

Anti-money laundering and counter-terrorist financing measures

Botswana

**1st Enhanced Follow-up Report &
Technical Compliance Re-Rating
April 2019**

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

This document and/or any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

This report was adopted by the ESAAMLG Task Force of Senior Officials at its meeting in Arusha, Tanzania in April 2019.

Citing reference:

ESAAMLG (2019), *Anti-money laundering and counter-terrorist financing measures - Botswana*, 1st Enhanced Follow-up Report & Technical Compliance Re-Rating, ESAAMLG, Dar es Salaam

<http://www.esaamlg.org>

© 2019 ESAAMLG. All rights reserved.

No reproduction or translation of this publication may be made without prior written permission. Applications for such permission, for all or part of this publication, should be made to the ESAAMLG Secretariat, P. O. Box 9923, Dar es Salaam-United Republic of Tanzania Tel: +255 22 2667895/7679

Fax No: +255 22 2668745

Email: executivesec@esaamlg.org

BOTSWANA: REVISED 1st FOLLOW-UP REPORT & REQUEST FOR TC RE-RATING	5
I. INTRODUCTION	5
II. FINDINGS OF THE MUTUAL EVALUATION REPORT	5
III. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE	6
3.1. Analysis of Current Progress to Address Technical Compliance Deficiencies	6
3.1.1 Recommendation 1 (Originally rated NC- re-rated LC)	6
3.1.2 Recommendation 2 (Originally rated PC- rating retained as PC).....	7
3.1.3 Recommendation 3 (Originally rated PC- re-rated to C)	8
3.1.4 Recommendation 4 (Originally rated PC- re-rated LC)	9
3.1.5 Recommendation 5 (Originally rated NC- re-rated C).....	9
3.1.6 Recommendation 6 (Originally rated NC-re-rated to PC).....	11
3.1.7 Recommendation 7 (Originally rated NC: re-rated PC).....	14
3.1.8 Recommendation 8 (Originally rated NC: not re-rated).....	15
3.1.9 Recommendation 9 (Originally rated NC: re-rated to PC)	15
3.1.10 Recommendation 10 Originally rated NC: re-rated PC).....	16
3.1.11 Recommendation 11 (Originally rated NC: Re-rated to LC).....	18
3.1.12 Recommendation 12 (Originally rated NC: re-rated LC).....	19
3.1.13 Recommendation 13 (Originally rated NC: re-rated PC).....	20
3.1.14 Recommendation 15 (Originally rated NC: re-rated PC).....	20
3.1.15 Recommendation 16 (Originally rated NC: re-rated PC).....	21
3.1.16 Recommendation 18 (Originally rated PC: not re-rated).....	22
3.1.17 Recommendation 19 (Originally rated NC: not re-rated).....	22

3.1.18 Recommendation 20 (Originally rated PC: re-rated to C)	23
3.1.19 Recommendation 21 (Originally rated NC: re-rated to LC)	24
3.1.20 Recommendation 22 (Originally rated NC: not re-rated)	24
3.1.21 Recommendation 23 (Originally rated PC: re-rated to LC)	25
3.1.22 Recommendation 24 (Originally rated NC: re-rated to PC)	26
3.1.23 Recommendation 25 (Originally rated NC: re-rated to PC)	27
3.1.24 Recommendation 26 (Originally rated NC: re-rated to PC)	28
3.1.25 Recommendation 27 (Originally rated LC: re-rated to C)	30
3.1.26 Recommendation 28 (Originally rated NC: re-rated to PC)	30
3.1.27 Recommendation 29 (Originally rated NC: re-rated to LC)	32
3.1.28 Recommendation 30 (Originally rated PC: re-rated to LC)	33
3.1.29 Recommendation 31 (Originally rated PC: re-rated to LC)	33
3.1.30 Recommendation 32 (Originally rated PC: re-rated to LC)	34
3.1.31 Recommendation 33 (Originally rated NC: re-rated to PC)	35
3.1.32 Recommendation 34 (Originally rated PC: not re-rated)	36
3.1.33 Recommendation 35 (Originally rated NC: re-rated to PC)	36
3.1.34 Recommendation 36 (Originally rated PC: re-rated to C)	37
3.1.35 Recommendation 37 (Originally rated LC: not re-rated)	37
3.1.36 Recommendation 38 (Originally rated PC: re-rated to C)	38
3.1.37 Recommendation 39 (Originally rated PC: re-rated to LC)	39
3.1.38 Recommendation 40 (Originally rated PC: re-rated to LC)	40
IV. CONCLUSION	42

BOTSWANA: REVISED 1st FOLLOW-UP REPORT & REQUEST FOR TC RE-RATING

I. INTRODUCTION

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, 5, 7, 8, 18 and 21 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.

