

FATF



8TH FOLLOW-UP REPORT

Mutual Evaluation of India

June 2013





FINANCIAL ACTION TASK FORCE

The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.

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ACRONYMS

AML/CFT	Anti-Money Laundering/Combating the Financing of Terrorism
ARFAC	AML/CFT Regulatory Framework Assessment Committee
BOAC	Beneficial Ownership Assessment Committee
C	Compliant
CSAC	Casino Sector Assessment Committee
DNFBP	Designated Non-Financial Businesses and Professions
LC	Largely compliant
MER	Mutual evaluation report
ML	Money laundering
NC	Non-compliant
NPOC	Non Profit Organisations Sector Assessment Committee
PC	Partially compliant
PMLA	Prevention of Money Laundering Act
R.	Recommendation
SR.	Special Recommendation
STR	Suspicious Transaction Report
TF	Terrorist financing
UAPA	Unlawful Activities (Prevention) Act

MUTUAL EVALUATION OF INDIA: 8TH FOLLOW-UP REPORT (& PROGRESS REPORT ON ACTION PLAN)

Application to move from regular follow-up

Note by the Secretariat

I. INTRODUCTION

The first mutual evaluation report (MER) of India was adopted on 24 June 2010¹. India was placed in a regular follow-up process for mutual evaluation processes. However, in the context of its membership application and discussion that took place at the June 2010 Plenary, India presented a detailed Action Plan to improve compliance of its Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) regime, including with respect of the nine core² and key³ Recommendations, which are also requirements for FATF membership, rated as PC. The *Action Plan to strengthen India's AML/CFT System* was amended and subsequently adopted by the June 2010 FATF Plenary. At that time, the FATF Plenary decided to grant membership status to India. However, since India had not met all the FATF membership criteria, the Plenary also decided that India should report to each Plenary on the progress made in the implementation of the *Action Plan to strengthen India's AML/CFT System*, and that a technical follow-up visit should take place prior to the June 2011 Plenary. India reported back to the FATF in October 2010 (first follow-up report); in February 2011 (second follow-up report); and the *Report by the review team on technical follow-up visit* (third report) was adopted by the FATF Plenary in June 2011. Afterwards, India continued to report back to the FATF in February 2012 (fourth follow-up report), June 2012 (fifth follow-up report), October 2012 (sixth follow-up report), and February 2013 (seventh follow-up report). In February 2013, India indicated that it would report to the Plenary again in June 2013 concerning the additional steps taken to address the deficiencies identified in the report, and apply to move from regular follow-up.

This paper is based on the procedure for removal from the FATF's regular follow-up process, as agreed by the FATF Plenary in October 2008 and subsequently amended⁴. The paper contains a detailed description and analysis of the actions taken by India in respect of the core and key Recommendations rated partially compliant (PC) or non-compliant (NC) in the mutual evaluation, as well as a description and analysis of the other Recommendations rated PC or NC, and for information a set of laws and other materials (included as Annexes). The procedure requires that a country "has taken sufficient action to be considered for removal from the process – To have taken sufficient action in the opinion of the Plenary, it is necessary that the country has an effective AML/CFT system in force, under which the country has implemented the core and key Recommendations at

¹ www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20India%20full.pdf.

² The core Recommendations as defined in the FATF procedures are R.1, SR.II, R.5, R.10, R.13 and SR.IV.

³ The key Recommendations are R.3, R.4, R.23, R.26, R.35, R.36, R.40, SR.I, SR.III and SR.V.

⁴ Third Round of AML/CFT Evaluations Processes and Procedures, par. 41 www.fatf-gafi.org/media/fatf/documents/process%20and%20procedures.pdf.

a level essentially equivalent to a Compliant (C) or Largely Compliant (LC), taking into consideration that there would be no re-rating"⁵. India was rated PC or NC on the following Recommendations:

Core Recommendations rated PC (no core recommendations were rated NC):

R.1, R.5, R.13, SR.II, SR.IV

Key Recommendations rated PC (no key recommendations were rated NC)

R.3, R.23, R.35, SR.I

Other Recommendations rated PC

R.6, R.17, R.21, R.33, R.34, SR.IX

Other Recommendations rated NC

R.12, R.24, SR.VIII

As prescribed by the Mutual Evaluation procedures, India provided the Secretariat with a full report on its progress. The Secretariat has drafted a detailed analysis of the progress made for Recommendations 1, 5, 13, 23 and 35, and Special Recommendations I, II, and IV (see rating above), as well as an analysis of all the other Recommendations rated PC or NC. However, given India's detailed follow-up reports discussed at nearly every single FATF plenary meeting following the adoption of the MER in June 2010, the FATF Plenary decided in February 2013 that the analysis of the current report could be presented in table form. The draft analysis was provided to India (with a list of additional questions) for its review, and comments received. The final report was drafted taking into account some of the comments from India. During the process India has provided the Secretariat with all information requested.

As a general note on all applications for removal from regular follow-up: the procedure is described as a *paper based desk review*, and by its nature is less detailed and thorough than a mutual evaluation report. The analysis focuses on the Recommendations that were rated PC/NC, which means that only a part of the AML/CFT system is reviewed. Such analysis essentially consists of looking into the main laws, regulations and other material to verify the technical compliance of domestic legislation with the FATF standards. In assessing whether sufficient progress had been made, effectiveness is taken into account to the extent possible in a paper based desk review and primarily through a consideration of data provided by the country. It is also important to note that these conclusions do not prejudice the results of future assessments, as they are based on information which was not verified through an on-site process and was not, in every case, as comprehensive as would exist during a mutual evaluation.

⁵ FATF Processes and Procedures par. 39 (c).

II. MAIN CONCLUSIONS AND RECOMMENDATIONS TO THE PLENARY

CORE RECOMMENDATIONS

With regard to R.1, India made clear progress to address the technical deficiencies identified in its MER. The major and most critical shortcoming, namely the (high) monetary threshold condition for most money laundering predicates, is fully addressed. While India improved its ML offence, it is not fully in line with the Palermo and Vienna Conventions. However, the scope of the outstanding technical deficiencies is relatively minor without real impact on the effectiveness of India's AML regime. Consequently, India's current level of compliance with R.1 can be considered to be essentially equivalent to LC. All of the seven technical deficiencies with regard to R.5 are fully addressed. As a result, India's current level of compliance with R.5 is essentially equivalent to LC. In addition, since its mutual evaluation, India has addressed the two technical deficiencies with regard to R.13 and SR.IV and has taken extensive measures to ensure effective implementation. India's current level of compliance with R.13 and SR.IV is essentially equivalent to LC. Finally, India has also addressed all technical deficiencies in relation to SR.II and its current level of compliance with SR.II is essentially equivalent to LC.

KEY RECOMMENDATIONS

India has addressed all of the technical deficiencies in relation to R.3 identified in its MER and India's overall compliance with R. 3 can be assessed at a level essentially equivalent to LC. With regard to R.23, India took actions with regard to all of the deficiencies identified and most of them are (at least) largely addressed. Consequently, India's current level of compliance with R.23 is considered to be essentially equivalent to LC. The deficiencies in relation to R.35 were a spill-over from R.1 and R.23 and India's current level of compliance with these two Recommendations is considered to be essentially equivalent to LC. On that basis, it can be concluded that India's level of compliance with R.35 is now essentially equivalent to LC. Finally, the initial PC rating for SR.I was mostly due to a spill-over effect from R.3, R.5, R.23, SR.II and SR.III. All of the technical deficiencies with regard to R.3, R.5 and SR.II are fully addressed while the ratings for R.23 and SR.III are essentially equivalent to LC and the impact of their spill-over is limited. As a result, India's current level of compliance with SR.I is also equivalent to LC.

OTHER RECOMMENDATIONS

India has made progress with regard to the other 10 Recommendations that were rated PC or NC. India has achieved a sufficient level of compliance with Recommendations R.6, R.17, and R.21 and Special Recommendation IX. India has also made efforts to improve its compliance with Recommendations 12, 16, 24, 33, and 34 and Special Recommendation VIII although deficiencies remain and implementation of these recommendations has not yet reached a level equivalent to an LC rating.

CONCLUSIONS

Overall, India has reached a satisfactory level of compliance with all of the core and key Recommendations.

The mutual evaluation follow-up procedures indicate that, for a country to have taken sufficient action to be considered for removal from the process, it must have an effective AML/CFT system in force, under which it has implemented all core and key Recommendations at a level essentially equivalent to C or LC, taking into account that there would be no re-rating.

India has made sufficient progress for all core and key Recommendations. Consequently, it is recommended that India is removed from the regular follow-up process.

