

Anti-money laundering and counter-terrorist financing measures

Botswana

4th Enhanced Follow-Up Report &
Technical Compliance Rating

December 2020

Follow-up Report



The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) was officially established in 1999 in Arusha, Tanzania through a Memorandum of Understanding (MOU). As at the date of this Report, ESAAMLG membership comprises of 18 countries and also includes a number of regional and international observers such as AUSTRAC, COMESA, Commonwealth Secretariat, East African Community, Egmont Group of Financial Intelligence Units, FATF, GIZ, IMF, SADC, United Kingdom, United Nations, UNODC, United States of America, World Bank and World Customs Organization.

ESAAMLG's members and observers are committed to the effective implementation and enforcement of internationally accepted standards against money laundering and the financing of terrorism and proliferation, in particular the FATF Recommendations.

For more information about the ESAAMLG, please visit the website: www.esaamlg.org

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I. INTRODUCTION

1. The mutual evaluation of Botswana was conducted by the ESAAMLG and the mutual evaluation report (MER) was approved by the ESAAMLG Council of Ministers in May 2017. This follow up report analyses the progress of Botswana in addressing the technical compliance (TC) deficiencies identified in its MER. Re-ratings are given where sufficient progress has been made. This report also analyses progress made in implementing new requirements relating to FATF Recommendations 2 and 15 which have changed since the MER was adopted. Overall, the expectation is that countries will have addressed most if not all TC deficiencies by the end of the third year from the adoption of their MER. This report does not address what progress Botswana has made to improve its effectiveness. Progress on improving effectiveness will be analysed as part of a later follow-up assessment.

2. The assessment of Botswana's request for TC re-ratings and the preparation of this report were undertaken by the following experts (supported by the ESAAMLG Secretariat: Mofokeng Ramakhala and Tom Malikebu):

- Wonder Kapofu (Zimbabwe)
- Osvaldo Santos (Angola)
- Clare Abuodha (Kenya)
- Vilho Nkandi (Namibia)
- Julia Tloubatla (South Africa).

3. Section III of this report highlights the progress made by Botswana and analysis undertaken by the Reviewers. Section IV sets out the conclusion and a table showing which Recommendations have been re-rated.

II. KEY FINDINGS OF THE MUTUAL EVALUATION REPORT

4. The MER¹ rated Botswana's technical compliance as set out in Table 2.1 below. In the light of these results, Botswana was placed in the enhanced follow-up process².

Table 2.1. Technical compliance ratings³, May 2017

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

III. OVERVIEW OF PROGRESS IN TECHNICAL COMPLIANCE

3.1. Progress in resolving the technical compliance deficiencies identified in the MER/FUR

5. Since the adoption of its MER in May 2017, Botswana has taken measures aimed at addressing the technical compliance deficiencies identified in its MER. As a result of this progress, 19 Recommendations were re-rated (upgraded) to LC and C as highlighted in the Table below.

¹ Mutual Evaluation Report (MER) on Botswana, May 2017, <https://esaamlg.org/reports/MER%20of%20Botswana%20-%20Council.pdf>

² Enhanced follow-up is based on the traditional ESAAMLG policy for members with significant shortcomings (in technical compliance or effectiveness) in their AML/CFT systems, and involves a more intense follow-up process.

³ Four technical compliance ratings are available: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

Table 3.1: Technical Compliance Re-rating¹

| Recommendations and Corresponding Ratings | | | | | | | | | | | | | |
|---|------------|------------|------------|------------|------------|------------|-----------|------------|------------|------------|------------|------------|------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 |
| (NC) LC | PC | (PC) C | (PC) LC | (NC) C | (NC) PC | (NC) PC | NC | (NC) PC | (NC) PC | (NC) LC | (NC) LC | (NC) PC | NC |
| 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| (NC) PC | (NC) PC | N/A | PC | NC | (PC) C | (NC) LC | NC | (PC) LC | (NC) PC | (NC) PC | (NC) PC | (LC) C | (NC) PC |
| 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | | |
| (PC) LC | (PC) LC | (PC) LC | (PC) LC | (NC) PC | PC | (NC) PC | (PC) C | LC | (PC) C | (PC) LC | (PC) LC | | |

6. This section of the report summarises further progress made by Botswana to improve its technical compliance by addressing the TC deficiencies identified in its MER and implementing the new requirements where the FATF standards have changed since the adoption of the MER (R.2 and R.15).

