financial institutions and their officers to be protected from both criminal and civil liability for breach of any confidentiality restrictions.

551. There is a provision in Article 22² of the AML Decree 55 that refers to AMLIU providing reassurance to reporting individuals and organisations when revealing secret information, and assistance to those making reports for any damages done to them. As there has not been a case

² **Article 22. Protection of notifying and reporting parties.**

In order to encourage the notices and reports on money laundering which are very important contribution in deterring and combating money laundering, there needs to be reassurance that notifying and reporting individuals or organizations shall not be considered as having committed an offence of revealing secret information. The Anti-Money Laundering Intelligence Unit shall ensure that such acts of notifying and reporting be kept confidential, and assistance be provided to those making the notices and reports for any damages done to them, as a result of their acts of notifying or reporting.

The confidentiality of the notifying and reporting shall also be maintained for the provision of anti-money laundering information between the Anti-Money Laundering Intelligence Unit of the Lao P.D.R. and the concerned organizations of foreign countries as stipulated under article 27 of this Decree.

against a reporting individual or organisation, it is not clear what form such assistance would take. Irrespective, Recommendation 14 requires protection to be provided in law, and not in a lower instrument such as in a decree.

Prohibition against Tipping-Off (c. 14.2):

552. There is no prohibition in law for financial institutions and their directors, officers and employees from disclosing the fact that a STR or related information is being reported or provided to the AMLIU.

553. There is a provision in Decree 55 at Article 16 that states, “Any act of serving a Notice or making a report on money laundering shall be kept confidential”. However, this is not in law as required by Recommendation 14, and in any event, this provision is not enforceable on reporting entities as the only sanction available in AML Decree 55 is for violation of STR reporting.

554. Irrespective of its legal status or enforceability, there are other deficiencies in the provisions in the Decree:

- The provision is very general and raises a number of challenges, including the question who is undertaking “any act”, whether the financial institution, employee or both, and it refers to “a report on money laundering” without mention of suspicion or suspicious only; and
- As worded, it is not clear that it prohibits tipping off in the period after a suspicion has been formed and before a STR is prepared or after a report has been submitted

555. Article 11 of the AML Decree carries a reference to lodging a suspicious report to both AMLIU and “the concerned authority for consideration”. This inconsistency in the Decree allows for the both tipping off and the confidentiality of reporting staff to be compromised. The authorities advised that they are aware the inconsistency in the Article and it will be addressed in reviewing the Decree. There was no timeframe provided for such review. Additionally, AMLIU were unable to advise whether any of the 28 STRs received had been provided to a “concerned authority” in parallel with the report to the FIU.

Additional Element—Confidentiality of Reporting Staff (c. 14.3):

556. There are no laws that specifically protect the personal details of staff from financial institutions, although Article 22 of Decree 55 carries a reference to protection when an international exchange of information is performed. Discussions with police indicated that they would not expect to receive an original STR. AMLIU stated that while they had not disseminated any STRs to date, they would not include an actual STR in any dissemination but rather provide information in the form of a written report. There was also no standard operation procedure provided to support these claims. Therefore, there is no prohibition for the details of financial institutions’ staff to be included in any report to the police, and if included, for the police to maintain confidentiality.

Recommendation 19

Threshold Reporting (c. 19. -19.3):

557. The Lao PDR has considered and decided to introduce threshold reporting. Article 15 of AML Decree 55 states that any transaction with a value higher than the limit set by AMLIU is to be

reported. Under Article 12 of the AML Guideline 2, AMLIC is responsible for setting the threshold amount.

558. There has been a lack of implementation of this provision. There has been no attempt to introduce any threshold amount nor has there been any consideration as to how these reports will be lodged with the relevant authority. The assessment team understands monies have been allocated for some time to address this need; however there is no plan from the AMLIU to progress this function.

Recommendation 25 (only feedback and guidance related to STRs)

559. AML Decree 55 under Article 25 *Rights and Duties* imposes obligations on AMLIU to provide guidance to financial institutions on ML typologies and methods, together with assistance to other supervisory agencies in carrying out their AML oversight function.

560. The sole guidance material relevant to STRs has been the non-binding STR Guideline 66. This guidance material is considered very broad and high level and appears to be a “download” of international guidance rather than information tailored for this jurisdiction. Additionally, there appears to be no consideration for how this material will apply across all sectors within Lao PDR, but rather a generic application of this material.

561. The sole feedback provided by AMLIU to any financial institution is an acknowledgement to banks of an STR received.

562. There has been no consideration of the FATF Best Practice Guidelines on Providing Feedback nor did the jurisdiction exhibit any clear understanding of other options apart from the standard acknowledgement. Lao PDR also advised there had been no effort undertaken to address the low levels of STR reporting, either by general feedback or outreach programs.

563. The assessment team was also advised during the on-site that there had been no regular meetings within the commercial banking sector to discuss AML matters, in particular STR reporting issues.

564. There is currently no written procedure to provide feedback on STR to reporting institutions.

Effectiveness

565. A lack of comprehensive STR reporting obligation in law or regulation, and an ambiguous STR reporting obligation in the Decree undermines effectiveness. However, the low levels of reporting and total non compliance outside the commercial banking sector are not due solely to deficiencies in the stated obligations, but also because of the lack of general engagement including enforcement and proactive guidance.

566. Article 7 in AML Decree 55 requests for the STR to be provided immediately. Discussions with commercial banks on-site revealed the general process for STR lodgment is for approval by a committee structure in most cases.

567. The assessment team highlights the very low number of 28 STRs lodged since the Decree implementation in 2006, with no pattern of increase and a decline after 2008 to single figure in 2009, and no STR has been received between July 2010 and the time of the on-site in October 2010. The

decline in STRs has not triggered any concern by the competent authority by way of any strategy to influence or engage with the reporting institutions to improve STR reporting.

3.7.2. Recommendations and Comments

Recommendation 13 (STR Reporting)

568. The Lao PDR should strengthen its STR reporting regime by including in either law or regulation, with enforceable sanctions, the following to address deficiencies in the current regime:

- Include a clear definition of suspicious transaction consistent with the FATF requirements;
- Require reporting on all 20 FATF predicate offences (once predicate offences deficiencies have been addressed) and attempted transactions. The latter to include a definition of attempted transaction;
- Include FT STR reporting, once FT is criminalised;
- Ensure all financial institutions, as defined in the FATF standards, are included as reporting institutions;
- Extend the scope and application of reporting obligations to clearly include Lao legal persons; and
- Remove any reference to a possible monetary threshold for reporting STRs.

569. Lao PDR should consider placing a time bound obligation (e.g. within days or hours after forming a suspicion) for the reporting of an STR.

SRIV

570. The Lao PDR should extend the STR reporting obligation to include FT.

Recommendation 14 (Protection and Tipping Off)

- Provide in law that no administrative, criminal or civil proceedings shall be taken against any individual or organisation that reports an STR in good faith;
- Prohibit “tipping off” by law and supported by adequate sanction(s);
- Remove the obligation to provide an STR to a concerned authority as currently stated in Article 11 of AML Decree 55; and
- Specify the names and personal details of staff of financial institutions should be kept confidential by the FIU.

571. The Lao PDR should consider formalising the practice of not providing original STRs and to remove any reference to the names and personal details of financial institutions staff in AMLIU reports disseminated to law enforcement agencies.

Recommendation 25 (only feedback and guidance related to STRs)

572. Enhance the current general guidelines on STR reporting with a focus on sector specific needs, concepts e.g. attempted transactions and examples relevant to both jurisdiction and sector.

573. The AML Working Group should review existing guidance material to ensure that it is totally relevant to this jurisdiction. Within this Working Group, each responsible ministry should develop sector specific guidance material with the assistance of AMLIU.

574. The AMLIU should issue regular (minimum half yearly is suggested) bulletins containing certain types of illegal activities identified within Lao PDR borders and how they can be identified as possible STR related transactions. This bulletin should also contain relevant statistical information that may assist financial institutions.

575. Consider and implement the FATF Best Practices Guideline on providing feedback, including as part of an outreach and feedback program to encourage higher levels of STR reporting.

576. AMLIU should consider introducing regular meetings with the Bankers Association and the Banks' AML Compliance Officers (AMLCO's), and Branch Anti-Money Laundering Officer (BAMLO's) to discuss the low STR levels and to provide feedback generally on AML matters.

3.7.3. Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	NC	<ul style="list-style-type: none"> • Scope of ML Offense is incomplete which limits the scope of reporting. • Coverage of reporting parties is narrowed by the non-inclusion of Lao legal persons. • Not all financial institutions are subject to STR reporting requirements. • No mandatory requirement for "attempted transactions". • No requirement for STR reporting on terrorist financing. • Confusing reference to a possible monetary threshold for STR reporting may undermine effectiveness. • Low STR numbers and limited range of institutions demonstrates ineffective implementation.
R.14	NC	<ul style="list-style-type: none"> • There is no legal "safe harbour" protection for all parties reporting STRs in good faith. • There is no legal prohibition against "tipping off".
R.19	C	<ul style="list-style-type: none"> • The Recommendation is fully observed.
R.25	NC	<ul style="list-style-type: none"> • Guidance produced is limited to the banking sector with no consideration as to how this can apply to other financial institutions. • Guidance is very broad and high level. • Feedback limited to the acknowledgement of STR receipt.

SR.IV	NC	<ul style="list-style-type: none"> No requirement to provide STR on terrorist financing as the latter is not criminalised in the Lao PDR.

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:

577. There are very broad and non-binding provisions in AML Decree No 55 at Article 9 and Article 10, as shown below:

Article 9. Combating and deterring measures.

Reporting institutions are obligated to take the following measures to combat and deter money laundering:

- *establish an efficient internal monitoring system to ensure the combating and deterring of money laundering;*
- *put in place and implement policies, plans, systems and mechanisms to efficiently combat and deter money laundering;*
- *provide training to build knowledgeable and capable personnel for combating and deterring money laundering;*
- *collaborate with and provide information to concerned authorities for combating and deterring money laundering;*
- *adopt provisional measures as stipulated under Paragraph 1 of Article 12, of this Decree.*

Article 10 Institutions which are obligated to report on money laundering shall employ Customers' Data Collecting Officers, as well as Control and Reporting Officers.

578. These provisions are supported again by very high level instructions contained in the AML Guideline, Chapter 2, "The Accountabilities on Anti Money Laundering", that carries a cross reference to the Decree 55; however, this nexus provides no OEM for these obligations.

579. The references in both documents to internal controls, compliance and audit requirements are considered to be quite generic in application and appear to be written solely for the commercial banking sector. Neither reference is supported by any sanction, and in essence left open to the interpretation of the individual reporting institutions.

Establish and Maintain Internal Controls to Prevent ML and TF (c. 15.1, 15.1.1 & 15.1.2):

580. The implementation of AML Decree 55 requirements has so far been limited to commercial banks supervised by the BOL and the requirements are very basic, high level and not augmented by detailed guidelines that would assist any unsophisticated reporting institution. As previously stated, they do not carry any specifically detailed reference for CDD, record retention, the detection of

unusual and suspicious transactions, and reporting obligations that may assist either a “compliance officer” or the reporting institutions themselves to determine expectations of the regulator.

581. In reality, the implementation of these obligations has been left to each individual commercial bank to determine its own approach and has primarily been driven by either a foreign parent imposing the external countries AML umbrella or a local entity seeking to support the BOL. It is difficult to assess the overall effectiveness to any degree because AMLIU has not conducted any supervisory activity to test effective implementation of this guideline and Decree 55 obligations amongst the commercial banks, nor has it issued any detailed guidance to assist reporting institutions in articulating the expectations of the AML regulator.

582. Article 4 of the non-binding AML Guideline states, *“At the Head Office level, the Compliance Officer’s designation is the Anti-Money Laundering Compliance Officer or “AMLCO” shall be at the level of Deputy Managing Director. At the Branch level, the Compliance Officer’s designation is the Branch Anti-Money Laundering Officer or “BAMLO” shall be at the level of Head, Deputy Head or Acting Head of the Branch; Deputy Branch Manager if it is a foreign branch.”*

583. Both the AMLCO and BAMLO have varying responsibilities in relation to ensuring compliance of branches and Head Office, including implementation of the AML mechanism, reporting of STR, staff awareness, and monitoring changes in business practices to ensure money laundering deterrence procedures are adequate with any changes.

584. The delegation of these functions to these positions by this guideline without any detailed guidance material or supervisory intervention to assess implementation and effectiveness, as previously stated, provides a distinct weakness in the Lao PDR approach to AML implementation.

585. The assessment team notes that while this approach may be of some assistance to the more sophisticated commercial banking sector, and in particular those commercial banks with foreign parents, there will need to be an appropriate adjustment in regulatory material to reflect the FATF standard that the AML/CFT compliance officer should be at the management level for other financial institutions. Ideally, the obligation for an AML/CFT compliance officer should be in the head legislation, i.e. Decree 55, rather than a general reference to *“Control officers”*. A suitable definition in Article 2 of the Decree, with appropriate enforceability, may address this deficiency.

586. The non-binding AML Guideline, however, does refer to certain levels of management required to assume a compliance officer status. This guideline has only been introduced to the commercial banking sector and therefore does not take into account the risk of ML/FT and how that would apply to all financial institutions as defined by the FATF. Generally, the concept of a risk based approach to all facets on ML/FT has not been evident to the assessment team.

587. The requirement for the compliance officer to have timely access to customer data and other CDD information, transaction records and other relevant information is not specifically listed in any Lao PDR law, regulation, or OEM, although in practice this access may occur particularly through other core sector legislation, such as the Law on Commercial Banks and Insurance Law that provides for such access.

588. Furthermore, there has been no implementation by other supervisory authorities, including for the insurance and securities sectors, to action the requirements of the Decree No 55.

Independent Audit of Internal Controls to Prevent ML and FT (c. 15.2):

589. There is no specific requirement for internal audit independence or adequate resourcing in any law, regulation, or other enforceable means.

590. The non-binding STR Guideline in Article 17 states, “*The Board of Directors of a reporting institution should ensure that internal auditors undertake audit of the effectiveness and compliance with anti money laundering requirements of the Anti Money Laundering Decree No. 55/PM dated 27 March 2006 as well as this Guideline and other guidelines issued by the Anti Money Laundering Intelligence Unit. Reporting institutions should inform the Anti Money Laundering Intelligence Unit upon the appointment or change in the appointment of the internal auditor and on the approach and procedures adopted by the internal auditors.*”

591. The evaluation team was advised by one foreign commercial bank that, as AML is such a new concept, the expertise within some Lao commercial banks may be lacking.

592. The AML Supervisor also advised that they have not conducted any awareness raising sessions to assist the banks’ internal auditors in gaining, firstly, the necessary AML knowledge base and, secondly, to convey the AML regulators expectations of this role within the commercial banking sector. This approach would be of greater benefit to local banks and those entities without foreign parents situated in more developed AML environments.

593. The Law on Commercial Banks at Article 27 details the, “*Rights and Duties of the Internal Audit*” Committee, together with Article 55 and 56 respectively of this Law that refers to “*Internal and External Audit*” functions. There is no reference in this law to AML obligations apart from Article 36 that states, “*Commercial banks shall determine measures to prevent and counter money laundering in accordance with the laws and regulations.*” It is unclear from discussions held during the onsite mission with BOL personnel as to how this Article of the Law on Commercial Banks relates to Decree 55 obligations.”

Ongoing Employee Training on AML/CFT Matters (c. 15.3):

594. While noting that there is no mandatory requirement to meet this requirement under Lao legislation, Article 15 of the AML Guideline contains a broad description of training required in relation to staff and cooperation with authorities; however, there is no reference to the need for ongoing training and maintaining a focus on current ML/FT trends and techniques, nor is there any reference to CDD obligations.

595. Additionally there has been no guidance material prepared in relation to FT generally within the Lao PDR.

Employee Screening Procedures (c. 15.4):

596. There is no reference to this obligation within AML Decree 55, although competent ministries visited during the on-site component of this ME stated that police checks would be undertaken for new employees. The Law on Commercial Banks does not carry any reference to this obligation.

Additional Element—Independence of Compliance Officer (c. 15.5):

597. There is no reference contained in any documentation provided as to the independence of the compliance officer. Discussions during the on-site indicated the compliance officers’ actions may

well be controlled by internal compliance committees within the commercial banking sector. The latter could overturn a compliance officer's decision to lodge an STR.

Recommendation 22

Application of AML/CFT Measures to Foreign Branches & Subsidiaries (c. 22.1, 22.1.1 & 22.1.2):

598. At present Lao PDR has one joint venture bank that has two branches in Vietnam. The Lao PDR authorities state that Article 67 of the Law for Commercial Banks covers this requirement. There is, however, no reference in any law, regulation or other enforceable means to meet this requirement.

Additional Element—Consistency of CDD Measures at Group Level (c. 22.3):

599. There is no consideration of this requirement in the Lao PDR approach to offshore branches and subsidiaries.

600. There are no insurance or securities branches or subsidiaries at present outside the Lao PDR borders; however, the associated legislation is silent on this obligation.

3.8.2. Recommendations and Comments

Recommendation 15 (internal controls, compliance and audit)

601. The following specific obligations should be included in either law, regulation or other enforceable means :

- Establish and maintain internal controls to prevent ML and FT covering CDD, record retention, the detection of unusual and suspicious transactions and reporting obligations;
- Designate AML/CFT compliance officer at a managerial level;
- Provide for the independence of compliance officers and timely access to CDD information, transaction records and other relevant information;
- Promulgate at the board of directors and/or senior management a written AML policy covering all obligations;
- Maintain an adequately resourced and independent internal audit function to test compliance;
- Establish an ongoing employee training on AML/CFT matters and the need to be kept up to date on emerging ML/FT trends, as well as CDD and suspicious transaction reporting in particular. Further consideration should also be given to making boards of directors and senior management directly responsible for this function, which should be included in their written AML policy or program; and
- Introduce rigorous employee screening procedures, such as police checks for all new employees

602. The Lao PDR should consider including specific reference to compliance officer independence in any review of AML legislation.

Recommendation 22 (Foreign Branches and Subsidiaries)

603. Lao PDR should include the following R.22 requirements in either law or regulation:

- Lao financial institutions' branches and subsidiaries should be required to observe AML/CFT measures consistent with Lao PDR requirements and the FATF Recommendations, to the extent that local (i.e. host country) laws and regulations permit;
- Lao financial institutions should be required to pay particular attention that this principle is observed with respect to their branches and subsidiaries in countries that do not or insufficiently apply the FATF Recommendations;
- The higher standard of AML/CFT laws should apply when there is a difference between the standards of the Lao PDR and host jurisdiction, to the extent the host country laws and regulations permit; and
- Lao financial institutions should be required to inform the BOL when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures in the host country because this is prohibited by the host country's laws, regulation or other measures. The Lao PDR should consider that such a report be provided to the BOL within seven day of receipt.

604. The Lao PDR should consider that any financial institution subject to the Core principles should be required to apply consistent CDD measures at group level, taking into account the activity of the customer with the various branches and majority owned subsidiaries worldwide.

3.8.3. Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	NC	<ul style="list-style-type: none"> • No requirement in law, regulation or OEM requiring internal controls consistent with the FATF standards (Decree 55 is neither regulation nor OEM). • No specific requirement for timely access to information. • Level of compliance officer not covered in AML Decree 55 nor supported by any other OEM. • No guarantee of independence of audit and compliance officer function. • No specific obligations in legislation and guidelines for ongoing training. • No requirement for screening of personnel to a high standard.
R.22	NC	<ul style="list-style-type: none"> • No binding requirements for control of foreign branches and subsidiaries in keeping with the FATF standards. • No requirement for financial institutions to inform their home country supervisors when a foreign branch or subsidiary is unable to observe

		appropriate AML/CFT measures because this is prohibited by local requirements.
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3.9. Shell Banks (R.18)

3.9.1. Description and Analysis

Legal Framework:

Prohibition of Establishment Shell Banks (c. 18.1):

605. There is no explicit legal prohibition on the establishment of shell banks in Lao PDR. There is some ambiguity in Article 60 on Internet Banking in the Law on Commercial Banks. The first point of Article 60 states, “*Internet Banks may be established that provide services to customers through electronic service systems, but that have no physical offices*”. The wording may suggest the possible existence of shell banks. In context, however, Article 60 follows Article 50 on Access to Electronic Information and both articles are under Chapter 4 on Electronic Banking. It would seem that Article 60 is in relation to internet banking, but the wording could cause doubt. When raised during the on-site, BOL officials were not able to clarify exactly the scope of Article 60 or whether a person could obtain an internet banking licence separate to a normal banking licence. BOL officials advised that it would issue clarification on the requirements of internet banking.

Prohibition of Correspondent Banking with Shell Banks (c. 18.2):

606. There is no specific legislative prohibition restricting financial institutions from entering into or continuing correspondent banking relationships with a shell bank.

Prohibit Use of Accounts by Shell Banks (c. 18.3):

607. There is no legislative requirement for financial institutions to satisfy themselves that their respondent banks are not dealing with shell banks.

3.9.2. Recommendations and Comments

608. Discussions with BOL personnel and the AMLU staff indicated a very basic understanding of the concepts of shell and correspondent banking. Authorities also informed the assessment team the BOL would issue a separate regulation on internet banks and that no internet bank has been allowed to operate.

609. The Lao PDR should undertake the following measures:

- Take action to amend or remove Article 60 in the Law on Commercial Bank or issue appropriate guidance to clarify the objective of this article;
- Restrict financial institutions operating in Lao PDR from entering into or continuing correspondent banking relationships with a shell bank; and
- Require financial institutions operating in Lao PDR to satisfy themselves that their respondent banks in a foreign country do not allow their accounts to be accessed by a shell bank.

3.9.3. Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	NC	<ul style="list-style-type: none"> • There is no clear legal requirement prohibiting the establishment of shell banks. • No specific legislative requirement restricting financial institutions from entering into or continue correspondent banking relationships with shell banks. • No legislative requirement for financial institutions to satisfy themselves that their respondent banks are not dealing with shell banks.

3.10. The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R. 23, 29, 17 & 25)

3.10.1. Description and Analysis

Authorities/SROs roles and duties & Structure and resources - R.23, 30

Recommendation 23 (Supervisory authorities)

Regulation and Supervision of Financial Institutions (c. 23.1):

610. The financial sectors supervisors are the BOL for commercial banks, loan and credit companies, savings and credit unions, pawn shops, leasing companies, foreign exchange bureaus, payment service providers, investment companies and other financial institutions under their authority; the Securities and Exchange Commission for securities companies; and the Ministry of Finance for insurance companies.

611. The Law on BOL, Law on Commercial Banks, Decree Law on Management of Foreign Currency; Regulation on the Supervision of Foreign Exchange Bureaus, Regulation for Deposit Taking Micro-Finance Institutions, and Regulation for Savings and Credit Unions provide the overarching legal and regulatory framework for the BOL's supervision of banks and non-bank financial institutions, excluding insurance and securities. The BOL's responsibilities include supervising the granting of licences and the prudential supervision of these entities.

612. The Insurance Law sets out the rights, powers and duties of the Ministry of Finance in respect of market entry, supervision, audit and inspection of insurance companies licenced by the former.

613. The Government Decree on Securities and Securities Market, under Part II: Securities Supervisory Authority, sets out the roles of the Securities and Exchange Commission, including its supervisory powers, and in Article 6, the rights and duties of its inspectors.

614. The abovementioned laws and decree are silent on AML/CFT supervision. AML supervision responsibilities are articulated in AML Decree 55, Article 21, as follows:

- *Put in place necessary measures to prevent individuals who are not suited to undertake the control function from becoming a member of the Directorate or Management of the Reporting Institutions;*
- *Supervise and control the Reporting Institutions on a regular basis;*
- *Issue regulations and guidelines on Customers' Due Diligence;*
- *Cooperate with other agencies to combat, deter and carry out money laundering prosecution.*
- *Guide Control Officers of the Reporting Institutions under their purview, to immediately inform the Anti-Money Laundering Intelligence Unit of any suspicious transaction.*
- *that Supervisory Agencies of Reporting Institutions have amongst various responsibilities to Supervise and control the Reporting Institutions on a regular basis.*

615. There is no specific mention of supervision pertaining to CFT, which is not surprising given it has not been criminalised. Although the supervisory powers available in the primary laws and decree of the three prudential supervisors are broad enough, and with enforceable measures, to be applied for both AML and CFT purposes.

Designation of Competent Authority (c. 23.2):

616. Article 2.3 of Decree 55 designates as AML supervisors the BOL, Ministry of Finance and Ministry of Commerce. As noted, the former two are financial sector supervisors, while the Ministry of Commerce has a DNFBP supervisory role (i.e. precious stones and gems) and a broader business licensing role. The Securities and Exchange Commission is not a designated supervisory authority for AML. Nevertheless, the Lao authorities advised the assessment team the Securities and Exchange Commission, together with the BOL and the Ministry of Finance, are the three designated AML supervisors for the financial sector. Authorities further added that within the BOL, it was AMLIU and not the BOL Supervision Department that was responsible for AML supervision of all financial sectors, except for insurance and securities.

617. There are scope concerns, as previously discussed, given the ambiguous and conflicting wording in Decree 55 on whether a Lao entity or legal person is captured or not under Decree 55 requirements, and therefore whether they are entities subject to AML supervision. Lao authorities advised that both Lao and foreign financial institutions are subject reporting entities.

618. There is no designated CFT supervisor as FT has not been criminalised.

619. The assessment team notes, from on-site discussions, a lack of understanding by designated supervisors on how they would implement Decree 55, with some ministries stating that the BOL would be responsible solely for implementation.

Anti Money Laundering Intelligence Unit (AMLIU) - BOL

620. The role of AMLIU in the AML supervision of the financial sector is further detailed in the AMLIU Establishment Agreement. The Agreement states in section 4.3.2:

The control and Inspection Division has the following responsibilities:

Monitor and inspect all reporting institutions in the implementation of anti money laundering decrees, regulations, directives and notification regarding anti-money laundering activities

issued by the Bank of the Lao PDR in each period as well as recommending resolution measures for reporting institutions contravening the said decrees and regulations.”

621. In discussions with AMLIU and the primary prudential supervisor of the financial sector, the BOL Supervision Department, both confirmed that any AML related supervision activity is solely the responsibility of AMLIU. The assessment team confirmed that no AML Supervision has been conducted nor any planned by AMLIU or the BOL Supervision Department.

Ministry of Finance

622. The assessment team recorded that while the insurance sector is supervised by the Ministry of Finance, on-site discussions revealed that the Ministry was unsure as to how AML Decree 55 would be applied within the insurance sector, and whether the Insurance Law or regulation needs to be amended to allow for this oversight capacity.

The Securities and Exchange Commission

623. The Securities and Exchange Commission was established in July 2009. As stated previously, this Commission is not a designated competent authority under Article 2.3 AML Decree 55. Similar to the Ministry of Finance, the Commission was uncertain as to how AML Decree 55 would be applied within their areas of responsibility. The confusion as to responsibilities may be caused by the potential restriction of supervisory function at Article 2.3 of Decree 55. This agency also considered there might be need to amend their regulation to implement Decree 55 obligations, and they felt that any sanction application would be the responsibility of the BOL.