III. OVERVIEW OF INDIA'S PROGRESS

OVERVIEW OF THE MAIN CHANGES SINCE THE ADOPTION OF THE MER

Since the adoption of the MER in 2010, India has focused its attention on strengthening its AML/CFT regime based on a high-level political commitment to the *Action Plan to strengthen India's AML/CFT System* adopted by the FATF in June 2010. India rectified nearly all of the technical deficiencies identified with respect to the criminalisation of money laundering (ML) and terrorist financing (TF) and the implementation of effective confiscation and provisional measures through amendments to the Prevention of Money Laundering Act (PMLA) and the Unlawful Activities (Prevention) Act (UAPA).

The financial services regulators have all issued an extensive range of enforceable circulars, which, together with amendments to the PMLA and the related Prevention of Money Laundering (PML) Rules, substantially address the technical deficiencies identified in relation to customer due diligence and other preventive measures. Indian authorities reported that the PML Rules are currently being revised to ensure full consistency with the recent amendments to the PMLA. The supervisory framework has been enhanced with all the regulators having amended their inspection procedures to give much greater emphasis to AML/CFT in the routine examination programme. AML/CFT compliance monitoring has been introduced for the first time for India Post's financial services business and the inspection programme commenced in April 2011.

With respect to the suspicious transactions reporting regime, the FIU has further enhanced its outreach programme to provide guidance to the financial sector on their reporting obligations, and has engaged in extensive compliance monitoring. The result has been a significant increase in the number of STRs filed both with respect to ML and TF, without any evidence that this constitutes defensive reporting. Approximately two-thirds of the STRs received are disseminated to law enforcement, intelligence agencies and the regulators.

The recent amendments to the PMLA brought several of the Designated Non-Financial Businesses and Professions (DNFBPs) within its scope. The following DNFBPs are now subject to the PMLA: casinos; real estate agents/sub-registrars in charge of registering property; dealers in precious metals/stones; dealers in high-value goods; and safe deposit keepers. No immediate action is currently planned with respect to lawyers and accountants, who the authorities consider to pose a low risk for money laundering on the basis of two risk assessments that have been undertaken. However, the amendments to the PMLA contain a provision that will allow bringing additional DNFBPs under the PMLA at a later stage.

In response to the mutual evaluation report, the authorities established four inter-agency committees to review the steps needed to respond to the MER's conclusions. These interagency committees are:

1. The AML/CFT Regulatory Framework Assessment Committee (ARFAC);
2. The Casino Sector Assessment Committee (CSAC);
3. The Beneficial Ownership Assessment Committee (BOAC); and
4. The Non Profit Organisations Sector Assessment Committee (NPOC).

Implementation of the Action Plan and the committees' recommendations is being overseen by a 10-person FATF Cell located within the Ministry of Finance.

THE LEGAL AND REGULATORY FRAMEWORK

Since the adoption of the MER in 2010, India has completed key AML/CFT legislative steps:

- Amendments to the PMLA were enacted by Parliament on 17 December 2012 and came into force on 15 February 2013. These amendments improve India's AML regime as follows:
 - Strengthening the ML offence which addresses most of the technical deficiencies in relation to R.1.
 - Strengthening confiscation and provisional measures which address all of the R.3 ML related technical deficiencies.
 - Covering commodities futures brokers and several DNFBPs within the scope of the PMLA which has an impact on India's compliance with Recommendations 5, 10, 11, 12, 13, 16, 23, 24 and 29 and Special Recommendation IV.
 - Introducing of a broader range of sanctions under the PMLA, including sanctions against designated directors and employees of reporting entities, to improve compliance with Recommendation 17.
 - Introducing an explicit provision which will ensure that there is no longer room for interpretation that the conviction of a legal person would be contingent on the concurrent prosecution/conviction of a natural person; and increasing administrative sanctions for legal persons. These amendments have a positive impact on India's compliance with Recommendation 2.
- Amendments to the UAPA were enacted by Parliament on 20 December 2012 and came into force on 1 February 2013. These amendments improve India's CFT regime as follows:
 - Strengthening the TF offence which addresses all of the technical deficiencies in relation to SR.II.
 - Strengthening confiscation and provisional measures which address all of the R.3 TF related technical deficiencies.
- Amendments to Banking Laws Act were enacted by Parliament on 20 December 2012 and came into force on 18 January 2013. These amendments increase the maximum fine for breaches of the Act (and thereby the instructions issued under the Act) and remedy deficiencies identified in relation to R.17 and R.29.

IV. REVIEW OF THE MEASURES TAKEN IN RELATION TO THE CORE RECOMMENDATIONS RATED PC

Core Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
1 – ML offence	PC	<ul style="list-style-type: none"> (High) monetary threshold condition for most ML predicates. 	<p>Amendments to India's Prevention of Money Laundering Act (PMLA) were enacted by Parliament on 17 December 2012 and came into force on 15 February 2013.</p> <p>All predicate offences previously contained in Part B of the Schedule (46 offences with a threshold value of INR 3 million ("30 lakh rupees" or USD 60 000) were added in Part A without a threshold value. Part C of the Schedule now includes all offences listed in Part A, supplemented by all offences covered by Chapter XVII of the Indian Penal Code, when these offences have cross-border implications. All in all, the list of predicate offences continues to include 156 offences under 28 different statutes but without any monetary threshold. As result, the major technical deficiency identified in relation to R.1 is fully addressed.</p>
		<ul style="list-style-type: none"> ML provision does not cover physical concealment of criminal proceeds. ML provision does not cover the sole knowing acquisition, possession and use of criminal proceeds. 	<p>Amendments to the PMLA were enacted by Parliament on 17 December 2012 and came into force on 15 February 2013.</p> <p>The amended section 3 of the PMLA now reads: "<i>Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of the offence of money laundering.</i>" While the current formulation specifically refers to concealment, possession, acquisition and use, it does not do away with the condition that the proceeds of crime need to be "<i>projected or claimed as untainted property</i>".</p> <p>The wording of the ML offence is thus not fully in line with the Vienna</p>

Core Recommendations												
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies									
		<ul style="list-style-type: none"> Effectiveness issues: The absence of any conviction for ML, and the high evidentiary standard untested before the courts, particularly in respect of the proof of the foreign predicate offence. 	<p>and Palermo Conventions but case law provided by India appears to mitigate the concerns regarding the possible limiting effect of the conditional element in the ML offence. On that basis, it can be concluded that the scope of these technical deficiencies is relatively minor. It is not expected that there will be any impact on the effectiveness of India's AML regime. The deficiency is mostly addressed.</p> <p>In May 2013, India provided an update of the number of ML investigations and prosecutions underway. The number of ML investigations increased from 798 on 31 December 2009 (at the time of the ME on-site visit), to 1 405 on 15 December 2011, to 1 510 on 31 August 2012, to 1 530 on 30 November 2012, and 1 561 on 30 April 2013. After an increase in the number of ML prosecutions from 6 on 31 December 2009 to 36 on 31 March 2011, this number remained almost status quo in 2012 (37 on 30 November 2011 to 40 on 31 August and 42 on 30 November 2012). India reported that in March 2013, 7 new prosecution complaints were filed. India clarified that all 49 cases are at various stages of trial before the designated special courts.</p> <p>More detailed statistics are included in the table below:</p> <table border="1"> <thead> <tr> <th>No</th> <th colspan="2">PMLA Statistics as on 30.04.2013</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>No. of ML cases registered for investigation</td> <td>1 561</td> </tr> <tr> <td>2.</td> <td>No. of Provisional Attachment Orders (PAOs) issued</td> <td>197</td> </tr> </tbody> </table>	No	PMLA Statistics as on 30.04.2013		1.	No. of ML cases registered for investigation	1 561	2.	No. of Provisional Attachment Orders (PAOs) issued	197
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			<table border="1"> <tr> <td>3.</td> <td>No. of PAOs confirmed</td> <td>162</td> </tr> <tr> <td>4.</td> <td>Values of properties under attachment</td> <td>INR 35 737.3 million (USD 65 000)</td> </tr> <tr> <td>5.</td> <td>Prosecution complaints filed</td> <td>49</td> </tr> </table> <p>The Enforcement Directorate (ED), India's central LEA in charge of investigating and prosecuting ML offences, undertook several outreach initiatives to raise awareness of various stakeholders in establishing an effective AML regime in the country:</p> <ul style="list-style-type: none"> a) It established channels, including through liaison officers, for regular interaction with the LEAs investigating the PMLA predicate offences. Nodal Officers have been appointed by the Law Enforcement Agencies (LEAs). b) The ED signed a MOU with the FIU-IND for better coordination. c) The ED published booklets with FAQ, which have been distributed among the various AML stakeholders. d) The ED contributed to special workshops organised by various LEAs. e) The ED designated some of its legal officers to interact and familiarise the judiciary with the provisions of the PMLA. f) The ED organised briefing sessions for advocates and counsels dealing with the PMLA in the Special Courts. <p>In addition, India underlined that the amended section 44 of the PMLA requires that the trial of the ML offence should be conducted in parallel with the trial of the predicate offence. Indian authorities are confident that trials of the ML offence will now be conducted in a much shorter</p>	3.	No. of PAOs confirmed	162	4.	Values of properties under attachment	INR 35 737.3 million (USD 65 000)	5.	Prosecution complaints filed	49
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Core Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
			<p>timeframe and that this will lead to an increase in the conviction rate.</p> <p>India is taking various actions with the aim to effectively implement the PMLA. As a result, an increase in ML investigations and prosecution complaints can be observed. However, the absence of any ML conviction remains a serious effectiveness issue.</p>
			<p>Recommendation 1, overall conclusion</p> <p>India's ML offence is not fully in line with the Palermo and Vienna Conventions but the scope of the outstanding technical deficiencies is relatively minor without real impact on the effectiveness of India's AML regime. On that basis, it can be concluded that India's current level of technical compliance with R.1 is essentially equivalent to LC.</p>
5 – Customer due diligence	PC	<ul style="list-style-type: none"> Scope limitation: The PMLA does not apply to commodities futures brokers. 	<p>Amendments to the PMLA were enacted by Parliament on 17 December 2012 and came into force on 15 February 2013. Commodities future brokers are now subject to the PMLA. This deficiency is addressed.</p>
		<ul style="list-style-type: none"> No provisions in law or regulation that require CDD to be renewed when there is a suspicion of ML/FT or when there are doubts about the veracity or adequacy of previously obtained customer identification data. 	<p>PML Rules were amended on 16 June 2010 to require renewal of CDD when there are suspicions of money laundering or terrorist financing, or where there are doubts about the adequacy or veracity of previously obtained customer identification data. This deficiency is addressed.</p>
		<ul style="list-style-type: none"> No provisions in law or regulation that require an institution proactively to determine whether a customer is acting on behalf of another person. 	<p>PML Rules were amended on 16 June 2010 to require institutions to determine whether a customer is acting on behalf of a beneficial owner. This deficiency is addressed.</p>
		<ul style="list-style-type: none"> Lack of clarity and divergent practices in relation to the identification and verification of beneficial 	<p>On 3 January 2013, the Department of Revenue within the Ministry of Finance, in charge of ensuring implementation of AML measures,</p>

