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Lao People's Democratic Republic: Enhancing Financial Sector Supervision (Cofinanced by the Cooperation Fund for Regional Trade and Financial Security Initiative)

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Asian Development Bank



DEVELOPING THE AML CFT CAPACITY OF LAO PDR

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ABBREVIATIONS

ADB	Asian Development Bank
AML	anti-money laundering
CFT	combating the financing of terrorism
DNFBPs	Designated Non Financial Business or Profession
EA	executing agency
FIU	financial intelligence unit
GDP	gross domestic product
IA	implementing agency
IMF	International Monetary Fund
IT	information technology
NBFI	nonbank financial institution
SMEs	small and medium-sized enterprises
TA	technical assistance
UNODC	United Nations Office on Drugs and Crime

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EXECUTIVE SUMMARY

With Lao PDR about to undergo the Mutual evaluation process the ADB determined that it would undertake a preliminary analysis to determine what action will be needed to respond to the likely findings of the Mutual Evaluation process.

Accordingly, the Terms of Reference (TORs) for this project are to:

1. Determine the major strengths and weaknesses of the current AML CFT arrangements in Lao PDR and the areas for priority action to address these issues.
2. Prepare a 10-15 page report which includes an assessment of the current position, identifies the strengths and shortcomings and outlines the main issues to be addressed to meet international best practices.
3. Prepare a 2 year action plan to address the deficiencies in the AML regime of Lao PDR including prioritised and sequenced reforms.

AML/CFT STRENGTHS AND WEAKNESSES

STRENGTHS

There are a number of inherent strengths within the present government and financial arrangements in Lao PDR.

- There is an AML Decree which contains some of the necessary elements of a satisfactory AML CFT Law. Key elements are absent (see Gap Analysis attached).
- A coordination Working Group has been established. All key ministries are represented. This is important as it provides a framework for policy and operational coordination.
- There appears to be a good working relationship between the AMLIU and the other government agencies.
- The AMLIU has been established with 10 Staff including the Director General.
- The AMLIU issued a *Guideline on Reporting Suspicious Transactions* and *The Guideline on AML Procedures and Operational Control for Financial Institutions under supervision of the Bank of Lao PDR*. In addition, AMLIU has issued two instructions to banks.
- Some reporting of suspicious transactions has occurred but the numbers are very low.
- Lao PDR is a member of the APG and though this has access to information about new AML CFT methodologies. It attends APG meeting, Typologies Workshops and other APG arranged training and technical assistance.
- The UNODC has had in place a system of AML CFT Mentors who provide assistance to Lao PDR, Vietnam and Cambodia.
- Location of the FIU within the framework of the BOL provides a number of benefits.
- As a member of ASEAN, Lao PDR is a party to a regional mutual legal assistance treaty.
- Lao PDR has been a party to the International Convention for the Suppression of the Financing of Terrorism since 29 October 2008.
- Lao PDR has signed (10 December 2003) and ratified (25 September 2009) the UN Convention against Corruption.
- LAO PDR has acceded to (26 September 2003) the UN Convention against Transnational Organised Crime.
- The Ministry of Public Security has recently established the Anti Financial Crimes Division within the Economic Police Department to investigate all financial crimes including money laundering activities.

WEAKNESSES

Any country which seeks to introduce AML/CFT systems has to overcome some inherent weaknesses or problems. Some of these factors are outside of the control of the authorities but they need to be taken into account in developing the AML CFT system.

- A number of Lao PDR's neighbours are known source countries for narcotics and manufactured illicit drugs such as methamphetamines.
- Policing of borders is difficult if not impossible. Its borders are porous and this facilitates the illegal movement of drugs, people, cash and other goods.
- The creation of the Anti Financial Crimes Division within MPS is welcome but there is still low capacity in law enforcement to effectively detect and investigate financial crime and money laundering.
- The AMLIU has been largely focused on the forthcoming ME process and this has meant that it has not yet begun to undertake traditional FIU roles including:
 - Supervision and inspection of banks
 - Checking compliance with the obligations to appoint Compliance Officers, develop AML CFT programs and conduct internal training
 - Develop analytical skills
 - Conduct training activities itself (as distinct from working with donor agencies)
 - Develop a clear timetable to extend application of the AML Decree to non bank financial institutions and the DNFBPs
- AMLIU is to undertake supervision of AML CFT activities within the banks but the onsite inspection manual is not expected to be completed until the end of 2010.
- AML CFT related banking supervision is not covered by the existing supervisory areas with BOL.
- Under the scheme provided by the AML Decree AML CFT supervision and enforcement is the responsibility of the government ministry or entity which oversees that entity. For examples casinos are regulated by the Ministry of Information and Culture and AML CFT compliance will be supervised by that ministry not the BOL or the AMLIU.
- Under the legislative hierarchy which operates in Lao PDR, a Decree issued by the President or the Prime Minister, or subordinate rules and guidelines cannot create criminal offences. Only Laws enacted by the National Assembly can do this. Consequently without an AML CFT Law enacted by the National Assembly there can be no criminal offences concerning tipping off, the unauthorised disclosure of information relating to reporting activity or foreign requests for assistance or other breaches of the AML Decree. These are only subject to administrative sanctions.
- The existing law is not being implemented. The Decree clearly imposes on reporting entities a range of ML obligations. However, the Decree is only expected to be applied at this stage by commercial banks.
- While the various instructions issued by AMLIU in relation to STRs and other areas of compliance such as the need for internal AML CFT programs could be improved, they do set out important elements of an AML CFT system. The problem is lack of compliance.
- The problems with the Decree have been the subject of a number of analyses undertaken by or on behalf of various agencies. There is no absence of advice on what the law should cover. I understand that there is no decision at the political level to either amend the current decree or to develop a new draft law for consideration by the National Assembly. The ME Report may provide the impetus for such a decision.
- There is no requirement to report high value transactions or electronic cross border transactions to AMLIU.
- In relation to Cross Border movements of cash there are instructions but it is not clear whether this instruction is or could be actively implemented.

- While there is a declaration process on arrival for cash above 20 million Kip and 100 million Kip equivalent in foreign currency or gems but it is not uniformly applied and this system allows the unlimited importation of undeclared amounts of cash or gems which could then be exported through the financial system without declaration.
- Corruption levels are regarded by the NGO sector as high.
- There have been no prosecution for ML to date despite the existence of a provision (Article 64 of the Penal Code) criminalising money laundering since 2005.
- The existence of legal casinos raises a number of AML and CFT issues. They should be an AML priority.
- While Lao PDR is a Party to Terrorism Financing Convention there is no legislation criminalising terrorism financing.
- In 2009 the APG raised three areas of concern with BOL. These were
 - The need for significant legislative amendment to ensure an adequate money laundering offence in the Penal Code, to impose sanctions for failure to comply with the STR reporting obligations and to criminalise terrorism financing;
 - The need to establish a high level National Consultative Council on AML CFT issues. The Working Group is not at a sufficient senior level to ensure action occurs; and
 - Enhanced powers for the AMLIU to ensure it can function effectivelyI understand these matters were referred by the BOL to the Prime Minister's Office in early 2009 where they remain pending.

Based on the international standards developed by the Financial Action Task Force (FATF) and now widely accepted as providing the basis for national responses to AML and CFT, a sound anti-money laundering system must contain certain core elements. The starting point is the **necessary minimum elements** to operate an effective AML CFT regime. The ME process will focus on a wider range of consolidations and examine them in more depth than this report can address.

A detailed list of requirements is at **Attachment B**. It covers

- Legislation
- The role, powers and functions of the FIU
- The obligations and activities of reporting entities (both financial and non financial)
- Investigative and prosecution agencies
- Coordination arrangements including international coordination and cooperation
- Policy development
- Systemic features

The Gap Analysis (**Attachment C**) identifies the legislative provisions which are required to meet the minimum international standards in relation to AML CFT laws and the current gaps in the legislative and regulatory systems in place. These requirements do not arise solely as an issue in relation to AML or CFT but are required to meet Lao PDR's obligations under various conventions and Security Council Resolutions.

Other issues to emerge from the Gap Analysis include:

- The lack of comprehensive proceeds of crime legislation;
- The lack of comprehensive mutual legal assistance legislation;
- The failure to deal with terrorism financing in the Penal Code
- The absence of structuring and tipping off offences;
- Existing legislation to monitor cross border movements but implementation could be improved and legislative requirements enhanced;

- Need to enhance and enforce rules on customer identification, KYC, due diligence and high risk clients;
- No requirements to effectively identify beneficial ownership; and
- No effective requirements to ensure adequate originator information for internal and external funds transfers.

The Two Year Action Plan which I am developing in consultation with the BOL will seek to address the most urgent of these needs. However, given the experience to date and absent some major commitment by the Government, effectively meeting all of these needs will take a longer timeframe.