Adequacy of Resources of Competent Authorities (c. 30.1):

Anti Money Laundering Intelligence Unit (AMLIU) - BOL

624. AMLIU is divided into three divisions. One division is responsible for AML supervision. The Division is headed by an AMLIU Deputy Director who has three staff, with an additional position vacant. Given the total lack of general AML supervision, it is difficult to assess whether the current staffing establishment would be adequate to provide a suitable regulatory oversight framework for those reporting institutions under the control of AMLIU.

625. AMLIU raised concerns over their lack of AML supervision knowledge and expertise, stating they did not know whether and when any AML examinations would be performed.

626. The BOL supervision department has 66 personnel and appears to be adequately resourced for their current activity, stating they believe they would have scope to include AML supervision within their current program. This statement is untested as there is no current AML regulatory framework to make a judgment of any scope for BOL supervision personnel to undertake such activity.

627. BOL personnel, in particular AMLIU staff, stated they have undertaken extensive AML/CFT training, both in the Lao PDR and overseas covering a variety of topics. There seems to be a lack of translation and application of knowledge acquired from capacity building into meeting their regulatory obligations.

Ministry of Finance

628. The Ministry of Finance stated that prudential supervision of their emerging insurance sector was new to the ministry, and therefore an assessment of capabilities in respect of AML supervision is difficult to compile with any accuracy.

629. The insurance industry is gradually growing in Lao PDR and while discussions with MOF representatives demonstrated a reasonable knowledge of this sector, the recent expansion within the Lao PDR may be cause for some concern over the skills and resource levels required to maintain an effective AML and prudential supervision of this industry.

630. The International Association of Insurance Supervisors is stated to be assisting Lao PDR in developing appropriate skills for their supervisory oversight and, in particular, how cross jurisdiction regulation can be effective.

Securities and Exchange Commission

631. The Securities and Exchange Commission expressed their potential difficulties in providing supervision of their emerging sector; nevertheless, the Commission felt that their existing resources would be adequate to meet this emerging need.

632. The Commission is being supported by its counterparts from Korea and Thailand.

Integrity of Competent Authorities (c. 30.2):

633. Competent authorities, such as the BOL, the Ministry of Finance and the Securities and Exchange Commission are subject to a range of probity measures. Chapter 8 of the Penal Law includes specific penalties of breach of civil servants' responsibilities, including bribery and corruption. Further, Article 22 of the Law on the BOL includes specific confidentiality provisions for all staff, particularly examiners, in keeping confidential, information gained from examination of regulated entities. This Article covers AMLIU staff as they are employed by the BOL. Article 8 of the Law on Insurance contains similar confidentiality provisions for insurance examiners. The Decree on Securities under Article 58 includes similar confidentiality requirements.

Authorities Powers and Sanctions – R.29 & 17

Recommendation 29 (Supervisory powers)

Monitor AML/CFT Requirement (c. 29.) conduct AML/CFT Inspections (c. 29.2):

Anti Money Laundering Intelligence Unit (AMLIU) - BOL

634. The Law on the BOL, 1995, and Decree No. 40/PM on the "Organisation and Activities of the Bank of the Lao PDR", both contain high level references to establishment, supervision and inspection of commercial banks and financial institutions under its control. This law is further supported by Part IV, Supervision and Inspection, in the Law on Commercial Banks, which sets out various obligations, and by BOL regulations governing foreign exchange businesses, savings and credit unions and micro-finance institutions. AMLIU, as part of the BOL, is covered by these instruments.

635. The AML Decree 55 carries various references within its content to organisations responsible for supervising reporting institutions, scope and application of the Decree, rights and duties of AMLIU, and rewards for good performers and punishment measures for Offenders. There is

a specific provision in Article 21 to, “*Supervise and control the Reporting Institutions on a regular basis*”. Article 25 also outlines the right to, “*pay close attention on guiding and monitoring the Reporting Institutions*.”

636. Article 25 (last dash point) of AML Decree 55 gives power to the BOL Governor to assign other duties to AMLIU, such as its supervisory power, as noted above. As a consequence, the AMLIU Establishment Agreement gives power to AMLIU to regulate and supervise financial institutions under the supervision of the BOL to ensure AML compliance under Article 4.3.2.

637. Neither Decree 55 nor the AMLIU Establishment Agreement carries enforceable inspection powers, or enforceability of AMLIU rights to inspect and examine. For commercial banks, AMLIU stated they would rely on the Article 64 of the Law on Commercial Banks that covers the Rights and Duties of Inspectors from the BOL, in the event of a refusal to allow access to premises or any other restriction to their duties.

Ministry of Finance

638. While the Insurance Law provides, at Article 11, coverage of inspectors’ rights and general obligations, the MOF was unclear how this article would apply to any surveillance by these inspectors of AML obligations. Ideally, there should be specific legislation that provides for this function, noting the MOF considers that additions to either its own regulations or law would be required to facilitate this function.

Securities and Exchange Commission

639. The Decree on Securities and Securities Market provides under Article 62 clear powers for inspectors from the Commission, including to enter, meet, inspect and examine the books and other documents of all institutions licenced by the Commission. These powers have yet to be used at the time of the on-site because there were no licenced securities companies. There are graded sanctions available, including revoking a securities licence, under Article 66 for people or organisations that violate the provisions of the Decree.

Compel Production of Records (c. 29.3 & 29.3.1):

AMLIU - BOL

640. AML Decree 55 and supporting guidelines are silent on this obligation, although AMLIU has stated they would rely on the Law on Commercial Banks Article 64 and other BOL powers. This Article in the Law on Commercial Banks defines five core rights and duties including, “2. *To examine the accounts, books, documents, electronic data, and other records of commercial banks or their affiliates.* 3. *To require administrators, employees and agents of commercial banks or their affiliates to provide all information on any matter relating to their administration and operations.*”

641. There are similar and more specific powers to compel production of records and/or access under Article 3 (Scope of Rights) in the Regulation on the Organization and Operation of the Bank and Financial Supervision Department, 23 March 2005. This Regulation covers all financial institutions under the supervision of the BOL, noting AMLIU is part of the BOL.

642. AMLIU further stated that AMLIU Establishment Agreement provides the right to compel production of and/or access records. However, while it provides the right to inspect under Article 4.3

of the Agreement, there is no specific reference to powers to compel production or obtain access to relevant records and information, apart from reliance on broader sector specific legislation.

Ministry of Finance

643. Article 11 of the Insurance Law provides general access to all records for sworn civil servants of this ministry, although it is unclear as to whether the MOF would need to amend regulations and/or a higher legislative instrument to apply such powers in respect of AML Decree 55 requirements.

Securities and Exchange Commission

644. The Decree on Securities and Securities Market provides powers under Article 62, “*To require administrators and employees to provide all information on any matter relating their administration and operations*”. Sanctions are available, as stated, in Article 65 of the Decree.

Enforcement & Sanction (c. 29.4):

645. The three designated supervisors are empowered to impose sanctions under Article 33 of AML Decree 55. As noted previously, however, the only sanction available under AML Decree 55 pertains to a failure to report an STR.

646. The powers of three designated AML supervisors to impose sanctions are supported by their sector specific legislation and regulation (s), although the Securities and Exchange Commission is not empowered to be the securities sector AML regulator and therefore may not have the power of enforcement and sanctions in respect of AML.

647. The lack of any supervisory activity does not allow any test of effectiveness and application of the sanctioning regime and how in practice it would be applied by any of the sector regulators.

648. Discussions with line ministries revealed a possibility that any enforcement action or may need to be referred back to AMLIU for application. This matter is stated to be a subject for the AML Working group to address, although no timeframe was provided to the assessment team.

Recommendation 17 (Sanctions)

Effective, Proportionate & Dissuasive Sanctions (c. 17.1):

Criminal Sanctions under Penal Law

649. Criminal sanctions for violation of preventative measures are limited to STR reporting violations. Article 64, fifth paragraph, in the Penal Law provides criminal liability for natural persons for AML STR reporting violations. It states, “*Any person having responsibility and duties to report the activities of money laundering such as bank officials or other finance institute officials who do not promptly report or intentionally report the incorrect activities of money laundering shall be regarded as the concealment of offence and shall be punished in according to penalties prescribed in Article 165 of the Criminal Law.*” The penalty referenced in the Penal Law is three months to two years of imprisonment or re-education without deprivation of liberty and shall be fined from 300,000 Kip to 5,000,000 Kip. The fines based on an exchange rate of USD1 = 8,000 Kip are minimal being USD37.5 to USD625.00.

650. To date, there have been no sanctions applied against this violation to test this legislation.

Civil and Administrative Sanctions

651. Administrative sanctions are available under Article 33 in AML Decree 55. The sanction itself is solely limited to a failure to report an STR and may be applied to both natural and legal persons.

652. Article 33 of the AML Decree No 55 contains a graded approach to the application of sanctions by way of a reprimand system and then upon “continued violation”, a penalty of between ten to thirty million Kip for a failure to report an STR. In order to put these monetary fines into context, using the exchange at the time of the on-site mission of USD1 = KIP8000, the following are the equivalent amounts in USD: 10 million KIP equals USD1250 and 30 million KIP equals USD 3750.

653. The fines available are considered minimal even in a local circumstance and therefore cannot be considered effective, dissuasive and proportionate to AML breaches.

654. The scope of Decree 55 may not capture Lao entities given the ambiguous and contradictory wording, as noted earlier in this report, on whether Lao entities are captured or not by AML Decree 55 requirements, including sanctions.

655. While there has been no sanction applied for AML violations, there has also been a lack of sanctions applied for prudential violations. There appears to be a preference by the prudential supervisors to influence by way of verbal warnings rather than imposing any sanctions that may have greater influence over market participants. The BOL Banking Supervision Department advised that for the last three years no sanctions had been applied.

656. Discussions with some commercial banks during the on-site mission confirmed that the verbal warning process appeared to be the main source of any supervisory intervention by the BOL. These entities indicated that they had responded to such requests in the past.

Designation of Authority to Impose Sanctions (c. 17.2):

657. As indicated under c. 29.4, AML Decree 55 designates three supervisory agencies, i.e. BOL, Ministry of Finance and Ministry of Commerce. However, the Securities and Exchange Commission falls outside of this definition. Therefore, the securities sector is not covered.

Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3):

658. The sole AML sanction available under Decree 55 Article 33 – the failure to report an STR – is levied against the reporting institution with no reference to any available sanction for directors or senior management.

659. The sanctions available under Article 64 of the Penal Code for ML breaches are, however, available for natural persons only. While untested, this sanction is solely for money laundering breaches and does not cover preventative measures generally.

Range of Sanctions—Scope and Proportionality (c. 17.4):

660. As noted previously, there is an absence of a range of graded and proportionate sanctions.

Market entry – Recommendation 23

Fit and Proper Criteria and Prevention of Criminals from Controlling Institutions (c. 23.3 & c23.3.1):

Banking Sector

661. All commercial banks supervised by the BOL require licensing under Chapter 1 of the Law on Commercial Banks. Details of the background of the proposed board members and senior management must also be submitted and approved as part of the licensing regime.

662. Lao PDR advised that any application for the establishment of a bank, the BOL Bank and Financial Institution Supervision Department shall require the applicant to provide a list of documents, including appropriate approvals from other ministries, reasons for establishment, bank's charter and regulations, and other documentation, pursuant to Articles 10-14 of the Law on Commercial Banks.

663. Article 10 of the Law on Commercial Banks also requires certificates of the financial status of the principal shareholders and other necessary documents relating to principal shareholders, together with a list of shareholders and their proportion of shareholding. Foreign commercial banks wishing to establish its branch offices or affiliates within Lao PDR also require consent from the home jurisdiction prudential supervisor.

664. Discussions during the on-site mission revealed that where a company was a principal shareholder, no investigation would be undertaken as to its beneficial ownership or controlling mind. This is particularly the case for foreign entities seeking to establish a Lao PDR presence. Additionally, there is no test against the source of funding for any enterprise but rather only the requirement the funds be "cleared" and available at a bank.

665. There is a requirement for a basic fit and proper test for board of directors. Article 23 "Qualification of Members of the Board of Directors" in the Law on Commercial Banks states the following qualifications are required:

Members of the Board of Directors of the bank shall have the following qualifications:

- 1. Shall be a person reaching maturity and has the legal capacity;*
- 2. Have experience in the management and have knowledge of the finance and banking;*
- 3. Shall not be sentenced by the court of offences related to fraud, deception, falsification of document, taking or giving bribe, corruption or money laundering;*
- 4. Shall not be removed from office as administrator of other legal entity, sentenced by the court as bankrupted person, or was an administrator of an legal entity that was sentenced bankrupted by the court;*
- 5. If such a person used to be staff of the Bank of the Lao PDR, he shall be cease his position at the Bank of the Lao PDR at least one year before taking position as a member of the Board of Directors.*

666. During the on-site discussion, the BOL advised that a police background check is made of the natural person applicant, both local and foreign. However, this did not seem to extend to members of the board of directors. The veracity and process of these foreign police checks undertaken by the Ministry of Planning and Investment was not available to the assessment team.

667. It should be noted that there has been a significant increase in the issuance of banking licences over recent years, including licences issued to applicants without any prior banking experience, either domestically or internationally. It would therefore seem possible for a foreign legal person to obtain a banking licence without any proven track record in banking. In fact, there were two cases mentioned by the BOL, although it was qualified that while the applicant had no prior banking experience, the proposed management team had extensive banking experience, and this was considered sufficient for licensing purpose.

Insurance Sector

668. The application process for establishing an insurance company is not stated within the Insurance Law; however, discussions with the Ministry of Finance revealed a similar process to that noted under the banking sector above. Although the capital required for obtaining an insurance licence is significantly less than imposed for a banking licence.

Securities Sector

669. Part IV, Securities Companies, in the Decree on Securities and Securities Market provides for market entry requirements, including documents required. These are similar to establishing a financial institution.

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5):

Foreign Exchange

670. The operation of a money changer is in accordance with Article 15 of the Decree Law on Foreign Exchange, March 2008; Article 14 of the Instruction on Implementation of Decree Law on Foreign Exchange, April 2010; and the Regulation on Supervision of the Establishment of the Money Exchange Business, 6 August 2004.

671. The Article 15, “Licensing the Operations of Foreign Exchange Business” of the Decree Law on Foreign Exchange states:

The Bank of the Lao PDR shall issue and revoke the license for the operations of foreign exchange business of a commercial bank and a foreign exchange bureau.

A person, a legal person intended to run with foreign exchange business shall complete a license application form and shall meet all requirements issued by the Bank of the Lao PDR from time to time.

A commercial bank and a licensed foreign exchange bureau shall operate their foreign exchange business within the limit stipulated in their license and shall comply with the laws, this decree law and other relevant regulations of the Lao PDR.

672. The Article 14 “Foreign Exchange Business Approval” of the Instruction on Foreign Exchange s defines:

An individual and a legal person, who are not a commercial bank, want to operate foreign exchange business in the form of foreign exchange bureau or foreign exchange agent shall get the approval from the commercial banks which is authorized by the Bank of Lao PDR. The conditions for foreign exchange business approval include:

- *Having good financial position and good creditability from society;*
- *Having appropriate location for the service and in the area where foreign currency buying-selling is needed;*
- *Having appropriate equipment for operating foreign exchange business;*
- *Having staff capable in foreign exchange business;*
- *Having registered capital of 200 million Kip for the establishment in Vientiane Capital and 100 million Kip in provinces or special zone;*
- *Having a business relation to one of the commercial banks operating in the Lao PDR;*
- *Certificate of court verifying of never being sentenced by court in a theft, Fraud or foreign exchange business case.*

673. There are no checks for the beneficial owner of the enterprise nor are there any checks in place to verify the sources of any funding for the enterprise, thus leaving both of these high risk sectors vulnerable to criminal and money laundering through these seemingly legitimate enterprises. The only test for funding being the “cleared funds” criterion.

674. The BOL did state that criminal checks would be required for any person seeking the FX licence as per the last dot point above. For any foreign person, the BOL advised they would require some form of evidence of a clean criminal past; however, they would rely on the Ministry of Planning and Investment to obtain this information as part of the foreign investment application.

675. Unlike for commercial banks, there is no fit and proper test requirement for the board of directors of a foreign exchange bureau, neither in the Decree nor Instruction for Foreign Exchange.

676. The Ministry of Finance indicated that insurance sector has similar processes as commercial banks. This process, however, is not described in the Law on Insurance, nor was any regulation provided to the team to support this statement. During the on-site, some private sector representative noted the regulatory framework and the market entry requirements were low by international standards.

Money or Value Transfer (MVT)

677. According to the BOL, the requirements and licensing process for the establishment of MVT providers are the same as for foreign exchange bureaus; although this is not stated in any legislation. The Law on Commercial Banks in Article 2 mentions payment services, however, there is no definition of payment services in the Law on Commercial Banks or any other law.

678. According to the BOL, the BOL issues licences for MVT, for both banking and non-banking financial institutions.

Ongoing supervision and monitoring – Recommendation 23

Application of Prudential Regulations to AML/CFT (c. 23.4):

679. There has been no application of prudential supervisory and regulatory practices for AML/CFT purposes. There is no risk based assessment of reporting entities, off-site monitoring, on-site examination or other prudential practices and how these may apply to any AML/CFT oversight.

680. The designated AML supervisors have not conducted any supervision, nor has any financial institution supervisor extended or given consideration to including AML/CFT requirements in their supervisory processes and existing regulatory framework.

Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6):

681. As noted, there has been neither off-site nor on-site examination of AML requirements under Decree 55.

682. MVT providers are supervised by the BOL Bank and Financial Institutions Supervision Department. The BOL supervision department monitors and supervises the MVT companies under an annual inspection cycle. All money transfer providers are also required to report monthly volume and transactional data to the BOL.

683. Money exchange bureaus are supervised by the Monetary Policy Department of the BOL and are subject to at least twice yearly on-site inspections that concentrate primarily on transactional sampling and verification. At times of high market volatility these entities will be visited on a far more frequent basis. Again there does not appear to be any risk based approach to supervision of these entities but a similar approach to all entities.

Licensing and AML/CFT Supervision of other Financial Institutions (c. 23.7):

684. The BOL Regulation for Deposit Taking Micro Finance Institutions (MFIs), 14 October 1999, and the BOL Regulation for Savings and Credit Unions, 3 June 2008, contain similar provisions for the licensing and market entry requirements for MFIs and savings/credit unions. Article 7 of the MFI Regulation, “Disqualified Persons”, outlines a list of conduct that would disqualify a person from being on the board of directors, managing director or major shareholder. The list of prohibition includes prior conviction or investigation for fraud, broken laws in the financial sector, declared bankrupt or involuntary liquidation of business, and other acts that would be regarded by the BOL as improper or fraudulent. Article 8 of the Savings and Credit Union Regulation contains identical requirements, except it is broader to include, “a person shall be disqualified from being an official or manager”. The legislation is not specific to the board of directors or senior management.

685. The BOL advised the licensing process is similar to commercial banks, in terms of checking with the police.

Guidelines – R.25.1 (Guidance for financial institutions other than on STRs)

686. The AML Guideline No.2, dated 16 September 2008, is the only AML guideline issued by the BOL or any other competent authority. The guideline does not contain specific information that would be of assistance to financial institutions, but rather applies a very general approach to guidance. As the guideline is specific to AML, it contains no reference to terrorist financing.

687. The Guideline appears to be a “download” of the FATF standards and is very broad and with little consideration given to the local environment. There has been no specific guidance material provided to support each of the key obligations of the FATF standards, such as CDD and record keeping.

688. AMLIU states the guidance material to date has been self-produced without market consultation, nor use of any banking association that could potentially allow input from experienced international banking practitioners employed by foreign banks.

Statistics and effectiveness

Statistics (applying R.32)

689. The authorities were not able to provide statistics on the numbers of licensing applications received for the various financial sectors and the actual numbers of licences issued for the team to make an informed judgement of the effectiveness of current market entry requirements. Nor was the team provided with English translation of case files to sight to ascertain the rigour of application of available measures. Further, there has been no off-site or on-site AML examination, and no sanctions imposed for violation of preventative measures after more than five years after the promulgation of AML Decree 55.

3.10.2 Recommendations and Comments

690. The Lao PDR should undertake the following measures to enhance its supervisory regime and rectify the identified deficiencies:

Recommendation 23

- Designate clearly and unambiguously the Securities and Exchange Commission as an AML/CFT supervisor.
- Make clear the scope of designated supervisors in respect of Lao legal persons.
- Expand the scope of AML supervisors to include FT once the latter has been criminalised.
- Commence a program of risk based AML on-site inspections to ensure financial institutions are complying with AML requirements.
- Amend appropriate laws or issue binding regulations to specifically request information on the origin of the funds used to pay the capital of a bank/financial institution by controlling shareholders and include specific beneficial ownership disclosure requirements.
- Amend appropriate laws or regulations to include a clear definition of MVT providers.
- Should consider introducing fit and proper test requirements for all financial institutions i.e. insurance and securities and ensure that they are extended to the board of directors in all cases.
- Should consider conducting AML inspections simultaneously with periodic/prudential inspections; and in the initial phase of building appropriate AML supervisory skills, consideration should also be given to themed AML inspections such as a focus on CDD for example. The initial focus should be within the commercial banking sector in order to provide a sound framework for extension to other high risk sectors.
- Should consider expanding the scope of the prudential supervision within the BOL to include AML supervision in the future, while noting that this approach is outside of current strategy. The benefits of this consideration are a blending of the existing Supervision Department program and

structured approach, together with general regulatory expertise to supervision with the knowledge base that AMLIU can provide to the Bank of Lao Supervision Department assessors. The net result being an expansion of overall AML knowledge within this jurisdiction in one of its prime high risk sectors.

- Should consider conducting own (BOL) due diligence on beneficial ownership for bank licensing, rather than relying on the Ministry for Planning and Investment processes. Consideration could also be given to extending this approach to foreign police checks as well.

Recommendation 30

- Undertake extensive capacity-building for human and other technical resources to ensure that personnel charged with monitoring AML compliance are equipped with necessary technical skills and knowledge.
- Develop a staffing strategy to ensure adequate staffing levels to achieve expected supervisory oversight.

Recommendations 25

- Develop more detailed and specific guidance material, but with a focus in the short term on the commercial banking sector in order to lay a sound AML foundation that can then be extended to other sectors on a gradual and measured basis.
- Develop appropriate guidance in relation to FT, specific to each sector, once relevant FT legislation is adopted.

Recommendation 29

- Clarify the restriction of supervising organisations at Article 2.3 of Decree 55.
- Clarify what legal amendments are necessary to sectoral legislation to ensure Decree 55 can legally be extended beyond entities regulated by the BOL, including but not limited to any regulatory oversight.

Recommendation 17

- Introduce effective, proportionate and dissuasive civil or administrative sanctions for financial institutions for failure to comply with AML/CFT requirements, e.g. maximum monetary fine should be significantly increased, and sanctions should not be limited to STR violations only.
- Designate the Securities and Exchange Commission as an authority able to apply AML/CFT sanctions for the securities sector.

- Provide a broad range of sanctions, including disciplinary and financial sanctions, for financial institutions, as well as their directors and senior management to allow for sanctions that are appropriate for the severity of the situation.
- Clarify the restriction of applying sanctions on Lao legal person at Article 2.3 of Decree 55.
- Should consider issuing public notices of any sanctions applied in order to provide a more visible deterrent factor, noting it may be beneficial to record this obligation in a legislation or regulation.

3.10.3. Compliance with Recommendations 17, 23, 25 & 29

	Rating	Summary of factors underlying rating
R.17	NC	<ul style="list-style-type: none"> • Lack of effective, proportionate and dissuasive criminal, civil or administrative sanctions i.e. sanctions only for STR violation and do not apply to all legal persons. • No designated authority to apply sanctions for the securities sector and possible scope restriction on Lao legal entities. • No sanctions available for directors and senior management. • The range of sanctions is neither broad nor proportionate.
R.23	NC	<ul style="list-style-type: none"> • No designation of a competent authority(s) for FT as the latter is not criminalised. • No formal designation of AML supervisor for the securities sector. • Potential scope issues with Lao legal persons. • Legal and regulatory measures are deficient to prevent criminals from holding management positions or controlling interest in financial institutions e.g. no beneficial ownership requirements, source of funds not investigated. • Measures that apply for prudential purposes are not being applied in a similar manner for AML/CFT purposes. • Lack of a clear legal definition of MVT and supervisory framework for non bank providers. • Lack of effective implementation due to no AML supervision.
R.25	NC	<ul style="list-style-type: none"> • No FT guidance. • Lack of detailed and sector specific guidance appropriate to the country.
R.29	NC	<ul style="list-style-type: none"> • No FT powers. • Potential restriction of powers for competent authorities (Article 2.3 of AML Decree 55).

		<ul style="list-style-type: none"> • Uncertainties about powers of supervisory authorities to compel production of records, or to obtain access to all records, documents or information relevant to monitoring compliance. • Securities and Exchange Commission does not have designated powers in respect of AML/CFT. • Lack of effective implementation as powers have not been used.
R.30	NC	<ul style="list-style-type: none"> • No demonstrated AML knowledge in evidence. • Unable to assess AML resource requirement due to lack of supervision activity.

3.11. Money or Value Transfer Services (SR.VI)

3.11.1. Description and Analysis (summary)

Legal Framework:

691. As indicated, the providers of MVT services are licenced by the BOL supposedly under the Decree Law on Foreign Exchange. The Decree Law is supplemented by the Instruction on Foreign Exchange dated 02 April 2010.

692. The previous section of this report has outlined the process of licensing and supervising MVT providers in the Lao PDR. Outside of the banking sector, there are five businesses licenced by BOL to conduct money or value transfer services. These entities consist of two large international providers, Western Union and Moneygram, which provide these services primarily through the banking sector. Coinstar Money Transfer, another international provider, has a presence together with Hong Lan Service Inc and Sacombank, the latter two entities having Vietnamese control. The international providers all have an agent network that provides the money transfer services.

693. The Decree Law on Foreign Exchange contains only limited references to transfer of money of value and only in very narrow circumstances. These do not cover general commercial remittance activities by foreign exchange bureaus. Article 5 of the Decree Law on Foreign Exchange sets out the scope of the sale and use of foreign exchange:

The sale of foreign exchange by commercial banks and the use foreign exchange by both resident and non-resident of the Lao PDR shall be carried out in accordance with the regulations issued by the Bank of the Lao PDR and its aims:

1. *To pay for imported goods;*
2. *To pay for services related directly to import-export goods. such as transit transportation, insurance and transit warehousing charges;*
3. *To repay the foreign debts in accordance with the agreement approved by the Government or by the organization authorized by the Government;*
4. *To give an aid to a foreign country in accordance with the approval of the Government or the organization authorized by the Government;*

5. *To repatriate of profits, dividends, initial investments, interests, service charges of the foreign investors and wages of foreign workers back to their home countries or to transfer to a third country as stipulated in the Law Governing the Promotion and Management of the Foreign Investment in the Lao PDR;*
6. *For the investment abroad with the Government approval;*
7. *For the national budget expenditures;*
8. *For other spending targets in accordance with regulations of the Bank of the Lao PDR including medical treatment, studying, visiting abroad.*

694. The extent of any informal and alternative remittance systems within this jurisdiction is not known nor been assessed by the relevant authorities.

