



Asia/Pacific Group  
on Money Laundering

## *BHUTAN: 3<sup>rd</sup> ENHANCED FOLLOW-UP REPORT 2019*

### **I. PURPOSE**

1. In accordance with the APG Third Round Mutual Evaluation Procedures 2018 ('third round procedures'), this report presents for members' consideration the APG Secretariat's analysis of Bhutan's third follow-up report (FUR).

#### **Key findings**

Bhutan has continued to work on reforms to address deficiencies identified in its 2017 Mutual Evaluation Report (MER). Key developments since its 2018 progress report include amendments to its AML/CFT laws and regulations, enhanced powers and procedures for law enforcement authorities (LEAs) and investigative authorities, and reviews of legislative gaps for predicate offences and international cooperation mechanisms.

Bhutan did not request technical compliance re-ratings.

#### **Recommendation**

It is recommended that:

- Bhutan remain on enhanced follow-up;
- Bhutan provide its fourth FUR by 31 January 2020; and
- The Co-Chairs write to relevant Minister(s) bringing their attention to the remaining deficiencies.

### **II. INTRODUCTION**

2. The MER of Bhutan was adopted in September 2016. This FUR analyses the progress of Bhutan in addressing the technical compliance deficiencies identified in its MER. This report does not analyse any progress Bhutan has made to improve its effectiveness. Progress on improving effectiveness will be analysed as part of a later follow-up assessment and, if found to be sufficient, may result in re-ratings of Immediate Outcomes at that time.

3. As Bhutan did not request re-ratings for any recommendations, the preparation of this report was undertaken by the APG Secretariat.

### III. FINDINGS OF THE MUTUAL EVALUATION REPORT

4. The MER rated<sup>1</sup> Bhutan as follows:

IO 1	IO 2	IO 3	IO 4	IO 5	IO 6	IO 7	IO 8	IO 9	IO 10	IO 11
Low	Mod	Low	Low	Low	Low	Low	Low	Mod	Low	Low

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
NC	PC	PC	PC	NC	NC	NC	PC	LC	C
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
C	C	C	PC	C	LC	LC	LC	LC	PC
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
NC	C	PC	PC	LC	PC	C	NC	NC	PC
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
PC	PC	PC	PC	PC	PC	NC	NC	LC	PC

5. Given these results, Bhutan was placed in enhanced (expedited) follow-up<sup>2</sup>.

6. In Bhutan's 2018 FUR, it requested re-ratings for 25 Recommendations. The review team concluded progress to LC had been made on 11 Recommendations: 1, 2, 5, 9, 14, 21, 23, 29, 32, 35 and 38. Additionally, Bhutan was re-rated to PC on three Recommendations: 6, 7 and 28. In light of the progress made, Bhutan exited enhanced (expedited) follow-up and was placed on enhanced follow-up.

### IV. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

7. This section summarises the reported progress made by Bhutan to improve its technical compliance.

#### 4.1. Progress to address technical compliance deficiencies identified in the MER

##### Recommendation 2 (Co-operation & coordination)

8. Bhutan reported that the Financial Intelligence Department (FID) has signed Memoranda of Understanding (MOUs) with the Anti-Corruption Commission of Bhutan (ACC), Department of Revenue and Customs (DRC), Bhutan Narcotics Control Authority (BNCA), Royal Bhutan Police (RBP) and Civil Society Organisation Authority (CSOA). Preparation of MOUs for the exchange of information with the Tourism Council of Bhutan and Department of Immigration is underway. Additionally, Bhutan is preparing a new chapter for the *AML/CFT Rules and Regulation 2018*, which will govern coordination procedures between the National Coordination Committee and the Technical Committee.<sup>3</sup>

<sup>1</sup> There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

<sup>2</sup> There are three categories of follow-up based on mutual evaluation results: regular, enhanced and enhanced (expedited). For further information see the APG Mutual Evaluation Procedures.

<sup>3</sup> The Technical Committee was formed in accordance with Section 17 of the *AML/CFT Act 2018*, which states the National Coordination Committee shall, on the FID's recommendation, form such a committee to provide advice on technical and relevant matters. It is comprised of the RMA Deputy Governor (chairperson), and representatives from the ACC, DRC, Office of Attorney General of Bhutan (OAG), RBA, Ministry of Foreign Affairs (MFA), Ministry of Home & Cultural Affairs, BNCA, MoEA, MoF and FID.

### Recommendation 3 (ML offence)

9. Bhutan has formed a legal working group comprising of legal offices from Office of Attorney General of Bhutan (OAG), Ministry of Foreign Affairs (MFA), Ministry of Economic Affairs (MOEA), RBP, BNCA and Royal Monetary Authority of Bhutan (RMA) to examine potential reforms to incorporate offences not currently criminalised in Bhutan (racketeering and organised crime offences, counterfeiting and piracy of products, maritime piracy and market manipulation) into criminal law.