The main priorities over the next two years are;

- The Government must decide to develop and implement a comprehensive AML CFT Law,
- In the meantime the existing legislation needs to be rigorously applied and enforced through a compliance program. This will need support from the senior levels of the BOL and key Ministers.
- Even without new legislation administrative directions from the Government would lead to much higher levels of AML action.
- AMLIU to develop, publicise and apply a timetable for the application of the AML Decree to non bank financial institutions, casinos and DNFBPs over the next two years.
- AMLIU to complete its On Site Inspection Manual and begin on site inspections of banks.
- The priority for inspection action is the largest banks. Failure to meet the requirements needs firm enforcement action (this will send an effective message to other reporting entities).
- The Casinos need to be brought within the reporting process urgently and be subject to regular supervision and enforcement action.
- Some analysis training will be needed but the volume of reports is unlikely to require significant IT capacity for some time. Planning should be undertaken however.
- A national AML CFT Risk Analysis should be carried out and provide a basis for a national AML CFT Strategy to be developed by the NCC and adopted by the Lao PDR Government.
- Lao PDR should be given technical assistance to develop mutual legal assistance and proceeds of crime legislation to enable it to meet its obligations under the UN Convention against Corruption and the UN Convention against Transnational Organised Crime.

BACKGROUND

The Asian Development Bank (ADB) has asked me to undertake a review of the present anti money laundering (AML) and combating the financing of terrorism (CFT) situation in Lao PDR. The Asia Pacific Group on Money Laundering (APG) is about to undertake a Mutual Evaluation (see below) of the situation in Lao PDR and the purpose of my terms of reference is to provide ADB and the relevant Laotian agencies with a current analysis of the situation and to develop a Two Year Plan for the Lao PDR authorities to move forward with the development of their AML CFT system.

A number of donors have undertaken work with the relevant Lao PDR agencies over the last few years to seek to enhance the AML and CFT capacity in the country. There have been a number of training programs, the introduction of legislation and work on particular issues such as the expansion of the range reporting agencies under the Decree on Anti-Money Laundering¹ (the AML Decree). However, there is concern within the donor community that progress towards an effective AML CFT system has not been as fast as was hoped for.

The Anti Money Laundering Intelligence Unit (AMLIU) is established by Section III of the AML Decree within the BOL with broad responsibilities to collect, analyse and reporting information on money laundering taking place within the country or abroad. It is to submit reports to the relevant authorities so that legal action to combat and deter money laundering can be undertaken. AMLIU is established to meet the basic functions conferred on financial intelligence units (FIUs) in accordance with accepted international practice².

With Lao PDR about to undergo a rigorous evaluation of its legislation, FIU structure, administrative systems, reporting entities and the capacity and responsiveness of its law enforcement and judicial system to combat money laundering and terrorist financing the ADB determined that it would assist the Lao PDR authorities to undertake a preliminary analysis and to determine what action will need to be undertaken over the next two years to respond to the likely findings of the Mutual Evaluation process.

Accordingly, the Terms of Reference (TORs) for this project are to:

1. Determine the major strengths and weaknesses of the current AML CFT arrangements in Lao PDR and the areas for priority action to address these issues.
2. Prepare a 10-15 page report which includes an assessment of the current position, identifies the strengths and shortcomings and outlines the main issues to be addressed to meet international best practices.
3. Prepare a 2 year action plan to address the deficiencies in the AML regime of Lao PDR including prioritised and sequenced reforms.

The Mutual Evaluation process is a detailed analysis of a country's AML CFT system. Undergoing the process is a resource intensive exercise for any country but particularly so for developing economies. My TORs reflect the fact that this exhaustive analysis will be undertaken shortly and that it is neither appropriate nor necessary for me to undertake such an exhaustive analysis. That would simply duplicate the process being undertaken. My task is to provide an early warning mechanism of likely areas of concern and to assist the Laotian authorities to commence corrective action as soon as possible so that they will be already undertaking action when the ME report is considered by the APG Plenary Meeting next July. It is important however to understand the ME process and the issues it will address.

¹ Decree Number 55 was issued by the Prime Minister on 27 March 2006

² See for example the description of an FIU at the website of the Egmont Group of Financial Intelligence Units <http://www.egmontgroup.org/about/what-is-an-fiu> and Financial Action Task Force (FATF) Recommendation 26.

THE AML CFT MUTUAL EVALUATION PROCESS

The Financial Action Task Force (FATF) is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. The FATF has published best practice Recommendations to meet this objective. Through the mutual evaluation process, the FATF monitors the implementation of the FATF Recommendations and assesses the effectiveness of the anti-money laundering and counter-terrorist financing systems in FATF member jurisdictions. The mutual evaluation process represents a central pillar of the work of the FATF and the regional FATF style bodies (FSRBs) which operate across the globe. The relevant FSRB to which Lao PDR belongs is the Asia Pacific Group on Money Laundering (APG).

These evaluations are based on the Forty Recommendations 2003 and the Nine Special Recommendations 2001 (as updated from time to time) and use the Anti-Money Laundering/Combating Terrorist Financing (AML/CFT) Methodology 2004. The scope of these evaluations is to assess whether the necessary laws, regulations or other measures required under the new standards are in force and effect, that there has been a full and proper implementation of all necessary measures and that the system in place is effective.

The evaluations are conducted by a team of experts (from the financial, legal and law enforcement areas). A key feature of the process is an on-site visit to the jurisdiction and comprehensive meetings with government officials and the private sector over a two week period. The FATF has developed comprehensive and detailed procedures to conduct mutual evaluations, and these are intended to ensure fair, proper and consistent evaluations. The findings of the assessment team are compiled in a Mutual Evaluation Report, which describes in detail the system in place and assesses and rates its effectiveness. Once adopted by the relevant FSRB the reports are published on the website of the relevant regional body. The findings are detailed and rate the country against each of the 40 + 9 Recommendations as Compliant, Largely Compliant, Partially Compliant or Non Compliant.

Evaluation and assessment reports are conducted by a number of bodies and all bodies and organisations responsible for compiling them (i.e. the FSRBs, the OGBS, the IMF and the World Bank) have agreed to share the reports with relevant organisations. To ensure global consistency, similar or common processes, documents and procedures are used by all the bodies and organisations that produce assessment reports based on the FATF Recommendations and the 2004 AML/CFT Methodology.

The assessment process is conducted in accordance with a detailed methodology endorsed by the Financial Action Task Force (FATF), the IMF and the World Bank. A key part of the process is the preparation of a detailed response to the Mutual Evaluation Questionnaire (MEQ) prior to the visit of the evaluation team. The response has just been submitted to the APG Secretariat.

DEPLOYMENT AND COMMENCEMENT OF ACTIVITIES

As agreed with the ADB, my initial deployment took place between 22 and 28 August 2010. This initial deployment was intended to allow me to obtain current and accurate information on the developments in Lao PDR and to meet with key officials. A work program was developed and agreed with the ADB and Bank of Lao (BOL). That program is at Attachment A.

I returned to Lao PDR on 4 September and worked until 10 September developing and seeking internal agreement to the initial draft of the Two Year Plan from AMLIU and other areas of BOL. As both Mr Leuane Vongphranakhorn, the Director General of AMLIU and his Deputy Mr Vongpaseuth Ratanavong were going to be absent in Singapore at an IMF Training Course the following week I proposed to ADB that I returned to Vientiane the following week and this was agreed. I returned on 20 September and continued discussions with the AMLIU, other BOL staff, ADB staff and the UNODC. Throughout my discussions I stressed the need for the Laotian authorities to agree to the Plan prior to the Mutual Evaluation on site visit which will occur in mid October.

The key tasks undertaken during the initial visit were:

- Analyse existing legislation relating to AML issues (eg AML Decree), the coordination mechanisms in place in Lao PDR, and any existing provisions for a money laundering offence including links to predicate offences, penalties, related offences (eg tipping off, protection of reporting entities, confidentiality obligations), locating, freezing/seizing proceeds of crime, mutual legal assistance and extradition.
- Identify any proposals for new or amending legislation.
- Prepare a basic 'gap analysis' showing what legislative provisions are required to meet minimum international standards in relation to AML CFT laws. This would include assessing the extent to which existing legislation dealt with issues such as:
 - Definitions of STRs and CTRs and other types of reports
 - Reporting rules (timing, methods of reporting, required forms etc)
 - Prohibitions on tipping off
 - KYC
 - CDD
 - Enhanced due diligence (PEPS, high risk customers etc)
 - Verification
 - Beneficial ownership
 - Prohibition of use of shell banks
 - Prohibition on false name accounts
 - Prohibition on structuring
 - Rules for exchange of information with other FIUs (minimum requirements for confidentiality and use)
 - Required statistics
 - Annual report to government(or National Assembly)
 - Electronic message rules (identification of parties)
- Develop a basic understanding of the likely sources of criminal proceeds in Lao PDR and the movement of funds into and out of Lao PDR.
- Develop an understanding of the operation of the investigative/prosecutorial and court system. What is the capacity of the agencies to deal with financial crime and what investigative tools do they have (eg wire tapping, controlled delivery etc)?