Designation of Registration or Licensing Authority (c. VI.1):

695. MVT providers are licenced by the BOL under the Decree Law on Foreign Exchange.

696. The Decree Law on Foreign Exchange does not contain a specific reference to MVT, but rather the BOL treat these entities as “foreign exchange bureaus”. The difference between MVT and foreign exchange bureaus that specialise in note exchange is vast and should be reflected in legislation.

697. The BOL advised that only legal persons are able to obtain such a licence. This is not stated in legislation and as the concept of beneficial owner is unknown to this jurisdiction, there is a potential for abuse of this sector in its current state.

698. Lao PDR has not considered the likelihood of informal systems/networks within the jurisdiction, although BOL personnel did state during the on-site mission that they felt it was unlikely that these existed. No proper assessment has been undertaken or documented to support or otherwise this statement, although there are large informal remittance networks in neighboring jurisdictions.

Application of FATF Recommendations) (c. VI.2): (applying R.4-11, 13-15 & 21-23, & SRI-IX

699. The shortcomings listed in the above FATF standards noted earlier in this report apply within the MVT sector.

700. Further, AML Decree 55, including the binding STR reporting obligations, has not yet been implemented to non-bank remittance companies. The implementation of the AML Decree to the commercial banking sector is noted; however, it is unclear as to how this implementation applies when MVT providers offer their services through an agent network within a commercial bank.

701. The assessment team notes that large international providers such as Western Union and Moneygram implement obligations based on their home supervisor requirements.

Monitoring of Value Transfer Service Operators (c. VI.3):

702. There has been no AML supervision of the MVT sector to date.

703. The prudential regulator from the BOL carries out yearly prudential inspections of this sector. There is no risk based approach to the BOL supervision, but rather all entities are treated the same apart from Bureau de Change, which are all subject to a twice yearly inspection program or

heightened scrutiny in times of unstable currency fluctuations. The MVT sector is also required to submit a monthly report to the BOL of turnover statistics.

704. *List of Agents (c. VI.4):*

705. The BOL produced an up to date listing of MVT providers and their agents during the on-site component of this assessment. The assessment team, however, noted that this obligation is not specifically stated within any legislation.

List of Sanctions (applying c. 17.1-17.4 in R.17)(c. VI.5):

706. The shortcomings outlined in recommendation 17 are applicable to the MVT sector.

Additional Element—Applying Best Practices Paper for SR VI (c. VI.6):

707. There has been no consideration of this paper in the Lao PDR approach to meeting SRVI obligations.

3.11.2. Recommendations and Comments

708. Lao PDR should include in legislation a clear definition of MVT and for all MVT providers to be licenced, maintain an up-to-date listing of all agents, and subject to all FATF 40 plus 9 Recommendations.

709. Lao PDR should consider conducting a detailed assessment of the informal remittance sector to identify any associated risks and scope of monetary movements.

710. Lao PDR should consider the measures set out in the Best Practices Paper for SRVI when revising its current approach to the MVT sector.

3.11.3. Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	NC	<ul style="list-style-type: none"> • BOL has not undertaken any assessment of informal networks within this jurisdiction. • Legislation opaque in reference to MVT sector. • No comprehensive licensing requirement. • Deficiencies noted in R.4-11, 13-15, 21-23, & SRI-IX apply to MVT sector. • No AML/CFT supervision of the sector. • No legal requirement for list of agents. • Absence of an adequate range of sanctions within existing legislation that applies to breaches of the FATF standards within this high risk sector. • Lack of AML Decree 55 implementation to this sector.

4. PREVENTIVE MEASURES—DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

General Description

Legal Framework:

711. Annex 2 of the AML Decree 55 includes DNFBPs such as casinos, dealers in precious metals and antiques, and attorney offices and notary offices as subject to CDD and record keeping requirements. However, accountants, lawyers, real estate agents, precious stones dealers and company service providers are not covered in the Decree. Trust arrangements are not provided for in the laws of the Lao PDR.

Description of DNFBPs:

712. A detailed description of each DNFBP sector is described in Section 1.3 of this report.

713. Lao PDR currently has four authorised casinos within its borders and also six other venues for slot machines; the latter located near the borders of China and Thailand. The casinos are structured in the form of a joint venture between the Lao PDR government and foreign investors. Access to gambling premises is limited to non-Lao nationals.

714. The Lao PDR has no licenced internet casinos, although they have received some applications for licence. These applications have been declined primarily on a moral rather than business consideration. Discussions during the on-site component of the assessment evidenced that in reality it would be difficult to identify internet gaming site within Lao PDR. The Ministry of Information and Culture should be aware of this possibility in its supervisory function.

715. There were 301 real estate agents in Lao PDR in May 2010. The agencies are operated by Lao natural persons in the form of sole enterprises. Agents or brokers provide brokerage services only and are not involved in accepting payments. Payment is direct between the seller and buyer.

716. There are two (2) BOL authorised import-export enterprises for precious metals (gold and silver bars). For the domestic market, there are 80 association members of the Precious Metal and Stone Association. There are also precious metals businesses with a business permit but not part of the association.

717. Lao PDR is a significant gem producing country. The Lao Gem and Jewellery Association estimate that there are more than 600 jewellery traders, with over 200 based in Vientiane. The majority are retail traders. There are two BOL authorised traders involved in import and export.

718. There are 129 lawyers and 51 trainee lawyers in the Lao PDR.

719. There are at least 150 certified public accountants. There are 40 accounting firms operating in Lao PDR, including three local offices of large international accounting firms. Large corporate entities are audited by local members of international firms. The small local audit firms concentrate mostly on tax and bookkeeping services, with only occasional audit work for medium-size and small companies.

720. The Lao Association of Accountants and Independent Auditors (LAAIA) was established for accountants employed in state-owned enterprises and private firms.

721. There are no trust service providers in the Lao PDR. Company formation services are relatively new, given the Law on Enterprises was promulgated in 2006 with most businesses still sole proprietorships.

4.1. Customer Due Diligence and Record-keeping (R.12)

4.1.1. Description and Analysis

722. Lao nationals are not permitted to enter casinos. A person who wishes to enter gambling premises needs to provide an ID card or passport, according to current regulations and rules issued by the committee or other related organisation. The assessment team understands that no details of these documents are recorded but rather viewed by official to gain entry.

723. There are no limits on transactions in casinos and payment for chips in casinos is in cash only.

724. The Decree is silent on CDD provisions in relation to the threshold limits for casinos. Other deficiencies in respect of CDD, PEPs, non face-to-face transactions, introduced business, record keeping and monitoring unusual transactions, as highlighted in section 3 of this report, are also true for DNFBPs.

725. No threshold limits have been established for CDD and other preventative measures as applied by casinos and dealers in precious metals and stones as envisaged in the FATF standards.

726. Currently there is no implementation of the provisions of AML Decree 55 by DNFBPs in Lao PDR. At the time of the on-site assessment, there has been no CDD regulation or guideline issued by supervisory agencies addressing their sector specific responsibilities. Generally, during on-site discussions with the responsible agencies, there was a lack of awareness as to the existence of the Decree and its associated AML responsibilities.

4.1.2 Recommendations and Comments

727. The Recommendations in Section 3 of the report in respect of FATF Recommendations 5, 6 and 8-11 are also relevant to DNFBPs.

728. Specifically for DNFBPs, the Law PDR should:

- Expand the scope of the legislative AML/CFT framework to include all categories of DNFBPs required under R12;
- Raise DNFBPs' awareness of their AML/CFT obligations;
- Focus implementation on higher risk DNFBPs such as casinos; and
- Introduce the appropriate thresholds for conducting CDD and related preventative measures for casinos and dealers in precious metals and stones.

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"> • Deficiencies in FATF Recommendations 5, 6 and 8-11 are also applicable to DNFBPs.

		<ul style="list-style-type: none"> • Not all DNFBPs are covered in AML Decree 55. • No implementation of AML Decree 55 in DNFBP sectors.
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4.2. Monitoring Transactions and other Issues (R.16)

(Applying R.13 to 15 & 21)

4.2.1 Description and Analysis

729. The deficiencies highlighted in Section 3.6 (R.21), 3.7 (R13-14) and 3.8 (R.15) of this report also apply to the DNFBP sector.

STR Reporting (c.16.1)

730. AML Decree 55 only covers some DNFBP sectors, with real estate agents, the accountancy profession and company service providers excluded from the reporting institutions detailed in Annex 2 of AML Decree 55. Regardless, AML Decree 55 has not been implemented within the DNFBP sector.

Self Regulatory organisations and STRs (c.16.2):

731. There has been no consideration given within Lao PDR as to how the obligations of the AML Decree may impact on legal privilege/professional secrecy in relation to STR reporting.

732. The accountancy profession is not included within Decree 55.

733. Additionally, while noting the participation of relevant DNFBP ministries in the AML working group, on-site discussions with these ministries, and either the relevant sector associations or market participants evidenced little knowledge and understanding of the AML Decree and its implications.

Tipping off, safe harbour and internal controls (applying R.14, 15, 21 c.16.3) :

734. Whilst the Decree 55 has not been implemented to the DNFBP sectors, the deficiencies noted in Section 3.6 (R.21), 3.7 (R13-14) and 3.8 (R.15) of this report would also apply to the DNFBP sector.

Additional Element -accountants (c.16.4)

735. The accountancy profession is not covered by AML Decree 55.

Additional Element—all criminal acts (c.16.5):

736. The deficiencies as described in R.13 are applicable to the limited number of DNFBPs listed as reporting institutions in AML Decree 55.

Statistics and effectiveness

737. There has been no implementation of Decree 55 in the DNFBP sector.

4.2.2. Recommendations and Comments

738. The Lao PDR should implement the following measures:

- Implement AML Decree 55 in the DNFBP sector;
- Extend the STR reporting obligation to include coverage of the accountancy profession, real estate agents and company service providers;
- Ascertain what matters would fall under legal professional privilege or legal professional secrecy in relation to any STR obligations; and
- Should consider engaging with the gems association to gain a better understanding of the risks associated with this sector in addition to the responsible Ministry's expertise.

4.2.3. Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	NC	<ul style="list-style-type: none"> • The deficiencies identified with regard to Recommendations 13 to 15, and 21; and SR.IV apply equally to DNFBPs. • Not all DNFBPs are covered in within the scope of AML Decree 55. • No implementation of the AML Decree 55.

4.3. Regulation, Supervision, and Monitoring (R.24-25)

4.3.1. Description and Analysis

Recommendation 24 (Supervision of DNFBPs)

Legal Framework:

739. The primary legislation in relation to the casino sector is the Regulation of the Minister of Ministry of Information and Culture on the Supervision and Inspection, Authorization of Gambling Business in Lao PDR, dated 22 September 2003. This Regulation and AML Decree 55 provide the legal framework for the supervisory oversight, both prudential and AML within the casino sector.

Regulation and Supervision of Casinos (c. 24.1, 24.1.1, 24.1.2 & 24.1.3):

740. Decree 55 designates casinos as a reporting institution. The Ministry of Information and Culture is the regulator for casinos in the Lao PDR, but it has not implemented Decree 55 within the high risk casino sector nor is there any indication of when this implementation will occur.

741. The Ministry of Information and Culture is not included amongst the authorities designated as AML supervisor under Decree 55, thus leaving the Ministry responsible for supervising casinos without clear authority to supervise these sectors from an AML perspective. Of further concern to the assessment team was the overall lack of understanding of the Decree 55 and its core obligations, how it would be applied within the casino sector, and the ML risks involved in casinos generally, despite a presence of this responsible ministry in the AML Working group.

742. The Lao PDR has no licenced internet casinos, although they have received some applications for licence. These applications have been declined primarily on a moral rather than business consideration. Discussions during the on-site component of the assessment evidenced that in reality it would be difficult to identify internet gaming site within Lao PDR. The Ministry of Information and Culture should be aware of this possibility in its supervisory function.

743. The establishment of a casino within Lao PDR requires a “special economic zone” to be created. This economic zone then requires an “Ad Hoc Committee to be formed that will supervise the casino”. The assessment team noted in the Vientiane Times, dated 18 October 2010, a statement that, *“From now on there will be no more casinos in special economic zones no more casinos would be considered within Lao PDR for the immediate future”*.

744. The special Ad Hoc Committee is responsible for the supervision and inspection of slot machine venues and casinos in Lao PDR conducted in accordance with Minister of Information and Cultural Ministry’s regulation No 664/IC, 22 October 2003, on supervision, inspection and authorisation of all gambling businesses in Lao PDR. In addition, there are some instructions and requirements as a reference for implementation of supervision and inspection this industry.

745. This Ad hoc Committee is stated to supervise and inspect casino operations and report to the government. The Committee’s members consist of representatives from Ministry of Information and Culture, Ministry of Public Security, Ministry of Planning and Investment and other relevant agencies.

746. The members of this “Ad Hoc” Committee may also issue some form of licence relevant to their own area of responsibility, prior to any final approval by the Ministry of Information and Culture. Discussions during the onsite component of the assessment were unable to determine a clear indication as to who would be responsible for the implementation of AML regime within the Lao PDR, although it was generally thought to be the Ministry for Information and Culture.

Casino Sector

747. The Ministry of Planning and Investment is responsible for assessing the “fit and proper” bona fides of the owner(s) and foreign management of any casino. There is no attempt to establish the source of any capital funding but rather a reliance on banks to advise the availability of these “cleared funds”.

748. There is no understanding within this jurisdiction of the beneficial ownership concept thus leaving this sector exposed to ownership by a criminal or terrorist element. Additionally, the concept of terrorist financing is not one that is well understood or considered within this jurisdiction.

749. The following précis of the process for foreign investment has been provided by Lao PDR:

“The Government of Lao PDR is the single authority to issue license for the establishment of casino. The Government shall apply the following processes:

- 1. Applicant shall completely the required documents and applies to the Investment Promotion Department, Ministry of Paining and Investment.*
- 2. Upon receipt of any application set, the Investment Promotion Department shall forward it within 15 official working days to the relevant agency for its consideration.*

3. *The Investment Promotion Department shall call for a technical meeting with the relevant agency to consent or comment to be concrete reference for the Government to consider and approve.*

750. Any Lao national holding a management position only is stated to be “Police checked” for employment in the same manner as a foreign person holding a similar role.

Monitoring Systems for Other DNFBPs (c. 24.2 & 24.2.1):

751. Lao PDR has not conducted any form of risk assessment to establish a basis for ML/FT risks within the Lao PDR generally and how that analysis may then be applied to the DNFBP sectors.

752. The Ministry of Commerce and the Ministry of Finance are the only designated AML supervisor for DNFBP, as designated under Article 3 of Decree 55: Organisation responsible for supervising the Reporting Institutions. Nevertheless, there has been no implementation on AML Decree 55 in their sector i.e. Ministry of Finance for accountants and Ministry of Commerce for precious stones and metals.

753. DNFBP supervisory authorities or self- regulatory organisations that not listed under Article 3 of AML Decree 55 include, for instance:

- casinos - Mass Culture Department, Ministry of Information and Culture.
- lawyers - Ministry of Justice/Bar Association
- accountants - Lao Association of Accountants and Independent Auditors
- gems – Gem Association

754. Under Article 29: Creation and Supervision of Precious Metal Business, in the Decree Law on Foreign Exchange, the Ministry of Industry and Commerce is the designated supervisor for both precious metals and stones. Article 29 provides as follows:

The Ministry Industry and of Commerce shall license and supervise an enterprise for producing and selling the jewelry made from precious metals, including the importation and exportation of jewelry, precious stones and precious metals mined and manufactured in the Lao PDR..

755. The dealers in precious metals and stones, apart from two large import/export entities, operate generally in the form of sole enterprises only requiring a business licence from Ministry of Industry and Commerce. There does not appear to be any supervision beyond licensing. Retail dealers of precious metals and stones are under self regulation by the Chamber of Commerce. The Gem association is also a self regulatory organisation.

756. The Accounting Law, Article 73, provides the Ministry of Finance with the right to propagate and disseminate laws and legislation concerning accounting; Article 74 details the rights and duties of the Ministry of Finance’s Accounting Department. The ministry’s responsibilities extend beyond setting accounting standards to include oversight of the accountancy profession.

757. Attorneys and lawyers are supervised by the Ministry of Justice with the Lao Bar Association being established in 1996.

758. Notary offices are governmental organisations. However, private agencies may be established and authorised by the government in accordance with specific regulations under the Law on Notary Offices issued 2009.

759. The content and noted deficiencies of Section 3 of this report concerning sanctions under Recommendation 17 area also applicable to the DNFBP sector.

4.3.2 Recommendations and Comments

Recommendation 25 (Guidance for the DNFBP sectors)

Guidelines for DNFBP's (applying c. 25.1):

760. No guidelines have been issued in any DNFBP sector nor are any planned at this stage of the AML Decree evolution.

Recommendations 24 and 25.1

761. The number of designated AML supervising ministries and (and self regulatory organisations) needs to be expanded for complete coverage of all DNFBP sectors.

762. Relevant DNFBP regulatory and supervisory agencies should work with AMLIU to develop a strategy to issue comprehensive statutes and regulations to regulate and supervise all DNFBPs in keeping with the FATF standards.

763. Lao PDR should pursue a staggered implementation of the FATF obligations in the DNFBP sector based on a risk assessment. The initial focus is recommended to begin with the high risk casino industry in the first instance

764. An ML/FT risk assessment of all DNFBP sectors should form part of this process to determine and identify key risk areas and the treatment required to address these risks. The risk assessment should also assist in determining the implementation timetable for the DNFBP sector.

765. Where confusion exists in relation to AML supervisory responsibilities, this should be addressed through the AML Working group and noted specifically in supporting legislation.

766. As the AML Decree 55 obligations are progressed through each DNFBP sector, the responsible Ministry will need to consider their local environment and activity in order to prepare a meaningful and helpful guidance.

767. Specifically tailored guidance material should be prepared for each sector to assist the participants in their understanding of ML and FT techniques and how these will apply specifically to this sector. The exiting guidance material is considered to be at too high a level to be of relevant assistance to DNFBPs.

4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	NC	<ul style="list-style-type: none"> No comprehensive AML/CFT regulatory and supervisory regime for casinos.

		<ul style="list-style-type: none"> • No clear procedures to prevent criminals or associates from being beneficial owners of casinos. • No designated DNFBP supervisor i.e. restriction within AML Decree 55 at Article 2.3 concerning supervising ministries excludes all DNFBP responsible ministries. • The deficiencies identified in section 3.10 of this report in relation to the range of sanctions available to deal with breaches of AML/CFT requirements also applies to the DNFBP sector. • No implementation of Decree 55 to DNFBP sector.
R.25	NC	<ul style="list-style-type: none"> • No guidelines issued in DNFBP sector. • Lack of implementation generally.

4.4. Other Non-Financial Businesses and Professions—Modern-Secure Transaction Techniques (R.20)

4.4.1. Description and Analysis

Other Vulnerable DNFB's (c. 20.1)

768. Annex 2 of Decree 55 lists the reporting institutions covered by this Decree. Amongst the entities listed are other DNFBPs such as pawn shops, investment advisors, games (other than casinos) and lottery.

769. Lao PDR advised they have not undertaken a comprehensive or national risk assessment of ML or FT, and have not included auction houses, dealers in high value and luxury goods within Decree 55.

770. The BOL has responsibility for the supervision of the 22 pawnshops operating in Lao PDR, while the Ministry of Industry and Planning covers investment advisors. There are presently no plans within either competent authority to extend AML Decree coverage to both of these sectors.

Modernization of Conduct of Financial Transactions (c. 20.2):

771. The Lao PDR government now pays all Vientiane based employees' salaries into bank accounts. The assessment team understands that this initiative will be extended to all provinces over time. This strategy has seen an influx of automatic teller machines throughout the capital; this has reduced over the counter bank transactions significantly, although actual data is unavailable in relation to this change.

772. The Lao economy, however, still remains a largely cash based economy with the largest bank note 50,000 Kip (approximately US\$6).

4.4.2 Recommendations and Comments

773. The Lao PDR should consider appropriate measures to reduce its reliance on the use of cash in financial transactions.

774. The Lao PDR should consider a secure automated transfer system that would further reduce the use of cash within the economy.

4.4.3. Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	PC	<ul style="list-style-type: none"> The authorities have not taken sufficient measures to reduce the use of cash and develop modern and secure techniques to address the risk of money laundering and terrorist financing.

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

775. In accordance to the Law on Enterprises (Law No. 11, of 9/11/2005), Lao citizens, foreign residents and stateless persons residing in the Lao PDR and foreigners, including their organisations, are entitled to establish enterprises or participate in business transactions in accordance with the laws and regulations of the Lao PDR (Article 3). This law applies to private enterprises, both domestic and foreign, state enterprises and joint enterprises established and operating in the Lao PDR (Article 8).

776. According to information provided during the on-site visit, foreign entrepreneurs, upon obtaining an investment licence from the Planning and Investment Authority (at local or central level), have to register at the Enterprise Registration Office (ERO) within two days. The applicant must provide the enterprise name certificate, the investment licence, act of incorporation, enterprise by laws and a letter of attorney with the registration allocation form.

777. Commercial companies must have a registered office in the Lao PDR. The majority of commercial companies are family-owned companies. According to an Asian Development Bank report dated February 2010, there were 126,913 enterprises in the Lao PDR in 2006, with 97% being single proprietor and only 71% formally registered but with the taxation authority only.³ With the exception of single partner private companies, at least two shareholders are required to form a company. The shareholders of private companies are known to each other. Most of the public companies are financial institutions.

Measures to Prevent Unlawful Use of Legal Persons (c. 33.1):

Types of Enterprises

778. There are four types of enterprises: private enterprises, state enterprises, joint enterprises and collective enterprises. A state enterprise and a joint enterprise may be established and operated in the form of a company only. A state enterprise is referred to as a “State company” and a joint enterprise as a “joint company”. Private enterprises may be classified in the following forms: 1) sole trader, 2) Partnership enterprise and 3) Company. Partnership enterprises are classified in two categories: 1) General partnership enterprise and 2) Limited partnership enterprise. Companies are classified in two categories: 1) Limited company, including one-person limited company and 2) Public company.

779. Enterprises have the obligation to conduct their business operations in accordance with their business purposes, to keep accounting books, to perform fiscal obligations towards the government, and to uphold other relevant laws and regulations of the Lao PDR (Article 5).

Registration Requirements

³ Page 3, ADB Technical Assistance Consultant’s Report: Lao PDR: Options for a Regulatory Review Program and an Office of Best Regulatory Practice, February 2010.

780. Registration is mandatory (Articles 12 and 16). Application for registration is file at the ERO at Vientiane capital, or through its offices at the provinces or district level where the enterprise is located. There is also a parallel requirement for tax registration (Article 16). Accounting requirements are provided for in the Law on Enterprise Accounting.

781. The role of the ERO is to assist enterprises' registration, to monitor registration and to monitor compliance of enterprises under the Law on Enterprises. The ERO duties include to: check enterprises' name and articles of incorporation, accept the application dossier for registration and amendment of enterprise certificate, maintain a national database of enterprises, provide data on enterprise registration to the public, monitor and record the implementation of the Law on Enterprises; disseminate and provide training on the procedures for enterprises registration; and carry out other duties as provided for in the relevant laws and regulations. The ERO has among other responsibilities the following: to certify enterprise's name, to sign enterprises' certificate, and to inspect enterprises compliance to the Law on Enterprises.

782. According to the ERO, to establish an individual enterprise and sole limited company, applicants must present the: enterprises' name certificate; application form for enterprise registration; manager's employment contract (if any), letter of attorney, six photos, by laws (for sole limited company). While to establish a partnership enterprise, company, including state company and mixed company, applicants must present the: enterprises' name certificate; application form for enterprise registration; promoters' names, addresses, signatures (company only); minutes of meeting, Articles of Association; manager's employment contract (if any), by laws, decision letter for enterprise establishment (state or state-mixed company), letter of attorney, six photos, (for sole limited company).

783. Shareholders or promoters of a company may be natural persons or legal entities (Article 79). Promoters are defined in Article 87 as persons who initiate the establishment of a limited liability company but are not representative of the company. There is no provision prohibiting nominee share ownership.

784. There is no explicit requirement in the Law on Enterprises for details of company directors to be provided to the ERO during the registration process, only the details of company promoters. However, Article 128 requires a register book of directors (identification details of all directors) to be maintained by the company, and under Article 117, certain categories of persons are prohibited from holding company directorship, including a legal entity, a bankrupt person and a person with no prior conviction for embezzlement or misappropriation of assets. The law does not require a director to be resident in the Lao PDR or preclude a nominee arrangement.

785. There is no requirement by the ERO for the declaration of beneficial ownership during the registration stage, or for companies/enterprises or company formation service providers to obtain and maintain such information.

786. If registration does not conform to the requirements, it has to be corrected. In the event that the correction cannot be made, the enterprise shall be dissolved in accordance with the procedures set forth in the law. The registration of an enterprise [granted] to a person restricted by law or the registration of an enterprise in contravention of any law or regulation shall be invalid (Article 15).

787. There are financial penalties whenever the individual or legal person conducts business operations not consistent with the purpose of the enterprise (Article 236) or fails to register (Article 237).

788. There is no fit and proper test requirement and previous breaches of the registration requirements do not prevent a new registration, as long as penalties have been served.

789. As regards effects of enterprise registration, Article 16 states that:

- 1. Creates a legal entity of a partnership enterprise or a company that is separate from its shareholders, having rights, duties and responsibilities within the scope of its purposes and bylaws;*
- 2. Enables the enterprise to carry out business activities within the business sectors indicated in its enterprise license without requiring further approval or review from the relevant authorities, except for certain types of businesses specified in the list of controlled businesses, as provided in Article 14 of this law;*
- 3. The contents that were filed with the notification for enterprise registration shall be disclosed, and any interested person may see such application as described in paragraph one, Article 19 of this law;*
- 4. The enterprise's name and tax registration are registered.*

790. Reporting of changes of registration details to the ERO is mandatory (Article 18 - Modification of Content in Enterprise Registration). Changes in ownership and management must be kept up to date.

Access to Information on Beneficial Owners of Legal Persons (c. 33.2):

791. Lao PDR has established a system of central registration and a database with all the relevant information related to legal persons; however, this data does not always include beneficial ownership information, as there is no requirement by the ERO for the declaration of beneficial ownership to be provided or maintained. The database, when fully functional, allows for real-time transfer of registrations from provincial offices to the central office.

792. All the contents of registration are public and any individual or legal person may access or request a copy of filed registration documents to the registration officers (Article 19). Other documents may be eventually disclosed only with the prior consent of the concerned enterprise, unless otherwise provided by the laws (e.g. for investigation purposes).

793. The information collected is, in general, publicly available (Article 18), in particular through the ERO's website. A check of the English version of the ERO's website could not confirm the availability of such information. However, the team was unable to verify whether such information is available in the Lao language version of the same website.

794. Investigative authorities or other competent authorities can have access to the relevant information in a timely fashion and can be shared with foreign authorities. However, as noted, there is no explicit requirement to declare or maintain beneficial ownership information, and nominee directors and share ownership are permitted; therefore information on beneficial ownership may not be available or in a timely fashion.