II. FINDINGS OF THE MUTUAL EVALUATION REPORT

Botswana's ratings for technical compliance are as set out in Table 1 below. As a result of these ratings, the country was placed under enhanced follow-up.

Table 1: MER Technical Compliance Ratings, May 2017

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

The assessment of Botswana's request for technical compliance re-ratings and the preparation of this report were undertaken by the following experts:

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

III. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

This section summarises the progress made by Botswana to improve its technical compliance by:

- Addressing the technical compliance deficiencies identified in the MER, and
- Implementing new requirements relating to Recommendations 2, 5, 7, 8, 18 and 21 which have changed since the MER was adopted.

3.1. Analysis of Current Progress to Address Technical Compliance Deficiencies

Botswana has made progress to address the technical compliance deficiencies identified in the MER in relation to Recommendations: 1, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 15, 16, 18, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 38, 39 and 40). As a result of this progress, Botswana has been re-rated on 32 Recommendations. On Recommendations 2, 8, 18, 19, 22, 34 and 37, progress has been noted, however, it does not justify a re-rating of these Recommendations.

3.1.1 Recommendation 1 (Originally rated NC- re-rated LC)

In the MER, Botswana was rated non-compliant with R.1. The main technical deficiencies were that: the country had not identified and assessed its money laundering/ terrorist financing (ML/TF) risks; there was no allocation of resources according to authorities' understanding of identified risks; there were no requirements for competent authorities to carry out ML/TF risk assessments of their sectors, particularly BURS, CIPA and the NPO sector.

Since the adoption of the MER in 2017, Botswana finalised its first National Risk Assessment (NRA). The NRA indicated that poaching, motor vehicle theft, tax evasion, obtaining goods by false pretenses and corruption were the most proceeds generating predicate offences using both the informal economy as well as the formal sector through banking, car dealers, insurance, precious & semi-precious stones dealers and accountants. The report further indicated that ML threat was medium high while ML vulnerability was high. The report also indicated that the country had identified and assessed ML/TF risks.

Authorities have used the following mechanisms to provide information on the results of the NRA to stakeholders: Launch of the NRA report which involved representatives all relevant competent authorities, meetings with SRBs and reporting entities during which the results of the NRA reports were shared, publication of the NRA report on the FIA website, distribution of the summarized versions of the NRA report to relevant stakeholders. It is anticipated that the NRA will be updated every three years.

The authorities determined that ML vulnerability of the banking sector and insurance sector was medium high; retirement funds, microlenders, bureau de change and money remitters

was high and DNFBPs were rated high, with the legal profession given the highest level. On the basis of these findings and in relation to life insurance, authorities amended the Financial Intelligence Act by introducing S. 10G which requires enhanced due diligence for life insurance services such as the identification of a beneficiary at the time of payout and identity of the beneficial owner as part of efforts to mitigate ML/TF risks. However, AML/CFT regime does not address risks in other areas where the rating was the same as the insurance sector (medium high) or even higher as described above (c.1.7).

Authorities have made other amendments to the laws and regulations to address some of the deficiencies identified in the MER. S. 37 of the Financial Intelligence Act, which permitted exemptions, has been repealed. Botswana does not permit exemptions to the application of the FATF Recommendations. Furthermore, Regulation 4C (1) of the Financial Intelligence Regulations permits reporting entities to carry out simplified CDD measures in situations where they have established that the risks of ML/TF and PF are low. In addition, Regulation 4C (2) allows reporting entities to reduce the frequency of customer updates, verify the identity of a customer or beneficial owner after establishment of business relationship, reduce the degree of monitoring or scrutinizing transactions where the reporting entity has considered the risk as low. However, the provisions do not include a condition that such simplified measures should be based on low risk findings which are consistent with the country's assessment of ML/TF risks. (c.1.8).

While S. 9(1)(f) of the FI Act requires reporting entities to conduct risk assessment, it is not clear whether this refers to ML/TF risks. The Act defines the term 'risk management systems' but not 'risk assessment'. In addition, the section does not include obligations to understand the ML/TF risks, document the risk assessment, keep the assessment up to date and have mechanisms to provide the risk assessment information to competent authorities and SRBs (c.1.11).