7. ESAAMLG welcomes the steps that Botswana has taken to improve its technical compliance with Recommendations 6, 7 and 10. Following this progress, Botswana has been re-rated largely compliant with R.6, R. 7 and R.10. Due to the new requirements of R.2 and R.15 the ratings of PC are retained.

3.1.1. Recommendation 6- Targeted Financial Sanctions Related to Terrorism and Terrorist Financing (Rerated from NC to PC under the 1st FUR- rerated to LC)

8. The main shortcomings identified in the MER were that Botswana did not have mechanisms for identifying targets for designation, based on the designation criteria set out in the relevant UNSCRs. The county could also not apply an evidentiary standard of proof of “reasonable grounds” or “reasonable basis” when deciding whether or not to make a proposal for designation. Furthermore, there were no mechanisms in place to enable Botswana to provide as much relevant information as possible on the proposed name, a

¹ <https://esaamlg.org/reports/FUR%20Botswana-April%202019.pdf>

statement of case which should contain as much detail as possible on the basis for the listing, and specify whether their status as a designating state may be made known.

9. To address the above deficiencies as well as relevant measures intended to implement targeted financial sanctions, Botswana issued Counter-Terrorism (Implementation of United Nations Security Council Resolutions) Regulations, 2020 (Counter-terrorism Regulations) which, among others addresses proposals for designations in regulation 9(4) of the Counter-Terrorism Regulations 2020. Botswana has set up a Committee which among others, determines whether a person or entity meets the criteria under applicable Resolutions to warrant proposal, by the Minister, to the relevant UNSC Committee. It was also noted that Regulation 9(4) of Counter-Terrorism Regulations, 2020 meets the essential element of reasonable ground or reasonable basis to propose a name for designation to the relevant committee of 1267/1989 or 1988 and this is not conditional upon the existence of a criminal proceeding. Botswana is also in a position to provide as much relevant information on the basis of which a listing would be made and the law specifically allows Botswana to make its status known as a designating state.

10. It was noted that in order to fulfil the requirements of c. 6.2(c) regulations 5 of Counter-Terrorism (Implementation of United Nations Security Council Resolutions) Regulations, 2020 enjoins the Director of Public Prosecution to make a prompt determination of whether a request is supported by reasonable grounds to warrant granting assistance pursuant to the provisions of the Counter-Terrorism Regulations, 2020. Furthermore, it was noted that regulation 7(11) of the Counter-Terrorism (Implementation of United Nations Security Council Resolutions) Regulations 2020 enables authorities in Botswana to provide as much identifying information and specific information supporting designation when making a request to a foreign country.

11. Botswana has in place legal framework intended to implement targeted financial sanctions without delay and without notice in line with the requirements of c.6.4. These measures are contained in regulation 7 of the Counter-Terrorism Regulations and section 17 of Counter-Terrorism Act respectively for designation made pursuant to UNSCR 1373 as well as, in terms of regulation 9(1) and (2) of the Counter Terrorism Regulations for designation made pursuant to UNSCR 1267(1999) and its successor resolutions. Botswana can also implement designations at the request of a foreign jurisdiction when it is satisfied that such a designation meets the requirements of regulation 5(3) of the Counter-Terrorism Regulations, 2020.