795. Due to the size, number and nature (most of them family-owned and natural persons) of the existing companies, registration and record-keeping requirements, communication with law enforcement authorities, access to information on beneficial ownership may not be complex. However, there is lack of awareness on the issue of beneficial ownership and of misuse for ML by the ERO. Such lack of awareness can be a significant problem, if one takes into account the 'booming' nature of the Lao's economy, the diversification of business activities, the establishment of foreign

companies, and, subsequently, the gradual complexity of companies and who is the (real) beneficial owner.

Prevention of Misuse of Bearer Shares (c. 33.3):

Bearer Shares

796. Companies are composed of shareholders who contribute capital to a company and are only liable for the company's debts up to an amount not exceeding the unpaid portion of [their] shares. A company may have one or more shareholders. Any company acquiring a sufficient number of shares in another company in order to gain control over such company's administration is called a "group company", and the company controlled is referred to as a "subsidiary". The contract of incorporation of the Company is made in writing in accordance with the Contract Law of the Lao PDR and includes, *inter alia*, the: name of the enterprise; business purpose; name [and] location of the headquarters and all branches, if any; stated capital broken down into the value and number of shares; names, addresses and nationalities of the promoters of the company; and the number of shares subscribed by each promoter.

797. A limited company may hold shares of other companies or may be a partner in other partnership enterprises but shall not be a shareholder in its own limited company (Article 84). The conditions and procedures to establish a limited company are set forth in Article 86 *et seq.* Any application to register the limited company has to include the following documents the: application form for the notification of enterprise registration and the contract of incorporation of the limited company; the minutes of the incorporation meeting of the limited company; and the bylaws of the limited company.

798. There are two types of share certificates of limited companies: registered share certificates and bearer share certificates (Article 101).

799. Registered share certificates shall contain the following main items: serial number of the share certificate; name of the limited company; name of the shareholder; number of shares held by the shareholder; value of each share; value of the unpaid portion and schedule of payment, if specified; and signature of the director and stamp [of the limited company]. A registered share certificate may be for shares that have not been paid. Such registered share certificate may be converted into a bearer share certificate when the shareholder has paid for the shares in full and registered to cancel the previous [certificate] (Article 102).

800. A bearer share certificate is a negotiable instrument and may only be issued if the following conditions are met: shares have been fully paid; right of the company to issue bearer share certificates shall be specified in the bylaws of the company. A bearer share certificate has similar contents to a registered share certificate, except for the contents relating to the name of shareholders and the value of the unpaid shares. A bearer share certificate may be converted into a registered share certificate by cancelling such share certificate and issuing a registered share certificate in its place (Article 103).

801. A bearer share certificate of a limited company may be transferred by handing over the share certificate to another. Bearer shares may only be transferred when: i) is consistent with the restrictions on share transfer provided in the bylaws of the limited company; ii) does not contravene any legal restrictions on share transfers; iii) they are acquired [pursuant to] a transfer of shares by operation of law; iv) is made in writing by indicating the names and signatures of the transferor and transferee, as well as the names and signatures of at least one witness for the transferor and one for

the transferee, and the serial number of the transferred share certificate. The transfer is registered (Article 104).

802. In the event of a transfer to a third party, a prior offering shall be made to the other shareholders of the company, and the transfer shall be registered with the name and address of the transferee in the share register (Article 104).

803. The shareholder register book shall contain the following information: names, addresses and nationalities of the shareholders; number of shares, value of shares, and serial numbers of share certificates divided according to their types as registered share certificates and bearer share certificates; unpaid portion of shares in the case of registered share certificates; date of registration as shareholder of the limited company; date of deletion from the shareholder list of the limited company (Article 107).

804. The shareholder register book shall be kept at the office of the limited company and made available for inspection by shareholders. The directors of the limited company shall send copies of the shareholder register book each time any changes are made or at least once a year if there is no change to the relevant enterprise registration officers not later than 25 December of each year (Article 107).

805. As regards transparency and bearer shares, it should be noted that all the relevant information related to the registration enterprises is public. There is also a book of shares that keeps the record of shares, including bearer shares. However, this is in respect of the legal owner. There is nothing prohibiting nominee share ownership of any share, let alone bearer shares. Beneficial ownership information is only available if the legal and beneficial owners are the same.

806. It is possible for competent authorities to obtain information on the identity of the owners of bearer shares in some circumstances (i.e. from the minute books of general meetings, the paper trail arising from when the shareholder needs to require information from the company). This is once again in terms of legal ownership and not necessarily beneficial ownership. At the moment, bearer shareholders who become dominant shareholders can also be identified due to the size-number and nature of companies in Lao PDR. However, such scenario may change with the economic booming and the establishment of foreign companies or shareholders.

807. Under the existing system, there are no specific measures on beneficial ownership to ensure that bearer shares are not misused for ML or FT, such as guidelines or instructions. There is no effective control of the number of companies with bearer shares.

Additional Element—Information on Beneficial Owners of Legal Persons by Financial Institutions(c. 33.4):

808. Article 19 of the Law on Enterprises provides financial institutions with the legal authority to access information on enterprises registered with the ERO. Once fully functional, enterprises registration details on the ERO's website will provide greater transparency and more timely access to information (subject to the deficiencies already mentioned).

5.1.2 Recommendations and Comments

809. In Lao PDR, the measures in place to prevent the unlawful use of legal persons in relation to ML and FT are not sufficient. In particular, there is an inadequate system that provides accurate and updated information in a timely fashion on the beneficial ownership and control of legal persons (including bearer shares' ownership). Competent authorities should request more information to know

who the company's beneficial owner is and who in fact controls the company. Such information should be regularly updated and monitored. The lack of awareness of authorities to these matters may be linked to the size-number and nature of the existing companies in Lao PDR.

810. There is no statistics to assess the efficiency of the existing system.

811. The following recommendations are made to enhance the transparency of the current system:

- Lao PDR should enhance its efforts to reduce ML and FT risks by establishing requirements to explicitly cover beneficial ownership information and control of legal persons (including where bearer shares are issued).
- Authorities must be able to obtain/have access to beneficial ownership information in timely fashion. The information must be: adequate (sufficient to identify the beneficial owner), accurate (true information on beneficial owner) and timely (up to date).
- Lao PDR should raise awareness on how to collect and control beneficial owner information, in particular to those entities that issue bearer shares, and establish mechanisms to ensure that they are not misused for ML.

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	NC	<ul style="list-style-type: none"> • No mechanism such as guidelines or instructions to reduce ML and FT risks, and in particular to explicitly cover identification and control of legal persons/ beneficial ownership. • Lack of information on beneficial ownership and the persons who control the information. • Bearer shares hinder the ability to assess who is the beneficial owner. • Effective implementation could not be ascertained.

5.2 Legal Arrangements—Access to Beneficial Ownership and Control Information (R.34)

5.2.1 Description and Analysis

812. Lao PDR law does not recognize the legal concept of a trust, including trusts created in other countries or any other legal arrangements of a similar nature to a trust or that meets the definition of 'legal arrangement' as defined in the FAFT recommendations. In addition, no trust service providers have been established in the Lao PDR.

5.2.2. Recommendations and Comments

813. Recommendation 34 is not applicable in Lao PDR context.

5.2.3. Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	N/A	<ul style="list-style-type: none"> Recommendation 34 is not applicable in Lao PDR context.

5.3. Non-Profit Organisations (SR.VIII)

5.3.1. Description and Analysis

Legal Framework:

814. There are two categories of NPOs and regulations in the Lao PDR:

- For international NPOs, the Prime Ministerial Decree on International Non Government Organisation (NGOs) No.13/PM, dated 8 December 2009 (“Decree 13 on International NGOs”), governs international and foreign NPOs, as defined in Article 2 of the Decree; and
- For domestic NPOs, the Prime Ministerial Decree No.115 on Associations, issued on 29 April 2009, governs the operation of domestic NPOs (“Decree 115 on Associations”). This Decree sets the rules and regulations governing the establishment, operation and management of associations. Association refers to a non-profit civil organisation set up on a voluntary basis, and operating on a permanent basis to protect the rights and legitimate interest of the association, its members or communities. An association formed and registered under Decree 115 is incorporated as a legal entity. It excludes unincorporated nonprofit organisations such as religious groups, micro finance funds and organisations associated with the communist party.

815. The responsible agency for the implementation of Decree 13 on International NGOs is the International Organisation Department in the Ministry of Foreign Affairs (MoFA); and for the Decree 15 on Associations, the Public Administration and Civil Service Authority (PACSA). However, for international NPOs, there is also a Committee on Management and Coordination of INGO that oversees international NPOs. MOFA acts as the Secretariat to the Committee.

816. There are about 196 international NPOs operating in the Lao PDR. About 30% have offices in the country, including project offices and representative offices. About 50-60% of NPOs are from the U.S. and Europe, with a small percentage from Asia. The number of international NPOs has increased steadily since the new Decree was promulgated.

817. There are no statistics on domestic NPOs, as their legal status was only officially recognized recently with the promulgation of Decree 115 in 2009. However, authorities advised since the introduction of Decree 115 on Associations there has been a growth in local NPO registrations. Local NPOs had existed previously but were not “officially recognized”.

Review of Adequacy of Laws & Regulations of NPOs (c. VIII.1):

818. Prior to the late 1990s, there was no specific rule governing international NPOs, only general laws applied. After a review of prevailing laws and procedures, the Prime Minister on 20

April 1998 issued Decree No.71/PM on Governing the NGOs in Lao PDR; and the Minister of Foreign Affairs issued the Instruction No.1865 on Governing the NGOs in Lao PDR.

819. In 2007, the Ministry of Foreign Affairs commenced a review of Decree No.71/PM to further refine the legal and administrative framework for the supervision of international NPOs. According to the lead agency, the International Organisation Department in MOFA, it was a major review undertaken over two years.

820. The Lao PDR government established a working group that undertook consultations with line ministries and provincial authorities. A national conference on NGOs, the first in Lao PDR was held in 2009. It was attended by the deputy foreign ministers, relevant government ministries and major international NPOs and interested persons. The draft of the Decree 13 on International NGO was presented for discussion and comment at this workshop.

821. The requirements of the FATF SRVIII were discussed in this review process. There was some opposition by international NPOs of the proposed roles of the Ministry Of Public Security (police) and the Ministry of Defence under the new Decree. Under Decree 13 on International NGOs, all international NPOs must be vetted by both ministries.

822. There was no specific consideration of undertaking a FT risk assessment. Decree 13 on International NGOs has not identified any specific focus on larger international NPOs or larger projects. But the International Organisation Department advised there is an enhanced focus on larger international NPOs and/or larger projects, and an enhanced project approval and monitoring regime as detailed further below in this section.

823. The process leading to the promulgation of Decree 115 on Associations for local NPOs was less structured. In part, as explained to the assessment team during the on-site meeting with the PACSA, the purpose of Decree 115 is to provide legal recognition to informal groups already existing in the Lao PDR, and include them under a formal supervisory umbrella. Unlike Decree 13 on International NGOs, there was no consideration of FT or terrorism issues.

Outreach to the NPO Sector to Protect it from Terrorist Financing Abuse (c. VIII.2):

824. For international NPOs, in addition to the national conference, numerous workshops have been undertaken to explain the differences between the old and new decree. There are further plans to undertake further awareness raising workshops of this kind in the provinces.

825. Awareness raising workshops to date have not covered explicitly the requirements of SRVIII or FT vulnerabilities, nor have they focused on promoting transparency, accountability, integrity and public confidence; although they have included the requirement of international NPOs to follow the laws of the Lao PDR, train the Lao authorities to pay more attention on project activities, supervise in detail the financial aspect of the project, and provide comprehensive and regular reports to supervisory authorities, including concerned ministries and MOFA. Even though the training did not cover FT directly, it provided an enhanced supervisory framework and foundation to deter violations.

826. The PACSA has undertaken a program of awareness raising of the requirements of Decree 115. There have been three conferences in Vientiane, Luang Prabang and another location, but they did not focus on FT related concerns. The focus was on the requirements and benefits of registration.

Supervision or Monitoring of NPOs that Account for Significant Share of the Sector's Resources or International Activities (c. VIII.3):

827. The supervisory focus, until recently, has been on international NPOs, as the Lao PDR only recently introduced regulatory requirements for domestic NPOs. The focus on international NPOs has meant that resources have focused on NPOs with international connections, and that account for a significant amount of the financial resources of the NPO sector. Lao PDR's efforts to bring informal associations into the regulatory framework will further enhance monitoring of the sector.

International NPOs

828. Article 18 in Decree 13 on International NPOs requires the latter to:

18.4 Submit an evaluation report on its operation to the Lao concerned authorities, on a regular basis or at least once a year;

18.5 Share book-keeping, project implementation reports and financial reports to be submitted to the donors;

18.6 Jointly with the Lao concerned authorities organize monitoring and financial review as well as mid-term and end-project evaluation;

18.7 Submit to Ministry of Foreign Affairs within 30 days, a project implementation report upon its completion and an official letter on project hand-over to Lao concerned authority;

18.8 Provide an update information on the change of organizational chart, office location, number of vehicles owned by an INGO;

18.9 Provide an update information on the change of local and expatriate staffs of INGO to the secretariat of Committee on INGO coordination.

829. As an additional control measure, operational permits are only issued and valid for 12 months. Renewal is not automatic and is subject to the Committee on the Management and Coordination of INGO decision of satisfactory performance, and also compliance with the terms of the permit.

830. The Committee is responsible for assessing an NPO's performance based on reports submitted and on-site visits. The NPO report must be approved by their partner Lao agency or agencies. There are six month evaluation and annual evaluation reports.

831. The International Organisation Department in MOFA acts as the Secretariat to this committee, and is the primary agency for monitoring international NPOs in cooperation with national and provincial authorities. However, the Department has only eight staff whose responsibilities extend beyond NPOs to include other MOFA areas.

832. If any crime act is committed, the relevant authorities such as the police can take action without prior consent from MOFA, and then the Committee will seek a report from the line ministry/government agency or provincial authority working with the NPO.

Local NPOs

833. Under Article 19 (Obligations of Associations) in the Decree 115 on Associations, the latter are required to:

“2. *File annual reports with the licensing agency and government organizations concerned on the status of their organization, activities, expenditures and budgets;*”

834. During the on-site, the PACSA advised that it did not have sufficient resources and relied on line ministries to do the on-the-ground monitoring. The latter includes exception reports submitted by local government authorities.

Information maintained by NPOs and availability to the public thereof (c. VIII.3.1):

Information maintained by NPOs

835. As described below on registrations (VIII 3.3), international NPOs are required to submit information on the objectives of both the NPO and the proposed project, as part of their permit application, and details of all project activities, staff, budget and intended beneficiaries of their operations. The information is also held by the NPO.

836. For local NPOs, the requirements are similar; the objectives of the NPO must be submitted and also information on all members and detailed information on committee members.

837. NPOs are generally required to maintain or provide information on the identity of all person(s) who own, control or direct their activities, including senior officers or board members.

Transparency

838. There is no provision in either decree for public access to information held by the MOFA and PACSA. Nevertheless, the International Organisation Department in MOFA is working with the UNDP to set up a database on NGOs and have this made available publicly. Similarly, for domestic NPOs, there is a plan to make available information on registered NPOs on PACSA's website, including name, main activities and general information.

Measures in place to sanction violations of oversight rules by NPOs (c. VIII.3.2):

839. Article 29 “Sanctions” of Decree 13 on International NPOs provides the following:

*“An INGO or its staff who carry out an activity in violation of this Decree shall be warned, Operation Permit or project shall be suspended depending on the nature of the transgression;
An INGO or its staff who carry out an activity in contrary to the policy of the Government and in violation of the law and regulations as well as the Lao fine traditions shall be subjected to the laws and regulations of the Lao PDR.”*

840. The authorities advised that there has been no case of permit cancellation or reissuance.

841. There are general sanction provisions in Article 58 on Penalties in Decree 115 on Associations, as extracted below. However, given the recent enactment of the decree and its implementation, it is too early to comment on how such general sanctions are applied:

“Associations or members breaching this Decree or other laws and regulations relating to associations will be warned, educated, subject to disciplinary measures, fines or legal action according to nature of their act.”

Licensing or registration of NPOs and availability of this information (c. VIII.3.3):

International NPOs

842. For an international NPO to operate in the Lao PDR, three levels of approval are required i.e. operation, project and office, as specified in the Decree 13 on International NPOs. The key articles are extracted below for reference:

Article 5. Procedures

In order for an INGO to operate in the Lao PDR, it requires to obtain the followings:

Operation Permit;

Project Approval;

Office Approval:

Project Office Approval;

Representative Office Approval;

Regional Office Approval;

Approval of INGO Representative, Project Director and Staff;

Approval for a short-term Activity

The Article 6. “Operation Permit” of INGO Decree defines:

In order to obtain Operation Permit, it requires the followings:

6.1 Legal status and formal registration under the Laws and regulations of the country of origin;

6.2 A status of non-profit organization;

6.3 An institutional status or charter governing the organization;

6.4 Ensured sound financial status and legal source of income;

6.5 An objective to assist the Lao PDR in development and humanitarian aids.

843. The Committee on Management and Coordination of INGO is responsible for approving all of the above. As indicated, the Department of International Organisations, MOFA, serves as the Secretariat of the Committee and is the lead operational agency.

844. According to the Department of International Organisations, since the promulgation of Decree 13 on International NPOs, 64 new permits have been issued in the last 12 months, from 162 to 196. As indicated previously, Decree 13 requires the permit to be renewed once a year, not indefinitely.

845. The International Organisation Department in MOFA undertakes the following process to assess applications:

- Check background and send to line ministry for verification
- Technical assessment
- If cleared – check with the Ministry of Public Security and Ministry of Defence
- Check with embassy abroad.

- Verify documentation is valid.
- Recommendation whether project office or representative office

846. MOFA will not approve an applicant without prior experience. Only established international NPOs will be approved.

847. The information contained on the NPO is available to all 13 members of the INGO Committee both during the application process and in subsequent monitoring. The Committee includes the Ministry of Public Security and the Ministry of Defense.

Local NPOs

848. The PACSA is responsible for receiving and assessing applications for permits to incorporate as associations under Decree 115 on Associations. The requirement and process are set out in Articles 12 and 13 of the Decree:

Association Incorporating Regulations and Procedures

Article 12 Rules and Procedures in Applying for an Association's Incorporation

Associations are incorporated under the following rules and procedures:

- 1. Upon appointment of the mobilization committee by the association's founder, the authoritative agency is to be notified as outlined in Article 50.1 and Article 50.3 of this Decree for consideration;*
- 2. The mobilization committee is required to file proper and complete documentation as required under Article 13 of this Decree to the province governor, capital mayor or President of the General Department of Public Administration and Civil Service for approval subject to recommendations from the relevant ministries or line authorities concerned;*
- 3. Within 30 days from the receipt of the association's incorporation documentation, the registration authority shall issue a temporary license or reject the incorporation;*
- 4. Upon receiving a temporary license, the mobilization committee prepares and carries out a statutory general assembly;*
- 5. The mobilization committee is dissolved automatically as the association's general assembly elects its board;*
- 6. The association will be automatically incorporated upon issuance by the licensing agency indicated in Articles 50.1 and 50.3 of this Decree of a decision adopting the association's charter.*

Article 13 Association License Application

The mobilization committee is required to file the following documentation in full:

- 1. Association incorporation application;*
- 2. Draft charter of the association;*
- 3. Personal history, certificate of residence, police record, diplomas of the mobilization committee's members;*
- 4. List of individuals or organizations enrolled voluntarily with the association;*
- 5. Certification of the association's office.*

849. There is no requirement in Decree 115 for ongoing registration or renewal each year. The PACSA advised during the on-site that it is in its early stages of receiving and issuing permits.

Maintenance of records by NPOs, and availability to appropriate authorities (c. VIII. 3.4):

Record Keeping

850. There is neither obligation in Decree 13 on International NPOs nor in Decree 115 on Associations for NPOs to maintain records of domestic and international transactions for at least 5 years. The Law on Enterprise Accounting requires accounting records to be kept (as discussed under Section 3) but it is not clear whether NPOs are covered by this law, as the implied reference in the law is to profit making enterprises. However, the Law on Accounting, which requires retention for 10 years, would capture NPOs, although the level of records required to be kept under these statutes may not go to the level of individual transactions.

Measures to ensure effective investigation and gathering of information (c. VIII.4):

851. The authorities advised that in the event of a criminal breach, a meeting of the Committee on Management and Coordination of INGO would be held. The Committee would review and decide what action, if any, needs to be undertaken. As indicated, the Committee includes the Ministry of Public Security and the Ministry of Defense. Once a decision is made to refer the case to a formal investigation, the processes as described under Recommendation 27 and 28 of this report will apply.

852. If the matter is related to terrorism, it would be referred to the National Ad hoc Committee on Terrorism, which is chaired by the Minister of Foreign affairs, but only after the INGO Committee has reviewed and discussed the matter.

853. There has been no case referred to either committee.

Domestic cooperation, coordination and information sharing on NPOs (c. VIII.4.1):

854. The Committee on Management and Coordination of INGO is composed of:

- Vice-Minister of Foreign Affairs, Chairman of Committee on INGO Coordinating Mechanism, Chairman;
- Director General of Department of International Organisations, Ministry of Foreign Affairs, Head of Secretariat;
- Director of General Planning Department, Ministry of Planning and Investment;
- Chief of Cabinet, the Lao National Commission for Rural Development and Poverty Reduction;
- Representative of Ministry of Education;
- Representative of Ministry of Public Health;
- Representative of Ministry of Agriculture and Forestry;
- Representative of Ministry of Labor and Social Welfare;
- Representative of Lao Woman's Union;
- Representative of Lao Youth Union;
- Representative of National Front for Reconstruction;
- Representative of Ministry of Public Security;
- Chairman of Provincial Committee.

855. As indicated, the Department of International Organisations, MOFA serves as the Secretariat of the Committee on Management and Coordination of INGO and the Director General of the Department of International Organisations serves as Head of the Secretariat.

856. For domestic NPOs, the PACSA and sectoral ministries and line authorities, at both the central and provincial/city levels, work together to oversee NPOs.

Information of NPOs during investigations (c. VIII.4.2): Sharing of information (c. VIII.4.3)

857. The arrangements are the same as for any criminal investigations, although the INGO Committee would be involved in the process, and if terrorism related, the Ad Hoc Committee on Terrorism.

Responding to international requests regarding NPOs (c. VIII.5):

858. The International Organisation Department in the MOFA is the designated contact point for international requests on NPOs, and the PACSA for domestic NPOs.

5.3.2. Recommendations and Comments

859. There is a separation in the supervisory framework for international and domestic NPOs. In practice, both categories of NPOs would intersect at the project or geographic level.

860. The supervisory framework for both is at a nascent stage, especially so for domestic NPOs. In moving forward, the relevant authorities should implement the following measures to further enhance the regulatory framework for NPOs, both in the context of AML/CFT and broader governance concerns:

- Undertake a review of the FT risk in the NPO Sector;
- Include FT concerns in future outreach activities to the sector;
- Include promotion of transparency, accountability, integrity and public confidence in future outreach activities to the sector;
- Consider providing further guidance to domestic NPOs on details required per Article 19 of Decree 115
- Enhance the registration requirements for applicants to provide information on the identity of person(s) who own, control or direct the activities, irrespective whether the person(s) are officers or not of the entity;
- Make publicly available information on NPOs registered under both decrees to enhance the transparency of the sector;
- Implement clearer record keeping obligations with regard to NPOs;
- Enhance coordination at the national level between competent authorities involved in supervising international and domestic NPOs. This could commence with the inclusion of Public Administration and Civil Service Authority in the Committee on Management and Coordination of INGO; and

- Review the sanction provisions in both decrees to provide a clearer and graded sanctions regime for violations.

5.3.3. Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	PC	<ul style="list-style-type: none"> • No outreach to the sector on AML/CFT. • Registration requirements do not include obligations to record the details of person who own, control or direct NPOs, irrespective whether the person is an officer of the NPO. • Reporting keeping obligations not clear and do not extend beyond 5 years. • Limited monitoring due to staffing constraints. • Laws to enhance regulation of NPO sector are relatively new and effectiveness difficult to demonstrate and assess.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1. National Co-Operation and Coordination (R.31)

6.1.1 Description and Analysis

Mechanisms for Domestic Cooperation and Coordination in AML/CFT (c. 31.1):

861. The AML Working Group was established in March 2008 in accordance with the BOL Governor's Decision No. 204/BOL, dated 27 March 2008, and No.56/BOL, dated 25 Jan 2010. The AML Working group consists of 19 representatives from relevant ministries and agencies. The head of AMLIU is the Chair of the Working Group.

862. The members of the AML Working Group are provided below:

No	Name and Title	Responsibility in AML/WG
1	AMLIU's Director General	Head
2	Deputy Director General, The Supreme People's Court	Deputy Head
3	Acting of Head Division, The Office of Supreme People's Prosecutor	Deputy Head
4	Deputy Director General, Ministry of National Defense	Deputy Head
5	Deputy Head of Division, Economic Police Dept	Deputy Head
6	Deputy Head of Division, Prime Minister Office	Member
7	Deputy Head of Division, Anti Corruption	Member
8	Head of Division, Ministry of Justice	Member
9	Ministry of Finance	Member
10	LCDC	Member
11	Deputy Head of Division, Bank of the Lao PDR	Member
12	Acting of Head Division, Bank of the Lao PDR	Member
13	Technical Official, Ministry of Industry and Commerce	Member
14	Technical Official, Ministry of Foreign Affair	Member
15	Head of Division, Ministry of Information and Culture	Member
16	Deputy Head of Division, Ministry of Planning and Investment	Member
17	Deputy Head of Division, Ministry of Foreign Affair	Member
18	Deputy Head of Division, Ministry of Finance	Member

19	Technical Official, The Supreme People's Court	Member
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863. The AML Working is concerned primarily with operational level matters, given it is essentially composed of operational officials. There is no national coordination committee at a more senior level that can discuss policy issues, or provide a higher level imprimatur or sponsorship of AML/CFT efforts in the Lao PDR.

864. The AML Working Group has not produced a strategic framework for AML/CFT implementation. It lacks sufficient influence in the Lao bureaucracy to provide a strategic AML /CFT direction or submit to higher authorities for consideration.

865. The effectiveness of the Working Group to achieve policy and operational level outputs is also questionable given there has been no documented case of ML investigation, very low STR reporting, no on-site supervision of any sector, and no implementation of AML Decree 55 beyond the banking sector.

866. During on-site discussions with a number of ministries, there was a lack of knowledge of AML Decree 55 and how it would be applied within their area of responsibility. Ministries were unsure as to how their own core legislation may need to be amended to allow them to supervise AML Decree 55 obligations within their sector.

867. Discussions held during the onsite mission did not reveal a clear working relationship between the BOL Supervision department and AMLIU, the AML/CFT regulator. It will be beneficial to both these areas of the BOL to have a clear and established dialogue in order to exchange findings of their supervisory activity. Additionally, the expertise contained within the BOL Supervision Department will be invaluable to AMLIU, as they develop their own AML regulatory regime.

868. The Economic Police Department holds monthly coordination meetings with other stakeholders such as the Drug Suppression Department, Investigation Department and Criminal Intelligence Department for sharing of intelligence and monitoring the effectiveness of AML measures. It seems the coordinating meeting is not functioning properly, in particular, in the area of intelligence sharing.