In view of the shortcomings which are outstanding, **Botswana is re-rated as largely compliant with R.1.**

3.1.2 Recommendation 2 (Originally rated PC- rating retained as PC)

Botswana was rated PC with R.2. The main technical deficiencies were that: The country did not have national AML/CFT policies informed by identified ML/TF risks; although the NCCFI is designated to advise on AML/CFT policies, the authority is not guided by identified ML/TF risks as they have not been identified and there was no cooperation/ coordination mechanism to combat the financing of proliferation of weapons of mass destruction.

Botswana has not addressed key deficiencies highlighted in the MER such as development of national AML/CFT policies informed by risks identified in the NRA report. Although the functions of the Chemical, Biological, Nuclear and Radiological Weapons Management

Authority include the coordination, monitoring and supervision of all activities related to scheduled chemicals, nuclear material and controlled agents and toxins; monitoring the implementation of various related Acts [S. 6 of the Chemical Weapons (Prohibition) Act], the Act does not provide for establishment of a committee or other body to operationalize this coordination similar to those described under c.2.3. In addition, Authorities have not indicated any administrative mechanisms to ensure that there is coordination and exchange of information concerning development and implementation of policies and activities in relation to PF. In addition, the FATF introduced a new requirement c.2.5 which authorities have not addressed. **Due to the outstanding deficiencies, the PC rating of R.2 has been retained.**

3.1.3 Recommendation 3 (Originally rated PC- re-rated to C)

The key deficiencies identified in the MER were: The predicate offences of illicit arms trafficking, hostage-taking, and kidnapping were not criminalised and the threshold approach to foreign predicate offences which have similar conduct constituting an offence in Botswana limited the scope of such offences in Botswana as it was high compared to the all crimes approach followed for domestic predicate offences.

Botswana has made amendments to various laws in order to criminalize the remaining predicate as follows:

1. Illicit trafficking in narcotic drugs
 - S. 5 of the Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 2018
2. Illegal arms trafficking
 - S.14 of the Arms and Ammunition Act
3. Hostage taking
 - S 191A of the Penal Code
4. Illegal restraint
 - S.260 of the Penal Code

Based on the above cited legislative amendments, Botswana has fully addressed the requirements of c.3.2. In addition, amendment to the Proceeds and Instruments of Crime Act in 2018 in relation to the definition of 'serious crime' lowers the threshold. It provides that it is 'any offence for which the minimum penalty is P500 or imprisonment for 6 months or both' which brings the domestic serious offence and foreign serious offence at the same level (c.3.3(c)). In addition, the definition of ML includes a 'foreign serious offence'. These provisions, when read together, satisfy the requirements of c.3.6.

On this basis, Botswana is re-rated as compliant with R.3.

3.1.4 Recommendation 4 (Originally rated PC- re-rated LC)

The key deficiencies identified in the MER were: the confiscation of property of corresponding value was only limited to instrumentalities of crime and there were no provisions of the law providing for taking of steps that can prevent or void actions that prejudice Botswana's ability to freeze or seize or recover property that is subject to confiscation.

Botswana has amended section 20 of the Proceeds and Instruments of Crime Act (PICA) in order to cover the concept of 'property of corresponding value'. However, one of the conditions is that the property to substitute the tainted property must be of the same nature or description. This provision brings limitations which make it inconsistent with the whole concept of 'property of corresponding value'. The element of value does not feature in this section (c.4.1). In relation to the deficiency noted under c.4.2, Botswana has amended the PICA to ensure authorities are able to prevent the flight or dissipation of assets, prior to a concrete crime having been established or criminal investigation having begun. This is provided for under section 35(8) of the PICA. The provision is wide enough to include powers of LEAs to take 'appropriate investigative measures'.

In view of the minor shortcomings noted, Botswana is re-rated as largely compliant with R.4.

3.1.5 Recommendation 5 (Originally rated NC- re-rated C)

The key deficiencies identified in the MER were: Commission of a TF offence by an individual terrorist is not criminalised, the provision that for a TF offence to be committed, it should not be a requirement that the funds provided be linked to a specific terrorist act(s) is not provided for, the ancillary offences of participating as an accomplice in a TF offence and contribution to the commission of one or more TF offence(s) or attempted offence(s) by a group of persons acting with common purpose are not criminalised.

Botswana has amended the Counter-Terrorism Act (CTA) to address deficiencies identified in the MER in relation to this Recommendation. For instance, concerning c.5.1 the definition of 'act of terrorism' in s.2 of the CTA has been broadened as follows:

“(aa) causes or is likely to cause serious bodily injury to a person not taking an active part in hostilities in a situation of armed conflict”

“(m)(iii) taking hostage whether or not for ransom”.