Core Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
		ownership.	issued an Office Memorandum describing the <i>Revised Method for Determination of Beneficial Ownership</i> . Section 1 of this Memorandum essentially mirrors the language of the interpretive note to the new R.10. Section 5 of the Memorandum expects the financial sector regulators (Reserve Bank of India - RBI; Securities and Exchange Board of India - SEBI; and Insurance Regulatory Development Authority - IRDA) to ensure compliance with the Revised Method. As a follow-up, the regulators promptly issued circulars containing the language of the Memorandum: RBI on 18 January 2013; SEBI on 24 January 2013, and IRDA on 4 February 2013. This deficiency is addressed.
		<ul style="list-style-type: none"> Professional secrecy provisions prevent identification of beneficial owners of client accounts. 	RBI circular was issued on 10 June 2010 prohibiting banks from opening client accounts for lawyers and accountants when the account-holder is unable to disclose the identity of the beneficial owners of the funds due to professional secrecy provisions. This deficiency is addressed.
		<ul style="list-style-type: none"> No obligation in IRDA circular to understand ownership and control structures of legal persons. 	IRDA circular issued on 12 November 2010 requires insurers to collect information in relation to the controlling interests and mind and management of a corporate customer. This circular was further completed with the IRDA circular on beneficial ownership issued on 4 February 2013. This deficiency is addressed.
		<ul style="list-style-type: none"> The RBI and IRDA circulars do not require a specific override of the procedures for low risk customers when there are suspicions of ML/FT, or where factors suggest that the customer poses a higher risk. 	RBI and IRDA circulars were issued on 9 June 2010 and 16 June 2010, respectively, to require that the low risk provisions should not apply when there are suspicions of ML/FT or when other factors give rise to a belief that the customer does not, in fact, pose a low risk. This deficiency is addressed.

Core Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
		<ul style="list-style-type: none"> No explicit requirement in the RBI and IRDA circulars to consider filing an STR when the institution can no longer be satisfied that it knows the true identity of the customer. Term life policies exempt from AML requirements at stage of writing the policy. 	<p>RBI and IRDA circulars were issued on 9 June 2010 and 16 June 2010, respectively, to introduce a requirement that an institution should file an STR when it can no longer be satisfied that it knows the true identity of a customer. This deficiency is addressed.</p> <p>IRDA circular issued on 12 November 2010 requires the CDD measures to be applied with respect to term life policies with effect from 1 January 2011, but classifies them as, <i>prima facie</i>, low risk. This deficiency is addressed.</p>
			<p>Recommendation 5, overall conclusion</p> <p>All of the seven technical deficiencies are fully addressed. As a result, India's current level of compliance with R.5 is essentially equivalent to LC.</p>
13 – Suspicious transaction reporting	PC	<ul style="list-style-type: none"> Scope limitation: The PMLA does not apply to commodities futures brokers. 	<p>Amendments to the PMLA were enacted by Parliament on 17 December 2012 and came into force on 15 February 2013.</p> <p>Commodities future brokers are now subject to the PMLA and the deficiency is addressed.</p>
		<ul style="list-style-type: none"> There is no definition of “activities of terrorism” in the PMLA, leaving it to reporting institutions to interpret the scope of the STR reporting requirement with respect to the financing of the activities of terrorism. 	<p>PML Rules were amended on 16 June 2010 and an explanation to the definition of suspicious transaction was inserted as follows: “Transaction involving financing of the activities relating to terrorism includes transaction involving funds suspected to be linked or related to, or to be used for terrorism, terrorist acts or by a terrorist, terrorist organisation or those who finance or are attempting to finance terrorism.” This deficiency is addressed.</p>
		<ul style="list-style-type: none"> Effectiveness issue: Concerns about the low number 	<p>Since the adoption of the MER, the FIU has been engaged in a</p>

Core Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
		of STRs filed in relation to ML and FT (especially in relation to the banking sector).	<p>number of projects, both to extend the outreach to the reporting entities, and to analyse the trends in the reporting system. A key project in this respect has been the establishment, under the umbrella of the Indian Banks' Association (IBA), of a joint public/private sector working group, which issued a guidance document for STR reporting on 30 March 2011. This document provides thorough and detailed guidance to assist institutions to establish a framework for identifying and reporting suspicious transactions.</p> <p>The FIU has also undertaken extensive outreach to financial institutions in the form of seminars and training workshops, which have included special programmes on terrorist financing. The FIU has also undertaken focused reviews of compliance with the STR requirements by both the public and private sector banks. These overall efforts to develop improved outreach and compliance monitoring appear to have had a significant and positive impact upon the levels of reporting by elements of the banking sector.</p> <p>This deficiency is addressed.</p>
			<p>Recommendation 13, overall conclusion</p> <p>Since its mutual evaluation, India has made important progress with regard to R.13 and its current level of compliance is essentially equivalent to LC.</p>
SR.II – Criminalise TF	PC	<ul style="list-style-type: none"> • FT provisions not in line with the FT Convention: <ul style="list-style-type: none"> ○ criminalisation of Treaty offences not consistent with art. 2.1(a); ○ not all Treaty offences included in the list 	<p>Amendments to the Unlawful Activities (Prevention) Act (UAPA) were enacted by Parliament on 20 December 2012 and came into force on 1 February 2013.</p> <ul style="list-style-type: none"> ○ The two deficiencies regarding the Treaty offences are

Core Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
		<ul style="list-style-type: none"> of terrorist acts; o international organisations not covered; o FT attempt is not fully covered. 	<p>addressed through the addition of sub-section 2 in section 15 of the UAPA which states that “<i>The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule.</i>” The proposed Second Schedule to the UAPA includes offences corresponding to all nine Treaties annexed to the TF Convention.</p> <ul style="list-style-type: none"> o The sub-section (1)(iii)-clause c of section 15 of the UAPA now explicitly refers to “<i>an international organisation or inter-governmental organisation or any other person to do or abstain from doing any act</i>”, what addresses the deficiency identified in the MER, namely that terrorist acts under section 15 did not target international organisations. o Through the amendments to section 17 of the UAPA, the attempt to commit the TF offence also extends to the acts of raising or collecting funds and consequently, the TF attempt is fully covered. <p>All four deficiencies in relation to the FT Convention are addressed.</p>
		<ul style="list-style-type: none"> • No criminalisation of sole knowing funding of terrorist individuals and terrorist organisations. 	<p>To address the specific deficiency regarding the criminalisation of sole knowing funding of terrorist individuals and terrorist organisations, the following “<i>explanation</i>” was added for the interpretation of the amended section 17: “<i>Raising or collecting or providing funds, in any manner for the benefit of, or, to an individual terrorist, terrorist gang or terrorist organisation for the purpose not specifically covered under section 15 (as set out above section 15 contains the different terrorist acts) shall also be construed as an offence.</i>” By adding this explanation, the financing of a terrorist organisation and an individual terrorist <i>for any purpose</i>, as required by the FATF Standards, is</p>