12. It was further noted that natural and legal persons in Botswana have an obligation to freeze without delay and without prior notice property or economic resources of designated persons or entities in terms of regulation 7(3) of Counter-Terrorism Regulations, 2020 which is executed once a freezing order issued in terms of section 17 of the Counter Terrorism Act, 2016 is granted and communicated to the chairperson of the Committee for necessary

action. The freezing requirement in terms of regulation 7(3) of the Counter Terrorism Regulations 2020 addresses measures taken pursuant to UNSCR 1373. Although authorities confirmed that the freezing order is granted following ex parte application where the courts in Botswana are accessible 24 hours, Reviewers noted that the number of steps taken to ultimately have freezing order executed by persons holding funds or other assets of nationally listed person is rather cumbersome and may defeat the without delay requirement in UNSCR 1373. For resolutions made by UNSC, Botswana imposes obligations, in terms of regulation 10(1) of the Counter-Terrorism Regulations, 2020, on accountable institutions, specified parties or any other person to identify and freeze, without delay and without prior notice, property or other economic resources for purposes of measures intended to be taken pursuant to UNSCR 1267(1999) and its successor resolutions. In regard to protecting the rights of third parties it was observed that regulation 11 of the Counter-Terrorism (Implementation of United Nations Security Council Resolutions) Regulations 2020 seeks to address a claim by a person who may have a bona fide right to a property or economic resources frozen. However, this provision is not specific on the measures in place intended to protect the rights of bona fide third parties when the obligations under Recommendation 6, are implemented not necessarily when freezing action has been executed. Thus, criterion 6.5(f) is about protecting the rights of bona fide third parties acting in good faith when implementing the obligations under Recommendation 6.

13. Reviewers noted further that regulation 6 of the Counter-Terrorism (Implementation of United Nations Security Resolutions) Regulations, 2020 allows review of the designation, made pursuant to UNSCR 1373, by the High Court. Whereas, Regulation 2 and 10 (9) (c) of the Counter-Terrorism (Implementation of United Nations Security Council Resolutions) Regulations, 2020 seeks to provide the procedure for informing designated persons or entities of the availability of the UN Office of Ombudsman in relation to the Al-Qaida Sanctions List. It was noted also that regulation 16(1) of Counter-Terrorism (Implementation of United Nations Security Council Resolutions) Regulations, 2020 provides for procedures to unfreeze funds or other assets in the event of false positive. These procedures are intended to be publicly known by virtue of being in the government gazette published for the benefit of members of the general public.

14. Moreover, regulations 12 and 14 of Counter-Terrorism (Implementation of United Nations Security Council Resolutions) Regulations, 2020 provides mechanisms for communicating delisting and unfreezing of property or economic resources of delisted persons or entities in terms of measures that should be applicable for UNSCR 1267(1999) and its successor resolutions and UNSCR 1373. These regulations further provide that entities or persons in possession of frozen property or economic resources of a delisted person or entities should forthwith proceed to unfreeze such property on the strength of the delisting notice communicated to them.

Weighting and Conclusion

15. The fundamental technical aspects of Recommendation 6 have been addressed. Botswana has revised its legal regime implementing UNSCR 1267(1999) and its successor resolutions as well as, UNSCR 1373. The amended provisions enable the country to propose designation to the relevant sanctions' committees of the UNSC. There are clear procedures to implement targeted financial sanctions without delay and the freeing of assets of designated persons or entities is required to take place without delay and without notice. It is noted that under the revised legal framework freezing is required to be done within a matter of hours and this ideally should not exceed 24 hours. Frozen assets can now be reported to competent authorities. However, under the regulations Botswana does not have measures specific to protect the rights of bona fide third parties. There are publicly known procedures to review decision before the high court by designated persons or entities. These procedures also guide designated persons of the availability of the UN office of Ombudsperson for designation under AL-Qaeda. The procedure for false positive has been developed and the manner of communicating delisted person and to unfreeze their assets have been addressed.

16. The foregoing highlights which and how the outstanding deficiencies have been addressed, save there are minor deficiencies identified in criterion 6.4 and 6.5(f).

17. Botswana is therefore re-rated **Largely Compliant with Recommendation 6**.

3.1.2. Recommendation 7- Targeted Financial Sanctions Related to Proliferation (Rated from NC to PC under the 1st FUR – re-rated to LC)

18. The main shortcomings under the MER related to lack of requirements that all natural and legal persons should freeze without delay and without prior notice, the funds, or other assets of designated persons and entities in line with c.7.1. There was no requirement for FIs and DNFBPs to report to competent authorities any assets frozen or action taken in compliance with the prohibition requirements of the relevant UNSCRs. There were not provisions that would protect the rights of bona fide third parties as well as, the absence of publicly known procedures for addressing false positives and how frozen funds could be accessed in line with the requirements of c. 7.4. There were also no measures in place to deal with contracts, agreements or obligations that arose prior to the date on which accounts became subject to targeted financial sanctions.