Furthermore, in order to address the exclusion of 'a terrorist individual' which was highlighted in the MER, Botswana has amended various sections of the Counter-Terrorism Act to include a 'terrorist individual' among the list of situations which should be covered in a TF offence such as s.5(1)(f)(ii) of the Act. In relation to c.5.4, in order to address the deficiency identified in the law, Botswana has introduced subsection 5(5) which reads as follows:

“For an act or omission to constitute an offence under this section, it is not necessary that the property was actually used, in full or in part to carry out an act of terrorism or that an act of terrorism has been committed”.

In the new subsection, Botswana introduced the highlighted text which is intended to mean that it is not necessary that ‘the funds be linked to a specific terrorist act’. **In addition, the definition of offence in the Penal Code includes act, attempt, or omission, punishable by law, which includes an attempt (Penal Code Section 2).**

The CTA has also been amended to broaden the scope of sanctions to allow sanctions to be applied commensurate with the nature and extent of the offence. Section 5(1) (i) and (ii) of the CTA provides that a person who carries out actions stated in this section commits an offence and shall be liable to a term of imprisonment for life or to a fine of P5 000 000.00 or to both”. S.38 (1) of the Interpretation Act provides that ‘where in any enactment a penalty is prescribed for an offence, the penalty shall, in the absence of any provision to the contrary, be deemed to be a maximum and not a fixed penalty’. Therefore, if a court is of the view that the nature and the severity of the offence warrants a lesser sentence it can do so. In instances where the court is of the view that the nature and the severity of the offence is such that the fine is not enough, it can impose both the fine and the imprisonment term. S. 5(7) of the CTA provides for civil sanctions.

As described above, the CTA broadens the scope of sanctions to include fines which can also be applied to legal persons. In addition, as explained under c.5.6, if the court is of the view that the nature and the severity of the offence warrants a lesser sentence it can do so in accordance with the cited provision. In instances where the court is of the view that the nature and the severity of the offence is such that the fine is not enough, it can impose both the fine and the imprisonment term (c.5.7).

With reference to deficiencies highlighted under c.5.8, Section 22 of the Penal Code provides as follows:

“When two or more persons form a common intention to execute an unlawful purpose in conjunction with one another, and in the execution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence”.

In a decided case of Nkgwebana & Others against the State, the High Court Judge ruled that a general provision in the Penal Code can be applied in all criminal proceedings unless there is some provision to the contrary in any written law. For this reason, section 22 of the Penal Code criminalises contributing to the commission of one or more TF offences by a group of persons acting with a common purpose. In addition, in terms of S.2 of the Penal Code as read together with ss.388 and 389, an attempted offence is also criminalised.

The new criterion 5.2bis was not part of the FATF Standards when Botswana was initially evaluated. S. 5(1)(g)(ii) of the Counter Terrorism Act is sufficiently broad to cover travel for the purpose of perpetration, planning, preparation or participation in terrorist acts or providing or receiving training linked to a terrorist organisation or for an individual terrorist act. The provision applies both directly and indirectly and therefore would be broad enough to constitute self-financing. The legislation includes a provision where the financing of travel for perpetration, planning, preparation or training to commit a terrorist act would be covered under “use of any financial or other service.....to commit or facilitate the commission of an act of terrorism”. The same argument also applies for the payment for training or participating in training “to commit or facilitate the commission of an act of terrorism”. Finally, the legislation’s definition of “act of terrorism” under Part I of the Act is also sufficiently broad to meet the requirement of 5.2bis, which can be considered met.

On this basis Botswana is re-rated as compliant with R.5.

3.1.6 Recommendation 6 (Originally rated NC-re-rated to PC)

The key deficiencies identified in the MER were: no legal framework which enables implementation of targeted financial sanctions related to terrorism and TF, and that the definition of the term “funds” did not meet the requirements of the TF Convention and was not consistent with the definition provided under the FATF Glossary.

Botswana amended the CTA and the Counter-Terrorism (Implementation of UNSCRs) Regulations in 2018 in order to address the deficiencies in relation to targeted financial sanctions related to terrorism and terrorist financing- the implementation of UNSCRs 1267 and 1373, including their successor resolutions. The Minister of Presidential Affairs, Governance and Public Administration is the competent authority with the responsibility for proposing persons or entities to the 1267/1989 Committee and the 1988 Committee for designation. The Minister acts on the basis of recommendations from the Counter-Terrorism Committee [Regulation 8(4)]. However, although the authority exists, Botswana does not have procedures and mechanisms in place for identifying targets for designation, based on the designation criteria set out in the relevant UNSCRs, including the requirements set out in c.6.1(c)-(e).