Core Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
		<ul style="list-style-type: none"> Effectiveness issue: Minimal number of convictions. 	<p>covered. This deficiency is addressed.</p> <p>In May 2013, India provided updated statistics. The number of persons accused of terrorist financing and the number of cases under investigation have continued to increase (respectively 470 and 143 in total from 2006 to 31 March 2013) while the number of persons convicted has remained low, namely 5 in total over the same period with no new convictions since April 2011. In addition, there were no cases under trial in 2012. These figures reflect an effectiveness issue in the process that leads from accusation to conviction in India.</p> <p>Following the enactment of the UAPA amendments, the Ministry of Home Affairs undertook several awareness raising initiatives in view of and effective implementation of the CFT legislation in January and April 2013.</p> <p>Even though some improvement regarding effectiveness since the 2010 MER can be observed, the deficiency regarding effectiveness remains.</p>
			<p>Special Recommendation II, overall conclusion</p> <p>All technical deficiencies in relation to SR.II are addressed and India's level of compliance with SR.II is now essentially equivalent to LC.</p>
SR.IV – Suspicious transaction reporting	PC	<ul style="list-style-type: none"> Scope limitation: The PMLA does not apply to commodities futures brokers. 	<p>Amendments to the PMLA were enacted by Parliament on 17 December 2012 and came into force on 15 February 2013.</p> <p>Commodities future brokers are now subject to the PMLA and the deficiency is addressed.</p>

Core Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
		<ul style="list-style-type: none"> There is no definition of “activities of terrorism” in the PMLA, leaving it to reporting institutions to interpret the scope of the STR reporting requirement with respect to the financing of the activities of terrorism. 	<p>The PML Rules were amended on 16 June 2010 and an explanation to the definition of suspicious transaction inserted as follows: <i>“Transaction involving financing of the activities relating to terrorism includes transaction involving funds suspected to be linked or related to, or to be used for terrorism, terrorist acts or by a terrorist, terrorist organisation or those who finance or are attempting to finance terrorism.”</i> This deficiency is addressed.</p>
		<ul style="list-style-type: none"> Effectiveness issue: Concerns about the extremely low number of STRs filed in relation to FT in comparison with India’s vulnerability with regard to terrorism 	<p>The reporting of suspicious transactions relating specifically to FT (which was highlighted in the MER as appearing to be exceptionally low in the context of India’s ongoing terrorism threat) is now showing a significant upward trend, especially with respect to those reports not involving automatic name-matches with the FT lists. This deficiency is addressed.</p>
			<p>Special Recommendation IV, overall conclusion</p> <p>Based on the information above, it can be concluded that India’s current level of compliance with SR.IV is essentially equivalent to LC.</p>

V. REVIEW OF THE MEASURES TAKEN IN RELATION TO THE KEY RECOMMENDATIONS RATED PC

Key Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
3 – Confiscation and provisional measures	PC	<ul style="list-style-type: none"> Confiscation of property laundered is not covered in the relevant legislation and depends on a conviction for a scheduled predicate offence. 	<p>Amendments to the PMLA were enacted by Parliament on 17 December 2012 and came into force on 15 February 2013 while amendments to the Unlawful Activities (Prevention) Act (UAPA) were enacted by Parliament on 20 December 2012 and came into force on 1 February 2013.</p> <p>The Amendments to sections 5 and 8 of the PMLA ensure that the confiscation of property laundered is also covered. The amendment to section 8 also ensures that confiscation of property is no longer dependent on a conviction for a scheduled predicate offence. The confiscation of property is now dependent on a predicate offence investigation registered at the judicial level, either in India or in any other country. The technical deficiencies are addressed.</p>
		<ul style="list-style-type: none"> The UAPA does not allow for confiscation of intended instrumentalities used in terrorist acts or funds collected to be used by terrorist individuals. 	<p>The amended definition of “proceeds of terrorism” in section 2(g) of the UAPA, explicitly includes <i>“any property which is being used, or is intended to be used, for a terrorist act or for the purpose of an individual terrorist or a terrorist gang or a terrorist organisation”</i>. Through this amendment to the definition of “proceeds of terrorism”, section 24(2) of the UAPA also provides for the confiscation of funds collected to be used by individual terrorists. The deficiency is addressed.</p>
		<ul style="list-style-type: none"> The UAPA and NDPS Act do not allow for property of corresponding value to be confiscated. 	<p>The amendment to section 24(3) of the UAPA provides for property of corresponding value to be confiscated.</p> <p>It is important to note that in the past, discussions also referred to</p>

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Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
			<p>proposed amendments to India's drugs legislation (NDPS Act). India proposed these amendments with the aim to fully address the deficiencies with regard to R.3 but they are not yet enacted. However, since the necessary drug offences are also covered as predicate offences under the PMLA, the amendments to India's drugs legislation are not needed to ensure compliance with the requirements of R.3.</p> <p>The deficiency is addressed.</p>
		<ul style="list-style-type: none"> There are no clear provisions and procedures on how to deal with the assets in case of criminal proceedings when the defendant has died. 	<p>Amendments to section 8(7) of the PMLA and section 33(5) of the UAPA introduce procedures for dealing with instances where the trial cannot be concluded because of the death of the accused or the accused being declared as a proclaimed offender or for any other reason. The deficiency is addressed.</p>
		<ul style="list-style-type: none"> Effectiveness issue: Concerns based on the limited number of confiscations in relation to ML/FT offences. 	<p>According to updated statistics provided by India in May 2013, the number of provisional attachment orders issued has continued to increase, from 138 on 30 April 2012, to 153 on 31 August 2012, 167 on 30 November 2012, and 196 on 31 March 2013. Only one of these provisional attachments resulted in a confiscation order. More detailed statistics are included in the effectiveness section in relation to R.1 above.</p> <p>India further clarified that even though, so far, only one confiscation has been made; out of the 195 other provisional attachments, 192 were confirmed by the Adjudicating Authority which is an indicator of the quality of the provisional attachment orders. Once these attachment orders are confirmed by the Adjudicating Authority, the owner of the property is deprived and the property is transferred to Enforcement Directorate. In addition, the authorities also point to</p>

Key Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
			<p>the fact that, on average, the amount of the individual attachment orders significantly increased since July 2010, namely from INR 76 million (approximately USD 1.5 million) on 31 July 2010 to INR 183 million (approximately USD 3.7 million) on 31 March 2013. As a result, it can be concluded that while the provisional attachments appear to be of good quality, the number of confiscations remains very low.</p>
			<p>Recommendation 3, overall conclusion</p> <p>India has addressed all the technical deficiencies in relation to R.3. On that basis, it can be concluded that India's current level of compliance with R.3 is essentially equivalent to LC.</p>
23 – Regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> • Scope limitation: The PMLA does not apply to commodities futures brokers. 	<p>Amendments to the PMLA were enacted by Parliament on 17 December 2012 and came into force on 15 February 2013.</p> <p>Commodities future brokers are now subject to the PMLA and the deficiency is addressed.</p>
		<ul style="list-style-type: none"> • Fit and proper testing by regulators prior to appointment does not apply to Non-executive Directors. 	<p>In 2011, the AML/CFT Regulatory Framework Assessment Committee (ARFAC) recommended that a "fit and proper" test should be applied prior to the appointment of all directors. Regulators have already introduced some administrative measures but the ARFAC recognised that, in the longer term, amendments to the regulatory laws would be needed to address this matter properly.</p> <p>Indian authorities further specified that the Insurance Act requires prior approval from IRDA for the appointment/reappointment of the CEO/a Director or Managing Director of insurance companies.</p>