19. Reviewers noted that Botswana has promulgated the Counter-Terrorism (Implementation of United Nations Security Council Resolutions) Regulations, 2020 to address both the requirements of Recommendations 6 and 7 in one set of the regulations. Thus, the analysis made in respect of the majority of criterion under R.6 equally apply for analysis under R.7. For instance: analysis made for c.6.5(a) equally applies in respect of c.7.2(a); c.6.5(b)(ii) and(iii) would apply in the case of c.7.2(b)(ii) and (iii); c.6.5(f) was used for c.7.2(f); c.6.6(f) was used for c.7.4(b) and c.6.6(g) was used in 7.4(d).

20. It was also noted that under regulation 10 (5) of the Counter-Terrorism (Implementation of United Nations Security Council Resolutions) Regulations, 2020 FIs and DNFBPs are required to report to competent authorities any assets frozen or action taken in compliance with the prohibition requirements of the relevant UNSCRs *including attempted transactions*.

21. Furthermore, supervisory authorities in Botswana have an obligation in terms of regulation 7(4) and 9(3) of Counter-Terrorism Regulations, 2020 to ensure that a specified party under their supervision takes necessary action and where necessary they provide guidance to a specified party holding funds, property or other economic resources. A general criminal penalty is provided in terms of regulation 34 of Counter-Terrorism Regulations 2020, for failure to comply with the provision of these regulations. It is however, not clear what kind of penalty may be imposed under the Counter-Terrorism Act in this regard. Botswana indicated that section 5 of the Counter Terrorism Act 2014 as amended, addresses the issue of a penalty for offences under the above-mentioned regulations. While it is appreciated that the Counter-Terrorism Act 2014 as amended criminalises and specifies penalties for Terrorist Financing and/or Proliferation Financing under this section, criterion 7.3 relates to a penalty that may be imposed for non-compliance with preventive measures.

22. Moreover, regulation 19(4) of the Counter-Terrorism (Implementation of United Nations Security Council Resolutions) Regulations, 2020 includes provisions on handling the exemptions set out under articles 21-23 of UNSCR 2232.

23. It was also noted that under regulation 19(4)(a) of the Counter-Terrorism (Implementation of United Nations Security Council Resolutions) Regulations 2020 Botswana can permit the addition to the accounts frozen pursuant to UNSCRs 1718 or 2231 of interests or other earnings due on those accounts or payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the targeted financial sanctions. However, it was noted that the regulation is silent on whether any interest, earnings and payment added is frozen. Botswana indicated that deficiency under regulation 7(3)(c) and 10(1)(c) of the Counter Terrorism Regulations cures

the deficiency identified in regulation 19(4)(a) of the Counter Terrorism regulations. Reviewers noted however that the cited provisions do not address requirements of criterion 7.5(a) and as such the identified deficiency under regulation 19(4)(a) remains. For measures under c.7.5(b) it was noted that regulation 19(5) of the Counter-Terrorism (Implementation of United Nations Security Council Resolutions) Regulations 2020 allows a designated person or entity to make payments due under a contract which was entered into prior to the listing of such a person.

Weighting and Conclusion

24. Botswana amended the Counter Terrorism Act in 2018 and issued the Counter-Terrorism (Implementation of UNSCRs) Regulations in 2020 to provide for implementation of targeted financial sanctions related to proliferation of weapons of mass destructions and its financing. The Counter-Terrorism Committee established under s.12A of the Counter Terrorism Act, is responsible for implementing and enforcing targeted financial sanctions. Reviewers noted that most of criterion needed to implement targeted financial sanctions relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing are akin to implementing targeted financial sanctions for prevention and suppression of financing of terrorism and as such, the authorities developed one set of regulations to address requirements of Recommendation 6 and 7 with some modifications where relevant. There are however deficiencies in relation to measures to protect the rights of bona fide third parties when implementing obligations under Recommendation 7. Furthermore, Regulation 19(4)(a) does not appear to cater for the aspect of whether when any interest, earnings and payment which are added to frozen accounts are also frozen in line with c.7.5a.