In relation to designations under UNSCR 1373, Regulation 4(1) of the Counter Terrorism Regulations identifies the Minister of Presidential Affairs, Governance and Public Administration as a competent authority with the responsibility for designating persons or entities as a terrorist or terrorist organisation on recommendation from the Counter-Terrorism Committee or at the request of another country. Regulation 4(2) provides that, where the Committee has reasonable grounds to believe that a person or structured group is engaged in acts of terrorism, or has committed any offence under the Act, it shall make a recommendation, providing information, to the Minister to nationally list that person or structured group. However, the Regulations do not indicate the process leading to the point

of 'having reasonable grounds''. It is not clear what procedures exist for identifying targets for designation, based on the designation criteria set out in UNSCR 1373. On the other hand, Regulation 5 sets out the steps to be taken when handling foreign requests for national listing. The request is channelled to the DPP who reviews the case and establishes its merit. Where he is satisfied that it is desirable and in the interest of justice to grant the assistance, he or she shall without delay, submit the request to the Committee for the Committee to make a recommendation to the Minister to make an order to nationally list the person or entity.

In this context, the core of sub-criterion 6.2(c) is 'making a prompt determination' that the request is supported by reasonable grounds. While it is appreciated that the DPP is required to submit to the Committee their recommendation without delay, the Regulation is not explicit on the following:

1. The period within which the request should be submitted to the DPP by the Ministry responsible for Foreign Affairs (the channel through which requests under the mutual assistance in criminal matters act go through from a foreign country);
2. The period within which the DPP should make a determination;
3. The period within which the Committee should consider the recommendation and forward it to the Minister.

In some parts of the Regulation where prompt action is required, the words 'immediately' or 'without delay' have been used. It is therefore concluded that where these words have NOT been used, prompt action is not required or envisaged. Based on this, the identified deficiency under sub-criterion c.6.2(c) is considered not to have been fully addressed.

There are legal authorities in various laws which can be used to collect or solicit information for purposes of identifying a person and entity for designation such as:

- The Intelligence and Security Act
- Financial Intelligence Act

Information would principally be collected by intelligence authorities, FIU and law enforcement authorities. However, powers of LEAs to use coercive measures are restricted to the investigation of serious crimes, or where there is significant risk that a person might engage in criminal activity. According to the Counter-Terrorism Act and its Regulations, the deliberations of the National Counter Terrorism Committee are conducted without any notice to the individuals or entities concerned, the individuals are only notified of the outcome of the deliberations if they have been designated (c.6.3).

Section 12(2) states that when a Minister designates a person or entity as a terrorist or terrorist entity, the designation shall be published in the Gazette. In relation to the UN List, Regulation 8(2) states that the Committee shall circulate the list without delay to the FIU, a supervisory authority, an investigative authority, and accountable institution. Furthermore, the circulation is accompanied by instructions to the supervisory authorities to direct a specified party to immediately or without delay freeze funds, property or economic resources that are owned, held or controlled, directly or indirectly by a designated person or entity (Regulation 9(1)). However, based on the manual processing of the implementation of

the TFS including giving effect to the freezing mechanism (by publishing in the Gazette), it cannot be concluded that TFS is implemented without delay in every circumstance.

The Counter Terrorism Committee established under s.12A of the Counter Terrorism Act, is responsible for implementing and enforcing targeted financial sanctions. However, as observed above, Regulation 9 is not consistent with Section 17 of the CTA. There is no direct obligation for reporting entities to freeze without delay funds or other assets of designated persons and entities. Authorities need to go to court to obtain a freezing order. This does not meet the standard of 'without delay'. Nevertheless, the related identified deficiency with regard to the definition of 'funds' has been addressed (Section 2), and is now consistent with the definition under the FATF Glossary.

Botswana prohibits any person (which includes natural and legal persons) from making funds, property or other economic resources available for the benefit of a designated person and entities (Regulation 19). However, there is 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. Although under Regulation 8(3) supervisory authorities are advised to provide guidance to their entities in relation to their obligations and action, the obligations are limited to freezing actions. As regards third party rights, the affected person may apply to the court that issued the freezing order for exclusion of that person's interest from the freezing order (Regulation 7). This provision applies to domestic designations only and it refers to 'a court which issued a freezing order' which is not consistent with c. 6.5(a) and therefore Regulation 7 is not relevant (c.6.5).