10. Bhutan is working with the IMF to amend the *AML/CFT Rules and Regulation* to include penalties for legal persons convicted of ML.

### Recommendation 4 (Confiscation)

11. Bhutan reported that it has established and/or amended procedures for the ACC, BNCA, DRC, and RBP for the management and disposal of seized property.

### Recommendation 5 (TF offence)

12. Section 165 (2) of the *AML/CFT Act 2018* criminalises the collection and provision of funds for the financing of travel for purposes related to terrorism.

### Recommendation 6 (TFS terrorism/TF)

13. Pursuant to the revised *AML/CFT Act 2018*, Bhutan now publishes the UNSC and domestic sanctions list, as well as the delisting of individuals and organisations, online.<sup>4</sup>

14. DLO is working to develop publicly available procedures for delisting, unfreezing and access to frozen fund or assets in the case of false positives.

### Recommendation 7 (TFS proliferation)

15. Bhutan reported that it has amended Sections 86 to 89 of the *AML/CFT Act 2018* to permit any person or organisation whose funds have been frozen to request access to such funds. Bhutan may now grant access to frozen funds on grounds of necessary or basic expenses<sup>5</sup> for a natural person or member of their family; payment for reasonable professional and legal fees; and paying fees due to a financial institution (FI) for routine holding or maintenance of the frozen funds. Upon determination that such funds may be used, Bhutan must notify relevant UNSC Committee of its intention to authorise an exemption, and proceed with access absent negative decision from that Committee.

16. Bhutan reported it will amend *AML/CFT Rules and Regulation 2018* to include the definition of ‘designation’ and ‘without delay’, in line with UNSCR requirements.

17. As per R.6, Bhutan now publishes the UNSCR list online.<sup>6</sup>

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<sup>4</sup> See: [http://www.mohca.gov.bt/?page\\_id=2320](http://www.mohca.gov.bt/?page_id=2320)

<sup>5</sup> Including payments for foodstuffs, medicines and medical treatment, reasonable rent or mortgage, taxes, insurance payments, public utility service fees, such as water, electricity, gas, and telecommunications, reasonable professional fees including legal services, and fees or service charges due to a financial institution for the routine holding or maintenance of funds. See p40-1: <https://www.rma.org.bt/fid/resources/doc/legislation/AML%20Act%202018.pdf>

<sup>6</sup> See: [http://www.mohca.gov.bt/?page\\_id=2320](http://www.mohca.gov.bt/?page_id=2320)

#### Recommendation 8 (NPOs)

18. Bhutan completed its National Risk Assessment in 2017, which included consideration of non-profit organisation (NPO) sectoral threats and vulnerabilities. Bhutan indicated competent authorities will conduct outreach to the NPO sector on TF issues.

19. The Civil Society Organisation Authority (CSOA) has updated its *Civil Society Organisation Rules and Regulations* and the *CSOA Act* is subject to ongoing revision. In January 2019, CSOA invited interest from law firms to review new Civil Society Organisation documents.

20. As of 20 February 2018, CSOA and FID have signed an MOU for sharing of information and cooperation.

#### Recommendation 15 (New technologies)

21. Bhutan noted it is in discussions with the IMF on amendments to the *AML/CFT Rules and Regulation 2018* to clarify definitions and applicability of AML/CFT requirements to virtual assets.

#### Recommendation 20 (STRs)

22. As per R.3, Bhutan has established a legal working group to assess the predicate crime gaps and is due to provide recommendations for legislative amendments. Banks in Bhutan are in varying stages of installing AML systems, which is expected by the FIU to increase STR volumes.

#### Recommendation 21 (Tipping-off)

23. The *AML/CFT Act 2018* includes provision for tipping off (Section 80) and the *AML/CFT Rules and Regulation 2018* include provisions for STR reporting by compliance officers (Sections 107 and 108), and requirements for safeguards on the confidentiality and use of information (Section 110).

#### Recommendation 24 (Transparency and beneficial ownership)

24. Under the *Companies Act 2016*, changes in a company's directors and share ownership are required to be filed for approval, and kept up to date in the corporate register as of February 2019.

25. The definition of beneficial ownership is due to be addressed in amendments to the *Companies Act*.

26. The *Companies Act 2016* requires winding-up reports and financial statements to be filed and maintained for inspection as of July 2016.

27. Regulations providing LEAs with legislative powers to obtain timely basic and beneficial ownership information are being developed in consultation with relevant authorities.

28. Since 2000, the *Companies Act 2016* makes it an offence to act as a shadow director, and prevents the provision of directors' rights to a shadow director. It also imposes a duty of care on directors to prevent breach of duty by shareholders. The Act also subjects companies to regular inspection with a duty imposed on management to explain any unlawful practices.

#### Recommendation 26 (FI regulation and supervision)

29. All FIs are supervised by the RMA under the revised *AML/CFT Act 2018*. Pension funds report to the FID as of October 2018.