25. **Botswana is therefore re-rated Largely Compliant with Recommendation 7.**

3.1.3. Recommendation 10- Customer due Diligence (Originally rated with PC – re-rated to LC)

26. The main shortcomings under the MER were that there was no requirement where verification measures were to be applied for the sources to be independent as well as reliable. The definition of beneficial owner was not entirely consistent with the FATF definition as it did not seem to include ‘a natural person who controls a customer and on whose behalf a transaction is conducted’. In addition, it did not seem to include a person who exercises effective control over a legal arrangement. Moreover, the requirement for FIs to understand the purpose and nature of the business relationship was not satisfactory. It was also not clear whether the FIs were required to obtain a document which would indicate powers that regulate and bind the legal persons. There was no legal or regulatory provision which

required FIs to identify a natural person who exercises control over a legal person or legal arrangement through other means, in situations where the FIs have doubts whether the natural person with controlling ownership interest is the beneficial owner. There was no specific legal or regulatory provision which required FIs to verify the identity through the identity of the settlor, trustees, protector beneficiaries and any other person exercising ultimate effective control. There was no legal or regulatory provision requiring FIs to conduct the remediation process on the basis of materiality and risk. In situations where a FI forms a suspicion of ML or TF, the legal and regulatory framework did not specify whether the FI would stop the CDD process and rather file an STR if continuing with the CDD process would tip off the customer.

27. Botswana amended its Financial Intelligence Act to address the above deficiencies. It is noted that Financial Institutions are now required to identify and verify their customers in terms of section 16 of the Financial Intelligence Act, 2019 consistent with the requirements of c.10.3. Moreover, the beneficial owner has been redefined under section 2 of the FI Act 2019 consistent with the definition in the FATF glossary. The definition includes a person who exercises control of a legal person or arrangement through other means. Furthermore, section 16(1) (b) of the Financial Intelligence Act, 2019 requires reporting entities to identify a beneficial owner. The definition of beneficial owner includes settlor, trustee or any person exercising ultimate effective control (s.2 of FIA).

28. Furthermore, it was noted that section 16(1)(c) of the Financial Intelligence Act, 2019 requires reporting entities to collect information to enable an understanding of the anticipated purpose and intended nature of the business relationship or transaction.

29. During its last FUR it was noted that the outstanding deficiency under 10.9 was whether the FIs were also required to obtain a document which indicated powers that regulate and bind the legal persons. In relation to partnerships, reporting entities are required to submit a founding statement or Partnership Agreement. As for companies, the Companies Act does not require submission of memorandum and articles of association to the Company Registry (or the equivalent documents) which contains powers of the company. Hence, reporting entities are not required to obtain a document which contains powers of legal persons. In addition, there is no requirement for submission of trust deed/instrument where a customer is a legal arrangement. [see section 16(6)(c) of the Financial Intelligence Act, 2019]. It noted further that the legal framework does not include identification of beneficial ownership through other means [c.10.10(b)].

30. Reviewers noted that under section 16(5) of the Financial Intelligence Act, 2019 reporting entities are obliged to apply CDD requirements to existing customers on the basis of materiality and risk. They are also required to consider whether and when a customer due diligence measures previously applied were adequate.

31. It was further noted that section 17(1)(a) of FI Act 2019 enables specified party and accountable institution to perform enhanced due diligence where the risk of financial crime is high, that is, where risk of ML/TF is high. Whereas, section 16(10)(b) of FI Act, 2019 permits reporting entities not to proceed with the CDD process wherever they form a reasonable suspicion that continuing the customer due diligence process will tip off the customer. In that case, the reporting entity is required to report a suspicious transaction.