In the subsequent visits the emphasis was on developing a practical Two Year Plan. I wanted to ensure that while the timetable was challenging, it was achievable. It was also important to ensure that the Plan was properly sequenced. In developing AML systems it is important that legislative, regulatory and administrative initiatives take place in ways will build an effective base for future work. The initial focus

needs to be on core reporting institutions with a progressive expansion of the system to other forms of financial and non financial institutions and activities.

It was also important to identify other possible donor activity which would need to be reflected in the Plan I was developing. I therefore made contact with the UNODC and missions based in Vientiane.

The draft Two Year Plan was discussed with the AML Working Group on 21 September. While it will take some time for the Plan to be considered by the senior officials of the BOL it is important that this process be expedited.

BANK OF LAO PDR SUPPORT

I met initially with Mr Phanthaboun Sayaphet, Deputy Director General of the International Relations Department of the BOL who welcomed me and offered his assistance. I also met with Mr Leuane Vongphranakhorn, Director General of the AMLIU and his Deputy, Mr Vongpaseuth Ratanavong, both of whom were very helpful and offered me their assistance in any way possible. Subsequently I met with both the Director General and Mr Ratanavong on a number of occasions and they provided me with additional written material. I am most grateful for their assistance.

I raised with the BOL officials the question of access to the MEQ response. I indicated this would be of great assistance to me and that it would allow me to spend my time more productively as it would give me much of the factual material I needed to undertake my analysis. They understood this and undertook to seek approval from the Governor of the BOL. However, I accept that is a confidential document and that the authorities may not wish to release it to me in advance of the Mutual Evaluation process. At the time of completing this report I had not received the MEQ response.

LAO PDR – AN OVERVIEW

In order to understand the environment in which the AML CFT system is being implemented it is essential to have some understanding of the system of government, the geography, the economic situation, the nature of the judiciary and the role of various government agencies within Lao PDR and the supervisory and regulatory structures within the financial sector and beyond. Given this report is prepared for the ADB and the Lao PDR officials there is no need for a detailed analysis of these factors. However some key points need to be highlighted as they directly impact on AML CFT developments, the pace and likelihood of change and the practical issues to be dealt with.

- Lao PDR is a landlocked country which borders China, Vietnam, Myanmar, Thailand and Cambodia. Its longest borders are with Thailand and Vietnam. The borders are relatively porous and the movement of people and goods (both licit and illicit is hard to control).
- Lao PDR has a government comprised of a single political party. Many commercial institutions, including the major domestic banks, are state owned.
- Its major natural resources are timber, hydropower, gypsum, tin, gold and gemstones. The latter two products provide a means for 'value' to be moved illicitly out of the country relatively easily.
- Just over 4% of Lao PDR is arable but the rural population amounts to 80% of total employment.

- Industry and services are the major contributors to GDP while only employing 20% of the workforce.
- Per capita GDP has been rising and is estimated to be around \$906 in 2009. Average growth in GDP since 2001 has been in excess of 7%. Lao PDR is making significant progress towards its Millennium Development Goals and poverty reduction programs are working.
- The banking sector has expanded very rapidly in recent years and there are now 24 licensed banks. While the three state owned banks still control more than 50% of deposits this figure has been dropping with the addition of new bank. This growth in bank numbers creates issues for the AML CFT system and for the regulatory role of AMLIU.
- Lao PDR still has a cash based economy but the proportion of economic activity conducted in cash is decreasing as electronic banking and non cash payment systems become more accessible.
- In order to understand the AML CFT legislative structure it is important to understand the way legislation is normally introduced in Lao PDR. While an Act of the National Assembly is the highest level of legislation this is not usually the first form of legislation. Unlike common law jurisdictions where new or novel issues are being addressed the initial legislation is usually a Decree, issued by the Prime Minister, under the authority of an existing Act. The Decree is usually in general terms. It deals with broad issues such as the need for agencies to respond to a perceived problem and imposes obligations in general terms. Decrees tend not to be prescriptive. If more detailed directions are required these are contained in regulations, notice or directives which draw their authority from the Decree or a national law. In the case of the directions and guidelines relating to AML these have been issued under the AML decree as well as the Law on the Bank of Lao PDR and the Banking Law.

However, while these subordinate instructions are to be 'strictly' applied with the sanctions contained in the Decree applicable for any failure to do so, this does not happen in practice and in many cases this is because the 'obligations' are expressed in ways which make it difficult to specify breaches. The language is exhortatory rather than prescriptive. The Guidelines therefore need to be rewritten and issued as regulations.

AML/CFT STRENGTHS AND WEAKNESSES

In the light of this analysis and the observations I have made there are some obvious factors which will assist the development of an effective AML/CFT system in Lao PDR. These strengths need to be balanced against some inherent weaknesses which also need to be addressed.

STRENGTHS

There are a number of inherent strengths within the present government and financial arrangements in Lao PDR.

- There is an AML Decree which contains some of the necessary elements of a satisfactory AML CFT Law. Key elements are absent (see Gap Analysis attached).

- The Director General of the AMLIU is Chairman of a Working Group established³ by the Governor of the BOL on 27 March 2008 to implement the AML decree and prepare for the Mutual Evaluation. All key ministries are represented. This is important as it provides a framework for policy and operational coordination.
- There appears to be a good working relationship between the AMLIU and the other government agencies which will play key roles in the AML/CFT system, at least at middle ranking officer level. This is coordination and cooperation will be important as the system develops. However, the levels of the Committee representatives are not at a sufficiently senior level. While a working level committee is important there needs to be a high level national coordinating committee to ensure that senior officials can focus on AML CFT issues.
- The AML Decree, while having serious shortcomings does provide a basis for reporting of suspicious transactions, established the FIU and allows for some countermeasures⁴ to be taken.
- The AMLIU has been established with 10 Staff including the Director General. While it is located in cramped accommodation it is about to move to more appropriate office accommodation. Its size compares favourably with many smaller country FIUs.
- The AMLIU issued a *Guideline on Reporting Suspicious Transactions* No.66/AMLIU dated 15 October 2007 and has also issued the reporting form for suspicious transaction reports (STRs).
- The AMLIU has issued *The Guideline on AML Procedures and Operational Control for Financial Institutions under supervision of the Bank of Lao PDR* No. 02/BOL dated 16 September 2008. This provides guidance to reporting institutions.
- In addition, AMLIU has issued some two instructions to banks:
 - Notice No.216/AMLIU dated 17 September 2008 for banks to implement the Bank of Lao Governor's Guideline on AML Procedures and Operational Control for Financial Institutions under supervision of the Bank of Lao PDR No. 02/BOL dated 16 September 2008 including the appointment of compliance officers.
 - Notice No.114/AMLIU dated 04 May 2009, for banks to develop their own internal AML policy and procedures and to develop and implement AML annual training program.
- The staff of the AMLIU have been the recipients of a range of AML CFT related training and technical assistance over the last few years. There is a good level of knowledge and understanding but as with any FIU its capacity to operate depends on its legal powers, relationship with both government and reporting entities, resources and support at the most senior levels of government.
- Some reporting of suspicious transactions has occurred but the numbers are very low.

³ See *The Decision on Terms of Reference of the AML Working Group* No. 673/BOL dated 02 September 2008

⁴ Such as blocking or rejecting suspicious transactions. The problem is that while there is reference to other necessary powers, eg freezing of transactions, neither the AMLIU nor the BOL has power to do so. Only the police can do this and the processes do not allow for quick action to be taken.

- Lao PDR is a member of the APG and though this has access to information about new AML CFT methodologies. It attends APG meeting, Typologies Workshops and other APG arranged training and technical assistance.
- The UNODC has had in place a system of AML CFT Mentors who provide assistance to Lao PDR, Vietnam and Cambodia. This has enable training and development of the AMLIU and other agencies with assistance from bodies such as the World Bank and the ADB⁵. Australia's FIU, AUSTRAC has also assisted in the development of a program to extend reporting obligations to DNFBPs. While these institutions are included in the list of reporting entities in the AML Decree they have not so far been required to report.
- Location of the FIU within the framework of the BOL provides a number of benefits. It draws on public confidence in the integrity of BOL and should allow for close cooperation between the AMLIU and related areas of the BOL such as banking supervision and bank licensing activities.
- This should mean that the BOL supervisors can ensure AML CFT requirements are being implemented by the reporting entities, such as banks, when these are subject to on and off site inspections. In fact the AMLIU has been designated to undertake AML CFT supervision (see below) separate from other bank supervision.
- As a member of ASEAN, Lao PDR is a party to a regional mutual legal assistance treaty which should, subject to the necessary domestic legislation, enable it to seek and exchange information relating to criminal investigations and prosecutions with other ASEAN members.
- Lao PDR has been a party to the International Convention for the Suppression of the Financing of Terrorism since 29 October 2008.
- Lao PDR has signed (10 December 2003) and ratified (25 September 2009) the UN Convention against Corruption.
- LAO PDR has acceded to (26 September 2003) the UN Convention against Transnational Organised Crime.
- As parties to these UN Conventions Lao PDR should have in place or, at the very least, be actively developing the necessary domestic legislation to give effect to its treaty obligations.
- The Ministry of Public Security has recently established the Anti Financial Crimes Division within the Economic Police Department to investigate all financial crimes including money laundering activities.