30. Bhutan reported that a study is due to be conducted on credit co-operatives, and whether a Civil Society Organisation (CSO) saving fund would include all registered CSOs or only include the Mutual Benefit Organisations, given there are two different CSOs which operate in-country.

31. RMA is planning to conduct an AML/CFT supervisory onsite visit to the National Pension Fund is due to be conducted in March 2019. Authorities are assessing whether AML/CFT onsite supervision of the CSO saving fund and credit cooperatives is necessary as per the risk-based approach.

#### Recommendation 28 (DNFBP regulation and supervision)

32. Applicants for shareholdings are required under the *Companies Act 2016* to complete criminal record checks. Revised fit and proper tests are due to be adopted in the existing share ownership procedure within six to 12 months.

33. A feasibility study of the designated non-financial businesses and professions (DNFBP) sector is underway. Bhutan is due to decide whether AML/CFT supervision is required for DNFBPs pursuant to the risk-based approach. Regulations would then be implemented for their supervision. MoEA, FID and RMA are in discussions on the development of an AML/CFT supervisory template, in the event these regulations are put in place.

#### Recommendation 30 (LEAs' responsibilities)

34. In December 2018, the Bhutan government has decided the RBP will be the designated authority to investigate TF. The RBP has accordingly formed a dedicated unit for the investigation of the ML/TF offences.

#### Recommendation 31 (LEAs' powers)

35. *The Narcotic Drugs, Psychotropic Substances and Substance Abuse Act of Bhutan 2015* (NDPSSA) provides the powers for the BNCA to access information from FIs with a court order.

36. *The Anti-Corruption Act of Bhutan* (ACAB) allows the ACC to work jointly with other LEAs, including the RMA and FID. It also provides power for the ACC to request information notwithstanding any conflicting law or oath of secrecy. MOUs have been signed between the FID and the following Bhutanese LEAs and investigative authorities: ACC, RBP, CSOA and BNCA.

#### Recommendation 33 (Statistics)

37. The ACC maintains a database that captures details on investigations, ranging from arrests and search and seizure, to prosecutions and their outcomes since 2017.

38. The BNCA retains statistics of drugs seized from LEAs since 2006.

39. The DRC publishes statistics on confiscation and seizure online, on an annual basis since April 2018. Customs-related statistics and data is also shared with members of the World Customs Organization (WCO) through a regional liaison office.

40. The FID is developing a financial intelligence system. As part of this project, in September 2018 a consultant was contracted to analyse FID's requirements.

#### Recommendation 34 (Guidance and feedback)

41. Bhutan is developing procedures and/or systems to provide feedback to reporting entities (REs) on the application of national AML/CFT measures.

#### Recommendation 36 (International instruments)

42. Pursuant to a Cabinet directive issued in 2016, the DLO is reviewing the Palermo Convention as the agency relevant to its ratification.

#### Recommendation 37 (MLA)

43. Pursuant to a Cabinet directive, the DLO has been identified as the Competent Authority for mutual legal assistance (MLA) and is receiving technical assistance from IMF to develop a MLA Bill. The draft Bill has been completed and has been circulated to the relevant agencies for comments.

43. 2018 amendments to the NDPSSAA allow the BNCA to designate a LEA to make, receive, respond to or execute extradition and MLA requests.

#### Recommendation 40 (International co-operation)

44. FID has signed MOUs with its counterparts in Korea, Bangladesh, Sri Lanka, Cambodia, Myanmar and India. Negotiations are underway to sign MOUs with counterparts in Malaysia and the Philippines during the APG Annual Meeting 2019. ACC has also signed MOUs with its counterparts in Bangladesh (2017), Malaysia (2015), Thailand (2014) and the Basel Institute on Governance (2017). Negotiations are underway to sign an MOU with the Indian Central Bureau of Investigation.

45. Otherwise, pursuant to a directive issued by the Royal Government of Bhutan in 2013, all international communications with non-counterparts should be routed through the MFA.

46. The Bhutan Income Tax Administration can conduct information exchanges with India through Article 25 of the Double Tax Avoidance Agreement. Bhutan Customs, under the SASEC<sup>7</sup> Customs Sub-group program, can bilaterally exchange information on three products of interest on a monthly basis with Bangladesh and India. Additionally, Bhutan signed Mutual Administrative Assistance on Customs-related matters through SAARC<sup>8</sup>, and agreed to share and exchange information and support.

47. The ACAB permits the ACC to cooperate with other countries and regional organisations including asset recovery, assistance in investigation and sharing information.

## V. CONCLUSION

48. As Bhutan did not request re-ratings this report does not contain detailed analysis of progress.

49. Bhutan has continued work on reforms to rectify deficiencies identified in its MER. Bhutan's next progress report is due 31 January 2020.

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<sup>7</sup> South Asia Subregional Economic Cooperation Program

<sup>8</sup> South Asian Association for Regional Cooperation