Weighting and Conclusion

32. Botswana has amended the Financial Intelligence Act 2009 to address outstanding deficiencies of Recommendation 10 through the Financial Intelligence Act, 2019. The provisions of the new Act enable FIs and DNFBPs in Botswana to identify and verify customers; improve the definition of beneficial owner in accordance with the FATF definition; introduce the requirement for accountable institution to obtain information on the purpose and nature of the business relationship; introduce the manner of establishing the identity and verification of legal persons and arrangements, as well as of the beneficial owner of the legal person or arrangement; introduce application of CDD requirements to existing customers on the basis of materiality and risk, as well as, applying enhanced CDD measures where the ML/TF risks are higher; and finally permit FIs and DNFBPs to go the route of filing an STR where performing the CDD process would tip-off the customer. However, there is no requirement for reporting entities to obtain documents which contain powers that regulate and bind the legal person or legal arrangement as part of the process of verifying the identity of legal persons or arrangements.

33. Botswana is therefore re-rated **Largely Compliant with Recommendation 10**.

3.1.4. Recommendation 2- National Co-Operation and Co-Ordination (Originally rated with PC – PC rating retained)

34. The main shortcomings under the MER were that Botswana had not yet come up with AML/CFT policies informed by identified risks. There were no mechanisms in place which would enable policy makers and competent authorities to cooperate, coordinate and exchange information domestically concerning development and implementation of policies and activities similar to those described under c2.3. Botswana had not introduced measures to enable cooperation and coordination between relevant authorities to ensure the compatibility of AML/CFT requirements with Data Protection and Privacy rules and other similar provisions.

35. Botswana has since addressed some of the above deficiencies. It has been noted that Botswana has developed AML/CFT strategy to mitigate risks identified in its NRA.

36. Furthermore, it is noted that the NCCFI is established under the FI Act with the mandate of promoting coordination between the FIA, investigatory authorities, supervisory authorities and other institutions with a view to improving the effectiveness of policies and measures to combat financial offences and the authorities have explained that the platforms established to address AML/CFT initiatives at policy level are the same platforms set up to address counter proliferation finance measures at both policy and operational level.

37. It was noted that Botswana has enacted the Data Protection Act 2018 to address the requirements of c.2.5, but authorities have not demonstrated whether there is co-operation and, where appropriate, co-ordination, whether formal or informal, between the relevant authorities when implementing the provisions of the Data Protection Act in order to ensure its compatibility with the AML/CFT initiatives in Botswana.

Weighting and Conclusion

38. Botswana has developed the AML/CFT Strategy, which sets out actions to mitigate the higher risk areas identified by the NRA. Furthermore, in addressing requirements of c.2.4 authorities have explained that the platforms established to address AML/CFT initiatives at policy level are the same platforms set up to address counter proliferation finance measures at both policy and operational level. While Botswana has enacted the Data Protection Act 2018 to address the requirements of c.2.5, authorities have not demonstrated whether there is co-operation and, where appropriate, co-ordination, whether formal or informal, between the relevant authorities when implementing the provisions of the Data Protection Act in order to ensure its compatibility with the AML/CFT initiatives in Botswana.

39. Based on these shortcomings **PC rating for Recommendation 2 is retained.**

3.1.4. Recommendation 15-New Technologies (Originally rated with PC – PC rating retained)

40. The main shortcomings under the MER/FUR were that FIs were generally not required to have internal policies and procedures to assess ML/TF risks for new procedures and new business practices that were being adopted. In addition, there was no indication that authorities had mechanisms in place to facilitate evaluation of FIs' risk assessments, policies and procedures in relation to new products and new business practices. FIs were not required to take appropriate measures to manage and mitigate the ML/TF risks associated with new products, new technologies and new business practices. Botswana had also not yet introduced measures that address virtual assets and virtual asset service providers.

41. Botswana addressed some of the above deficiencies by amending the Financial Intelligence Act to require FIs and DNFBPs to conduct ML/TF risk assessment in relation to the development of new products and new business practices including delivery mechanisms [section 11 of FI Act 2019]. However, authorities have not demonstrated whether Botswana as a country and financial institutions operating in Botswana have identified and assessed the ML/TF risks that may arise in relation to the development of new products and new business

practices, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products.

42. It was also noted that FIs and DNFBPs are required to conduct risk assessment prior to the launch or use of products, practices and new technologies and to take appropriate measures to manage and mitigate the identified risks in line with the requirements of 15.2(b) [section 11(a)(c)].