Botswana has set out procedures for handling de-listing requests for transmission to the 1267/1989 Sanctions Committee, 1988 Sanctions Committee under Regulation 10. This Regulation explains to whom the request should be submitted and the required supporting information. There are also procedures for de-listing and unfreezing the funds, other assets and economic resources under Regulation 11 in relation to persons or entities designated pursuant to UNSCR 1373. The procedures under Regulation 11 provides for the review of the designation made under UNSCR 1373 by the Counter Terrorism Committee. However, the sub-criterion requires that the review be done either by a court or other independent competent authority. The Committee cannot qualify as 'other independent competent authority' since it is the one which made the recommendation for designation of the person or entity. Procedures for review of requests for delisting by the 1988 Sanctions Committee include provision of particulars of the individual or entity, reasons justifying the request for delisting etc (Regulation 10). These are consistent with the UNSCR 1988.

However, **Botswana does not have procedures for informing designated persons or entities** of the availability of the UN Office of Ombudsman in relation to the Al-Qaida Sanctions List. In relation to *false positives* arising from similarity in names or wrong entry or errors, the affected person may apply to the Minister to unfreeze the funds, property or economic resources. If the funds were frozen under the UNSCRs, the Minister is required to forward the request to the relevant Sanctions Committee. In case of domestic designations, the

application shall be determined within 15 days. The Counter Terrorism Committee is required to communicate the decision to de-list a person or entity to all supervisory authorities, which should in turn, inform the specified parties (FIs and DNFBPs) immediately and give instructions to give effect to the delisting decision/ action (Regulations 11 and 13). In addition, Botswana has set out procedures for authorizing access to funds or other assets by designated persons or entities in relation to basic expenses or extraordinary expenses (Regulations 16 and 17). The criterion requires that the procedures should be publicly known. This is a cross-cutting issue. Other than publication of the Act and Regulations in the gazette, there is no public medium used to communicate the procedures (c.6.6 and c.6.7).

On the basis of the moderate shortcomings, Botswana is re-rated as partially compliant with R.6.

3.1.7 Recommendation 7 (Originally rated NC: re-rated PC)

The main deficiency was that Botswana did not have a legal framework which provides for the implementation of targeted financial sanctions related to proliferation financing.

Botswana amended the CTA and issued the Counter- Terrorism (Implementation of UNSCRs) Regulations in 2018 to provide for implementation of targeted financial sanctions related to proliferation. The Counter Terrorism Committee established under s.12A of the Counter Terrorism Act, is responsible for implementing and enforcing targeted financial sanctions. **However, there is no requirement for all natural and legal persons to freeze without delay, the funds, or other assets of designated persons and entities (See discussion under c.6.4).** Although the freezing obligation extends to all funds or other assets that are owned or controlled by the designated person or entity and funds or other assets of persons or entities acting on behalf of, or at the direction of designated persons or entities, it **does not extend to funds or other assets which are jointly owned by a designated person and funds or other assets derived or generated** from funds or other assets owned or controlled directly or indirectly by a designated person (Regulation 9).

The provisions in relation to making funds or other assets available to designated entities, communication designations to reporting entities, obligation of reporting entities to report action taken on assets frozen and protection of third parties are similar to those TFS related to TF (refer to c.6 for analysis and shortcomings). **There is 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. [see discussion under c.6.5(e) above].** However, FIs and DNFBPs are expressly required to monitor and report on transactions for high risk businesses (9C) (1) of Financial Intelligence Act). High risk business includes a business that appears on the UN Sanctions List, a business that has a business relationship with other businesses that appear on the sanctions list and a business that is subject to sanctions, embargos or similar measures issued by the UNSC (s.2 of the Financial Intelligence Act). Failure to comply with this obligation is an offence which attracts a fine not exceeding P1,500,000. Although supervisors do not have an express obligation to monitor and ensure

compliance by FIs and DNFBPs with proliferation financing sanctions, this is considered as part of the broader supervisory roles (c.7.3).

There are procedures for handling de-listing requests for transmission to the UN Security Council pursuant to UNSCR 1730 (Counter Terrorism Regulation 10), unfreezing the funds, other assets and economic resources of persons or entities which were frozen as a result of similarity in names or wrong entries on the United Nations list (Counter Terrorism Regulation 15) and authorizing access to funds or other assets by designated persons or entities where it has been determined that the exemption conditions set out in Article 9 of the UNSCR 1718 have been met. The affected person may apply to the Minister to unfreeze the funds, property or economic resources. If the funds were frozen under the UNSCRs, the Minister is required to forward the request to the relevant Sanctions Committee for consideration (Regulation 17). The Counter Terrorism Committee is required to communicate the decision to delist a person or entity to all supervisory authorities, which should in turn, inform the specified parties (FIs and DNFBPs) immediately and give instructions to give effect to the delisting decision/ action and unfreeze funds.