869. Under Prime Minister Decision No. 63/PM, of 27/12/2002, a National Anti-Terrorism Ad-Hoc Committee was created with the mandate, inter alia: to act as an advisory body to the Government on CT issues; to make the national report to the 1373 (2001) Committee; and to propose amendments to the domestic law to comply with UNSCR 1373 (2001). The Committee is chaired by the Deputy Prime Minister and includes the Minister of Foreign Affairs, Minister of Public Security, Minister of National Defense and Minister of Justice, and representatives from concerned departments within the MOFA (Department of International Organisations, Department of Law and Treaties, etc), the National Assembly, Public Prosecutor's Office, Science and Technology Agency, Bank of Lao PDR, Civil Aviation Department, and National Drug Control Committee.

870. Given this Committee was established after the on-site, it is not possible for the assessment team to comment on its effectiveness or otherwise.

Additional Element - Competent Authorities and Regulated Institutions (c. 31.2):

871. There is no formal mechanism in place for roundtable discussion with the relevant local bankers association, although meetings are held with banker association members as required on AML matters.

Statistics (applying R.32):

872. No statistics were provided on coordination meetings.

6.1.2. Recommendations and Comments

873. There is a lack of higher level policy coordination committee that can discuss more strategic and policy issues, and more importantly provide the higher level imprimatur to progress AML concerns.

874. It is recommended that the Lao PDR consider implementing the following to enhance its AML/CFT coordination mechanism:

- Form a National Coordination Committee on AML or AML/CFT composed of ministerial or agency head officials, with the chair at the ministerial level;
- Develop a clear strategic plan to focus Lao PDR's resources on implementing priority AML/CFT objectives and recommendations contained in this report;
- Take measures to enhance operational level coordination for law enforcement and supervisory purposes;
- Consider developing a closer working relationship between the BOL supervision department and AMLIU in relation to AML supervisory activities, including supervisory techniques and structure; and
- Take measures to improve intelligence sharing among law enforcement agencies.

6.1.3. Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	NC	<ul style="list-style-type: none"> • Absence of high level policy coordination and direction. • Lack of effective operational coordination to progress AML/CFT requirements, including AML Decree 55 mandate.

6.2. The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1. Description and Analysis

Legal Framework and Ratification of AML Related UN Conventions (c. 35.1):

875. The Lao PDR acceded to the Vienna Convention on 11 October 2004, the Palermo Convention on 26 September 2003, and the CFT Convention on 29 October 2008.

876. From the 9 sectoral CT conventions listed in the annex of the CFT Convention, Lao PDR is a State party to six:

1. Convention for the Suppression of Unlawful Seizure of Aircraft, 1970 (acceded on 10/10/1971);
2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971 (acceded on 6/04/1989);
3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, 1973 (acceded on 22/08/2002);
4. International Convention against the Taking of Hostages, 1979 (acceded on 22/08/2002);
5. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, 1988 (acceded on 22/08/2002); and
6. International Convention for the Suppression of Terrorist Bombings, 1997 (acceded on 22/08/2002).

877. Lao PDR is also party of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963 (acceded on 4/10/1969) and Convention on the Safety of United Nations and Associated Personnel, 1994 (acceded on 22/08/2002).

878. During the on-site visit, the Lao PDR Government advised that it is in the process of depositing the instrument of ratification of the Convention on the Making Plastic Explosives and the Convention on the Physical Protection of Nuclear Material. The ratification of the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its Protocol are currently being analysed by the National Assembly based on the Government's proposal.

879. In accordance to Article. 31 of Presidential Ordinance No. 01/P, of 7/10/r 2009 on the Creation, Accession and Implementation of International Conventions, international conventions are part of the domestic law and prevail over ordinary law in case of inconsistency of the latter (paragraphs 3 and 4). Treaties are directly applicable whenever they do not require any amendment to the existing ordinary law or enactment of new law (Article 32 of the same Decree). International treaties that require 'transformation' are the treaties which provisions are inconsistent with domestic law or that require domestic legislation to be implemented.

880. The internal procedure to sign/ratify/adhere to a convention is the following: the Government submits a proposal to ratify or adhere to one convention to the National Assembly based on a proposal and previous analysis of the MOFA (or from a concerned agency to the MOFA). The Standing Committee of the National Assembly shall consider it and issue a favorable opinion. After approval from the National Assembly, the President shall promulgate the decision. The MOFA is responsible for the deposit of the instrument of ratification/adhesion. During this process of acceptance, adhesion or ratification of a treaty, the MOFA in cooperation with relevant agencies shall assess the conformity of domestic legislation with the treaty and the need to amend, abrogate or adopt domestic legislation to implement the treaty.

881. In general, bilateral agreements follow the same procedure. Any relevant agency may take the initiative to celebrate a bilateral agreement and MOFA will do the diplomatic contacts as the leading agency.

882. Treaties should be published in the Official Journal; however, publication is not systematic, due to the lack of financial and human resources (for translation and editing).

883. As regards implementation of the Vienna and Palermo Conventions, Lao PDR has not yet fully implemented the aforementioned conventions; there is no comprehensive ML legal framework in place as described under Recommendations 1 and 2. The CFT Convention has not been implemented yet and there is no criminalisation of terrorism and FT, neither a freezing regime nor MLA legal framework in criminal matters in place.

884. Lao PDR is not part of the 9 CT Conventions as prescribed in Article 2 (1) (a) of the CFT Convention.

885. The Lao PDR authorities acknowledge the existing legal gaps and stated that a working group has been created to address such issues in order to improve the overall legal framework.

Implementation of UN SCRs relating to Prevention and Suppression of FT (c. I.2)

886. The implementation of UNSCRs has been discussed under the SR.III section of the report and the deficiencies have been noted.

887. This National Anti-Terrorism Ad-Hoc Committee is a policy and inter-governmental body; it is not an executive body with mandate, inter alia, to monitor compliance to UNSCRs.

Additional Element

888. Lao PDR signed the Merida Convention in 2003 and ratified on 25 September 2009.

6.2.2. Recommendations and Comments

889. Lao PDR should fully implement the Vienna and Palermo Conventions, i.e. to adopt an adequate and consistent legal framework in line with the international obligations and standards.

890. Lao PDR has not implemented the CFT Convention. Terrorism, including FT, is neither a criminal offence nor a predicate offence of ML. There is no freezing mechanism in place to address effectively the UNSCRs 1267 and 1373.

891. Lao PDR should , inter alia, to:

- Enact legislation consistent with the Vienna and Palermo Conventions and FATF Recommendations;
- Enact legislation to counter terrorism and FT consistent with the CFT Convention and FATF SR.II;
- Implement the UNSCRs and to establish a freezing mechanism/regime; and
- Adopt a comprehensive MLA legal framework on criminal matters.

6.2.3. Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	PC	<ul style="list-style-type: none"> • Vienna and Palermo conventions are not fully implemented at several levels, including: <ul style="list-style-type: none"> – no comprehensive AML/CFT legal framework;

		<ul style="list-style-type: none"> – ML offence not consistent with the Vienna and Palermo Conventions; – lack of enforceability of the existing system; – no MLA legal framework; – no freezing provisions and procedures for MLA; – lack of efficient measures to identify customers in whose interests accounts are open; – lack of dissemination, coordination and awareness among stakeholders of the ML offence and preventive measures; and – CFT Convention not yet implemented.
SR.I	NC	<ul style="list-style-type: none"> • CFT Convention has not yet been implemented. • Terrorism and FT are not criminalised. • UNSCRs 1267 (1999) and 1373 (2001) have not been implemented yet. • There are no freezing mechanism and procedures in place. • There is no MLA legal framework. • There is lack of dissemination, coordination and awareness among stakeholders of the FT offence and preventive measures.

6.3. Mutual Legal Assistance (R.36-38, SR.V)

6.3.1. Description and Analysis

Legal Framework:

892. There is no comprehensive legal framework for MLA in Lao PDR. The main provisions on international cooperation are set forth in three short clauses of Part XI of the Criminal Procedure Law, which states that international cooperation in criminal proceedings shall be afforded while complying with the principles of respect for the independence, territorial sovereignty of the States, non-interference in the domestic affairs, equality and mutual benefit, and while consistent with the Constitution of Lao PDR and the fundamental principles of international law (Article 117).

893. MLA agreements signed by Lao PDR with foreign countries or international conventions together with the laws of the Lao PDR constitute the existing framework for MLA.

894. In the event that the Lao PDR has not yet signed or entered into international conventions relating to criminal proceedings, such co-operation shall be carried out on the basis of principles of mutual cooperation and in accordance with Lao PDR legislation (Articles 118 and 119). MLA may include extradition, transfer of sentenced persons, seizure of assets of an accused person or defendant, enforcement of judgment, or general cooperation in combating of cross-border crime (Article 119, paragraph 2). In summary, Lao PDR can provide MLA on criminal matters even if no bilateral or multilateral agreement exists. However, such assistance has to be consistent with the national constitution and its fundamental principles.

895. The Lao PDR has signed the following MLA treaties/agreements:

- The ASEAN Treaty on Mutual Legal Assistance in Criminal Matters;

- The Bilateral Extradition Treaties with Vietnam, China, Thailand, Cambodia and Democratic People's Republic of Korea;
- The Treaty on Justice in Civil and Criminal Matters with Vietnam and the Democratic people's Republic of Korea; and
- Bilateral Treaty on Sentenced Persons with Thailand and United Kingdom.

896. If there is no MLA bilateral or multilateral agreement, international cooperation shall be conducted on a case-by-case basis upon request. Articles 118 to 120 of the Criminal Procedure Law establish the general principles of any MLA request. Apart from these provisions, there is no other legislation or procedural mechanism on the subject-matter. The Lao PDR authorities are aware of such lacuna and are taking the necessary steps to adopt adequate legislation.

Widest Possible Range of Mutual Assistance (c. 36.1):

897. Based on the principles in the existing legislation, MLA can be afforded for the purpose of ML investigations as regards the: provision of information, documents, or evidence (including financial records) from financial institutions; taking of evidence or statements from persons; identification, seizure, or confiscation of assets laundered or intended to be laundered (the investigative measures provided for in Article 42 *et seq.* of the Criminal Procedure Law). In the absence of a MLA agreement, assistance may be afforded on a reciprocal basis under the principle of mutual cooperation as referred to above. Although the principles are articulated in the Criminal Procedure Code, no procedural details or explicit powers are articulated in any statute or binding instruction.

898. Lao PDR has no freezing mechanism in place, so it cannot request or accept any MLA request related to the freezing of assets either for ML or FT.

899. The deficiencies in the physical elements of the ML offence and the fact that not all the predicate offences are criminalised may hinder MLA requests related to the investigation/prosecution of such offences. The ML offence is also not in line with the international standards. In addition, terrorism and FT are also not criminalised; as a result the scope of MLA is quite narrow or cannot be afforded on these matters.

Provision of Assistance in Timely, Constructive and Effective Manner (c. 36.1.1):

900. MOFA is the focal point for all MLA agreements on criminal matters. All MLA requests follow the diplomatic channels. Any MLA request shall be forwarded by MOFA to the concerned agency to analyze the request and to provide the reply. There is no coordination mechanism, rather, for each request a special ad-hoc committee is created. It is composed of MOFA, Ministry of Justice, Ministry of Public Security, Public Prosecutor and Court that shall decide on the subject-matter, including to accept the request and to appoint the responsible agency to execute the request. The answer shall be forwarded through diplomatic channels.

901. Due to the absence of a MLA legal framework, it is not possible to assess the range of MLA and if MLA requests are executed in a timely, constructive and effective manner or to assess the efficiency of the process.

902. The explanation of the existing system might hinder the effectiveness of rendering a MLA request. The lack of an adequate coordination mechanism also jeopardizes the provision of MLA in an effective, constructive and timely manner.

No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance (c. 36.2):

903. Article 120 states the grounds for refusal of a MLA request, as follows:

The request for judicial assistance is not in conformity with agreements that the Lao PDR has signed with foreign countries, or international conventions to which the Lao PDR is a party, or the laws of the Lao PDR.

The provision of the judicial assistance would affect the sovereignty, security or stability of the nation, or any important interest of the Lao PDR.

904. The absence of MLA requests does hinder any assessment on how Article 120 is applied or the existence of any other unreasonable or unduly restrictive conditions to afford MLA.

Efficiency of Processes (c. 36.3):

905. Lao PDR has not yet requested any MLA request founded in a bilateral, regional or multilateral agreement, or on a case-by-case basis.

906. The insufficiency of MLA requests on a case-by-case basis hampers any assessment on how MLA is in practice being handled.

Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 36.4):

907. There is no prohibition against the provision of MLA when it involves fiscal matters.

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 36.5):

908. It is not possible to assess whether MLA would be affected by existing secrecy or confidentiality laws given the absence of a MLA law or cases.

Availability of Powers of Competent Authorities (applying R.28, c. 36.6):

909. The powers of competent authorities that are available for domestic matters are also available for MLA.

Avoiding Conflicts of Jurisdiction (c. 36.7):

910. There is no mechanism in place to determining the best avenue for prosecution of defendants in cases that are subject to prosecution in more than one country.

Additional Element—Availability of Powers of Competent Authorities Required under R28 (c. 36.8):

911. Subject to the deficiencies highlighted in section 2.6 of this report, there is nothing in the Criminal Procedures Law that would prevent the application of law enforcement powers in response to a direct request from foreign law enforcement authorities.

Special Recommendation V

912. In the absence of criminalisation of terrorism or terrorist financing, the abovementioned is applicable *mutatis mutandis* to SR V.

Recommendation 37

Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):

913. As stated, the main provisions on international cooperation are set forth in Part XI of the Criminal Procedure Law and none of them mentions the requirement (principle) of dual-criminality. There is no provision on this subject-matter, which means that MLA may be afforded without the requirement of dual criminality on a case-by-case basis.

914. Nevertheless, there are some restrictions that the Criminal Procedure Law points out, namely the non-conformity with Lao PDR legislation or if the provision of the MLA would affect the sovereignty, security or stability of the nation, or any important interest of the Lao PDR. Article 4 of the *Penal Law (Application of Criminal Law outside the Territory of the Lao People's Democratic Republic)* should also be taken into consideration –

“Lao citizens who commit offences outside the territory of the Lao People's Democratic Republic shall be charged with and punished for such offences if they are defined [as offences under] the Criminal Law of the Lao People's Democratic Republic.”(underline)

915. The dual criminality principle is provided for in bilateral agreements and in the ASEAN regional agreement.

916. There is no concrete case to assess the existing *modus operandi*.

917. The implementation of a MLA legal framework would contribute to set up clear criteria and objective requirements on this subject-matter, as well as enhance certainty as regards internal procedures.

918. The abovementioned is applicable *mutatis mutandis* to **SR V**.

Recommendation 38

Ability to respond to Requests for Provisional Measures including Confiscation (c. 38.1):

919. As stated above, there is no comprehensive legal framework for MLA in Lao PDR, including for proceeds of crime. The provisions on international cooperation set forth in Part XI, plus the sections on provisional measures and confiscation in the Criminal Procedure Law, the MLA agreements signed by Lao PDR with foreign countries and international conventions, together with the laws of the Lao PDR, constitute the existing framework for MLA relating to proceeds of crime.

920. The weaknesses with the scope of covered property, proceeds of crime and instrumentalities for ML, TF and predicates, as discussed at Recommendation 3, applies equally to Recommendation 38.

Property of Corresponding Value (c. 38.2):

921. There is no clear provision for equal value confiscation.

Coordination of Seizure and Confiscation Actions (c. 38.3):

922. There are no arrangements for coordinating seizures with other countries.

Asset Forfeiture Fund (c. 38.4):

923. The authorities have not considered establishing an asset forfeiture fund.

Sharing of Confiscated Assets (c. 38.5):

924. There is no MLA legal framework or cases addressing this issue. There has been also no consideration of authorising the sharing of confiscated assets with other countries when confiscation is a directly or indirectly a result of co-coordinated law enforcement actions.

Additional Element (R 38.6) – Recognition of Foreign Orders

925. The abovementioned is applicable *mutatis mutandis* to **SR V**.

Effectiveness

926. There are no statistics of any outgoing or incoming requests for mutual legal assistance involving Lao PDR. The lack of MLA legislation and procedures undermines effectiveness.

927. Due to absence of a MLA legal framework, MLA shall be afforded or requested on a case-by-case basis. Since there is no concrete case to assess the existing *modus operandi*, it is not possible to assess the range of MLA and if MLA requests, including in relation to asset tracing and freezing, are executed in a timely, constructive and effective manner or to assess the efficiency of the process.

928. There is also no coordination mechanism or criteria or any procedural provisions on how any MLA request shall be carried out. Such absence hinders the provision of MLA in an effective, constructive and timely manner

929. Lao PDR cannot afford MLA on terrorism matters neither to freeze the assets of ML or FT since there is no freezing mechanism. The fact that not all predicate offences are criminalised also undermines the provision of MLA on criminal matters.

6.3.2. Recommendations and Comments

930. Lao PDR should establish a comprehensive MLA legal framework on criminal matters, including:

Recommendation 36/SRV

- criteria to grant or refuse assistance;
- types and forms of assistance;
- a quick and efficient mechanism to provide timely responses;
- a coordination entity for MLA requests (central authority);

- focal points/liaison officers for MLA matters in all the relevant agencies;
- freezing procedures and special investigative techniques;

Recommendation 37/SRV

- adopt provisions allowing for non -compulsory assistance in the absence of dual criminality;

Recommendation 38/SRV

- laws and procedures to provide MLA related to freezing;
- provision for equal value confiscation; and
- arrangements for coordinating seizure and confiscation actions with other countries;

931. Lao PDR should consider:

- sharing of the proceeds of crimes with other countries; and
- establishing an assets forfeiture fund.

932. Lao PDR should also consider establishing a comprehensive statistical data system that will allow assessing the effectiveness of the system in place.

6.3.3. Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	NC	<ul style="list-style-type: none"> • Deficiencies with the ML offence would undermine the scope of available MLA. • Terrorism and FT are not criminalised. • No MLA legal framework or clear criteria, substantive or procedural provisions on how to conduct any MLA request. • Lack of MLA bilateral and/or regional agreements. • There is no statistical data to assess the effectiveness of the existing system.
R.37	PC	<ul style="list-style-type: none"> • There are some restrictions on dual criminality in the Criminal Procedure Law and bilateral agreements. • There is no statistical data to assess the effectiveness of the existing system.
R.38	NC	<ul style="list-style-type: none"> • No MLA legal framework and clear criteria, substantive or procedural provisions on how to conduct any MLA request in an effective and timely manner. • Absence of a freezing mechanism. • No clear provision for equal value confiscation. • No arrangements for coordinating seizures with other countries. • There is no statistical data to assess the effectiveness of the existing

		system.
SR.V	NC	<ul style="list-style-type: none"> • Terrorism, including FT, is not a criminal offence. • No MLA legal framework. • Absence of a freezing mechanism hinders any MLA on freezing. • There are no clear criteria, substantive or procedural provisions on how to conduct any MLA request. • There is no statistical data to assess the effectiveness of the existing system.

6.4. Extradition (R.37, 39, SR.V)

6.4.1. Description and Analysis

Legal Framework:

933. There is no extradition regime in place in Lao PDR. The only provision of the Criminal Procedure Law that mentions extradition is Article 119, paragraph 2, by stating that extradition can be afforded. Extradition can be afforded on a case-by-case basis, following the general principles established in Articles 117 to 120 of the same Law. In other words, extradition may be refused on the grounds of Article 120, whenever it would affect the sovereignty, security or stability of the nation or any important interest of the Lao PDR.

934. There are a number of provisions on extradition in the bilateral, regional and multilateral agreements signed by Lao PDR; however there is no extradition regime or any concrete case on the subject-matter.

935. The Lao PDR signed five bilateral extradition treaties, namely with Vietnam, China, Thailand, Cambodia and Democratic People's Republic of Korea.

936. Although there is no specific dual-criminality requirement in Lao PDR, bilateral agreements signed by Lao PDR establish such a principle as a requirement for extraditable offences.

937. One cannot affirm that the extradition of nationals can be afforded in the absence of an extradition regime. In fact, all bilateral agreements signed by Lao PDR state that Parties may refuse extradite its own nationals, which is the general rule in legal cooperation in criminal matters. Lao PDR authorities reaffirmed that nationals would not be extradited on the grounds of Article 120 of the Criminal Procedure Law without prejudice of being prosecuted under Lao PDR law.

938. The fact that there is no concrete case makes it difficult to assess the existing *modus operandi*.

939. The implementation of an extradition regime would provide certainty and efficiency while providing clear and objective criteria to grant or refuse extradition as well as the rules on internal procedures.

940. Terrorism, including FT, is not an extraditable offence since it is not criminalised. Not all ML predicate offences are extraditable offences.

941. The abovementioned is applicable *mutatis mutandis* to **SR V**.

Effectiveness

942. According to the on-site visit, there was only two cases of transferred of sentenced persons from Lao PDR to the UK. Further details of these cases were not provided, except that this was not related to ML.

6.4.2. Recommendations and Comments

943. Lao PDR should establish an extradition regime with the essential criteria to grant or refuse extradition, as well as the respective procedural rules and domestic prosecution in lieu of extradition of own nationals. It should also consider setting up a coordination entity to deal with extradition matters.

6.4.3. Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	NC	<ul style="list-style-type: none"> • Gaps in the ML offence would impede the basis for extradition. • There is no extradition regime. • There are no substantive criteria or procedural rules in place, including in relation to the principle of dual-criminality. • No procedure for domestic prosecution in lieu of extraditing own nationals. • Not all ML predicate offences are extraditable offences. • There is no statistical data to assess the effectiveness of the existing system.
R.37	PC	<ul style="list-style-type: none"> • There are some restrictions on dual criminality in the Criminal Procedures Code. • There is no statistical data to assess the effectiveness of the existing system.
SR.V	NC	<ul style="list-style-type: none"> • There is no extradition regime. • Terrorism, including FT, is not a criminal offence. • There are no substantive criteria or procedural rules in place, including in relation to the principle of dual-criminality. • Terrorism and FT are not extraditable offences. • There is no statistical data to assess the effectiveness of the existing system.

6.5. Other Forms of International Co-Operation (R.40 & SR.V)

6.5.1. Description and Analysis

Legal Framework:

944. Section IV in AML Decree 55 establishes a set of provisions on international cooperation to combat and deter ML (Articles 28-31). However, the wording of this section limits the agencies/ministries able to exchange information on ML to the AMLIU and the Interpol Department of the Ministry of National Security. Other agencies having a role include the Ministry of Justice and the Ministry of Foreign Affairs, but in the context of negotiating treaties and agreements under MLA. There is no mention of other designated AML supervisory authorities i.e. Ministry of Finance, Ministry of Commerce and the Securities and Exchange Commission. The current system does not provide gateways for direct exchanges with foreign counterparts for ML, but indirectly through the two designated agencies.

945. Given the comments under Recommendation 26, that the AMLIU cannot disseminate information without reference to BOL senior management and the need to consult with the Ministry of Foreign Affairs, these (i.e. Articles 28-29 of Decree 55) add additional restrictions on the limited gateway available for international information exchange outside of MLA.

946. There is no clear gateway for information exchange on FT.

AMLIU

947. As noted previously, AMLIU is mentioned as one of the two lead agencies in the exchange of information under Article 29 of AML Decree 55, in addition to FIU specific information exchange under Article 27 of the same AML Decree 55. There is no restriction on the type of information that AMLIU might potentially exchange, and could include supervisory information from financial and DNFBP sectors, should such information become available. Information on ML may be exchanged as long as they, “*shall be kept confidential and the usage of which shall be controlled*”, (Article 27, paragraph 2). There is no mention of restriction based solely on fiscal matters.

948. So far, AMLIU has not signed any MOU with other countries. The BOL is planning to sign a MOU with the State Bank of Vietnam to facilitate the exchange of information between the two FIUs. The Governor of the BOL, however, can give his discretion on a case-by-case basis to accede to a request from foreign FIUs in the absence of a written agreement. AMLIU has provided assistance on one occasion - to the Vietnamese FIU under such a policy.

949. AMLIU, as noted under Recommendation 26, have some measures in place to protect the confidentiality of information received.

Other Supervisory Authorities

950. AML Decree 55 provides for the exchange of information on ML through only one supervisory agency, namely AMLIU, although the BOL as the mother agency is also able to exchange information. However, while the AMLIU/BOL is the designated supervisory agency for most financial sectors, it does not cover the insurance sector and the emerging securities sector, or any of the DNFBP sectors. However, information can be exchanged indirectly by these agencies through AMLIU.

951. The Law on Commercial Banks, in Article 9 on International Cooperation, provides broad provisions for the Lao PDR to exchange information in order to strengthen the banking system in the country. There is no confidentiality restriction in this law in terms of exchange of information by the BOL, although there are restrictions on disclosing information for personal gain.

952. There has been no exchange of information by supervisory authorities on ML. There is an agreement between the BOL and the Vietnam State Bank on the exchange of information.

953. The Ministry of Finance has exchanged prudential information on the insurance sector with ASEAN counterparts and with International Association of Insurance Supervisors.

Economic Police

954. The gateway for information exchange is through the Interpol Department in the Ministry of National Security.

955. There has been no exchange of information on ML to verify the effectiveness of such arrangements. However, the police has been active in bilateral and regional cooperation with its neighbours on key predicate offences through the following mechanisms/channels such as:

- Association of National Police Forces of the ASEAN Region (ASEANAPOL): The Lao PDR is a member of this ASEAN group that aims, among its various objectives, to enhance regional cooperation and information exchange on transnational crime.
- Vietnam, Laos and Cambodia Public Security Ministries: This is a sub-regional grouping of the three public security ministries with the aim to share experience and information about crime prevention and control and coordination.
- Lao PDR-Thailand Bilateral Meeting on Drug Law Enforcement Cooperation. There are yearly-bilateral meeting on drug law enforcement and the two jurisdictions would take turns to host.
- Lao PDR –China: The Agreement, signed in 2010 between the two public security ministries, aims to enhance the cooperation on public security at local and central levels, information exchange, law enforcement, settlement of lawsuits, repatriation of illegal immigrants, extradition, narcotic suppression, countering illegal resettlement, human trafficking, cheating through telecom channel, fake banknote smuggling, prevention of terrorism, and immigration control.
- Lao PDR – China's Yunnan Province: The drug police in Yunnan are authorised by the China Ministry of Public Security to cooperate closely with their Lao counterparts. Since 1997, the drug police in Yunnan have worked with the local police in the Lao PDR, and succeeded in solving many cases of cross-border drug crimes.

956. There were no statistics provided to the assessment team on the exchange of information under the above mechanisms.

Customs

957. Article 9 of Customs Law states that, *“The government extends and promotes international cooperation on customs work on the basis of respect for each other’s sovereignty and mutual benefit in order to develop the customs sector such as exchange of experience on technical matters, human resource development, exchange of information, facilitating trade and others in accordance with international treaties and conventions that the Lao PDR has signed or become a party to”*.