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Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
			<p>On that basis, IRDA issued Corporate Governance Guidelines which contain details regarding fit and proper criteria for all Directors of Insurance Companies. However, the ARFAC's report also mentioned: <i>"While these [directions] will meet the immediate objective, a clear 'fit and proper' regime laid out through bridging gaps in appropriate legislation should be aimed at in the long term."</i></p> <p>As a result, while Indian authorities have taken immediate measures in view of addressing this deficiency by issuing guidelines, further legal amendments will be needed to fully address it, as concluded in the ARFAC report.</p>
		<ul style="list-style-type: none"> • Effectiveness issues: <ul style="list-style-type: none"> ○ Authorised Persons and Payment Service Providers, including India Post, have only recently been brought under the PMLA, and hence it is too early to assess effectiveness; ○ no inspections or ongoing monitoring by the Ministry of Finance of India Post as yet; 	<p>The regulator within the Ministry of Finance, Department of Economic Affairs, in particular, the Budget Division and the Department of Post have issued circulars/enforceable guidelines requiring India Post to comply with AML/CFT measures when doing banking business.</p> <p>In April 2011, India reported that 6 154 departmental post offices out of the 25 312 in the country had been inspected. Progress with regard to inspections carried out was being monitored by the Budget Division. In January 2013, India reported that during the second semester of 2012, an additional 5 297 post offices were inspected by the competent supervisor. India thus continues to make progress against this specific action plan item.</p>
		<ul style="list-style-type: none"> • Concerns that the regulators' procedures for targeting on-site inspections do not adequately take into account the AML/CFT risks of individual institutions. 	<p>The RBI's Department of Banking Supervision has amended its inspection manual to improve the focus on the AML/CFT risks of individual institutions. The RBI also conducted a thematic review of KYC/AML systems in place and corresponding compliance by banks. On that basis, the RBI's High Level Steering Committee</p>

Key Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
			<p>recommended the adoption of a risk-based supervision model for all banks.</p> <p>India reported that between January and March 2013, the RBI's Urban Banks Department conducted inspections of 442 Urban Cooperative Banks (UCBs). In several instances, cases of violation of the RBI's KYC/AML/CFT guidelines were observed, such as: 1) absence of a system for monitoring suspicious transactions of INR 1 million (USD 20 000) and more; 2) non-generation of CTRs/STRs; and 3) absence of risk categorisation and risk profiling. To follow up on these deficiencies, the RBI took the following actions: 27 advisory notices, 24 warning letters, and 27 show cause notices were issued. In addition, 7 entities were penalised and a total amount of INR 4 million (approximately USD 80 000) in the form of penalties were imposed.</p> <p>During the same period, the RBI's Rural Planning and Credit Department carried out 194 inspections of the institutions under its supervision: 30 Regional Rural Banks (RRBs), 9 State Co-operative Banks (SCBs), 152 District Central Co-operative Banks (DCCBs) and 3 other institutions. Major observations on KYC/AML/CFT violations by these banks related to: 1) customer identification; 2) reporting requirements; and 3) record-keeping. The irregularities were discussed with the institutions concerned in view of taking initiatives to remedy the deficiencies and further supervisory action.</p> <p>In addition, the NHB and NABARD have revised their inspection procedures to be broadly in line with those of the RBI. Indian authorities provided details on various awareness raising activities conducted by both the NHB and NABARD in cooperation with the</p>

Key Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
			<p>FIU-IND.</p> <p>In 2010-2011, SEBI has held meetings with the stock exchanges and depositories and developed plans for enhanced targeted inspection and supervision. Indian authorities report that since then, SEBI has included the AML/CFT risks as part of its inspection of securities intermediaries. In case of Stock Brokers and Depository participants, compliance of AML/CFT norms is verified by the stock exchanges and depository participants during their annual inspections and also in half yearly internal audits. Depository participants are required to conduct audit with respect to their operations which includes account opening/KYC/AML norms. SEBI has also carried out specific theme based inspections focusing on compliance with KYC (which includes broader CDD) and AML/CFT guidelines for stock brokers and depository participants. Indian authorities also reported that Mutual Funds are subject to inspection, including for compliance with AML/CFT requirements, on a yearly basis.</p> <p>IRDA has modified the inspection manual to address this issue. According to the revised inspection manual, focused inspections of insurance companies are carried out on a need basis, in addition to initial thorough inspections. Triggers for such focused inspections arise from market intelligence, FIU-IND reports; periodic routine inspections. IRDA has identified the following areas as key risk areas in the AML/CFT framework for insurance companies: CDD measures; STR reporting; sanctions lists. Indian authorities report that IRDA's focus during inspections is placed on systems/processes rather than transactional failures.</p> <p>India has taken important steps in view of addressing this</p>

Key Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
			deficiency.
			Recommendation 23, overall conclusion
			India reported actions with regard to all of the deficiencies identified in relation to R.23 and most of these deficiencies are (at least) largely addressed. Consequently, India's current level of compliance with R.23 is essentially equivalent to LC.
35 – Conventions	PC	<ul style="list-style-type: none"> Palermo TOC Convention not ratified. 	India ratified the Palermo Convention on 5 May 2011. The deficiency is fully addressed.
		<ul style="list-style-type: none"> Criminalisation of ML not in line with the Vienna and TOC Conventions (concealment, acquisition, possession and use). 	India's ML offence is not fully in line with the Palermo and Vienna Conventions but the scope of the outstanding technical deficiencies is relatively minor without real impact on the effectiveness of India's AML regime. The deficiency is largely addressed.
		<ul style="list-style-type: none"> Restricted ML seizure/confiscation regime. 	As indicated above in relation to R.3, this deficiency is fully addressed.
		<ul style="list-style-type: none"> Inadequate sanctions for the ML offence in the NDPS Act and the sanctions for legal persons in the PMLA. 	The threshold of INR 500 000 (USD 10 000) for the fine applicable to legal persons in section 2 of the PMLA has been removed through the recent amendments to the PMLA. The fine imposable on legal persons is now at the discretion of the court. As explained above in relation to R.3, amendments to the NDPS Act are not needed to ensure compliance with the FATF Recommendations given that the necessary drug offences are covered by the PMLA. The deficiency is addressed.
		<ul style="list-style-type: none"> Deficiencies in the regulatory and supervisory regime 	As indicated above in relation to R.23, the deficiencies in India's

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Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
		<ul style="list-style-type: none"> Effectiveness issue: Absence of convictions. 	<p>regulatory and supervisory regime are largely addressed.</p> <p>The effectiveness concerns regarding the total absence of ML convictions expressed in the MER still remains.</p> <p>India reported that it has enhanced its trial process. Throughout the country, 117 Special Courts for conducting trials under the PMLA were set up. Moreover, in addition to the measures taken to further expand its legal division and overall number of staff, the Enforcement Directorate hired over 50 lawyers for conducting the trials in these Special Courts. Finally, as indicated above in relation to R.1, through the recent amendments to the PMLA (in particular section 44), it is expected that trials will be conducted within a shorter timeframe.</p>
			<p>Recommendation 35, overall conclusion</p> <p>India has addressed nearly all of the technical deficiencies identified in relation to R.35. Consequently, its level of compliance with R.35 is now essentially equivalent to LC.</p>
SR.I – Implement UN instruments	PC	<ul style="list-style-type: none"> FT criminalisation not in line with the FT Convention (FT offences, international organisations, attempt). 	As explained above in relation to SR.II, this deficiency is now fully addressed.
		<ul style="list-style-type: none"> Confiscation of terrorist funds is deficient. 	As explained above in relation to R.3, this deficiency is now fully addressed.
		<ul style="list-style-type: none"> UN RES are not fully implemented. 	Though India considers that the implementation of the relevant UNSCRs is consistent with the requirements of SR.III, concerns remain as to whether the procedures in place for authorising

Key Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
			<p>access to funds or other assets frozen pursuant to UNSCR 1267 are appropriate.</p> <p>India reported that the Ministry of External Affairs has drafted a Gazette Notification which is currently with the Ministry of Law and Justice for approval. This Gazette Notification would put in place formal procedures for authorising access to funds for basic expenses consistent with FATF requirements. India is taking the necessary steps in view of addressing this deficiency.</p>
		<ul style="list-style-type: none"> Effectiveness issue: Concerns regarding preventive regime and judicial follow-up in terms of final convictions. 	<p>While the concerns regarding the preventive regime appear to be (largely) addressed (see R.5 and R.23 above), the effectiveness issue regarding R.1 remains outstanding.</p>
			<p>Special Recommendation I, overall conclusion</p> <p>Since the adoption of its MER in 2010, India has taken measures to improve its compliance with SR.I, which is now essentially equivalent to LC.</p>