⁵ For example there have been a number of World Bank/UNODC workshops aimed at the FIU and LEAs, AUSTRAC workshops in 2009 on application of AML CFT procedures within designated non financial businesses and professions (DNFBPs), the ongoing support of World Bank and UNODC funded mentors over the last 4 years, ADB funded provision of legal drafting assistance in 2004-5, ADB is also undertaking a three part technical assistance program which is expected to cover three components: Regulatory Framework, Training, and IT System and various ad hoc support on translation of materials such as the MEQ through the US Embassy. Staff of AMLIU have attended various regional taring activities run by IMF. This list is not intended to be comprehensive

WEAKNESSES

Of course any country which seeks to introduce AML/CFT systems has to overcome some inherent weaknesses or problems. A number of these are apparent in the present arrangements which may create problems for the effective implementation of AML/CFT laws. Some of these factors are outside of the control of the authorities but they need to be taken into account in developing the AML CFT system. They affect the speed and effectiveness of the Lao PDR system but also make it imperative that it develops and implements such a system.

- A number of Lao PDR's neighbours are known source countries for narcotics and manufactured illicit drugs such as methamphetamines. While it has taken steps to substantially reduce domestic cultivation it is a transit country which makes it vulnerable to money laundering activities.
- Its domestic geography, and that of its neighbours, makes policing of borders difficult if not impossible. Its borders are porous and this facilitates the illegal movement of drugs, people, cash and other goods.
- The creation of the Anti Financial Crimes Division within MPS is welcome but there is still low capacity in law enforcement to effectively detect and investigate financial crime and money laundering. This is reflected in the absence of any money laundering investigations or prosecutions to date. It is a common problem in the region. UNODC is working on a program for technical assistance in this area and this will make a significant difference over time.
- The AMLIU has been largely focused on the forthcoming ME process and this meant that it has not yet begun to undertake traditional FIU roles including:
 - Supervision and inspection of banks
 - Checking compliance with the obligations to appoint Compliance Officers, develop AML CFT programs and conduct internal training
 - Develop analytical skills
 - Conduct training activities itself (as distinct from working with donor agencies)
 - Develop a clear timetable to extend application of the AML Decree to non bank financial institutions and the DNFBPs
- The Governor of BOL has said that AMLIU to undertake supervision of AML CFT activities within the banks. They are working on an On Site Inspection Manual but it is not expected to be completed until the end of 2010. This means there has been no assessment of the level of compliance with the Directives issued by AMLIU.
- Perhaps because of the decision that AMLIU should undertake AML CFT related banking supervision this area is not covered by the exiting supervisory areas with BOL. Ideally, they should be looking at AML CFT issues until AMLIU has the capacity to undertake this work. The fact that there are laws and directives in place which are not the subject of inspection and enforcement action (if necessary) sends negative signals to the financial institutions.
- Under the scheme provided by the AML Decree AML CFT supervision and enforcement is the responsibility of the government ministry or entity which oversees that entity. For examples casinos are regulated by the Ministry of Information and Culture and AML CFT compliance will be supervised by that ministry not the BOL or the AMLIU.

- Under the legislative hierarchy which operates in Lao PDR, a Decree issued by the President or the Prime Minister, or subordinate rules and guidelines cannot create criminal offences. Only Laws enacted by the National Assembly can do this. Consequently without an AML CFT Law enacted by the National Assembly there can be no criminal offences concerning tipping off, the unauthorised disclosure of information relating to reporting activity or foreign requests for assistance or other breaches of the AML Decree. These are only subject to administrative sanctions.
- The existing law is not being implemented. The Decree clearly imposes on reporting entities a range of ML obligations. Reporting entities are
 - 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, travelers 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 PDR.

However, the Decree is only expected to be applied at this stage by commercial banks. This is a common practice in a number of countries where the selective application of Decrees and regulations occurs. The institutions will be advised in due course when the government expects them to comply. Until that time non compliance is accepted. While a staged implementation process is usually desirable, and is the practice adopted in many countries (developed and developing), this is often specifically provided for in the legislation. This has not been done in Lao PDR or in a number of other countries in the region. The practice seems to be that the use of more informal administrative devices to achieve staged implementation is acceptable.

- While the various instructions issued by AMLIU in relation to STRs and other areas of compliance such as the need for internal AML CFT programs could be improved, they do set out important elements of an AML CFT system. The problem is lack of compliance. Only 28 STRs have been reported since the Decree was promulgated, and only 6 were made in the last year. There is a serious problem on non compliance and the amendment of the legislation (as important as that is) will not lead of itself to improved compliance.
- The problems with the Decree have been the subject of a number of analyses undertaken by or on behalf of various agencies: there was an early comprehensive draft Law which ran to almost 60 pages, various drafts of the decree, comments on the draft from IMF and ADB, a detailed analysis undertaken on behalf of OTA in 2009, and APG advice and commentary in the lead up

to mutual evaluation process. There is no absence of advice on what the law should cover. I understand that there is no decision at the political level to either amend the current decree of to develop a new draft law for consideration by the National Assembly. The ME Report may provide the impetus for such a decision.

- There is no requirement to report high value transactions or electronic cross border transactions to AMLIU.
- To give effect to the Presidential Decree Law (No.01/OP dated 17 March 2008) on *Governing the Management of Foreign Currency and Precious Metals* the Governor of the Bank of the Lao PDR issued the *Instruction on Implementation of Decree Law on Management of Foreign Currency and Precious Metals* (No. 1/BOL dated 2 April 2010). Article 13 of the Instructions, deals with 'Bringing cash in foreign currency, and precious metals and kip in and out the Lao PDR'. It provides that

“Residents and non-residents of the Lao PDR coming in and going out of the Lao PDR may bring in or out the Kip of no more than 20 million kip. Bigger amount shall be approved by the BOL.

Passengers coming into the Lao PDR may bring unlimited amount of cash in foreign currency and/ or precious metals. However, if the amount exceeds its equivalent of 100 million Kip, it shall be declared to the customs officer at the border check point.

The customs officer at the border check point will issue a declaration slip to the owner of money or previous metal as evidence.

Passengers going out the Lao PDR who want to bring out foreign currency and /or precious metals with a value in excess of its equivalent 100 million Kip shall take along the declaration slip of bringing these in or get an approval from the BOL or from an authorized commercial bank.

Bringing cash in kip and foreign currency in and out the Lao PDR by a commercial bank and a financial institution located in Lao PDR shall comply with Article 19 of the Decree Law and this Instruction.”

This means that movement of cash and gems below the threshold is unregulated and above the limit depends on a declaration processes which may not be known to those who enter or leave the Lao PDR. There is a declaration form but this is often not distributed to those entering the country. However, given the border management issues referred to above it is not clear whether this instruction is or could be actively implemented.

- There have been no prosecution for ML to date despite the existence of a provision (Article 64 of the Penal Code) criminalising money laundering since 2005.
- The existence of legal casinos raises a number of AML and CFT issues. The extent to which they are regulated needs to be explored but some at least have larger numbers of players. They should be an AML priority.
- While Lao PDR is a Party to Terrorism Financing Convention there is no legislation criminalising terrorism financing. This means Lao PDR is in breach of its obligations under the Convention and under UN Security Council Resolution 1373 (2001) and subsequent Resolutions relating to terrorism financing.
- In 2009 the APG raised three areas of concern with BOL. These were

- The need for significant legislative amendment to ensure an adequate money laundering offence in the Penal Code, to impose sanctions for failure to comply with the STR reporting obligations and to criminalise terrorism financing;
- The need to establish a high level National Consultative Council on AML CFT issues. The Working Group is not at a sufficient senior level to ensure action occurs; and
- Enhanced powers for the AMLIU to ensure it can function effectively.

I understand these matters were referred by the BOL to the Prime Minister's Office in early 2009 where they remain pending.