958. The Lao Customs Department is a member of ASEAN Customs Cooperation Framework. This framework allows for the exchange of information on the prevention and repression of smuggling, trafficking of narcotics and psychotropic substances, and other customs frauds. It includes also identified contact points among all 10 ASEAN custom authorities.

International Cooperation under SR V

959. There is no legal gateway provided for the exchange of information on FT because the latter has not been criminalised.

Additional elements

960. The provisions in AML Decree 55 does not allow for direct bilateral exchange with non counterparts, although as noted, with the exception of AMLIU and the Lao Interpol Department, all information exchange is conducted indirectly through AMLIU or the Interpol Department.

961. As indicated, there has only been one information exchange and Lao authorities explained that Vietnam disclosed the purpose of the request and the originator's details were provided.

962. AMLIU role as a gateway for information exchange would indicate that it can obtain information from another competent authority in response to a foreign FIU request.

Statistics (applying R.32):

963. There has been only one case of information exchange by AMLIU with the Vietnam FIU.

6.5.2. Recommendations and Comments

964. It is difficult to determine how the current arrangements would impact on the ability to provide assistance in a rapid, constructive and effective manner, since there has been only one case of information exchange related to ML i.e. with Vietnam. Prima facie, however, the inability to exchange ML information directly with foreign counterparts, except by AMLIU and the Interpol Department, could impact adversely on information exchange in areas where the two designated agencies do not have operational responsibilities.

965. The Lao PDR should provide direct gateways for information exchange on ML and FT outside of the MLA process for all relevant Lao government agencies, including the Ministry of Finance, State Securities Commission, Ministry of Justice, Ministry of Trade and Commerce, Ministry of Foreign Affairs, and Customs.

6.5.3. Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relative to s.6.5 underlying overall rating
R.40	NC	<ul style="list-style-type: none"> • No clear gateway for information exchange on FT. • No legal gateway for the direct exchange of ML information with foreign counterparts except for AMLIU and the Interpol Department. • Current arrangements do not allow for rapid prompt, constructive and effective information exchange. • AMLIU has not established any mechanism for information exchange and only one case of FIU information exchange.
SR.V	NC	<ul style="list-style-type: none"> • No legal basis for the FIU and other competent authorities to exchange information with foreign counterparts in relation to FT.

7. OTHER ISSUES

7.1. Resources and Statistics

966. There are sufficient resources in terms of actual staff numbers allocated at the FIU, law enforcement, prosecution and supervisory level for the banking sector, although if implementation of the required measures progresses, additional resources would be required. The issue with resources is less with actual numbers than the required competency and application. Overall, there seems to be a lack of technical expertise and understanding at all levels on AML/CFT.

967. There are negligible resources devoted to AML/CFT supervision outside of the banking sector and for DNFBPs, even though there are designated agencies.

968. Additionally, as also noted in this document, while resources may be considered adequate, the technical expertise required to assess any AML obligations is lacking and requires immediate attention by competent authorities.

	Rating	Summary of factors underlying rating
R.30	NC	<ul style="list-style-type: none"> • AMLIU lacks the adequate skill and resource in conducting STR analysis. • Lack of application of resources to actual ML investigation. • Doubts concerning financial investigation skill No allocation of staffing resources to traditional border crossings. • No demonstrated AML knowledge in evidence. • Unable to assess AML resource requirement due to lack of supervision activity.
R.32	NC	<ul style="list-style-type: none"> • Lack of statistics to demonstrate implementation.

7.2. Other relevant AML/CFT Measures or Issues

969. The AML/CFT efforts are essentially managed by operational level officials. There seems to be a gap in ministerial level leadership or sponsorship of the requirements associated with meeting the FATF Recommendations. There has been some support, albeit it had a long gestation period, with the allocation of dedicated office, staff and equipment for the AMLIU. However, this is one of many milestones, which will require ministerial level support, not just in terms of resources, but providing the political will and underpinning needed to bring the AML/CFT regime in the Lao PDR into compliance with international standards.

970. There has been extensive training and capacity building provided to the lead AML/CFT agency in the Lao PDR. However, there has been a lack of practical application of the knowledge acquired from such capacity building events supported by international providers. The reasons for this are not clear, although the lack of a performance mandate on operational staff could be one factor, both internally within the Lao PDR system and by technical assistance providers.

971. There is a need for continued capacity building, particularly for law enforcement and prosecutors that have received relatively little training to date. Overall, training needs to be linked to some form of tangible application, otherwise knowledge remains theoretical and not applied.

7.3. General Framework for AML/CFT System (see also section 1.1)

972. The assessment team found inconsistencies and lack of structure in the laws, regulations and other instruments. While the Lao PDR is probably not a litigious society, these inconsistencies and a lack of clear structure, could potentially pose problems or ambiguity when attempting to apply requirements enunciated in various instruments pertinent to AML/CFT.

Table 1. Ratings of Compliance with FATF Recommendations

Forty Recommendations	Rating	Summary of factors underlying rating ⁴
Legal systems		
1. ML offense	PC	<ul style="list-style-type: none"> • Absence of comprehensive ML offence. • The ML offence provided for in Article 64 of the Penal Law is not consistent with all the required elements of the Vienna and Palermo Conventions. • No clear definition of property, assets and proceeds of crime. • Not all the predicate offences are punished under the criminal legislation of Lao PDR or provided for as predicate offences for ML, such as organised crime, terrorism and terrorism financing and insider trading. • Lack of clarity on the extraterritoriality of the predicate offences. • Lack of coverage of ancillary offences. • There are no statistics to show effectiveness of the existing system.
2. ML offense—mental element and corporate liability	PC	<ul style="list-style-type: none"> • Legal persons are not criminally liable and no effective administrative sanctions. • Sanctions provided for natural persons are not dissuasive and proportionate to the seriousness of the offence. • There are no statistics to assess effectiveness of the existing system.
3. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> • The gaps in the scope of coverage of the ML offence and absence of TF offence undermine the scope of confiscation. • Inconsistent definitions of property mean it is uncertain if instrumentalities used or to intend to be used for ML as well as property of corresponding value can be confiscated. • Lack of a freezing mechanism/procedure, including for ex parte.

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

		<ul style="list-style-type: none"> • There is no data to demonstrate effectiveness of the existing system.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	LC	<ul style="list-style-type: none"> • Article 35 in Law on Commercial Banks inhibits sharing of information between financial institutions where this is required under R.7, R.9 and SR.VII. • Lack of statistics demonstrating access to information by competent authorities.
5. Customer due diligence	NC	<ul style="list-style-type: none"> • Financial institutions are not explicitly prohibited by law or regulation from opening or maintaining anonymous accounts, or accounts in fictitious names. • Financial institutions are not required to conduct CDD when carrying out occasional or one-off transactions, including wire transfers, when above the applicable designated threshold. • The thresholds for occasional transaction and wire transfer are not designated yet. • Financial institutions are not required to conduct CDD measures when there is suspicion of ML or FT. • There is no legal requirement to undertake CDD measures when the bank has reasonable doubts about the veracity of previously obtained customer's identification. • There is no explicit requirement for financial institutions to verify a customer's identity to using reliable, independence source documents, data or information. • There is no requirement to identify customers who are legal persons. • No requirement for financial institutions to identify any person said to be acting on behalf of another person if so authorised. • No requirement to verify the identity of any person acting on behalf of another person. • No requirement to identify beneficial ownership. • There is no legal requirement for the reporting institutions to obtain information on the purpose and intended nature of the business relationship.

		<ul style="list-style-type: none"> • No legislative or other enforceable means to require enhanced due diligence for higher risk categories of customer business relationship or transaction. • No ongoing due diligence obligations. • No specific requirement to ensure CDD is kept up to date. • No legislation requiring the termination of a business relationship where certain criteria have not been applied. • No specific legislative requirement for financial institutions to apply CDD requirements on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times. • There is no legal requirement specifying the timing of CDD verification. for customers. • No AML inspections conducted to gauge effectiveness of implementation of AML Decree 55.
6. Politically exposed persons	NC	<ul style="list-style-type: none"> • There is no legislative, regulatory or other enforceable requirement in respect of politically exposed persons.
7. Correspondent banking	NC	<ul style="list-style-type: none"> • There is no specific legal requirement or enforceable mean that address the requirement on cross border correspondent banking relationships.
8. New technologies & non face-to-face business	NC	<ul style="list-style-type: none"> • Lao PDR does not have specific legislation or requirement in relation to the misuse of technological developments in ML or FT, or to address any specific risks associated with non face-to-face transactions.
9. Third parties and introducers	NA	
10. Record-keeping	PC	<ul style="list-style-type: none"> • The legal obligations relating to record keeping are limited to transaction records for banks only and do not apply to NBFIs. • No requirement for maintenance of records of identification data, account files and business correspondence. • No requirement for maintenance of records after

		<p>termination of business relationship.</p> <ul style="list-style-type: none"> • There is no requirement for information to be provided to competent authorities on a timely basis. • It is not clear that effective implementation of the few obligations in the banking sector have been confirmed through supervision.
11. Unusual transactions	NC	<ul style="list-style-type: none"> • There is no enforceable requirement for financial institutions to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, and to examine and make available findings to help competent authorities and auditors. • There is no requirement to keep such findings available to competent authorities and auditors for at least five years.
12. DNFBP–R.5, 6, 8–11	NC	<ul style="list-style-type: none"> • Deficiencies in FATF Recommendations 5, 6 and 8-11 are also applicable to DNFBPs. • Not all DNFBPs are covered in AML Decree 55. • No implementation of AML Decree 55 in DNFBP sectors.
13. Suspicious transaction reporting	NC	<ul style="list-style-type: none"> • Scope of ML Offense is incomplete which limits the scope of reporting. • Coverage of reporting parties is narrowed by the non-inclusion of Lao legal persons. • Not all financial institutions are subject to STR reporting requirements. • No mandatory requirement for “attempted transactions”. • No requirement for STR reporting on terrorist financing. • Confusing reference to a possible monetary threshold for STR reporting may undermine effectiveness. • Low STR numbers and limited range of institutions demonstrates ineffective implementation.
14. Protection & no tipping-off	NC	<ul style="list-style-type: none"> • There is no legal “safe harbour” protection for all parties reporting STRs in good faith. • There is no legal prohibition against “tipping

		off”.
15. Internal controls, compliance & audit	NC	<ul style="list-style-type: none"> • No requirement in law, regulation or OEM requiring internal controls consistent with the FATF standards (Decree 55 is neither regulation nor OEM). • No specific requirement for timely access to information. • Level of compliance officer not covered in AML Decree 55 nor supported by any other OEM. • No guarantee of independence of audit and compliance officer function. • No specific obligations in legislation and guidelines for ongoing training. • No requirement for screening of personnel to a high standard.
16. DNFBP–R.13–15 & 21	NC	<ul style="list-style-type: none"> • The deficiencies identified with regard to Recommendations 13 to 15, and 21; and SR.IV apply equally to DNFBPs. • Not all DNFBPs are covered in within the scope of AML Decree 55. • No implementation of the AML Decree 55.
17. Sanctions	NC	<ul style="list-style-type: none"> • Lack of effective, proportionate and dissuasive criminal, civil or administrative sanctions i.e. sanctions only for STR violation and do not apply to all legal persons. • No designated authority to apply sanctions for the securities sector and possible scope restriction on Lao legal entities. • No sanctions available for directors and senior management. • The range of sanctions is neither broad nor proportionate.
18. Shell banks	NC	<ul style="list-style-type: none"> • There is no clear legal requirement prohibiting the establishment of shell banks. • No specific legislative requirement restricting financial institutions from entering into or continue correspondent banking relationships with shell banks. • No legislative requirement for financial

		institutions to satisfy themselves that their respondent banks are not dealing with shell banks.
19. Other forms of reporting	C	
20. Other DNFBP & secure transaction techniques	PC	<ul style="list-style-type: none"> The authorities have not taken sufficient measures to reduce the use of cash and develop modern and secure techniques to address the risk of money laundering and terrorist financing.
21. Special attention for higher risk countries	NC	<ul style="list-style-type: none"> There is no requirement for reporting institutions to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries that do not or insufficiently apply the FATF Recommendations. There is no requirement for financial institutions to examine the background and purpose of financial transactions, and document and make available written findings to assist competent authorities. There is no mechanism or legal basis for the competent authority to apply appropriate counter measures.
22. Foreign branches & subsidiaries	NC	<ul style="list-style-type: none"> No binding requirements for control of foreign branches and subsidiaries in keeping with the FATF standards. No requirement for financial institutions to inform their home country supervisors when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local requirements.
23. Regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> No designation of a competent authority(s) for FT as the latter is not criminalized. No formal designation of AML supervisor for the securities sector. Potential scope issues with Lao legal persons. Legal and regulatory measures are deficient to prevent criminals from holding management positions or controlling interest in financial institutions e.g. no beneficial ownership requirements, source of funds not investigated. Measures that apply for prudential purposes are not being applied in a similar manner for

		<p>AML/CFT purposes.</p> <ul style="list-style-type: none"> • Lack of a clear legal definition of MVT and supervisory framework for non bank providers. • Lack of effective implementation due to no AML supervision.
24. DNFBP—regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> • No comprehensive AML/CFT regulatory and supervisory regime for casinos. • No clear procedures to prevent criminals or associates from being beneficial owners of casinos. • No designated DNFBP supervisor i.e. restriction within AML Decree 55 at Article 2.3 concerning supervising ministries excludes all DNFBP responsible ministries. • The deficiencies identified in section 3.10 of this report in relation to the range of sanctions available to deal with breaches of AML/CFT requirements also applies to DNFBP sector. • No implementation of Decree 55 to DNFBP sector.
25. Guidelines & Feedback	NC	<ul style="list-style-type: none"> • Guidance produced is limited to the banking sector with no consideration as to how this can apply to other financial institutions. • Guidance is very broad and high level. • Feedback limited to the acknowledgement of STR receipt. • No FT guidance. • Lack of detailed and sector specific guidance appropriate to the country. • No guidelines issued in DNFBP sector. • Lack of implementation generally.
26. The FIU	NC	<ul style="list-style-type: none"> • No legal basis to receive and disseminate STR on FT. • There is no STR analysis procedure. • STR analysis is limited to information contained in other STR reports and information from other competent authorities and open sources are not

		<p>used.</p> <ul style="list-style-type: none"> • No STR dissemination. • Lack of STR guidance to non-bank reporting institutions and awareness raising among all reporting institutions. • No typology report and trend analysis have been published. • AMLIU lacks sufficient operational independence. • Lack of effective implementation.
27. Law enforcement authorities	PC	<ul style="list-style-type: none"> • No formal designation of a law enforcement authority responsible for FT investigation. • Lack of coordination between the designated ML investigation unit and other departments in the Police. • Lack of effective implementation as there is no confirmed case of ML investigation.
28. Powers of competent authorities	LC	<ul style="list-style-type: none"> • There is a lack of effective implementation of available powers as demonstrated by a lack of statistics on investigation and prosecution.
29. Supervisors	NC	<ul style="list-style-type: none"> • No FT powers. • Potential restriction of powers for competent authorities (Article 2.3 of AML Decree 55). • Uncertainties about powers of supervisory authorities to compel production of records, or to obtain access to all records, documents or information relevant to monitoring compliance. • Securities and Exchange Commission does not have designated powers in respect of AML/CFT. • Lack of effective implementation as powers have not been used.
30. Resources, integrity, and training	NC	<ul style="list-style-type: none"> • AMLIU lacks the adequate skill and resource in conducting STR analysis. • Lack of application of resources to actual ML investigation. • Doubts concerning financial investigation skill. • No allocation of staffing resources to traditional border crossings.

		<ul style="list-style-type: none"> • No demonstrated AML knowledge in evidence. • Unable to assess AML resource requirement due to lack of supervision activity.
31. National co-operation	NC	<ul style="list-style-type: none"> • Absence of high level policy coordination and direction. • Lack of effective operational coordination to progress AML/CFT requirements, including AML Decree 55 mandate.
32. Statistics	NC	<ul style="list-style-type: none"> • No comprehensive framework for maintaining statistics. • Lack of statistics to demonstrate implementation.
33. Legal persons–beneficial owners	NC	<ul style="list-style-type: none"> • No mechanism such as guidelines or instructions to reduce ML and FT risks, and in particular to explicitly cover identification and control of legal persons/ beneficial ownership. • Lack of information on beneficial ownership and the persons who control the information. • Bearer shares hinder the ability to assess who is the beneficial owner. • Effective implementation could not be ascertained.
34. Legal arrangements – beneficial owners	N/A	<ul style="list-style-type: none"> • Recommendation 34 is not applicable in Lao PDR context.
International Cooperation		
35. Conventions	PC	<p>Vienna and Palermo conventions are not fully implemented at several levels, including:</p> <ul style="list-style-type: none"> • no comprehensive AML/CFT legal framework; • ML offence not consistent with the Vienna and Palermo Conventions; • lack of enforceability of the existing system; • no MLA legal framework; • no freezing provisions and procedures for MLA; • lack of efficient measures to identify customers in whose interests accounts are open; • lack of dissemination, coordination and awareness among stakeholders of the ML offence and preventive measures; and • CFT Convention not yet implemented.

36. Mutual legal assistance (MLA)	NC	<ul style="list-style-type: none"> • Deficiencies with the ML offence would undermine the scope of available MLA. • Terrorism and FT are not criminalised. • No MLA legal framework or clear criteria, substantive or procedural provisions on how to conduct any MLA request. • Lack of MLA bilateral and/or regional agreements. • There is no statistical data to assess the effectiveness of the existing system.
37. Dual criminality	PC	<ul style="list-style-type: none"> • There are some restrictions on dual criminality in the Criminal Procedure Law and bilateral agreements. • There is no statistical data to assess the effectiveness of the existing system.
38. MLA on confiscation and freezing	NC	<ul style="list-style-type: none"> • No MLA legal framework and clear criteria, substantive or procedural provisions on how to conduct any MLA request in an effective and timely manner. • Absence of a freezing mechanism. • No clear provision for equal value confiscation. • No arrangements for coordinating seizures with other countries. • There is no statistical data to assess the effectiveness of the existing system.
39. Extradition	NC	<ul style="list-style-type: none"> • Gaps in the ML offence would impede the basis for extradition. • There is no extradition regime. • There are no substantive criteria or procedural rules in place, including in relation to the principle of dual-criminality. • No procedure for domestic prosecution in lieu of extraditing own nationals. • Not all ML predicate offences are extraditable offences. • There is no statistic data to assess effectiveness of the existing system.
40. Other forms of co-operation	NC	<ul style="list-style-type: none"> • No clear gateway for information exchange on FT. • No legal gateway for the direct exchange of ML

		<p>information with foreign counterparts except for AMLIU and the Interpol Department.</p> <ul style="list-style-type: none"> • Current arrangements do not allow for rapid prompt, constructive and effective information exchange. • AMLIU has not established any mechanism for information exchange and only one case of FIU information exchange.
Nine Special Recommendations		
SR.I Implement UN instruments	NC	<ul style="list-style-type: none"> • CFT Convention has not yet been implemented. • Terrorism and FT are not criminalised. • UNSCRs 1267 (1999) and 1373 (2001) have not been implemented yet. • There are no freezing mechanism and procedures in place. • There is no MLA legal framework. • There is lack of dissemination, coordination and awareness among stakeholders of the FT offence and preventive measures.
SR.II Criminalise terrorist financing	NC	<ul style="list-style-type: none"> • Lao PDR has not criminalised FT in accordance with the international law and international standards (i.e. SR.II).
SR.III Freeze and confiscate terrorist assets	NC	<ul style="list-style-type: none"> • The lack of criminalisation of terrorism and FT means that freezing and confiscation is not available in relation to those offences. • Absence of laws and effective procedures to freeze funds and other assets without delay and prior notice to the designated persons involved as required under UNSCRs. • Absence of a freezing mechanism and procedures (including associated measures such as communicating to financial sector, unfreezing, authorising access and protecting bona fide third parties). • Lack of coordination among the concerned agencies as regards to implementing UNSCR 1267. • Effectiveness of the existing system cannot be demonstrated.
SR.IV Suspicious transaction reporting	NC	<ul style="list-style-type: none"> • No requirement to provide STR on terrorist financing as the latter is not criminalised in the Lao PDR.

SR.V International cooperation	NC	<ul style="list-style-type: none"> • Terrorism, including FT, is not a criminal offence. • No MLA legal framework. • Absence of a freezing mechanism hinders any MLA on freezing. • There are no clear criteria, substantive or procedural provisions on how to conduct any MLA request. • There is no statistical data to assess the effectiveness of the existing system. • There is no extradition regime. • Terrorism, including FT, is not a criminal offence. • There are no substantive criteria or procedural rules in place, including in relation to the principle of dual-criminality. • Terrorism and FT are not extraditable offences. • There is no statistical data to assess the effectiveness of the existing system.
SR.VI AML/CFT requirements for money/value transfer services	NC	<ul style="list-style-type: none"> • BOL has not undertaken any assessment of informal networks within this jurisdiction. • Legislation opaque in reference to MVT sector. • No comprehensive licensing requirement • Deficiencies noted in <i>R.4-11, 13-15, 21-23, & SRI-IX apply to MVT sector.</i> • No AML/CFT supervision of the sector. • No legal requirement for list of agents. • Absence of an adequate range of sanctions within existing legislation that applies to breaches of the FATF standards within this high risk sector. • Lack of AML Decree 55 implementation to this sector.
SR.VII Wire transfer rules	NC	<ul style="list-style-type: none"> • No specific requirement to ensure complete originator information is included in outgoing wire transfers. • There is no requirement for the originator's account number or unique reference number if no account number exists to be included in an outgoing payment instruction. • No threshold requirements.

		<ul style="list-style-type: none"> • No legislative requirement or other enforceable means that require full originator information to accompany or be made available within the required timeframe for domestic transfers. • No specific requirements for financial institutions in the payment chain to ensure that all originator information accompanies a wire transfer. • No obligation for the beneficiary financial institution to assess incoming wire transfers that are missing complete originator information for any AML/CFT risk exposure. • There are no measures in place to effectively monitor the compliance of financial institutions with rules and regulations implementing SRVII. • No sanctions to be applied against the various obligations under SRVII.
SR.VIII Nonprofit organisations	PC	<ul style="list-style-type: none"> • No outreach to the sector on AML/CFT. • Registration requirements do not include obligations to record the details of person who own, control or direct NPOs, irrespective whether the person is an officer of the NPO. • Reporting keeping obligations not clear and do not extend beyond 5 years. • Limited monitoring due to staffing constraints. • Laws to enhance regulation of NPO sector are relatively new and effectiveness difficult to demonstrate and assess.
SR.IX Cash Border Declaration & Disclosure	NC	<ul style="list-style-type: none"> • Declaration requirement does not clearly include all bearer negotiable instruments. • No requirement for declaration via mail or cargo. • There is no cross border declaration form for incoming and departing passengers. • No provision in Customs Law that empowers customs officers in discharging their duties on declaration requirements. • Sanctions of cross-border physical transportation of currency for purposes of ML or FT and its corresponding power of confiscation are not stipulated in law. • There is no strict declaration requirement at some customs check points. • The lack of effectiveness of the current system is highlighted by the fact that no voluntary

		declaration has ever been made by passengers. <ul style="list-style-type: none"> • Lack of intelligence sharing with both local and overseas agencies.
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Table 2. Recommended Action Plan to Improve the AML/CFT System

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
1. General	
2. Legal System and Related Institutional Measures	
Criminalisation of ML (R.1, 2, & 32)	<p>Recommendation 1</p> <ul style="list-style-type: none"> • Criminalise ML in keeping with the international standards; • Amend Article 64 of the Penal Law with all the material and physical elements; • Establish a clear definition of property, assets and proceeds of crime; • Criminalise all predicate offences and include as predicate offences for ML; • Clarify the extraterritoriality of the predicate offences; • Criminalise all appropriate ancillary offences; <p>Recommendation 2</p> <ul style="list-style-type: none"> • To adopt dissuasive and proportionate criminal sanctions for natural persons; • Establish criminal liability and sanctions for legal persons; • To adopt dissuasive and proportionate administrative sanctions for natural and legal persons; • Prosecute and convict the ML offence; and • The Lao PDR should also improve the statistics by separating data related to the predicate offence and to the ML offence, and by prosecuting the ML offence.

Criminalisation of Terrorist Financing (SR.II & R.32)	<p>The Lao PDR should implement a comprehensive legal framework on counter terrorism and FT, wherein the following elements should be considered:</p> <ul style="list-style-type: none"> • Adopt and implement legislation to comprehensively criminalise FT in accordance with the international standards; • Include TF as a predicate offence for ML; • Establish extra-territoriality jurisdiction for terrorism and FT offences; • Adopt dissuasive and proportionate sanctions for natural persons for TF; • Establish the criminal liability of legal persons for TF; and • Adopt a comprehensive statistics system to assess the effectiveness of the legal system in place.
Confiscation, freezing, and seizing of proceeds of crime (R.3 & 32)	<p>Lao PDR should adopt adequate legislation and procedures to comprehensively implement SR.III.</p> <p>Lao PDR should implement communication and coordination mechanisms among the relevant agencies as well as awareness raising and training on CT and CFT measures.</p> <p>Lao PDR should adopt freezing provisions and procedures as a provisional and effective measure to fight against FT. The procedure for freezing should, among other elements:</p> <ul style="list-style-type: none"> • Stipulate legal framework for freezing terrorist funds and other assets; • Provide for the freezing of terrorist funds and assets without delay and prior notice to the designated persons involved as required under UNSCRs; • Allow cooperation with foreign counterparts in terms of giving effect, if appropriate, the actions under the freezing mechanisms of other countries; • Provide clear provision of terrorist funds and assets that can be frozen; • Establish clear mechanisms and guidance to communicate actions undertaken to the financial sector; • Specify freezing and unfreezing procedures (the latter should be publicly known); • Identify clearly the legal authority for the issuing of a freezing and unfreezing order or other instrument;

	<ul style="list-style-type: none"> • Establish an internal coordination mechanism; • Implement an effective freezing, seizing and confiscation regime in other circumstances (as described in c.III.11); • Protect the rights of <i>bona fide</i> third parties; and • Implement appropriate measures to monitor effectively compliance with relevant legislation, rules or regulations governing the obligations under SR.III, once enacted.
Freezing of funds used for terrorist financing (SR.III & R.32)	<p>Lao PDR should adopt adequate legislation and procedures to comprehensively implement SRIII.</p> <p>Lao PDR should implement communication and coordination mechanisms among the relevant agencies as well as awareness raising and training on CT and CFT measures.</p> <p>Lao PDR should adopt freezing provisions and procedures as a provisional and effective measure to fight against FT. The procedure for freezing should, among other elements:</p> <ul style="list-style-type: none"> • Stipulate legal framework for freezing terrorist funds and other assets; • Provide for the freezing of terrorist funds and assets without delay and prior notice to the designated persons involved as required under UNSCRs; • Allow cooperation with foreign counterparts in terms of giving effect, if appropriate, the actions under the freezing mechanisms of other countries; • Provide clear provision of terrorist funds and assets that can be frozen; • Establish clear mechanisms and guidance to communicate actions undertaken to the financial sector; • Specify freezing and unfreezing procedures (the latter should be publicly known); • Identify clearly the legal authority for the issuing of a freezing and unfreezing order or other instrument; • Establish an internal coordination mechanism; • Implement an effective freezing, seizing and confiscation regime in other circumstances (as described in c.III.11); • Protect the rights of <i>bona fide</i> third parties; and • Implement appropriate measures to monitor effectively compliance with relevant legislation, rules or regulations governing the obligations under SR.III, once enacted.