VI. REVIEW OF THE MEASURES TAKEN IN RELATION TO THE OTHER RECOMMENDATIONS RATED PC OR NC

Other Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
6 – Politically exposed persons	PC	<ul style="list-style-type: none"> Scope limitation: The PMLA does not apply to commodities futures brokers. 	<p>Amendments to the PMLA were enacted by Parliament on 17 December 2012 and came into force on 15 February 2013.</p> <p>Commodities future brokers are now subject to the PMLA. This deficiency is addressed.</p>
		<ul style="list-style-type: none"> No requirement in the RBI and SEBI circulars to implement ongoing risk management procedures for identifying PEPs. 	<p>RBI issued a circular on 9 June 2010, requiring banks to implement ongoing risk management procedures for identifying PEPs and accounts for which a PEP may be the beneficial owner.</p> <p>SEBI issued a circular on 14 June 2010 requiring capital market intermediaries to put in place appropriate risk management systems to determine whether their client or potential client or the beneficial owner of such client is a PEP.</p> <p>This deficiency is addressed.</p>
		<ul style="list-style-type: none"> No requirement in the RBI circulars to apply enhanced measures to close relatives of PEPs. 	<p>RBI circular of 9 June 2010 specifies that enhanced measure should also be applied with respect to close relatives (but not close associates) of PEPs. This deficiency is mostly addressed.</p>
		<ul style="list-style-type: none"> No obligation in the IRDA circular to apply enhanced measures to entities where the beneficial owner of the customer is a PEP. 	<p>IRDA issued on 12 November 2010 requires insurers to apply enhanced CDD measures with respect to a policy of which a PEP is the beneficial owner. This deficiency is addressed.</p>

Other Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
			essentially equivalent to LC.
12 – DNFBPs – R.5, 6, 8-11	NC	<ul style="list-style-type: none"> Scope limitation: The PMLA does not apply to any of the DNFBP sectors, with the exception of casinos. 	<p>Amendments to the PMLA were enacted by Parliament on 17 December 2012 and came into force on 15 February 2013.</p> <p>The following DNFBPs are now subject to the PMLA (section 2(2)(v)): casinos; real estate agents/sub-registrars in charge of registering property; dealers in precious metals/stones and dealers in high-value goods, and safe deposit keepers. No immediate action is planned with respect to lawyers and accountants but the amendment to section 2 gives the Central Government the authority to designate additional DNFBPs, by notification, at a later stage.</p> <p>While India has clearly taken steps to address this deficiency, it is only partially addressed.</p>
		<ul style="list-style-type: none"> Only the basic requirements of the PMLA and the accompanying Rules apply to casinos, and these do not address much of the detail required under the FATF standards. 	<p>The Casino Sector Assessment Committee has examined FATF standards, legislation of other countries, typologies reports and the Report of the DNFBP Risk Assessment (2009 – see MER) to identify typologies relevant to the casino sector in the Indian context. The Report identified ten main areas for strengthening the legal framework. The recommendations formulated by the Committee were approved by the Government and instructions were issued to both the Government of Sikkim and the Government of Goa to ensure compliance.</p> <p>Indian authorities reported that the Government of Sikkim has issued AML/CFT guidelines for casinos operating in Sikkim. These guidelines were issued in September 2011 under the Sikkim Casino Games (Control and Tax) Act, 2002. On 10 January 2013, the Government of Goa issued through a formal notification in the</p>

Other Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
			Official Gazette of the Government of Goa “The Goa Anti Money Laundering and Financing of Terrorism Guidelines.” These guidelines were issued under rule 9(7) of the PML Rules. In case of non-compliance with these guidelines, sanctions under section 13 of the PMLA can be imposed.
		<ul style="list-style-type: none"> Effectiveness issue: Extension of the PMLA to the casino sector is very recent and there is insufficient evidence of effective implementation 	While the Governments of Goa and Sikkim issued the necessary AML/CFT guidelines, the nature of this report does not allow concluding that AML/CFT preventive measures are effectively implemented in India’s casino sector, especially given the very recent nature of the Goa AML/CFT guidelines.
			<p>Recommendation 12, overall conclusion</p> <p>While India has made progress with regard to R.12, it is difficult to conclude that its current level of compliance would be essentially equivalent to LC. This is mainly due to the fact that the scope of DNFBPs subject to the PMLA was only recently expanded and it is unclear to what extent the requirements under R.5; 6, and 8-11 are implemented by these DNFBPs.</p>
16 – DNFBPs – R.13-15 & 21	NC	<ul style="list-style-type: none"> Scope limitation: The PMLA does not apply to any of the DNFBP sectors, with the exception of casinos. 	See above in relation to R.12.
		<ul style="list-style-type: none"> Only the basic requirements of the PMLA and the accompanying rules apply to casinos, and these do not address much of the detail required under the FATF standards. 	See above in relation to R.12.
		<ul style="list-style-type: none"> Implementation issue: Extension of the PMLA to the casino sector is very recent and there is insufficient evidence of effective implementation 	See above in relation to R.12.

Other Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
			<p>Recommendation 16, overall conclusion</p> <p>While India has made progress with regard to R.16, its current level of compliance is not yet equivalent to LC.</p>
17 – Sanctions	PC	<ul style="list-style-type: none"> Scope limitation: The PMLA does not apply to commodities futures brokers. 	<p>Amendments to the PMLA were enacted by Parliament on 17 December 2012 and came into force on 15 February 2013.</p> <p>Commodities future brokers are now subject to the PMLA. This deficiency is addressed.</p>
		<ul style="list-style-type: none"> Sanctions applied for AML/CFT deficiencies across all sectors are not effective, proportionate or dissuasive. 	<p>Section 13(2) of the PMLA was amended and includes a broad range of sanctions for reporting entities, their directors and employees to be applied in cases of non-compliance with the AML/CFT obligations.</p> <p>In 2011, the AML/CFT Regulatory Framework Assessment Committee (ARFAC) recommended that the regulators review the range and effectiveness of their sanctions, and prepare guidance on their implementation.</p> <p>The Banking Laws Act was amended on 20 December 2012 and these amendments came into force on 18 January 2013. Sections 46 and 47A were amended to increase the maximum fine for breaches of the Act (and thereby the instructions issued under the Act) from INR 50 000 to INR 10 million (instead of from USD 1 000 to USD 200 000). In addition, if the contravention or default persists, a further penalty not exceeding INR 50,000 (instead of the initial INR 25,000 or 500 USD) can be imposed for every day the contravention or default continues.</p> <p>1. The range of sanctions available to SEBI and the</p>

Other Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
			<p>exchanges is sufficiently broad but the absolute level of fines imposed in many cases is small. In 2011, the FATF expressed the view that the exchanges should have the ability to levy much higher financial sanctions for significant systems failures, without having to rely on deterrent measures that directly impact an institution's ability to conduct business (e.g., through suspension or limitation of business). Indian authorities remain of the view that in most inspections completed so far only minor and no serious deficiencies have been observed. They further report that through the current approach the compliance level of the intermediaries with respect to AML/CFT and KYC norms has considerably improved.</p> <p>This being said, SEBI has recently reviewed its range of penalties to be applied by the stock exchanges starting from the financial year 2013-2014. Indian authorities report that the penalties for violation of the KYC and the AML/CFT requirements more generally have been enhanced. The range of penalties the stock exchanges will be able to impose when conducting inspections of securities market participants has become more deterrent and commensurate with the seriousness of the violations and possible repetitions of violations.</p> <p>In 2011, the Indian Government introduced the Insurance Laws (Amendment) Bill, 2008 in Parliament. One of the amendments proposes to increase the maximum penalty for failure to comply with IRDA's directions from INR 500 000 to INR 10 million (from USD 10 000 to USD 200 000), and to have the available range of sanctions increased. The Standing Committee on Finance issued its report on 13 December 2011 and with the approval of the Finance Minister, a Cabinet Note for introducing the official amendments to the Insurance Laws (Amendments) Bill, 2008 was recently</p>

Other Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
			<p>approved. These official amendments are proposed to be introduced in the current session of Parliament.</p> <p>India has taken measures to address the deficiency identified in the 2010 MER but it is not yet fully addressed.</p>
			<p>Recommendation 17, overall conclusion</p> <p>Since its MER in 2010, India has taken measures to improve its compliance with R.17 which can now be considered to be essentially equivalent to LC.</p>
21 – Special attention for higher risk countries	PC	<ul style="list-style-type: none"> • Scope limitation: The PMLA does not apply to commodities futures brokers. 	<p>Amendments to the PMLA were enacted by Parliament on 17 December 2012 and came into force on 15 February 2013. Commodities future brokers are now subject to the PMLA. This deficiency is addressed.</p>
		<ul style="list-style-type: none"> • There are no clear and direct requirements for the institutions in the banking and insurance sectors to pay special attention to both business relationships and transactions with persons from or in countries that do not, or insufficiently, apply the FATF Recommendations. 	<p>Updated RBI and IRDA master circulars (dated 2 July 2012 and 27 January 2012, respectively) require institutions in the banking and insurance sector to pay special attention to both business relationships and transactions with persons from, or in countries that do not or insufficiently apply the FATF Recommendations. This deficiency is addressed.</p>
		<ul style="list-style-type: none"> • Financial institutions are not expressly required to examine the background and purpose of transactions with persons from or in countries that do not adequately apply the FATF standards. 	<p>Updated RBI and IRDA master circulars (2 July 2012 and 27 January 2012, respectively) require that if transactions with persons from, or in countries that do not adequately apply the FATF standards have no apparent economic or visible lawful purpose, financial institutions must examine the background and purpose of such transactions as far as possible, make written findings, and ensure that such findings are available to competent authorities and auditors. This deficiency is addressed.</p>