- Some of the technical assistance provided to date seems to me to have been of less value that it might have been because of what I see as sequencing issues. For example, AUSTRAC provided assistance on developing a program to extend the reporting obligations to DNFBPs. These are included in the definition of reporting entities in the Decree and should be reporting. However, it is unlikely they will be brought on stream ahead of financial institutions such as leasing companies, securities markets, money changers, credit providers and deposit taking entities. In most countries these have been brought into the system ahead of the DNFBPs. I understand the AMLIU asked AUSTRAC or deal with the DNFBPs because they were conscious of their need to deal with these entities under the FATF standards. This is no criticism of AUSTRAC which responded to a request and provided the requested assistance.

Yet to cover this area before the non bank financial sector and casinos seems to me to directing resources at the wrong targets. It is important that the assistance provided reflects properly sequenced priorities.

ELEMENTS OF AN EFFECTIVE ANTI-MONEY LAUNDERING SYSTEM

Based on the international standards developed by the Financial Action Task Force (FATF) and now widely accepted as providing the basis for national responses to AML and CFT, a sound anti-money laundering system must contain certain core elements. For the purposes of this Report, the list is limited to the main issues that need to be addressed and which will need to be addressed if they are not yet in place. The starting point is the **necessary minimum elements** to operate an effective AML CFT regime. The ME process will focus on a wider range of consolidations and examine them in more depth than this report can address.

A detailed list of requirements is at **Attachment B**. It covers

- Legislation
- The role, powers and functions of the FIU
- The obligations and activities of reporting entities (both financial and non financial)
- Investigative and prosecution agencies
- Coordination arrangements including international coordination and cooperation
- Policy development
- Systemic features

A Gap Analysis, indicating my assessment of the present position in Lao PDR against these considerations, is at **Attachment C**.

These elements do not need to be found in a single law, although that can be useful. In many countries the legislative elements of the AML/CFT regime are found in a number of laws often the responsibility

of a number of different ministries. While a single comprehensive law is desirable many factors may militate against that approach. Not all elements have to be in primary legislation, however some elements must be contained in Acts such as the criminalisation of money laundering and the financing of terrorism.

As a member state of the United Nations, and as a party to key UN Conventions, Lao PDR has obligations to ensure its domestic legislation allows it to respond to both money laundering and terrorism financing. The present legislation does not allow Lao PDR to meet its Convention obligations in a number of key respects.

PREPARATION OF A GAP ANALYSIS

The Gap Analysis (Attachment C) identifies the legislative provisions which are required to meet the minimum international standards in relation to AML CFT laws and the current gaps in the legislative and regulatory systems in place. Some of the key elements of an AML/CFT system already exist (eg the creation of a money laundering offence (albeit with significant problems) and the requirement for financial institutions to introduce KYC policies) but the scope and enforceability of the existing provisions needs to be significantly improved. Some elements will need to be the subject of further consideration by the government and approval given to develop new legislation. For example there needs to be comprehensive legislation to allow for the tracing, seizure and recovery of criminal proceeds and also a legislative framework for the seeking and provision of mutual legal assistance. This is needed to give effect to decisions already made by the Government to ratify the UN Convention against Corruption.

These requirements do not arise solely as an issue in relation to AML or CFT but are required to meet Lao PDR's obligations under various conventions and Security Council Resolutions.

Other issues to emerge from the Gap Analysis include:

- The lack of comprehensive proceeds of crime legislation;
- The lack of comprehensive mutual legal assistance legislation;
- The failure to deal with terrorism financing in the Penal Code
- The absence of structuring and tipping off offences;
- Existing legislation to monitor cross border movements but implementation could be improved and legislative requirements enhanced;
- Need to enhance and enforce rules on customer identification, KYC, due diligence and high risk clients;
- No requirements to effectively identify beneficial ownership; and
- No effective requirements to ensure adequate originator information for internal and external funds transfers.

The Two Year Action Plan which I developed in consultation with the BOL seeks to address the most urgent of these needs. However, given the experience to date and absent some major commitment by the Government, effectively meeting all of these needs will take a longer timeframe.

Based on this initial analysis and my discussions with AMLIU my assessment is that the main priorities over the next two years are;

- The Government must decide to develop and implement a comprehensive AML CFT Law, the detail of which must meet the inevitable criticism to be made by the ME Report. This will take time but commitment to the process is urgent. Support for this process could be provided by ADB under its current TA activity. This would build on the substantial work done over the last four years to provide guidance on what is needed.
- Legislation must be enacted to give effect to the obligations imposed on Lao PDR by the UN Security Council Resolutions relating to terrorism financing and its ratification of the UN International Convention for the Suppression of the Financing of Terrorism 1999
- In the meantime the existing legislation needs to be rigorously applied and enforced (to the extent possible given its terms). This will need support from the senior levels of the BOL and key Ministers. Absent that support little will change.
- Even without new legislation administrative directions from the Government would lead to much higher levels of AML action.
- AMLIU to develop, publicise and apply a timetable for the application of the AML Decree to non bank financial institutions, casinos and DNFBPs over the next two years.
- AMLIU to complete its On Site Inspection Manual and begin on site inspections of banks.
- The priority for inspection action is the largest banks and failure to meet the requirements of the AML Decree and Guidelines needs to be dealt with firm enforcement action (this will send an effective message to other reporting entities).
- The 4 licensed Casinos need to be brought within the reporting process urgently and be subject to regular supervision and enforcement action.
- A national AML CFT Risk Analysis should be carried out and provide a basis for a national AML CFT Strategy to be developed by the NCC and adopted by the Lao PDR Government.
- Some basic analysis training will be needed quickly. While the volume of suspicious transactions reports (STRs) is unlikely to require significant IT capacity for some time, the volume of cash and other high value transactions such as international funds transfers will require IT capacity. Planning should be undertaken now as lead times are significant. The inherent problems with the BOL IT system (it is said not to be able to support email traffic) need to be addressed if reports are to be received electronically in the foreseeable future.
- Lao PDR should be given technical assistance to develop mutual legal assistance and proceeds of crime legislation to enable it to meet its obligations under the UN Convention against Corruption and the UN Convention against Transnational Organised Crime. This will take time but decisions to provide such assistance need to be made by the donor community.

CONCLUSION

While a great deal has been done to develop a legislative structure, create the AMLIU, issue instructions and guidance material, commence the reporting processes and undertake training and

receive technical assistance Lao PDR faces a substantial task to build on this beginning. Its law must be improved. All reporting entities identified under the Decree must be brought into effective compliance over a clearly identified and applied timeframe. Non compliance must be dealt with using appropriate and consistent sanctions.

These developments need to be sequenced and implemented with the support of the BOL, other ministries and the Government. The Two Year Action Plan provides a basis for this to occur but it will need the commitment of the Government and the active involvement of all Ministries and agencies as well as effective cooperation by the financial sector if the Plan is to become a reality.

ATTACHMENT A – WORK PROGRAM

Week One: 22-28 August

- Arrive in Vientiane and meet with senior BOL and AMLIU staff
- Undertake information gathering on the current situation including
 - the legislative framework
 - coordination of AML CFT activities
 - structure and resources of the AMLIU
 - reporting processes and level of reporting of STRs and high value transactions
 - scope of reporting entities (legally and in practice)
 - training activities undertaken to date by AMLIU staff, ministries and reporting entities
 - existing and proposed planning arrangements (eg extension of reporting obligations, legislative developments, donor programs)
- Seek access to Mutual Evaluation Questionnaire Responses.
- Identify strengths of current situation
- Identify major deficiencies as against international AML CFT standards
- Identify priorities for future action
- Begin drafting the initial report

Week Two: 30 August to 3 September

Complete initial report and forward to BOL (AMLIU).

Week Three: 4 - 11 September

Discuss Initial Report and get agreement to key findings

Develop 2 Year Action Plan with emphasis on

- Legislative developments
- Coordination arrangements
- Enhanced reporting by banks
- AML CFT National Risk Analysis
- Implementation of reporting by non bank financial institutions and DNFBPs
- Development of analytical skills
- Development of capacity to receive and analyse reports with appropriate IT capacity
- Training needs analysis and national training program
- Technical assistance needs and sequencing

Discussion of draft 2 Year Plan with AMLIU

Week Four 19-24 September

Finalise the Two Year Plan

ATTACHMENT B – MINIMUM REQUIREMENTS OF AN AML CFT SYSTEM

As a minimum⁶, the FATF Recommendations require the following elements in the national AML/CFT regime.