43. Recommendation 15 has been significantly amended after the publication of Botswana MER 2018 and its FUR 2019 and new requirements have been introduced relating to virtual assets (VAs) and virtual asset services providers (VASPs). However, Botswana has not yet put in place mechanism or measures to address VAs and VASPs in line with the requirements of c.15.3-15.11. In particular, Botswana has not identified and assessed the money laundering and terrorist financing risks emerging from virtual asset activities and the activities or operations of VASPs. Furthermore, Botswana does not have a requirement for licensing or registration of legal or natural persons that may operate in the country as VASPs. It could also not be established whether Botswana has yet taken action to identify natural or legal persons that carry out VASP activities in the country. Since the VASPs are not catered in Botswana it follows that they may not be subject to adequate regulation and risk-based supervision or monitoring by a competent authority, including systems for ensuring their compliance with national AML/CFT requirements. The requirements on establishing guidelines, and providing feedback to assist VASPs in applying national measures to combat money laundering and terrorist financing, and, in particular, in detecting and reporting suspicious transactions are not applicable. In addition, VASPs that fail to comply with AML/CFT requirements are not subject to a range of proportionate and dissuasive sanctions, whether criminal, civil or administrative. Moreover, VASPs operating in Botswana are not subject to requirements of recommendation 10 and well as requirement to implement targeted financial sanctions in R 6 and R. 7. Pursuant to powers of LEAs as noted under R. 31 Botswana may be able to rapidly provide the widest possible range of international cooperation in relation to money laundering, predicate offences, and terrorist financing relating to virtual assets, on the basis set out in Recommendations 37 to 39. This may not be the case however in respect of R.40 as there is no legal basis for the FIU or supervisors to exchanging information regarding VASPs.

Weighting and Conclusion

44. Botswana has amended its FI Act to require FIs and DNFBPs to conduct ML/TF risk assessment in relation to the development of new products and new business practices including delivery mechanisms as well as to take to take appropriate measures to manage and mitigate the identified risks.

45. It is noted however that since the amendments to Recommendation 15 were made to introduce virtual assets and virtual assets service providers Botswana has not put in place necessary measures to address requirements of c.15.3 to 15.11.

46. Based on the above identified deficiencies **PC rating for Recommendation 15 is retained.**

IV. CONCLUSION

47. Overall, Botswana has made progress in addressing deficiencies in technical compliance identified in its FUR to justify re-rating of R. 6, 7 and 10 (all rated PC in the 1st FUR) to Largely Compliant.

48. Although Botswana has put in place legal framework to address the new requirements of this Recommendation 2, there was no sufficient progress to justify a re-rating.

49. Recommendation 15 has not been re-rated as Botswana has not provided information addressing the new requirements of R.15 as set out in c.15.3 to c.15.11.

50. Considering progress made by Botswana since the adoption of its MER, its technical compliance with the FATF Recommendations has been revised as shown in Table 4.1 below.

51. Botswana will remain in enhanced follow-up and will continue to inform the ESAAMLG of the progress made in improving the implementation of its AML/CFT measures.

Table 4.1. Technical compliance ratings, December, 2020

| Recommendations and Corresponding Ratings | | | | | | | | | | | | | |
|---|----|-----|----|----|------------|------------|----|----|----------|----|----|----|----|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 |
| LC | PC | C | LC | C | (PC) LC | (PC) LC | NC | PC | PC LC | LC | LC | PC | NC |
| 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| PC | PC | N/A | PC | NC | C | LC | NC | LC | PC | PC | PC | C | PC |
| 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | | |
| LC | LC | LC | LC | PC | PC | PC | C | LC | C | LC | LC | | |

Note: Four technical compliance ratings are available: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

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December 2020

Anti-money laundering and counter-terrorist financing measures in Botswana

4th Enhanced Follow-up Report & Technical Compliance Re-Rating

This report analyses Botswana's progress in addressing the technical compliance deficiencies identified in the FATF assessment of their measures to combat money laundering and terrorist financing of May 2017.

Follow-up Report