Other Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
		<ul style="list-style-type: none"> India has no clear legal authority that enables it to apply a range of appropriate counter-measures in the securities or insurance sectors where a country continues not to apply or insufficiently applies the FATF Recommendations. 	<p>The AML/CFT Regulatory Framework Assessment Committee (ARFAC) has examined the existing institutional framework and the options available to apply appropriate counter-measures where a country continues not to apply or insufficiently applies the FATF Recommendations. One of the recommendations was aimed at setting up a mechanism for communication of AML/CFT risks to the financial institutions in order to enhance the current procedures. The report was adopted by the Government. The Committee also proposed amendments to the PMLA with a view to introduce an explicit obligation to require reporting entities to apply counter-measures in certain circumstances. However, the recent amendments to the PMLA do not include such provision.</p> <p>India reported that through an Order of the Department of Revenue issued on 28 May 2012, an AML Steering Committee chaired by the Additional Revenue Secretary was established with very broad Terms of Reference; including considering and recommending to the Government any policy changes in the legal and administrative framework. This is one of the many initiatives India has taken to follow up on the recommendations in the ARFAC's report, including with regard to R.21.</p> <p>While India has taken steps in view of addressing this deficiency, so far, it appears to be partially addressed only.</p>
		<ul style="list-style-type: none"> Effectiveness issue: There is a concern that covered institutions do not look beyond the FATF statements, and that they make little use of publicly available information when identifying countries which do not or insufficiently apply the FATF Recommendations. 	<p>Regulatory circulars have been issued to specify that institutions should go beyond the FATF statements and consider publicly available information when identifying countries which do not or insufficiently apply the FATF Recommendations. In addition, the ARFAC has issued further recommendations to enhance the effectiveness with regard to R.21 (see above). While some action</p>

Other Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
			has been taken to address this deficiency, no further initiatives have yet been taken with regard to the recommendations to enhance the effectiveness with regard to R.21.
			<p>Recommendation 21, overall conclusion</p> <p>By addressing the scope issue in the PMLA, issuing sector specific circulars, and taking initiatives to follow up on the ARFAC recommendations, India addressed some of the technical deficiencies identified in the MER. Amendments to the PMLA proposed by the Committee were not part of the recently enacted PMLA amendments and no further amendments are pending. The effectiveness issue is equally only partially addressed. However, it appears that India's current level of <u>technical</u> compliance with R.21 is essentially equivalent to LC.</p>
24 – DNFBP: regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> Scope limitation: The PMLA does not apply to any of the DNFBP sectors, with the exception of casinos. 	<p>Amendments to the PMLA were enacted by Parliament on 17 December 2012 and came into force on 15 February 2013.</p> <p>The following DNFBPs are now subject to the PMLA (section 2(2)(v)): real estate agents/sub-registrars in charge of registering property; dealers in precious metals/stones and dealers in high-value goods, and safe deposit keepers. No immediate action is planned with respect to lawyers and accountants, although the amendment to section 2 gives the Central Government the authority to designate them, by notification, at a later stage. While India has clearly taken steps to address this deficiency, it is only partially addressed.</p>
		<ul style="list-style-type: none"> With respect to the casino sector: <ul style="list-style-type: none"> No statutory “fit and proper” tests for owners, 	<p>A Casino Sector Assessment Committee (CSAC) has reviewed the existing regulatory framework for the casino sector and has given</p>

Other Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
		<p>operators and managers.</p> <ul style="list-style-type: none"> ○ Insufficient range of sanctions available to the regulator to permit a proportionate response to identified deficiencies. ○ Doubts about the statutory authority of the regulator to enforce compliance with the PML Rules and its own AML/CFT circular. 	<p>the specific recommendations against each of the issues involved. The CSAC report was approved by the Minister of Finance and instructions were issued to competent authorities for compliance. It should be noted that, since the regulation of casinos is not a matter for the central government, implementation of the Committee's recommendations will require the existing legislation to be amended at individual State level (currently in each of the three States where casinos have been licensed). There is no action plan or timeline available as to how and when any amendments to existing legislation will be proposed.</p> <p>The Indian authorities also refer to the AML/CFT guidelines issued by the States of Goa and Sikkim, as mentioned above in relation to R.12. "The Goa Anti Money Laundering and Financing of Terrorism Guidelines." were issued under rule 9(7) of the PML Rules and in case of non-compliance with these guidelines; sanctions under section 13 of the PMLA can be imposed. However, the guidelines issued by the Government Sikkim are issued under the Sikkim Casino Games (Control and Tax) Act, 2002 and do not contain any sanctions to be imposed in case of violation of the AML/CFT sections. As a result, doubts about the statutory authority of the Government of Sikkim to enforce compliance with the PMLA, PML Rules, and its own AML/CFT circular remain.</p> <p>In addition, statutory "fit and proper" tests for owners, operators and managers of casinos do still not exist.</p> <p>This deficiency is only partially addressed.</p>
		<ul style="list-style-type: none"> • Lack of dissuasive sanctions for obstructing the 	<p>This deficiency is not yet addressed.</p>

Other Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
		regulator's right to inspect.	<p>Recommendation 24, overall conclusion</p> <p>Amendments to the PMLA to bring additional, but not all, DNFBPs under the PMLA came recently into force. Implementation can only start now. Adding some DNFBPs to the scope of the PMLA is only a first step in addressing the deficiency identified. In addition, while the CSAC had formulated specific recommendations to address the deficiencies with regard to the casino sector, legislative amendments to regional legislation are needed. While India has taken some action to improve its compliance with R.24, it is not yet equivalent to LC.</p>
33 – Legal persons – beneficial owners	PC	<ul style="list-style-type: none"> Information on additional beneficial ownership of legal persons beyond the immediate beneficial owner is not required to be collected by either the corporate registry, within corporate records held by legal persons, or by company secretaries. 	<p>The Beneficial Ownership Assessment Committee (BOAC) has produced its report which contains recommendations to address the identified deficiencies, including a proposal to amend the Companies Act and for beneficial ownership to be maintained within the central registry or corporate records.</p> <p>The Companies Bill, 2012 has been passed by Lok Sabha (the Lower House of Parliament) on 18 December 2012. The Bill is currently pending for discussions in Rajya Sabha (the Upper House).</p> <p>Provisions 89 and 90 of the Companies Bill, 2012 deal with beneficial ownership and beneficial interest in companies. Provision 89(40) of the Bill empowers the Central Government to frame rules for holding and disclosing beneficial interest and beneficial ownership. In addition, provision 149 defines the term 'nominee director'.</p>

Other Recommendations			
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			India reported that it will decide on what additional measures are still needed based on the recently adopted FATF technical compliance methodology.
		<ul style="list-style-type: none"> There are no measures in place to prevent the unlawful use of HUFs in relation to ML or FT – for instance, HUFs are not required to maintain information on beneficial ownership. 	BOAC - as above.
		<ul style="list-style-type: none"> While law enforcement and other authorities have sufficient powers to access current and accurate information on beneficial ownership of legal persons (in particular foreign companies), this is not possible in a timely fashion. 	BOAC - as above.
			<p>Recommendation 33, overall conclusion</p> <p>Progress is subject to adoption and implementation of the Committee's recommendations to address the MER identified deficiencies. While amendments to the Companies Act are currently under consideration by Parliament, they have not yet been enacted.</p> <p>India's level of compliance with R.33 remains at PC.</p>
34 – Legal arrangements – beneficial owners	PC	<ul style="list-style-type: none"> There is no requirement to obtain, verify and retain adequate, accurate and current information on the beneficial ownership and control of private trusts. 	The Beneficial Ownership Assessment Committee (BOAC) has produced its report which contains recommendations to address the identified deficiencies, including a proposal to amend the Trust Act and establish a central registry.
		<ul style="list-style-type: none"> That are no measures in place that guarantee that minimal adequate and accurate information concerning the beneficial owners of private trusts can 	As above.