1. Legislation

Legislation that:

- 1) Allows for and has given effect to ratification and full implementation of the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna Convention), the UN International Convention for the Suppression of the Financing of Terrorism 1999 and the UN Convention Against Transnational Organized Crime 2001 (Palermo Convention) as well as other regional and international AML/CFT conventions or obligations. These include the Resolutions of the Security Council of the United Nations relating to terrorism and terrorist financing such as Resolution 1373.
- 2) Criminalizes money laundering
- 3) Criminalizes the financing of terrorism
- 4) Enables access to financial records in all financial institutions, subject to appropriate safeguards, as part of a money laundering related investigation and the development of financial intelligence.
- 5) Requires all financial institutions to establish and apply KYC rules.
- 6) Requires comprehensive “fit and proper” tests for officers, managers and significant shareholders of financial institutions
- 7) Requires reporting of all (cash) transactions (CTR) above a specified threshold (such as US 10,000.00). The size of the threshold to be determined having regard to local factors such as the nature of the economy and the size of average transactions
- 8) Includes an offence of structuring so that deliberately making smaller transactions to avoid reportable thresholds is a separate offence
- 9) Requires reporting of **any** suspicious transaction (STR) regardless of the size of the transaction. The basis for suspicion does not have to be defined in the law but it should be determined having regard to all of the surrounding circumstances.
- 10) Provides for guidance on the identification of suspicious transactions to be included in regulations or given to financial institutions in the form of guidelines and notices.
- 11) Provides full protection from legal or administrative penalties for employees or institutions which report a CTR or STR, unless the reports are shown to be malicious

⁶ This list is intended to guide consideration of what a country must do. It summarises core issues to be addressed. It is **not** an alternative to the detailed ME Methodology which identifies all of the obligations imposed by the international standards.

- 12) Requires confidentiality about the fact of and content of a CTR or STR
- 13) Establishes a FIU that is authorized to receive, analyse and disseminate financial and other intelligence both domestically and internationally.
- 14) Vests responsibility for investigating money laundering in nominated agencies. These can be existing law enforcement agencies (LEA) or specifically created bodies, including an FIU, and can be determined in accordance with the normal arrangements in the country for investigating serious crimes.
- 15) Allows investigating agencies to seek additional information from financial institutions, preferably through the FIU or a body with power to issue enforceable requests to the institution
- 16) Enables assets to be identified, traced and frozen by the FIU or other competent authorities, while protecting third party rights, during an investigation.
- 17) Establishes a system of mutual legal assistance relating not only to money laundering but to all serious offences. The assistance should be available to assist both investigation and prosecution processes on a reciprocal basis.
- 18) Establishes an effective regime for the confiscation of the proceeds of criminal activity or assets used to finance terrorism. Such a system might be based on either conviction of a person for the underlying criminal offence or be based on a civil recovery model (balance of probabilities test) independent of the need to establish the specific offence(s) that generated the assets.

More detailed requirements, consistent with the primary legislation should be contained in regulations or rules consistent with country practice.

Financial Intelligence Unit

An FIU should be established for receiving, analysing, and disseminating disclosures of financial information and other relevant information and intelligence concerning suspected money laundering (ML) or financing of terrorism (FT) activities (see Egmont Statement of Purpose). The FIU should meet the Egmont group definition of an FIU. The international obligations to counter terrorist financing now arise from a number of sources including the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism, the consequent national legislation to give effect to the provisions of the Convention in domestic law and the specific United Nations Resolutions, made in the aftermath of the September 11, 2001 terrorist attacks in the USA, which require Member States to take action to prevent terrorist financing. Responsibilities of the FIU should include:

- (a) The FIU or another competent authority should issue guidelines for the identification of complex and unusual transactions or patterns for transactions, and suspicious patterns of behaviour.
- (b) Financial institutions and other reporting parties should be provided with guidance regarding the manner of reporting, including the specification of reporting forms. These should be carefully developed to keep them as simple as possible, consistent with

obtaining the necessary level of information. They should not by their complexity or content discourage reporting.

- (c) The FIU, either directly or through other competent authorities, should have access to financial, administrative and/or law enforcement information, on a timely basis, to enable it to adequately undertake its responsibilities.
- (d) The FIU or another competent authority should be authorised to order sanctions or penalties (including meaningful fines and/or license suspensions) against reporting parties for failure to comply with their reporting and other obligations.
- (e) The FIU should be authorised to receive from and disseminate to domestic authorities or foreign counterparts financial information and intelligence for investigation or action when there are grounds to suspect ML or FT and should be authorised to enter into agreements such as memoranda of understanding to allow for such exchanges. The FIU should be able to provide reports spontaneously to another FIU without the need for a mutual assistance request.
- (f) There should be adequate safeguards, including confidentiality, to ensure that this exchange of information is consistent with national laws and international agreed principles on privacy and data protection.
- (g) FIUs and other competent authorities should keep statistics on:
 - STRs received, analysed and disseminated;
 - STRs resulting in investigation, prosecution, or convictions;
 - Requests for assistance received by the FIU or other competent authorities, from both domestic and foreign authorities, as well as the number of responses provided to the requests received;
 - Spontaneous referrals made by the FIU or other competent authorities to both domestic and foreign authorities; and
 - If the jurisdiction requires the reporting of large currency transactions, statistics should be kept on the number of reports filed.
- (h) The FIU should be adequately staffed, and provided with sufficient technical and other resources to fully perform its functions.
- (i) The FIU may be located within existing government agencies or as a separate authority but must be able to operate independently and protect the information it receives.
- (j) The FIU should publish periodic reports, including statistics, typologies and trends regarding its activities.
- (k) The FIU should establish and maintain close working relationships with its client organizations and provide regular and accurate feedback on results achieved. This requires the development of close working relationships built on trust and cooperation. This is not easy and requires continual work by all involved. It is, however, of fundamental importance and is an issue we deal with below.

3. Financial Institutions

Confidentiality or secrecy laws should not inhibit investigation of predicate offences and money laundering. Financial institutions should have the following measures in place:

- (a) Anonymous or fictitious accounts should be prohibited.
- (b) Effective KYC procedures should be in place and applied to both regular and occasional customers. In the case of occasional customers the extent of KYC procedures that is appropriate may vary. Although, in the light of concerns about terrorist financing, it is now expected that detailed information about the identity of the occasional customer initiating international funds transfers will be obtained by institutions and that information will accompany the transfer information.
- (c) Numbered accounts should only be permitted if the financial institution has properly identified the customer in accordance with these criteria, and the customer identification records are available to the AML/CFT compliance officer, other appropriate staff and the supervisor.
- (d) Accurate and meaningful originator information should be included in funds transfers.
- (e) Institutions should undertake ongoing monitoring of accounts and transactions, looking for unusual transactions to further examine for suspicious characteristics.
- (f) Financial institutions should be required to pay special attention to all complex, unusually large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, to examine these as far as possible, record findings and make these available for inspection by competent authorities.
- (g) Financial institutions should be required to give special attention to business relations and transactions involving persons (including legal entities and other financial institutions) in jurisdictions that do not have adequate systems in place to prevent or deter ML or FT.
- (h) There should be effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML or CFT systems of other countries.
- (i) Financial institutions should be required to give enhanced scrutiny to wire transfers that do not contain complete originator information.
- (j) Customer identity records (including where possible, copies of the official or other identifying document), account files, transaction records and business correspondence should be kept for at least five years following the termination of an account or business relationship and should be available for inspection by a competent authority.
- (k) Suspicious transactions should be required to be reported promptly to the FIU using established procedures that are well known by staff. Institutions should develop and maintain internal guidelines.

- (l) Financial institutions should be required to establish and maintain internal procedures to prevent their institutions from being used for ML or FT purposes.
- (m) Financial institutions should be required to ensure that employees are kept informed of new developments, including information on current ML and FT techniques, methods and trends and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning customer identification and due diligence, and suspicious transaction reporting.
- (n) Financial institutions should designate a senior manager as AML/CFT compliance officer.
- (o) Financial institutions should be required to put in place adequate screening procedures to ensure high standards when hiring employees.
- (p) Financial institutions should ensure that their foreign branches and subsidiaries observe appropriate AML/CFT measures consistent with the home jurisdiction requirements, to the extent that local laws and regulations permit. Where home and branch jurisdiction standards vary the higher standard should be adopted.
- (q) Integrity standards should apply to the recruitment of staff and to all officers, managers and significant shareholders of the financial institutions.
- (r) Regulators should have adequate powers of enforcement and sanction against financial institutions, their directors and senior management and the capacity to cooperate within jurisdictions and between jurisdictions.

4. Investigation and Prosecution of Money Laundering and Terrorist Financing

Investigation and prosecution of ML should have the following features:

- (a) Responsibility for investigating ML and FT should be specifically designated.
- (b) A wide range of investigative techniques, such as controlled delivery, undercover operations, should be authorised by law. These techniques are particularly useful in investigating money laundering and the predicate offences.
- (c) Provisions should exist to compel production of bank account records, financial transaction records, customer identification records, and other records through lawful process (for example, subpoenas, summonses, search and seizure warrants, or court orders such as monitoring orders). It is desirable that these powers be executed covertly.
- (d) Law enforcement and prosecution agencies dealing with ML and FT should be adequately structured and resourced.
- (e) Detailed statistics of investigations, prosecutions, and convictions, (particularly those initiated on the basis of STRs), and as a result of “on the street” or predicate offence

investigations, should be kept. Authorities should also keep statistics on any criminal, civil, or administrative sanctions applied.