On the basis of the moderate shortcomings, Botswana is re-rated as partially compliant with R.6.

3.1.8 Recommendation 8 (Originally rated NC: not re-rated)

The identified technical deficiencies covered the following; all the measures regulating the activities of NPOs in Botswana under the Societies Act are not for purposes of dealing with the possible exposure of the NPO sector to abuse for TF activities and identification of which NPOs are at risk to be exposed to TF and the kind of measures which can be taken to mitigate the TF risks faced by such NPOs. Also, the requirements under the Societies Act were not being used to understand the possible exposure of the sector to the TF risk. Further, no awareness was being done on TF risks to the NPO sector. Additionally, R.8 has been significantly amended since the MER.

No information was provided for the purpose of assessing technical compliance with the revised Recommendation.

On this basis, the rating of NC has been retained.

3.1.9 Recommendation 9 (Originally rated NC: re-rated to PC)

The main deficiency was that information in possession of the banks about their clients was not easily accessible to other competent authorities (other than the DCEC) due to provisions of s. 43 of the Banking Act. For this reason, Assessors concluded that it was not possible for the FIA and other competent authorities (other than the DCEC) to exchange information which they do not have access to.

Botswana has amended S.43(2) of the Banking Act to remove the secrecy obligations placed on directors, principal officers, officers, employees or agents of a bank or any other person having access to records of a bank. The Section provides that the duty of confidentiality imposed on a banker in accordance with subsection (1) shall not apply in the following circumstances (selected): (i) the information is required by the Agency, in accordance with the provisions of the Financial Intelligence Act; (k) the bank is required to provide additional information to the Agency on a suspicious transaction report that it has filed with the Agency, in accordance with the provisions of the Financial Intelligence Act; and, (n) the disclosure of the information is required by this Act or by any other law.”

FIs are expected to disseminate an STR either spontaneously or upon request. The language of the foregoing provisions seems to be limited to situations where the information has been requested by the FIA. Secondly, in terms of sub-section (k), FIA does not have legal mandate to request information from any other FI apart from the one which submitted an STR.

On this basis, Botswana is re-rated as partially compliant with R. 9.

3.1.10 Recommendation 10 Originally rated NC: re-rated PC)

The MER identified the following deficiencies: no legal and regulatory requirements for FIs to apply CDD measures when establishing a business relationship or conducting transactions with a legal person or arrangements; no requirement for FIs to identify and verify the identity of beneficial owners, no requirements prohibiting FIs from keeping anonymous accounts, or accounts in obviously fictitious names, FIs were not required to apply CDD measures on business relationships and transactions on a risk-based approach to allow for application of reduced or enhanced due diligence measures.

Botswana has amended its FI Act and FI Regulations to address the deficiencies in the MER. FIs are prohibited from opening or maintaining an anonymous account or any account in a fictitious or false name (Section 10C of FI Act). FIs are also required to undertake CDD measures when:

- a) establishing a business relationship [Section 10(1)(a) of Financial Intelligence Act];
- b) carrying out occasional transactions [Section 10(1)(a) of Financial Intelligence Act];
- c) carrying out occasional transactions that are wire transfers [Section 10(1)(a) of Financial Intelligence Act];
- d) there is a suspicion of ML/TF, regardless of any exemptions or thresholds [Regulation 4A (1) of Financial Intelligence Regulations];
- e) the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data [Regulation 4A(1)(d) of FI Regulations].

S. 10(1) of the FI Act requires FIs to undertake CDD measures before establishing business relationship or concluding a transaction. The term ‘transaction’ is understood to include all

transactions, irrespective of the amount and the type of transaction. In this case, wire transfers and occasional transactions are covered (c.10.2). In addition, S.10 of FI Act includes an obligation to apply CDD measures in relation to beneficial owners (BO) and beneficiaries of life insurance policies. **However, the definition of BO is not entirely consistent with the FATF definition as it does not seem to include ‘a natural person who control a customer and on whose behalf a transaction is conducted’.** In addition, it does not seem to include a person who exercises effective control over a legal arrangement. It only refers to ‘ultimate beneficiary of share or other securities’. For this purpose, there is no legal or regulatory provision which requires 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. (c. 10.5 and c.10.10).

The FI Amendment Act of 2018 defines “customer” to include a natural person, unincorporated body, legal arrangement, legal person and body corporate. Furthermore, Regulation 11 of the FI Act provides for verification of the identity of the customer using reliable sources (c 10.3). **However, the provision in the FI Act is conditional where it states “Any information or particulars ascertained by a specific party as required under Part II of these regulations shall as far as is reasonably practicable in the circumstances, be verified by the specified party”.** This indicates a deficiency with the verification provisions. There is also no requirement where verification measures are applied for the sources to also be ‘independent’ as well as reliable.