<p>The Financial Intelligence Unit and its functions (R.26, 30 & 32)</p>	<ul style="list-style-type: none"> • Expand the legal authority of AMLIU to include the receipt and dissemination of STR on FT once the latter has been criminalised; • Develop a strategic plan for AMLIU that sets out objectives, actions required and resources needed; • Enhance the operational independence of AMLIU within the BOL, particularly concerning the dissemination of STRs; • Raise the awareness of STR reporting among all reporting institutions; • Provide additional or sector specific STR guidelines to non-bank financial institutions; • Adopt STR analysis and processing procedures to enhance the quality of STR analysis; • Provide hands on STR analysis training to AMLIU staff; • Take a proactive approach in seeking information from other agencies and open sources to enhance STR analysis; • Coordinate or establish a formal mechanism for timely dissemination of STRs to the Economic Police Department for investigation; • Ensure data security, including backup, of FIU data; and • Increase the resources of the AMLIU by filling the two vacant positions to ensure full operation of the unit.
<p>Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)</p>	<ul style="list-style-type: none"> • The Financial Crime Investigation Division should be formally designated for FT investigation; • The Economic Police Department should take a proactive approach in pursuing ML investigation; • The Coordinating Committee should be used to enhance coordination between the Economic Police Department and other police departments in conducting investigations; • The Economic Police Department should work closely with the Office of the Supreme Public Prosecutor in any ML and FT investigation; • The Lao authorities should consider defining clearly in law the powers to (i) postpone or waive arrest of suspected persons and the seizure of money for the purpose of identifying person involved, and (ii) use of special investigative technique; • The Police and Public Prosecutor should be given additional training on ML and FT investigation to enhance

	<p>their investigation capability;</p> <ul style="list-style-type: none"> • The Financial Crime Investigation Division should be expanded; and • The Office of the Supreme Public Prosecutor should designate and establish a specialised division for ML investigation and prosecution.
Cross Border Declaration or disclosure (SR IX)	<ul style="list-style-type: none"> • Amend existing laws and regulation to introduce declaration requirements that include currency and bearer negotiable instruments and cover all cross border channels including mail and cargo streams; • Include in the declaration form provisions that refer to sanctions for violations; • Introduce systems to ensure information held by Customs is shared with AMLIU; • Amend the Customs law to stipulate clearly the powers of Customs Officers in discharging their duties, including the power of arrest & seizure and confiscation of the currency/precious metals in violation of the declaration requirement; • Amend current legislation to include sanctions for cross-border physical transportation of currency for purposes of ML or FT and the corresponding power of confiscation; • Enhance the intelligence sharing of illegal smuggling of cash/precious metals activities with both local and overseas agencies; • Implement the new declaration requirements at all check points, in particular at traditional customs check points that are vulnerable to cash smuggling activities; and • Provide more training to Customs Officers on ML/FT and techniques in detecting illegal smuggling of cash/precious metals activities.
3. Preventive Measures– Financial Institutions	
Risk of ML or terrorist financing	
Customer due diligence, including enhanced or reduced measures (R.5–8)	<p>Recommendation 5</p> <p>It is recommended that Lao PDR introduce mandatory requirements by passing specific legislation or regulation to:</p> <ul style="list-style-type: none"> • Prohibit the existence (opening or maintenance) of numbered or anonymous accounts; • Impose the applicable designated thresholds for

	<p>occasional or one –off transactions, including a de minimis threshold for wire-transfers;</p> <ul style="list-style-type: none"> • Introduce CDD requirements when there is suspicion of ML or FT; • Undertake CDD measures when the bank has reasonable doubts about the veracity of previously obtained customer’s identification; • Introduce a requirement to verify customers identity using reliable, independent source documents (whether regular or occasional); • Include expanded requirements/guidance covering how financial institutions should identify the veracity or adequacy of any previously obtained customer identification; • Include a requirement to identify the beneficial owner , and for a legal person or arrangement, the operating mind or ownership and controlled; • Include a legal requirement for the reporting institutions to obtain information on the purpose and intended nature of the business relationship; • Introduce on-going due diligence requirements; • Introduce risk based CDD measures including enhanced due diligence for higher risk customers and the capacity to apply reduced CDD for lower risk customers; • Specify the timing for verification of customers and to prohibit account opening when CDD requirements are unable to be met; • Introduce the requirement to terminate, and report an STR, on any account already activated, where relevant CDD requirements are unable to be met; • Introduce CDD requirements for existing customers on the basis of materiality and risk; and to maintain up to date information such as address; and • Introduce appropriate sanctions for violations (see Recommendation 17) <p>Recommendation 6</p> <p>It is recommended the Lao PDR introduce enforceable requirements that would require reporting entities to put in place appropriate risk management systems to:</p> <ul style="list-style-type: none"> • Determine a PEP; • Obtain senior management approval for establishing business relationships with a PEP; • Take reasonable measures to establish the source of wealth or funds of a PEP; and • Conduct enhanced ongoing monitoring on any business relationship with a PEP.
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	<p>Recommendation 7</p> <p>It is recommended that Lao PDR introduce enforceable requirements to require financial institutions to take the following measures:</p> <ul style="list-style-type: none"> • Gather information about a respondent institution's business and reputation; • Assess the respondent institution's AML/CFT controls; • Necessitate senior management approval before establishing relationships; • Document the respective responsibilities of the financial institution and its respondent institution; and • Satisfy that payable through accounts are subject to CDD requirements. <p>Recommendation 8</p> <p>It is recommended that:</p> <ul style="list-style-type: none"> • The reporting entities be required to have policies and procedures in place to prevent the misuse of technological developments in ML or FT schemes and to address any specific risks associated with non-face-to-face business relationships or transactions; and • The BOL and other supervisory authorities issue detailed and enforceable regulations on what specific CDD procedures must be applied to non-face-to-face customers.
Third parties and introduced business (R.9)	<ul style="list-style-type: none"> • No recommendation.
Financial institution secrecy or confidentiality (R.4)	<ul style="list-style-type: none"> • It is recommended that Lao authorities should lift the barriers to the sharing of information between financial institutions in relation to correspondent banking (R7), third party transactions (R.9) and wire transfer (SRVII).
Record keeping and wire transfer rules (R.10 & SR.VII)	<p>Recommendation 10</p> <p>It is recommended that Lao PDR introduce mandatory and enforceable requirements in either law or regulation to:</p> <ul style="list-style-type: none"> • Expand record keeping obligation to cover all requirements of FATF Recommendation 10, including for all designated reporting entities to maintain records of identification data, account files and business

	<p>correspondence for at least five years following the termination of an account or business relationship; and</p> <ul style="list-style-type: none"> • Ensure financial institutions make available records to competent authorities on a timely basis by indicating a clear timeframe. <p><i>Recommendation SR VII</i></p> <p>It is recommended the Lao PDR should establish enforceable requirements covering all aspects of SR.VII for reporting entities:</p> <ul style="list-style-type: none"> • Implement CDD measures prior to carrying out occasional transaction or wire-transfers above a threshold to be set by the supervisory authority (the threshold has not yet been set), • Ensure that wire transfers are accompanied by proper identification information (name and address of the originator, and where an account exists, number of that account), • Pay special attention to wire transfers that do not contain complete originator information; and to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information; • Obtain and maintain information relating to the originator of wire transfers; • Verify the identity of the originator for all wire transfers; • Require ordering financial institutions to include full originator information in the message or payment form accompanying cross-border wire transfers; • Require intermediary and beneficiary financial institutions in the payment chain of wire transfers to transmit all originator information with the transfers, or to keep a record of that information for five years if there are technical limitations to transmit any of it; • Require beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information, and to take measures such as restricting or even terminating their business relationship with financial institutions that fail to meet the SR.VII standards; and • Put measures in place to effectively monitor the compliance of ordering, intermediary or beneficiary financial institutions, and establish sanction mechanisms against non-compliance.
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<p>Monitoring of transactions and relationships (R.11 & 21)</p>	<p>It is recommended that Lao PDR should set out enforceable requirements to require financial institutions to undertake the following:</p> <p>Recommendations 11</p> <ul style="list-style-type: none"> • Pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, and to examine and make available findings to help competent authorities and auditors; • Keep such findings available to competent authorities and auditors for at least five years; <p>Recommendation 21</p> <ul style="list-style-type: none"> • Give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries that do not or insufficiently apply the FATF Recommendations; • Examine the background and purpose of financial transactions, and document and make available written findings to assist competent authorities; and • Implement countermeasures issued by the competent authority and for the latter to have the legal basis to issue such measures.
<p>Suspicious transaction reports and other reporting (R.13, 14, 19, 25, & SR.IV)</p>	<p><i>Recommendation 13 (STR Reporting)</i></p> <p>The Lao PDR should strengthen its STR reporting regime by including in either law or regulation, with enforceable sanctions, the following to address deficiencies in the current regime:</p> <ul style="list-style-type: none"> • Include a clear definition of suspicious transaction consistent with the FATF requirements; • Require reporting on all 20 FATF predicate offences (once predicate offences deficiencies have been addressed) and attempted transactions. The latter to include a definition of attempted transaction; • Include FT STR reporting, once FT is criminalised; • Ensure all financial institutions, as defined in the FATF

	<p>standards, are included as reporting institutions;</p> <ul style="list-style-type: none"> • Extend the scope and application of reporting obligations to clearly include Lao legal persons; and • Remove any reference to a possible monetary threshold for reporting STRs. <p>Lao PDR should consider placing a time bound obligation (e.g. within days or hours after forming a suspicion) for the reporting of an STR.</p> <p><i>SRIV</i></p> <p>The Lao PDR should extend the STR reporting obligation to include FT.</p> <p><i>Recommendation 14 (Protection and Tipping Off)</i></p> <ul style="list-style-type: none"> • Provide in law that no administrative, criminal or civil proceedings shall be taken against any individual or organisation that reports an STR in good faith; • Prohibit “tipping off” by law and supported by adequate sanction(s); • Remove the obligation to provide an STR to a concerned authority as currently stated in Article 11 of AML Decree 55; and • Specify the names and personal details of staff of financial institutions should be kept confidential by the FIU. <p>The Lao PDR should consider formalising the practice of not providing original STRs and to remove any reference to the names and personal details of financial institutions staff in AMLIU reports disseminated to law enforcement agencies.</p> <p>Recommendation 25 (only feedback and guidance related to STRs)</p> <p>Enhance the current general guidelines on STR reporting with a focus on sector specific needs, concepts e.g. attempted transactions and examples relevant to both jurisdiction and sector.</p> <p>The AML Working Group should review existing guidance material to ensure that it is totally relevant to this jurisdiction. Within this Working Group, each responsible ministry should develop sector specific guidance material with the assistance of</p>
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	<p>AMLIU.</p> <p>The AMLIU should issue regular (minimum half yearly is suggested) bulletins containing certain types of illegal activities identified within Lao PDR borders and how they can be identified as possible STR related transactions. This bulletin should also contain relevant statistical information that may assist financial institutions.</p> <p>Consider and implement the FATF Best Practices Guideline on providing feedback, including as part of an outreach and feedback program to encourage higher levels of STR reporting.</p> <p>AMLIU should consider introducing regular meetings with the Bankers Association and the Banks' AML Compliance Officers (AMLCO's), and Branch Anti-Money Laundering Officer (BAMLO's) to discuss the low STR levels and to provide feedback generally on AML matters.</p>
Internal controls, compliance, audit and foreign branches (R.15 & 22)	<p><i>Recommendation 15 (internal controls, compliance and audit)</i></p> <p>The following specific obligations should be included in either law, regulation or other enforceable means :</p> <ul style="list-style-type: none"> • Establish and maintain internal controls to prevent ML and FT covering CDD, record retention, the detection of unusual and suspicious transactions and reporting obligations; • Designate AML/CFT compliance officer at a managerial level; • Provide for the independence of compliance officers and timely access to CDD information, transaction records and other relevant information; • Promulgate at the board of directors and/or senior management a written AML policy covering all obligations; • Maintain an adequately resourced and independent internal audit function to test compliance; • Establish an ongoing employee training on AML/CFT matters and the need to be kept up to date on emerging ML/FT trends, as well as CDD and suspicious transaction reporting in particular. Further consideration

	<p>should also be given to making boards of directors and senior management directly responsible for this function, which should be included in their written AML policy or program; and</p> <ul style="list-style-type: none"> • Introduce rigorous employee screening procedures, such as police checks for all new employees. <p>The Lao PDR should consider including specific reference to compliance officer independence in any review of AML legislation.</p> <p><i>Recommendation 22 (Foreign Branches and Subsidiaries)</i></p> <p>Lao PDR should include the following R.22 requirements in either law or regulation:</p> <ul style="list-style-type: none"> • Lao financial institutions' branches and subsidiaries should be required to observe AML/CFT measures consistent with Lao PDR requirements and the FATF Recommendations, to the extent that local (i.e. host country) laws and regulations permit; • Lao financial institutions should be required to pay particular attention that this principle is observed with respect to their branches and subsidiaries in countries that do not or insufficiently apply the FATF Recommendations; • The higher standard of AML/CFT laws should apply when there is a difference between the standards of the Lao PDR and host jurisdiction, to the extent the host country laws and regulations permit; and • Lao financial institutions should be required to inform the BOL when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures in the host country because this is prohibited by the host country's laws, regulation or other measures. The Lao PDR should consider that such a report be provided to the BOL within seven day of receipt. <p>The Lao PDR should consider that any financial institution subject to the Core principles should be required to apply consistent CDD measures at group level, taking into account the activity of the customer with the various branches and majority owned subsidiaries worldwide.</p>
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Shell banks (R.18)	<p>Lao PDR should undertake the following measures:</p> <ul style="list-style-type: none"> • Take action to amend or remove Article 60 in the Law on Commercial Bank or issue appropriate guidance to clarify the objective of this article; • Restrict financial institutions operating in Lao PDR from entering into or continuing correspondent banking relationships with a shell bank; and • Require financial institutions operating in Lao PDR to satisfy themselves that their respondent banks in a foreign country do not allow their accounts to be accessed by a shell bank.
<p>The supervisory and oversight system—competent authorities and SROs</p> <p>Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 25, & 32)</p>	<p>The Lao PDR should undertake the following measures to enhance its supervisory regime and rectify the identified deficiencies:</p> <p>Recommendation 23</p> <ul style="list-style-type: none"> • Designate clearly and unambiguously the Securities and Exchange Commission as an AML/CFT supervisor. • Make clear the scope of designated supervisors in respect of Lao legal persons. • Expand the scope of AML supervisors to include FT once the latter has been criminalised. • Commence a program of risk based AML on-site inspections to ensure financial institutions are complying with AML requirements. • Amend appropriate laws or issue binding regulations to specifically request information on the origin of the funds used to pay the capital of a bank/financial institution by controlling shareholders and include specific beneficial ownership disclosure requirements. • Amend appropriate laws or regulations to include a clear definition of MVT providers. • Should consider introducing fit and proper test requirements for all financial institutions i.e. insurance and securities and

	<p>ensure that they are extended to the board of directors in all cases.</p> <ul style="list-style-type: none"> • Should consider conducting AML inspections simultaneously with periodic/prudential inspections; and in the initial phase of building appropriate AML supervisory skills, consideration should also be given to themed AML inspections such as a focus on CDD for example. The initial focus should be within the commercial banking sector in order to provide a sound framework for extension to other high risk sectors. • Should consider expanding the scope of the prudential supervision within the BOL to include AML supervision in the future, while noting that this approach is outside of current strategy. The benefits of this consideration are a blending of the existing Supervision Department program and structured approach, together with general regulatory expertise to supervision with the knowledge base that AMLIU can provide to the Bank of Lao Supervision Department assessors. The net result being an expansion of overall AML knowledge within this jurisdiction in one of its prime high risk sectors. • Should consider conducting own (BOL) due diligence on beneficial ownership for bank licensing, rather than relying on the Ministry for Planning and Investment processes. Consideration could also be given to extending this approach to foreign police checks as well. <p>Recommendation 30</p> <ul style="list-style-type: none"> • Undertake extensive capacity-building for human and other technical resources to ensure that personnel charged with monitoring AML compliance are equipped with necessary technical skills and knowledge. • Develop a staffing strategy to ensure adequate staffing levels to achieve expected supervisory oversight. <p>Recommendations 25</p> <ul style="list-style-type: none"> • Develop more detailed and specific guidance material, but with a focus in the short term on the commercial banking sector in order to lay a sound AML foundation that can then be extended to other sectors on a gradual and measured basis. • Develop appropriate guidance in relation to FT, specific to
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	<p>each sector, once relevant FT legislation is adopted.</p> <p>Recommendation 29</p> <ul style="list-style-type: none"> • Clarify the restriction of supervising organisations at Article 2.3 of Decree 55. • Clarify what legal amendments are necessary to sectoral legislation to ensure Decree 55 can legally be extended beyond entities regulated by the BOL, including but not limited to any regulatory oversight. <p>Recommendation 17</p> <ul style="list-style-type: none"> • Introduce effective, proportionate and dissuasive civil or administrative sanctions for financial institutions for failure to comply with AML/CFT requirements, e.g. maximum monetary fine should be significantly increased, and sanctions should not be limited to STR violations only. • Designate the Securities and Exchange Commission as an authority able to apply AML/CFT sanctions for the securities sector. • Provide a broad range of sanctions, including disciplinary and financial sanctions, for financial institutions, as well as their directors and senior management to allow for sanctions that are appropriate for the severity of the situation. • Clarify the restriction of applying sanctions on Lao legal person at Article 2.3 of Decree 55. • Should consider issuing public notices of any sanctions applied in order to provide a more visible deterrent factor, noting it may be beneficial to record this obligation in a legislation or regulation.
Money value transfer services (SR.VI)	<p>Lao PDR should include in legislation a clear definition of MVT and for all MVT providers to be licenced, maintain an up-to-date listing of all agents, and subject to all FATF 40 plus 9 Recommendations.</p> <p>Lao PDR should consider conducting a detailed assessment of the informal remittance sector to identify any associated risks and scope of monetary movements.</p>

	Lao PDR should consider the measures set out in the Best Practices Paper for SRVI when revising its current approach to the MVT sector.
4.Preventive Measures– Nonfinancial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	<p>Specifically for DNFBPs, the Law PDR should:</p> <ul style="list-style-type: none"> • Expand the scope of the legislative AML/CFT framework to include all categories of DNFBPs required under R12; • Raise DNFBPs' awareness of their AML/CFT obligations; • Focus implementation on higher risk DNFBPs such as casinos; and • Introduce the appropriate thresholds for conducting CDD and related preventative measures for casinos and dealers in precious metals and stones.
DNFBP Monitoring and other issues. (R.16)	<p>The Lao PDR should implement the following measures:</p> <ul style="list-style-type: none"> • Implement AML Decree 55 in the DNFBP sector; • Extend the STR reporting obligation to include coverage of the accountancy profession, real estate agents and company service providers; • Ascertain what matters would fall under legal professional privilege or legal professional secrecy in relation to any STR obligations; and • Should consider engaging with the gems association to gain a better understanding of the risks associated with this sector in addition to the responsible Ministry's expertise.
Regulation, supervision, monitoring, and sanctions (R.17, 24, & 25)	<p>The number of designated AML supervising ministries and (and self regulatory organisations) needs to be expanded for complete coverage of all DNFBP sectors.</p> <p>Relevant DNFBP regulatory and supervisory agencies should work with AMLIU to develop a strategy to issue comprehensive statutes and regulations to regulate and supervise all DNFBPs in keeping with the FATF standards.</p> <p>Lao PDR should pursue a staggered implementation of the FATF obligations in the DNFBP sector based on a risk assessment. The initial focus is recommended to begin with the high risk casino industry in the first instance</p> <p>An ML/FT risk assessment of all DNFBP sectors should form part</p>

	<p>of this process to determine and identify key risk areas and the treatment required to address these risks. The risk assessment should also assist in determining the implementation timetable for the DNFBP sector.</p> <p>Where confusion exists in relation to AML supervisory responsibilities, this should be addressed through the AML Working group and noted specifically in supporting legislation.</p> <p>As the AML Decree 55 obligations are progressed through each DNFBP sector, the responsible Ministry will need to consider their local environment and activity in order to prepare a meaningful and helpful guidance.</p> <p>Specifically tailored guidance material should be prepared for each sector to assist the participants in their understanding of ML and FT techniques and how these will apply specifically to this sector. The existing guidance material is considered to be at too high a level to be of relevant assistance to DNFBPs.</p>
Other designated non-financial businesses and professions (R.20)	<p>The Lao PDR should consider appropriate measures to reduce its reliance on the use of cash in financial transactions.</p> <p>The Lao PDR should consider a secure automated transfer system that would further reduce the use of cash within the economy.</p>
5. Legal Persons and Arrangements & Nonprofit Organisations	
Legal Persons–Access to beneficial ownership and control information (R.33)	<p>The following recommendations are made to enhance the transparency of the current system:</p> <ul style="list-style-type: none"> • Lao PDR should enhance its efforts to reduce ML and FT risks by establishing requirements to explicitly cover beneficial ownership information and control of legal persons (including where bearer shares are issued). • Authorities must be able to obtain/have access to beneficial ownership information in timely fashion. The information must be: adequate (sufficient to identify the beneficial owner), accurate (true information on beneficial owner) and timely (up to date). • Lao PDR should raise awareness on how to collect and control beneficial owner information, in particular to those entities that issue bearer shares, and establish mechanisms to ensure that they are not misused for ML.

Legal Arrangements–Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> • No recommendation.
Nonprofit organisations (SR.VIII)	<ul style="list-style-type: none"> • Undertake a review of the FT risk in the NPO Sector; • Include FT concerns in future outreach activities to the sector; • Include promotion of transparency, accountability, integrity and public confidence in future outreach activities to the sector; • Consider providing further guidance to domestic NPOs on details required per Article 19 of Decree 115 • Enhance the registration requirements for applicants to provide information on the identity of person(s) who own, control or direct the activities, irrespective whether the person(s) are officers or not of the entity; • Make publicly available information on NPOs registered under both decrees to enhance the transparency of the sector; • Implement clearer record keeping obligations with regard to NPOs; • Enhance coordination at the national level between competent authorities involved in supervising international and domestic NPOs. This could commence with the inclusion of Public Administration and Civil Service Authority in the Committee on Management and Coordination of INGO; and • Review the sanction provisions in both decrees to provide a clearer and graded sanctions regime for violations.
6. National and International Cooperation	
National cooperation and coordination (R.31 & 32)	<ul style="list-style-type: none"> • Form a National Coordination Committee on AML or AML/CFT composed of ministerial or agency head officials, with the chair at the ministerial level; • Develop a clear strategic plan to focus Lao PDR's resources on implementing priority AML/CFT objectives and recommendations contained in this report;

	<ul style="list-style-type: none"> • Take measures to enhance operational level coordination for law enforcement and supervisory purposes; • Consider developing a closer working relationship between the BOL supervision department and AMLIU in relation to AML supervisory activities, including supervisory techniques and structure; and • Take measures to improve intelligence sharing among law enforcement agencies.
The Conventions and UN Special Resolutions (R.35 & SR.I)	<p>Lao PDR should fully implement the Vienna and Palermo Conventions, i.e. to adopt an adequate and consistent legal framework in line with the international obligations and standards.</p> <p>Lao PDR has not implemented the CFT Convention. Terrorism, including FT is neither a criminal offence nor a predicate offence of ML. There is no freezing mechanism in place to address effectively the UNSCRs 1267 and 1373.</p> <p>Lao PDR should , inter alia, to:</p> <ul style="list-style-type: none"> • Enact legislation consistent with the Vienna and Palermo Conventions and FATF Recommendations; • Enact legislation to counter terrorism and FT consistent with the CFT Convention and FATF SRII; • Implement the UNSCRs and to establish a freezing mechanism/regime; and • Adopt a comprehensive MLA legal framework on criminal matters.
Mutual Legal Assistance (R.36, 37, 38, SR.V & 32)	<p>Lao PDR should establish a comprehensive MLA legal framework on criminal matters, including:</p> <p>Recommendation 36/SRV</p> <ul style="list-style-type: none"> • criteria to grant or refuse assistance; • types and forms of assistance; • a quick and efficient mechanism to provide timely responses; • a coordination entity for MLA requests (central authority); • focal points/liaison officers for MLA matters in all the relevant agencies;

	<ul style="list-style-type: none"> freezing procedures and special investigative techniques; <p>Recommendation 37/SRV</p> <ul style="list-style-type: none"> adopt provisions allowing for non -compulsory assistance in the absence of dual criminality; <p>Recommendation 38/SRV</p> <ul style="list-style-type: none"> laws and procedures to provide MLA related to freezing; provision for equal value confiscation; and arrangements for coordinating seizure and confiscation actions with other countries; <p>Lao PDR should consider:</p> <ul style="list-style-type: none"> sharing of the proceeds of crimes with other countries; and establishing an assets forfeiture fund. <p>Lao PDR should also consider establishing a comprehensive statistical data system that will allow assessing the effectiveness of the system in place.</p>
Extradition (R. 39, 37, SR.V & R.32)	Lao PDR should establish an extradition regime with the essential criteria to grant or refuse extradition, as well as the respective procedural rules and domestic prosecution in lieu of extradition of own nationals. It should also consider setting up a coordination entity to deal with extradition matters.
Other Forms of Cooperation (R. 40, SR.V & R.32)	The Lao PDR should provide direct gateways for information exchange on ML and FT outside of the MLA process for all relevant Lao government agencies, including the Ministry of Finance, State Securities Commission, the Ministry of Justice, Ministry of Trade and Commerce, Ministry of Foreign Affairs, and Customs.
7. Other Issues	
Other relevant AML/CFT measures or issues	There is a need for continued capacity building, particularly for law enforcement and prosecutors that have received relatively little training to date. Overall, training needs to be linked to some form of tangible application, otherwise knowledge remains theoretical and not applied.

Annex 1. Authorities' Response to the Assessment

APG Co-Chairs,
Distinguished Guests,
Ladies and Gentlemen.

First of all, it is my pleasure to represent the delegation of the Lao PDR to convey our sincere thanks and appreciation to the APG Co-Chairs, APG Secretariat and its members, Assessors Team and Providers for their strong support to the Lao PDR, completing its Mutual Evaluation as scheduled during 11-22 October 2010 with the objective to assess its compliance to FATF 40+9 recommendations. We highly appreciate the On-Site Evaluation of the Assessor Team to the Lao PDR and we feel very impressive to the team for understanding the situation of the Lao PDR, especially its strengths and weaknesses in implementing the FATF 40+9 recommendations and in formulating its domestic legislation to be in line with international communities in deterring and combating the financing of terrorism.

As you may be aware that Lao PDR is listed in the least developed countries of the United Nations (UN). In order to achieve the Millennium Development Goals (MDG) in 2015 and lead the country to be free from the UNLDC list in 2020, the Lao PDR has successfully completed the 6th five year Socio-Economic Development Plan, including legislative development on the Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) as well as Human Resources Development to respond to these important tasks.