- (f) Adequate training should be provided to administrative, investigative, prosecutorial, and judicial authorities for enforcing laws to combat ML and FT.
- (g) Training should focus on the scope of predicate offences, ML and FT typologies, techniques to investigate and prosecute these offences, and techniques for tracing property that is the proceeds of crime or is to be used to finance terrorism, and ensuring that such property is seized, frozen and confiscated.

5. Co-ordination Arrangements

Coordination arrangements are essential to ensure smooth operations of the AML system. Requirements include:

- (a) An operations committee representing those involved in day-to-day collection of financial intelligence, investigation, prosecution and compliance should also be established. This committee might also include representatives of financial institutions. This will assist in improving the level of compliance in areas such as reporting and KYC.
- (b) Close and effective cooperation between all relevant domestic agencies is essential.
- (c) Where necessary, appropriate mechanisms (such as a “task force or “combined law agency groups”) should be created to ensure adequate co-operation and information sharing among the different government agencies that may be involved in investigations of ML, FT, and predicate offences (e.g., police, customs, FIU and/or other competent authorities).
- (d) Typologies and trends should be reviewed on a regular, interagency basis, and information should be disseminated to law enforcement personnel on current ML and FT methods and techniques.

6. Policy Development and Legislative Review

A coordinating committee with senior representatives of all agencies with responsibilities in relation to ML and FT should be established. It should meet regularly. This committee should ensure regular review of law and procedure and propose changes as needed to reflect international best practice.

Adequate efforts should be made to address problems encountered by the authorities in achieving successful investigations, prosecutions, and convictions, and in freezing, seizing and confiscating the proceeds of crime or property to be used to finance terrorism.

7. Systemic Features

The systemic features required include:

- (a) Sound and sustainable financial sector policies.
- (b) Well-developed public sector infrastructure. This includes ethical and professional police, prosecutors and judges and an independent and reasonably efficient court system, all of which is adequately resourced.
- (c) Well-developed private sector infrastructure. This includes ethical and professional lawyers, accountants, and auditors operating under codes of practice that are enforceable and enforced.
- (d) A culture of deterrence shared and reinforced by government, financial institutions, industry groups and self-regulating organizations.

All of the elements set out above are important. While each element adds to the system, the anti-money laundering regime will only be truly effective when EVERY element is included. Many elements have little effect on their own but it is the way different aspects complement each other that makes such a difference.

ATTACHMENT C - GAP ANALYSIS

ATTACHMENT A - GAP ANALYSIS

GAP ANALYSIS OF EXISTING LEGISLATION AGAINST MINIMUM AML CFT STANDARDS

LEGISLATIVE OR OTHER REQUIREMENT	EXISTING LAW- YES/NO	COMMENTS
1. Allows for and has given effect to ratification and full implementation of the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna Convention), the UN International Convention for the Suppression of the Financing of Terrorism 1999 and the UN Convention Against Transnational Organized Crime 2001 (Palermo Convention) as well as other regional and international AML/CFT conventions or obligations. These include the Resolutions of the Security Council of the United Nations relating to terrorism and terrorist financing such as Resolution 1373.	Partial	Some coverage but no real basis for international cooperation elements of the conventions such as mutual legal assistance and no legislation for location, freezing, seizing and confiscation of proceeds of crime. Terrorism Financing not criminalised. Many elements of 1373 not covered.
2. Criminalizes money laundering	Yes	Article 64 of Penal Code does not meet international requirements (see extensive analysis done by OTA and others)
3. Criminalizes the financing of terrorism	No	Lao PDR signed and ratified UN Convention in 2009
4. Enables access to financial records in all financial institutions, subject to appropriate safeguards, as part of a money laundering related investigation and the development of financial intelligence.	No	Limited provisions in AML Decree. In practice only banks subject to partial coverage at present
5. Requires all financial institutions to establish and apply KYC rules.	No	No requirement in AML Decree. The Guideline On Anti Money Laundering Procedures and Operational Controls of Reporting Institutions under Supervision of the Bank of Lao PDR No 2/BOL dated 16 September 2008 has provisions but these do not bind the institutions. Not applied to other entities.
6. Requires comprehensive “fit and proper” tests for officers, managers and significant shareholders of financial institutions	No	
7. Requires reporting of all (cash) transactions (CTR)	No	Article 15 of AML decree allows AMLIU

<p>above a specified threshold (such as US 10,000.00). The size of the threshold to be determined having regard to local factors such as the nature of the economy and the size of average transactions</p>	<p>No</p>	<p>to set a figure but none has been set.</p>
<p>8. Includes an offence of structuring⁷ so that deliberately making smaller transactions to avoid reportable thresholds is a separate offence</p>	<p>Yes</p>	
<p>9. Requires reporting of any suspicious transaction (STR) regardless of the size of the transaction. The basis for suspicion does not have to be defined in the law but it should be determined having regard to all of the surrounding circumstances</p>	<p>No</p>	<p>Article 15 refers to suspicious transactions but in general terms. The Guidelines has more detailed provisions but not an adequate requirement</p>
<p>10. Provides for guidance on the identification of suspicious transactions to be included in regulations or given to financial institutions in the form of guidelines and notices.</p>	<p>No</p>	<p>Guidelines have been issued but are not binding</p>
<p>11. Provides full protection from legal or administrative penalties for employees or institutions which report a CTR or STR, unless the reports are shown to be malicious</p>	<p>Yes, partially</p>	<p>Article 22 refers to encouraging reports but in fact provides no protection to reporting entities or their staff.</p>
<p>12. Requires confidentiality about the fact of and content of a CTR or STR</p>	<p>Yes, partially</p>	<p>Article 22 is inadequate</p>
<p>13. Establishes a FIU that is authorized to receive, analyse and disseminate financial and other intelligence both domestically and internationally.</p>	<p>No</p>	<p>AMLIU is not given full range of powers. Even where LAO PDR has a treaty relationship (eg under multilateral treaties) addition MOUs are required. International cooperation provisions are inadequate</p>
<p>14. Vests responsibility for investigating money laundering in nominated agencies. These can be existing law enforcement agencies (LEA) or specifically created bodies, including an FIU, and can be determined in accordance with the normal arrangements in the country for investigating serious crimes.</p>	<p>No</p>	<p>Normal arrangements for investigation of offences apply. New Economic Crime Division Established within Ministry of Public Security</p>
<p>15. Allows investigating agencies to seek additional</p>		

⁷ Structuring refers to the practice of depositing relatively small amounts of cash to prevent the making of automatic reports above the threshold. This practice, if detected, usually leads to a STR being made.

information from financial institutions, preferably through the FIU or a body with power to issue enforceable requests to the institution	No	
16. Enables assets to be identified, traced and frozen by the FIU or other competent authorities, while protecting third party rights, during an investigation.	No	
17. Establishes a system of mutual legal assistance (MLA) relating not only to money laundering but to all serious offences. The assistance should be available to assist both investigation and prosecution processes on a reciprocal basis.	No	
18. Establishes an effective regime for the confiscation of the proceeds of criminal activity or assets used to finance terrorism. Such a system might be based on either conviction of a person for the underlying criminal offence or be based on a civil recovery model (balance of probabilities test) independent of the need to establish the specific offence(s) that generated the assets.		
RESPONSIBILITIES OF FIU		
1. The FIU or another competent authority should issue guidelines for the identification of complex and unusual transactions or patterns for transactions, and suspicious patterns of behaviour.	Yes	Article 25 sets out rights and duties of AMLIU but does not actually require Guidelines to be issued
2. Financial institutions and other reporting parties should be provided with guidance regarding the manner of reporting, including the specification of reporting forms. These should be carefully developed to keep them as simple as possible, consistent with obtaining the necessary level of information. They should not by their complexity or content discourage reporting.	No	STR forms issued together with Guidance
3. The FIU, either directly or through other competent authorities, should have access to financial, administrative and/or law enforcement information, on a timely basis, to enable it to adequately undertake its responsibilities.	No	There are inadequate powers in AML Decree to allow AMLIU to get information from other agencies. These need to be strengthened. In addition requests must be channelled through both BOL and the requested agency which slows communications.
	Yes	The AML Decree provides for reprimands and penalties for repeat