Other Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
		be obtained or accessed by the competent authorities in a timely fashion	
			<p>Recommendation 34, overall conclusion</p> <p>Progress is subject to adoption and implementation of the Committee's recommendations to address the MER identified deficiencies. Consequently, India's level of compliance with R.34 remains at PC.</p>
SR.VIII – Non-profit organisations	NC	<ul style="list-style-type: none"> There is no review undertaken of the adequacy of domestic laws in the NPO sector. 	<p>The NPO Sector Assessment Committee (NPOC) has completed its review of the adequacy of domestic laws in the NPO sector and made recommendations to strengthen the domestic laws in this area, including a proposal for a single law and regulatory agency governing NPOs. These are detailed in the report of the Committee of March 2011 and a separate report titled, "Foreign Contribution and NPOs" dated 11 April 2011, which were subsequently adopted by the Government. India reports that a follow-up mechanism has been put in place to ensure the implementation of the recommendations. India also reported concrete initiatives taken within the Central Board of Direct Taxes. The principal goal of these initiatives is to identify and investigate cases of tax evasion rather than misuse of NPOs for FT purposes. This being said, the specific deficiency identified in the MER is addressed.</p>
		<ul style="list-style-type: none"> There are no periodic reassessments undertaken by reviewing new information on the sector's potential vulnerabilities to terrorist activities. 	<p>India refers to the report "Foreign Contribution and NPOs" adopted on 11 April 2011 (see above) and underlines its conclusion, namely that the risk posed by the NPO sector is considered to be low.</p> <p>While so far, no sector-specific reassessment took place, India reports that the receipt of foreign funds by individual NGOs/NPOs is subject to rigorous scrutiny, including information from</p>

Other Recommendations			
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		<ul style="list-style-type: none"> There is no outreach to the NPO sector with a view to protecting the sector from abuse for terrorist financing takes place. There is only limited information available on the identity of person(s) who own, control or direct their activities, including senior officers, board members and trustees. 	<p>security/intelligence agencies, on a case-by-case basis. Given that India's focus is on only one part of the NPO sector, this deficiency is only partially addressed.</p> <p>The Ministry of Home Affairs (MHA) conducted a series of outreach programmes covering four of the regions in India. India reports that the MHA has the intention to conduct similar outreach programmes on a regular basis. This deficiency is addressed.</p> <p>With regard to addressing this deficiency, India refers to the recommendations issued by the NPOC. It reports that scrutiny guidelines are developed on a yearly basis to ensure that cases with possible tax evasion are identified. The information provided by India clearly refers to monitoring of the NPO sector for combating tax fraud. While the measures in place will to some extent contribute to preventing the misuse of NPOs for TF purposes, it remains unclear how they would cover the whole NPO sector.</p> <p>India is of the view that the TF risk in the NPO/NGO sector mainly relates to the receipt of funds from abroad. This particular aspect is regulated by the Foreign Contribution Regulation Act, 2010 (FCRA 2010). To be registered or granted permission under this Act, the NGO/NPO concerned needs to submit the following information: the list of members of the Executive Committee/Governing Council/etc of the entity/association (i.e. name, name of father/husband, nationality, occupation with address of workplace, post held in the entity/association, relationship with other members, address for correspondence); details of registration/incorporation of the entity/association; and activities over the last three years, including audited account statements. In addition, the name and address of the branch of the bank through which the foreign contributions/funds would be received account</p>

Other Recommendations			
Recommendations	Rating	Summary of Factors Underlying Rating	Actions taken to remedy deficiencies
		<ul style="list-style-type: none"> India has not demonstrated that measures are in place to sanction violations of oversight measures or rules by NPOs or persons acting on behalf of NPOs for <u>NPOs other than those registered under the Income Tax Act and under the FCRA.</u> 	<p>number should also be submitted.</p> <p>As with the previous deficiency, India's focus is on some parts of the NPO sector only and as a result, this deficiency is only partially addressed.</p> <p>The Foreign Contribution (Regulation) Act, 1976 was replaced by the Foreign Contribution (Regulation) Act, 2010 (FCRA). The Foreign Contribution (Regulation) Rule, 2011 (FCRR) for the NPOs receiving foreign funds to be regulated in a more efficient manner came into force on 1 May 2011. Five new positions were created in the monitoring unit of the FCRA wing to increase its strength.</p> <p>In addition, India reports that the Central Board of Taxes is in the process of implementing an on-line return filing facility. As a result, once fully implemented, information regarding NPOs claiming tax exemption is being regularly uploaded on the website of the Income-tax Department and is thus publicly available.</p> <p>While India needs to be commended for these efforts in combating misuse of NPOs for tax purposes and in relation to foreign contributions, the deficiency identified in the MER is only partially addressed.</p>
		<ul style="list-style-type: none"> The majority of NPOs are not registered as such with government agencies, including the tax authorities. 	<p>The Foreign Contribution (Regulation) Act, 1976 was replaced by the Foreign Contribution (Regulation) Act, 2010 (FCRA). The Foreign Contribution (Regulation) Rule, 2011 (FCRR) for the NPOs receiving foreign funds to be more efficiently regulated came into force on 1 May 2011. India reports that banks have a crucial role in ensuring that the provisions of the FCRA and FCRR are not misused. Banks are subject to a mandatory disclosure obligation to the Government in relation to receipt of a foreign contribution. These</p>

Other Recommendations			
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			<p>actions definitely contribute to focus authorities' attention on higher risk NPOs but it is not clear what percentage of the NPO sector is now registered. Consequently, it cannot be determined to what extent this deficiency is addressed.</p> <p>Special Recommendation VIII, overall conclusion</p> <p>The Review of Foreign Contribution by NPOs and the new Foreign Contribution (Regulation) Rules, 2010, together with the outreach activities being undertaken, enable the authorities to focus on higher risk NPOs. While India has clearly made progress with regard to SR.VIII, its level of compliance is not yet equivalent to LC.</p>
SR.IX – Cross-Border Declaration and Disclosure	PC	<ul style="list-style-type: none"> Effectiveness issue: Concerns based on the low number of currency declarations, the detected false declarations, and the cash seizures, including seizures of unaccompanied cash or BNIs. 	<p>Indian authorities provided details on various initiatives taken in view of the effective implementation of its cross-border declaration/disclosure systems. One of these initiatives relates to the development of an IT tool which allows for the on-line identification of all Currency Declaration Forms (CDFs) filed by persons carrying currency above the threshold limit at international borders, including at land customs stations and airports. In addition, customs authorities further improved IT resources for the centralisation of the data collected and for making them available to LEAs and FIU-IND.</p> <p>Recently, 87 X-Ray Baggage Inspection System (XBIS) have been installed at various airports, seaports, and land customs stations in the country. The installation of 76 more advanced versions of the XBIS at the most important airports was approved. In addition, specific measures to detect unaccompanied cash or BNIs have been initiated.</p> <p>The Indian Customs Department has also been examining various</p>

Other Recommendations																			
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		<ul style="list-style-type: none"> The cross-border declaration/disclosure systems appear to be applied only to currency and BNI via airports, with no information on movements of currency and BNI via land borders or unaccompanied movement of currency through postal and cargo systems. 	<p>technologies available for inspections of cargo, including parcels by mail. The procurement of specific equipments shall be carried out on a need basis.</p> <p>It can be concluded that Indian authorities have clearly taken actions to address this deficiency. The nature of this report does not allow for a detailed assessment of their effectiveness but it can be expected that effectiveness has improved.</p> <p>The Arrival Card has been amended so as to remove the ambiguities regarding the statutory requirement of declaring currency in excess of the prescribed threshold, and the sanctions for non-compliance. The new version of the amended Arrival Card is expected to be used by relevant customs authorities at all cross border control points. Specific instructions for the use of this new version were issued for both the land customs stations and sea ports.</p> <p>Indian authorities provided the following statistics regarding the number of CDFs filed:</p> <table border="1"> <thead> <tr> <th>Customs Entry Point</th> <th>2011-2012</th> <th>2012-2013</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>Airport</td> <td>9 174</td> <td>9 919</td> <td>19 093</td> </tr> <tr> <td>Land Customs Stations</td> <td>9</td> <td>56</td> <td>65</td> </tr> <tr> <td>Total</td> <td>9 183</td> <td>9 975</td> <td>19 158</td> </tr> </tbody> </table>	Customs Entry Point	2011-2012	2012-2013	Total	Airport	9 174	9 919	19 093	Land Customs Stations	9	56	65	Total	9 183	9 975	19 158
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Other Recommendations			
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			While the number of CDFs filed at land customs stations remains very low, Indian authorities have taken action in view of addressing this deficiency.
		<ul style="list-style-type: none"> The shortcomings identified with regard to the attachment, confiscation and forfeiture provisions discussed in Section 2.3 and to the freezing, seizing and attachment of property related to terrorist financing (as discussed in Section 2.4) have a negative impact on Special Recommendation IX. 	As mentioned above in relation to R.3, these shortcomings are addressed.
			<p>Special Recommendation IX, overall conclusion</p> <p>India has taken several measures to improve its compliance with regard to SR.IX and its level of compliance is currently equivalent to LC.</p>