Continuing with the past achievement, Lao PDR is presently putting its efforts to implement the 7th five year Socio-Economic Development Plan to build up the fundamental basis to enable Lao PDR graduate from the LDC status in 2020 as planned. Moreover, one of the Lao Government priority tasks is to find out all necessary means for implementing the UN Conventions where Lao PDR has been parties to, such as the development of its legal system on the Anti Money Laundering and Combating the Financing of Terrorism (AML/CFT).

In this regard, I would like to take this opportunity to inform all delegates that following the APG Mutual Evaluation of the Lao PDR taking place in October 2010, the Assessor Team make some suggestions to develop and improve a number of following areas to fulfill the FATF's 40+9 recommendations:

1. Legal system and related institutional measures.
2. Preventive Measures of money laundering and combating the financing of terrorism on Financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs);
3. The transparency of Legal Entities and Non-Profit Organizations; and
4. National and International Co-operation.

In addition, during the On-Site Evaluation to the Lao PDR in October 2010, the Assessor Team had requested some additional information and we did all our best to respond and support such additional

requested information. We did hope that all additional supporting information provided would help the Assessor Team to get better understanding and add value to the Mutual Evaluation Report of the Lao PDR.

We would like to take this opportunity to report some progresses which have been made by the Lao PDR as follows:

1. The Governor of the Bank of Lao PDR has issued Decisions on the appointment of two Committees to be responsible for drafting the law on combating the financing of terrorism dated 30 November 2010;
2. The Governor of the Bank of the Lao PDR has issued an additional Decision delegating the CFT Committees to be responsible for drafting the law on the anti money laundering dated 10 June 2011.
3. The Government of the Lao PDR has issued the Decree on the management of the Non-Profit Organizations dated May 19, 2011, which are now under supervision of the Prime Minister Office (PMO).

Once again, please allow me to express our gratitude to all members of the Assessor Team for their comprehensive comments and recommendations on the current system of the Lao PDR AML/CFT, with the purpose of strengthening the AML/CFT systems to be gradually in compliance with the international standards or the FATF's 40+9 recommendations. We consider comments and recommendations made by Assessor Team as a challenging task for the Lao PDR since we still lack resources and capabilities. We strongly believe that the support of the APG Secretariat and Donors will be an integral part for our success to address all weaknesses mentioned in the MER on the Lao PDR, especially the preparation of its Strategic Implementation Plan (SIP). We are strongly committed to implementing all the recommendations as above stated.

Before concluding my remark, may I represent the delegation of the Lao PDR to express our sincere thanks to the Assessor Team, APG Secretariat and Donors for their valuable support and assistance. We do hope that APG Secretariat and Donors would continue supporting the Lao PDR in terms of FIU's capacity building to enable Lao PDR to fulfill its commitments. Special thanks also go to the host of this meeting for its warm hospitality and excellent arrangement. From now on, I welcome all comments and questions that you would have in this plenary session.

Thank you

Remarks of Mr. Leuane VONGPHRANAKHORN, Head of Lao FIU

at the 14th APG Annual Meeting in Kochi, India on July 21, 2011.

Annex 2. Details of All Bodies Met During the On-Site Visit**Government ministries/agencies**

1. Accounting Department, MOF; and
2. Anti Money Laundering Intelligence Unit, BOL
3. Anti-Corruption Department, State Inspection Committee
4. Banks and Financial Institutions Supervision Department , BOL
5. Customs Department, Ministry of Finance
6. Department of Vientiane Trading and Industrial, Ministry of Industry and Commerce
7. Domestic Trade Department, Ministry of Industry and Commerce
8. Economic Police Department, Ministry of Public Security
9. Forestry Ministry
10. International Organisation Department, MOFA
11. Justice Management Department, MOJ
12. Lao National Commission for Drugs Control and Supervisor
13. Law and Treaty Department, MOFA
14. Licensing Department , BOL
15. Mass Culture Department, Ministry of Information and Culture
16. Ministry of Justice
17. Prime Minister's Office Representative
18. Security and Exchange Commission Office
19. State Enterprise Finance Management Department, MOF
20. Supreme Court
21. Technical Criminal Case Office, Supreme People's Prosecutor Office

Private sector

22. Commercial banks
23. Dan Savanh Nam Ngum Resort and Hotel (Casino)
24. Insurance companies
25. Lao Banker Association
26. Lao Bar Association
27. Lao Gem and Jewellery Trader Association
28. Lao Institute Certify Public Accountant
29. Lao Stock Market
30. Real estate company

Annex 3. List of All Laws, Regulations, and Other Material Received**Laws**

1. Constitution (2003)
2. Law on Accounting (2007)
3. Law on Agriculture (1998)
4. Law on Anti Corruption & Decree (2005)
5. Law on Bank of the Lao PDR (1995)
6. Law on Bankruptcy & Decree (1994)
7. Law on Civil Aviation (2005)
8. Law on Civil Procedure (2004)
9. Law on Commercial Banks (2007)
10. Law on Contract (1990)
11. Law on Court Fees (2006)
12. Law on Criminal Procedure & Decree (2004)
13. Law on Customs & Decree (2005)
14. Law on Drugs and Medical Products (2000)
15. Law on Electricity & Decree (1997)
16. Law on Enterprise Accounting (1990)
17. Law on Enterprises (2005)
18. Law on Environmental Protection (1999)
19. Law on Family (1990)
20. Law on Family Registration (1992)
21. Law on Handling Petitions (2005)
22. Law on Heritage and Basis of Inheritance (1990)
23. Law on Hygiene, Disease Prevention and Health Promotion (2001)
24. Law on Insurance & Decree (1990)
25. Law on Judgment Enforcement (2004)
26. Law on Labour (2006)
27. Law on Land & Decree (2003)
28. Law on Land Traffic (2000)
29. Law on Land Transport (1997)
30. Law on Lao Nationality (2004)
31. Law on Local Administration (2003)
32. Law on Mining (1997)
33. Law on National Assembly Oversight (2004)
34. Law on National Defence Obligations (1995)
35. Law on National Heritage (2005)
36. Law on Notary Offices (1992)
37. Law on Penal (2005)
38. Law on Peoples Court (2003)
39. Law on Postal Services (2004)
40. Law on Property (1990)
41. Law on Public Prosecutor & Decree (2003)
42. Law on Resolution of Economic Disputes (2005)
43. Law on Secured Transaction & Decree (2005)
44. Law on State Assets (2002)
45. Law on State Budget (2006)

46. Law on Tax & Decree (2005)
47. Law on Telecommunications & Decree (2001)
48. Law on the Government of the Lao PDR & Decree (2003)
49. Law on the Industrial Processing & Decree (1999)
50. Law on the National Assembly (2006)
51. Law on the Promotion of Domestic Investment (2004)
52. Law on the Promotion of Foreign Investment (2004)
53. Law on Tort (1990)
54. Law on Tourism (2005)
55. Law on Water and Water Resources (1996)

Decrees

56. Decree Law on Governing the Management of Foreign Exchange and Precious Metal
57. Decree No. 55 on Anti Money Laundering
58. Decree on Credit Lease
59. Decree on the Organisation Structure and Operation of the BOL

Regulations

60. Regulation on Deposit Taking MFI
61. Regulation on Non Deposit Taking MFI
62. Regulation on Saving and Credit Union
63. Regulation on the Establishment and Supervision of Import & Export Precious Metal Company
64. Regulation on the Supervision of Foreign Exchange Bureau
65. The Regulation on Supervision, Inspection, and Authorization of Gambling Business
66. Instruction on Implementation of Decree Law on Management of Foreign Currency and Precious Metals

Guidelines

67. STR Guideline No.66, Oct 2007
68. AML Guideline No.02, 16 Sep 2008 on AML Procedures and Operational Controls for FIs under control of BOL

Other instruments

69. The Establishment Agreement of AMLIU No.229, 2007
70. National Drug Control Master Plan

Annex 4: Copies of Key Laws, Regulations, and Other Measures

**People's Democratic Republic
Peace Independence Democracy Unity Prosperity**

Office of the Prime Minister

**No. _55_/PM
City of Vientiane, 27 / 03 /2006**

Decree

**On
Anti-Money Laundering**

- Based on the Law pertaining to the Government of the Lao P.D.R. Number 02/ NA dated 06 May 2003.
- Based on the proposal of the Governor of the Bank of the Lao P.D.R.

The Prime Minister hereby decrees

Section I

General Provisions

Article 1: Objective

The Decree on Anti-money laundering establishes the mechanism, means and measures for combating and deterring money laundering, aiming at strengthening the economic and financial system, creating a stable and orderly social environment and enhancing international cooperation in combating and deterring money laundering.

Article 2: Definition of terms

The following terms used in this Decree are understood as follows:

- 1. Money Laundering** refers to the acquisition of money or assets deriving from offences as specified in Annex 1 of this Decree, that have been transformed, utilized, possessed, transferred or converted in order to give such money or assets the legitimate appearance
- 2. Reporting Institution** refers to individuals or entities such as commercial banks, financial institutions, insurance companies, casinos and others, as specified in Annex 2 of

this Decree, which are obligated to report on any suspicious transaction to the Money Laundering Intelligence Unit.

3. Organization responsible for supervising the Reporting Institutions refers to an organization which has the right and responsibility to supervise and guide Reporting Institutions, namely: the Bank of the Lao P.D.R., Ministry of Finance and Ministry of Commerce.

4. Transaction refers to any deal conducted between Reporting Institutions and their customers relating to account opening, cash deposit and withdrawal, currency exchange, domestic and international transfers, purchase-sale of material, goods or services and others.

5. Acquiring money or assets deriving from offences refers to the acquisition of money or assets deriving from unlawful activities such as: illicit trafficking in narcotic drugs, illicit arms trafficking, trafficking in human beings, corruption, sexual exploitation and other conducts as listed in Annex 1 of this Decree.

6. Transformation of assets deriving from offences refers to the conversion of the assets deriving from offences as specified in Annex 1 of this Decree, into different kind of assets such as: from currency to gold, from gold to real estate, from real estate back to currency or other assets that appear legitimate.

7. Utilization of money or assets deriving from offences refers to the usage of money or assets illegally acquired, for entering into a transaction or a business activity or buying assets aiming at recuperating money or assets that appear legitimate.

8. Possession of money and assets deriving from offences refers to having in possession of illegally acquired money or assets or putting under the custody of others, aiming at making such assets appear legitimate.

9. Transfer of money and assets deriving from offences refers to the sending, transferring of ownership of money or assets, the money transfer from one account to another between banks or financial institutions domestically and internationally in order to make the money or assets appear legitimate.

10. Exchange of money or assets deriving from offences refers to the making use of money or assets acquired from offences for exchanging into other currencies or other payment instruments or other types of assets, aiming at making the money or assets obtained through such exchanges, appear legitimate.

11. High risk individual refers to an individual having decision making power who is periodically determined by the Money Laundering Intelligence Unit.

Article 3. Scope and application of the Decree

1. The present Decree is applicable throughout the territory of the Lao PDR.
2. This Decree applies to :
 - Lao citizens, foreign residents, stateless individuals ,foreigners living in the Lao PDR;
 - Foreign individual or entity not residing in the Lao PDR, who has

entered into a transaction in the Lao PDR.

Article 4. Fundamental principles for combating and deterring money laundering.

The detecting, combating and deterring of money laundering shall be conducted in accordance with the rules and procedures established under the law to ensure sovereignty, national security and normalcy in the running of the socio-economy; protect the legitimate interest of individuals and entities; combat all cases of power abuse and warrant that the acts of combating and deterring money laundering shall not undermine the legal rights and benefits of the citizens and entities.

The combating and deterring of money laundering shall become the responsibility of all individuals, entities and organizations.

Article 5. Individuals and agencies responsible for combating and deterring money laundering.

Individuals, entities directly responsible for combating and deterring money laundering shall be the Reporting Institutions as specified under Annex 2 of this Decree, as well as other concerned agencies as stipulated under the law of the Lao PDR.

Section II

Measures for combating and deterring money laundering.

Article 6. Obligation to serve a Notice.

In order to ensure the effectiveness of combating and deterring of money laundering, any individual or organization having knowledge of an act or behavior of another individual or organization, which is suspected of being an offence of money laundering shall be required to serve a notice on such an offence.

Article 7. Notice serving channel.

Any individual or organization having knowledge of an act or behavior which is suspected of money laundering shall be required to immediately notify the Anti-Money Laundering Intelligence Unit in writing or through facsimile transmission.

The Anti-Money Laundering Intelligence Unit shall issue an acknowledgement of receipt of such a Notice to the notifying party.

Article 8. Confidentiality abstention.

Any confidentiality requirement stipulated in the reporting institution's own regulation or in any agreement which is not consistent with this Decree, shall be abstained from enforcement.

Article 9. Combating and deterring measures.

Reporting institutions are obligated to take the following measures to combat and deter money laundering:

- establish an efficient internal monitoring system to ensure the combating and deterring of money laundering;
- put in place and implement policies, plans, systems and mechanisms to efficiently combat and deter money laundering;
- provide training to build knowledgeable and capable personnel for combating and deterring money laundering;
- collaborate with and provide information to concerned authorities for combating and deterring money laundering;
- adopt provisional measures as stipulated under Paragraph 1 of Article 12, of this Decree.

Article 10. Data Collection and Control Officers.

Institutions which are obligated to report on money laundering shall employ Customers' Data Collecting Officers, as well as Control and Reporting Officers.

Article 11. Data Collection and Reporting.

Reporting Institution shall create an Information Center to establish summaries of the collected data relating to its operations.

Control Officers of Reporting Institutions, who know of any act or information, behavior of an individual or organization suspected of having committed a money laundering offence, shall be required to immediately report in writing or through facsimile transmission, to the Money Laundering Intelligence Unit.

Upon noticing a suspicious transaction, the Reporting Institution is able to take provisional measures stipulated under Paragraph 1 of Article 12 of this Decree. In addition, a report shall be made to the Money Laundering Intelligence Unit and the concerned authority for consideration.

Article 12. Application of provisional deterring measures.

In combating and deterring money laundering, the following deterring measures may be applied:

1. Cessation or declining the service;
2. Freezing of account balance;
3. Freezing or confiscating assets;
4. Detaining the offender;
5. Other deterring measures as stipulated under the Law.

The application of the deterring measures shall be made in accordance with the laws and regulations with assurance that the day to day operation of the financial-monetary system will not be adversely affected.

Article 13. Collection of Detailed Information on the Customers.

The Reporting Institutions shall require the customers or their assignees to show identity card, family log book, passport or other documents certifying the identity of the customers or their assignees when entering into a transaction. Photocopies of the documents shall be made to serve as proofs, particularly for transactions that are of high value or suspicious nature. Details on information collection is set out under a separate regulation.

Article 14. Information Retention by the Reporting Institutions.

The Reporting Institutions shall retain and make available to the concerned authorities, all information and documents relating to the reported transactions as follows:

- Information on the customers themselves and the beneficiaries of the transaction collected through the Customers Due Diligence process, shall be retained for at least ten years in accordance with the document retention regulation, starting to count from the date of account closing or the terminating date of the transaction relation;
- Information on customers' transactions shall be retained for at least 5 years starting from the completion date of the transaction.

Article 15. Content of the Report.

Upon observing a money laundering transaction, transaction with value higher than the limit set by the Money Laundering Intelligence Unit, suspicious transaction of general customers or high risk personalities, Reporting Institutions shall urgently report to the Money Laundering Intelligence Unit, with the following principal content:

- First and family names, identity and address of the persons making the transaction;
- First and family names, identity and address of the beneficiaries or those assigned to transact on the others' behalf.
- Details of the transactions, namely the transactions with value greater than the limit set by the Anti-Money Laundering Intelligence Unit or any transaction relating to cash deposits and withdrawals, currency exchanges, transfer, buying–selling of checks and other transactions which appear suspicious of money laundering.

The detailed content of the report is specified in the reporting form developed by the Anti-Money Laundering Intelligence Unit.

Article 16. Confidentiality of the Notice and Report.

Any act of serving a Notice or making a Report on money laundering shall be kept confidential.

Article 17. Currency and precious metal reporting at border.

A person entering or leaving the Lao PDR carrying cash, payment instruments or precious metals exceeding a value determined periodically by the concerned authorities, shall declare the amount in cash, payment instruments or precious metals to the customs officers stationed at the border, using the form developed by the Anti-Money Laundering Intelligence Unit.

The customs officers at the border shall verify the correctness of the declaration and send all such declarations to the Anti-Money Laundering Intelligence Unit.

Article 18. Relation with the High Risk Personalities.

If a customer who is a high risk personality requires to enter into a transaction, the concerned official of the Reporting Institution shall act as follows:

- Request authorization from the Directorate or the Management of the Institution before entering into business relation with such a customer;
- Take all necessary measures to ascertain the source of money or assets;
- Pursue continuously the business relation with such a customer.

Article 19. Foreign Correspondent Banks.

Financial institutions maintaining business relation with correspondent banks abroad or any other similar relation, shall act as follows:

- Verify the correspondent banks' legitimacy as entities with which business relation has been established;
- Collect information on the nature of business operations of their correspondent banks abroad;
- Assess the credibility and conduct of supervision and control activities of their correspondent banks abroad, basing on the information revealed to the public.
- Ensure that prior approval from the Directorate or Management of the Bank has been obtained, each time that the business relation with a foreign correspondent bank is to be established.
- Evaluate the record of Money Laundering control performance of the correspondent banks.

Article 20. Special attention on certain transactions.

Reporting Institutions shall pay special attention to every transaction which is complex and of particularly high value, and transaction which appears irregular and lacks legitimate objective.

Reporting Institutions shall pay special attention to business relation and transaction entered into with an individual and entity, domiciling in a country which does not have money laundering laws and regulations, or having such laws and regulations which have not been strictly enforced.

Article 21. Responsibility of the Supervisory Agencies.

Supervisory Agencies of Reporting Institutions have the following responsibilities:

- Put in place necessary measures to prevent individuals who are not suited to undertake the control function from becoming a member of the Directorate or Management of the Reporting Institutions;
- Supervise and control the Reporting Institutions on a regular basis;
- Issue regulations and guidelines on Customers' Due Diligence;
- Cooperate with other agencies to combat, deter and carry out money laundering prosecution.
- Guide Control Officers of the Reporting Institutions under their purview, to immediately inform the Anti-Money Laundering Intelligence Unit of any suspicious transaction.

Article 22. Protection of notifying and reporting parties.

In order to encourage the notices and reports on money laundering which are very important contribution in deterring and combating money laundering, there needs to be reassurance that notifying and reporting individuals or organizations shall not be considered as having committed an offence of revealing secret information. The Anti-Money Laundering Intelligence Unit shall ensure that such acts of notifying and reporting be kept confidential, and assistance be provided to those making the notices and reports for any damages done to them, as a result of their acts of notifying or reporting.

The confidentiality of the notifying and reporting shall also be maintained for the provision of anti-money laundering information between the Anti-Money Laundering Intelligence Unit of the Lao P.D.R. and the concerned organizations of foreign countries as stipulated under article 27 of this Decree.

Section III

Anti-Money Laundering Intelligence Unit.

Article 23. Location and Mandates

The Anti-Money Laundering Intelligence Unit shall form part of the Bank of Lao P.D.R., having mandates and responsibility in collecting, analyzing and reporting information on money laundering taken place within the country or abroad, to be submitted to the authorities for taking legal action to combat and deter money laundering.

Article 24. Staffing Structure

The Anti-Money Laundering Intelligence Unit shall consist of the Head of the unit, the Deputy Head and some technical staff., which shall be specified under a separate regulation.

Article 25. Rights and Duties.

The Anti-Money Laundering Intelligence Unit shall have the following rights and duties:

- to examine the information on money laundering received from or reported by individuals, organizations and reporting institutions;
- to maintain international relation and cooperation in the area of anti-money laundering as approved by the higher authority;
- to analyze information on money laundering;
- to compile reports for submission to the investigating agency of the police force for legal action, provided that there is evidence to support money laundering suspicion;
- to warn the Reporting Institution about the serious offence which forms the cause and source of money laundering, as specified in Annex 1 of this Decree, by publishing

documents on money laundering typologies and methods to detect money laundering to serve as reference for the Reporting Institution in carrying out its reporting duty ;

- to determine the limit for the value of a transaction to serve as the base for the monitoring and reporting duties of the Reporting Institution;
- to issue regulation on Customers' Due Diligence and the reporting of suspicious transactions or transactions with value over the determined limit;
- to advise the Reporting Institution on the appointment of Control Officers to monitor and control the implementation of the regulations issued by the Anti-Money Laundering Intelligence Unit;
- to recommend that the Supervisory Agencies pay close attention on guiding and monitoring the Reporting Institutions under their purview, in order for them to detect and report on money laundering suspicious transactions;
- to establish training program and provide training for its own staff and those of Reporting Institutions in respect of money laundering;
- to report on its activities to the Governor of Bank of the Lao P.D.R., and other concerned government agencies on a regular basis;
- to exercise its other rights and duties as provided under this Decree and as assigned by the Governor.

Article 26. Keeping and Destroying Information and Documents.

The Anti-Money Laundering Intelligence Unit shall keep all information and documents on money laundering cases which have been transmitted to the Investigating Agency of the Police Force for legal proceedings. Other information which have not been transmitted to the Investigating Agency, shall be kept for five years before they could be destroyed.

Article 27. Communication and exchange of information with foreign states.

The Anti-Money Laundering Intelligence Unit receives, sends and exchanges information on money laundering with foreign Anti-Money Laundering Intelligence Unit with which the Lao P.D.R. has signed an agreement, been or not been party thereof. The sending, receipt and exchange of information on money laundering, shall require prior approval of the Government, through the Ministry of Foreign Affairs of the Lao P.D.R.

Information on money laundering sent to or received from foreign states shall be kept confidential and the usage of which shall be controlled. In the event that the receiving party wishes to use the information received as evidence for any legal proceedings, prior approval from the sending party shall be required.

Section IV

International Cooperation in Combating and Deterring Money Laundering.

Article 28. The Responsibility of the State Agency in International Relation.

1. The Bank of the Lao P.D.R. shall consider and implement the International Treaties on the exchange of information on money laundering suspicious transaction, as delegated by the Government
2. The Ministry of Justice, Ministry of National Security and Ministry of Foreign Affairs shall be responsible for negotiating and partaking in the treaties with foreign states, as determined by the Government on the cooperation in combating and deterring money laundering, extraditing criminals and conducting legal proceedings.
3. The Bank of the Lao P.D.R., Ministry of National Security, Ministry of Justice and other concerned authorities shall have the mandate to advise on international cooperation in the area of combating and deterring money laundering.

Article 29. International Cooperation.

International cooperation in combating and deterring money laundering shall be carried out as follows:

1. Coordinate in detecting ,combat and deter money laundering as specified under the Law.
2. Sign and partake in international treaties in combating and deterring money laundering as delegated by the Government.
3. Collect, research and exchange information and experience in the combat of money laundering.
4. Coordinate, Co-operate and mutually assist one another in staff training and raising the level of technical knowledge in combating and deterring money laundering.
5. Implement cooperation agreements on legal proceedings and extradition of criminals as signed or partaken by the Lao P.D.R.

The international relation and cooperation in combating and deterring money laundering shall be established in writing and shall be sent to the Anti-Money Laundering Intelligence Unit of the Bank of the Lao P.D.R. and the Interpol Department of the Ministry of National Security. Electronic mail may be used in the case of urgent requirement of information from foreign state, which shall however, be subsequently followed by a written communication within seven days.

Article 30. Content of and documentation for requesting cooperation.

The content of and documentation for requesting cooperation in combating and deterring money laundering consist of :

- Name of country and requesting Agency;
- Name of country and Agency of the country receiving the request;
- Content, objective and time frame of the request;
- Other details on assets and the offenders;

- Copies of proof documents and other agreements of the requesting country's authority.

Article 31. Declining of the request.

The concerned authority for combating and deterring money laundering may decline the request of the foreign state, in the event that :

- Such a request may affect the national sovereignty and security or the major interest of the Lao P.D.R.;
- Such a request is not consistent with the terms of the treaty signed or partaken by the Lao P.D.R.;
- The request is not consistent with Article 29 of this Decree;
- The request for the extradition of an offender against whom the Lao P.D.R. is conducting legal proceedings for money laundering.

In declining the request of a foreign state, the concerned authority shall inform the requesting country in writing.

Section VI

Rewards for good performers and punishment measures for Offenders.

Article 32. Rewards for good performers.

Individuals or organizations with outstanding performance in respect of the implementation of this Decree through: notifying, reporting, carrying out intelligence activity or making other contribution toward combating and deterring money laundering, shall be duly honored and otherwise rewarded in accordance with the existing regulation.

Article 33. Punishment measures for the offenders.

Any individual, entity or organization carrying out or partaking in money laundering shall be duly punished in accordance with the existing laws and regulations.

Reporting Institutions which fail to report as stipulated under this Decree, shall be reprimanded by the agency in charge of supervising the Reporting Institutions. After the reprimand and upon continued violation, the offender shall be penalised with the fine amounting from ten to thirty million Kip and duly punished in accordance with the existing law.

Section VII

Final Provisions

Article 34. Implementation

The Bank of the Lao P.D.R. and the Ministry of National Security shall issue the guideline for implementing this Decree within the limit of their respective authority.

The Ministries, Agencies, Capital City and Provinces shall recognize and strictly implement this Decree.

Article 35. Effectiveness

This Decree shall become effective after ninety days from the date of signing by the Prime Minister of the Lao P.D.R. Any other stipulation and regulation previously issued which are inconsistent with the content of this Decree shall become null and void.

Prime Minister of the Lao P.D.R.

(Signed and sealed)

Boun yang Vorachith

Annex 1.

Criminal offences which are considered as serious offences for money laundering are as follows:

- Terrorism;
- Financing of terrorism ;
- Human trafficking and smuggling;
- Sexual exploitation;
- Human export or illegal migration;
- Production, sales and possession narcotic drugs;
- Illicit arms and dynamite trafficking;
- Concealment and trafficking of peoples' property;
- Corruption;
- Receipt and giving bribes;
- Swindling;
- Embezzlement;
- Robbery;
- Property stealing and seizing;
- Counterfeiting and using counterfeit money;
- Murder, grievous bodily injury;
- Illegal apprehension and detention;
- Violation of state tax rules and regulations;
- Extortion;
- Check forgery, illicit usage false checks or bonds and other financial instruments;
- And any other crimes in respect of which a penalty may include a sentence to prison for a period of one year or more.

Annex 2.

Reporting Institution consists of:

- Commercial banks;
- Financial institutions;
- Insurance companies;
- Casinos, games, lottery ;
- All types of loan making and credit providing companies;
- Pawn shops;
- Financial leasing companies;
- Currency transfer companies;
- Companies or agents for sales and management of payment instrument such as: credit cards, traveler cheques, bank drafts and others;
- Securities companies or companies that provide financial services relating to the trading of securities;
- Foreign exchange shops;
- Companies that provide investment service, or manage capital on the behalf of other individuals or legal entities;
- Dealers in precious metals and antiques;
- Attorney offices and Notary offices;
- And any others as additionally provided by the Bank of the Lao P.D.R.

2011

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