<p>4. The FIU or another competent authority should be authorised to order sanctions or penalties (including meaningful fines and/or license suspensions) against reporting parties for failure to comply with their reporting and other obligations.</p>	<p>No</p>	<p>offenders but there is no supervision occurring at present making these provisions ineffectual</p>
<p>5. The FIU should be authorised to receive from and disseminate to domestic authorities or foreign counterparts financial information and intelligence for investigation or action when there are grounds to suspect ML or FT and should be authorised to enter into agreements such as memoranda of understanding to allow for such exchanges. The FIU should be able to provide reports spontaneously to another FIU without the need for a mutual assistance request.</p>	<p>No</p>	<p>The Decree does not contain an adequate basis for international cooperation.</p>
<p>6. There should be adequate safeguards, including confidentiality, to ensure that this exchange of information is consistent with national laws and international agreed principles on privacy and data protection.</p>	<p>No</p>	<p>Decree has general statements about confidentiality but does not provide an adequate basis to ensure confidentiality</p>
<p>7. FIUs and other competent authorities should keep statistics on:</p> <ul style="list-style-type: none"> a) STRs received, analysed and disseminated; b) STRs resulting in investigation, prosecution, or convictions; c) Requests for assistance received by the FIU or other competent authorities, from both domestic and foreign authorities, as well as the number of responses provided to the requests received; d) Spontaneous referrals made by the FIU or other competent authorities to both domestic and foreign authorities; and e) If the jurisdiction requires the reporting of large currency transactions, statistics should be kept on the number of reports filed. 	<p>No</p>	<p>No legislated requirement and only very basic statistics being kept. There needs to be a comprehensive requirement for these in legislation.</p>
<p>8. The FIU should be adequately staffed, and provided with sufficient technical and other resources to fully perform its functions.</p>		<p>No legislative guarantees of resources. At present there are 10 people including the Director general but physical accommodation is cramped, there is inadequate security, no functioning IT system for the FIU functions, and no basis for electronic reporting.</p>
<p>9. The FIU may be located within existing government agencies or as a separate authority but must be able to operate independently and</p>		<p>AMLIU is part of BOL. This is not of itself a problem but internal communication and cross agency contact are subject to normal</p>

	protect the information it receives.	No	interagency arrangements which are not consistent with the need for the AMLIU to have direct and rapid contact with other agencies.
10.	The FIU should publish periodic reports, including statistics, typologies and trends regarding its activities.	No	No legal obligation and no reports produced
11.	The FIU should establish and maintain close working relationships with its client organizations and provide regular and accurate feedback on results achieved. This requires the development of close working relationships built on trust and cooperation.		The AMLIU has good relations through the Working Group but there needs to be a formal basis for access to information
FINANCIAL INSTITUTIONS AND OTHER ENTITIES			
1.	Anonymous or fictitious accounts should be prohibited.	No	See Article 9 of the Guidelines
2.	Effective KYC procedures should be in place and applied to both regular and occasional customers. In the case of occasional customers the extent of KYC procedures that is appropriate may vary. Although, in the light of concerns about terrorist financing, it is now expected that detailed information about the identity of the occasional customer initiating international funds transfers will be obtained by institutions and that information will accompany the transfer information.	No	Guidelines have provisions but not being supervised
3.	Numbered accounts should only be permitted if the financial institution has properly identified the customer in accordance with these criteria, and the customer identification records are available to the AML/CFT compliance officer, other appropriate staff and the supervisor.	No	Dealt with in the Guidelines (Article 7)
4.	Accurate and meaningful originator information should be included in funds transfers.	Yes	This is imposed externally through SWIFT rules. Guidelines deal with this in Article 9. General statements in Decree but Guidelines contain more specific detail. Non binding.
5.	Institutions should undertake ongoing monitoring of accounts and transactions, looking for unusual transactions to further examine for suspicious characteristics.	Yes but does not deal with TF	Article 20 of the Decree but need to be stronger
6.	Financial institutions should be required to pay special attention to all complex, unusually large transactions, or unusual patterns of transactions,		

<p>that have no apparent or visible economic or lawful purpose, to examine these as far as possible, record findings and make these available for inspection by competent authorities.</p>		
<p>7. Financial institutions should be required to give special attention to business relations and transactions involving persons (including legal entities and other financial institutions) in jurisdictions that do not have adequate systems in place to prevent or deter ML or FT.</p>	<p>No</p>	<p>Article 20 of the Decree but need to be stronger</p>
<p>8. There should be effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML or CFT systems of other countries.</p>	<p>No</p>	<p>No provision for this to be done at present</p>
<p>9. Financial institutions should be required to give enhanced scrutiny to wire transfers that do not contain complete originator information.</p>	<p>Yes, partially</p>	<p>This is the practical effect of the Guidelines of followed.</p>
<p>10. Customer identity records (including where possible, copies of the official or other identifying document), account files, transaction records and business correspondence should be kept for at least five years following the termination of an account or business relationship and should be available for inspection by a competent authority.</p>	<p>Yes, partially</p>	<p>AMLIU to keep document in some cases (Article 26 of Decree) but only general statements in Decree insofar as reporting entities concerned</p> <p>Reporting rules in Decree inadequate</p>
<p>11. Suspicious transactions should be required to be reported promptly to the FIU using established procedures that are well known by staff. Institutions should develop and maintain internal guidelines.</p>	<p>Yes, partially</p>	<p>General statements in Decree but no detail or enforcement. AMLIU has issued notices reminding banks of obligation</p>
<p>12. Financial institutions should be required to establish and maintain internal procedures to prevent their institutions from being used for ML or FT purposes.</p>	<p>Yes, partially</p>	<p>General statements in Decree but no detail or enforcement. AMLIU has issued notices reminding banks of obligation</p>
<p>13. Financial institutions should be required to ensure that employees are kept informed of new developments, including information on current ML and FT techniques, methods and trends and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning customer identification and due diligence, and suspicious transaction reporting.</p>	<p>Yes, partially</p>	<p>General statements in Decree but no detail or enforcement. AMLIU has issued notices reminding banks of</p>

14.	Financial institutions should designate a senior manager as AML/CFT compliance officer.	No	obligation
15.	Financial institutions should be required to put in place adequate screening procedures to ensure high standards when hiring employees.	No	
16.	Financial institutions should ensure that their foreign branches and subsidiaries observe appropriate AML/CFT measures consistent with the home jurisdiction requirements, to the extent that local laws and regulations permit. Where home and branch jurisdiction standards vary the higher standard should be adopted.	No	
17.	Integrity standards should apply to the recruitment of staff and to all officers, managers and significant shareholders of the financial institutions.	No	
18.	Regulators should have adequate powers of enforcement and sanction against financial institutions, their directors and senior management and the capacity to cooperate within jurisdictions and between jurisdictions.		
INVESTIGATION AND PROSECUTION OF ML AND TF			
1.	Responsibility for investigating ML and FT should be specifically designated.	No	New Division in Public Security Ministry said to have this responsibility
2.	A wide range of investigative techniques, such as controlled delivery, undercover operations, should be authorised by law. These techniques are particularly useful in investigating money laundering and the predicate offences.	No	
3.	Provisions should exist to compel production of bank account records, financial transaction records, customer identification records, and other records through lawful process (for example, subpoenas, summonses, search and seizure warrants, or court orders such as monitoring orders). It is desirable that these powers be executed covertly.	Limited powers in AML Decree and associated notices	Needs to be addressed specifically in AML CFT legislation or in comprehensive criminal procedures
4.	Law enforcement and prosecution agencies		This is a major issue not just in Lao PDR but all developing nations.

<p>dealing with ML and FT should be adequately structured and resourced.</p> <p>5. Detailed statistics of investigations, prosecutions, and convictions, (particularly those initiated on the basis of STRs), and as a result of “on the street” or predicate offence investigations, should be kept. Authorities should also keep statistics on any criminal, civil, or administrative sanctions applied.</p> <p>6. Adequate training should be provided to administrative, investigative, prosecutorial, and judicial authorities for enforcing laws to combat ML and FT.</p> <p>7. Training should focus on the scope of predicate offences, ML and FT typologies, techniques to investigate and prosecute these offences, and techniques for tracing property that is the proceeds of crime or is to be used to finance terrorism, and ensuring that such property is seized, frozen and confiscated.</p>		<p>None available</p> <p>Some training but no training needs analysis has been done or training program developed.</p>
<p>COOPERATION ARRANGEMENTS</p>		
<p>1. An operations committee representing those involved in day-to-day collection of financial intelligence, investigation, prosecution and compliance should also be established. This committee might also include representatives of financial institutions. This will assist in improving the level of compliance in areas such as reporting and KYC.</p> <p>2. Close and effective cooperation between all relevant domestic agencies is essential.</p> <p>3. Where necessary, appropriate mechanisms (such as a “task force or “combined law agency groups”) should be created to ensure adequate co-operation and information sharing among the different government agencies that may be involved in investigations of ML, FT, and predicate offences (e.g., police, customs, FIU and/or other competent authorities).</p> <p>4. Typologies and trends should be reviewed on a regular, interagency basis, and information should be disseminated to law enforcement personnel on current ML and FT methods and techniques.</p>	<p>No</p>	<p>Established a mid level by Direction of Governor of Bank of Lao PDR</p> <p>Need establishment of high level National Coordination Committee</p> <p>No legislative framework for this.</p> <p>Not occurring</p>