FIs are required to conduct ongoing CDD on the business relationship and monitor complex transactions, unusual transactions or unusual patterns of transactions which have no apparent or economic purpose [sections 9B (1) and 9C (1)(a) of FI Act]. It is assumed that in establishing that a transaction or the pattern of transactions is unusual, FIs will logically compare with their knowledge of the customer, the business and risk profile of the customer. FIs are also required to carry out periodic review of accounts on an ongoing basis to ensure that information and records collected at the time of customer identification and verification is current [section 9B (1) of the FI Act]. Furthermore, Section 11(3A) requires FIs to keep up-to-date all information, data or documents collected under any CDD (c.10.7). In relation to customers which are legal persons or legal arrangements, S. 10A(a) and (b) of FI Act requires FIs to establish the nature of the customer’s business and, its ownership and control structure (c.10.8-c.10.10). **However, there is no specific legal or regulatory provision which requires FIs to verify the identity of a beneficial owner through the identity of the settlor, trustees, protector beneficiaries and any other person exercising ultimate effective control (c, 10.11)**

Where a FI established a business relationship before coming into force of the Act, a FI is prohibited from carrying out any transaction until it has carried out CDD measures set out under Section 10(1)(a). **However, there is no legal or regulatory provision requiring FIs to conduct the remediation process on the basis of materiality and risk (c.10.16).**

FIs are required to carry out enhanced CDD measures when dealing with a customer from a high risk jurisdiction, or at the instance of an international organisation, or a transaction for a high risk business. In addition, Regulation 4D provides that FIs are required to conduct an enhanced CDD for all complex, unusually large transactions and all unusual patterns of transactions with no apparent economic or lawful purpose. **However, these provisions leave a deficiency in that they do not specify that enhanced CDD should occur in all circumstances where the ML/TF risks are higher (c.10.17).**

FIs are prohibited from opening an account, commencing business relations and performing any transaction where the FI is not satisfied with the information received at the time of carrying out CDD. In addition, they are required to consider making a suspicious transaction report in relation to the customer (Regulation 3A). Furthermore, section 9D of the FI Act states that if a FI is unable to establish and verify the identity of a customer it should terminate an existing business relationship. In situations where a FI forms a suspicion of ML or TF, **the legal and regulatory framework does not specifically permit the FI to stop the CDD process and file an STR if continuing with the CDD process would tip off the customer (c.10.19 and c.10.20).**

On this basis, Botswana is re-rated as partially compliant with R.10.

3.1.11 Recommendation 11 (Originally rated NC: Re-rated to LC)

The MER identified the following deficiencies: the legal framework did not contain a provision requiring FIs to keep all records obtained through CDD measures, account files and business correspondence and results of any analysis undertaken for at least five years after the termination of a business relationship; there was no obligation to verify documents obtained relating to legal persons, legal arrangements and beneficial owners; it was difficult to have sufficient information which would facilitate reconstruction of transactions to provide evidence for prosecution of a criminal activity due to lack of requirements to obtain information on beneficial ownership relating to legal persons and other forms of legal arrangements other than trusts; there was no specific legal provision which obliged FIs to provide documents swiftly to domestic competent authorities.

FIs are required under S.12(1) of the FI Act to keep records obtained through the CDD measures, account files and business correspondence and results of any analysis undertaken for at least five years from the date of a transaction and after the termination of a business relationship. S. 11 of the FI Act requires FIs to keep the CDD documents, nature of transaction, amounts involved in a transaction and the parties to the transaction, and all accounts involved in a transaction. As discussed under R.10, CDD documents include those of legal persons, legal arrangements and beneficial owners. These documents appear to be sufficient to permit reconstruction of individual transactions.

In relation to availability of documents to competent authorities, S. 11(2) provides that CDD information and transaction records shall be kept in electronic form. Although this facilitates retrieval of the documents, there is no specific legal provision requiring FIs to ensure that all CDD information and transaction records are available swiftly to domestic competent authorities. This criterion requires the authorities to place an obligation on FIs. The powers of LEAs are assessed under a separate Recommendation.

On this basis, Botswana is re-rated as largely compliant with R.11.

3.1.12 Recommendation 12 (Originally rated NC: re-rated LC)

The MER observed that Botswana had no legal framework dealing with obligations which apply to PEPs.

The new legal provisions require FIs to (a) obtain senior management approval before establishing the business relationship; (b) take reasonable measures to establish the source of funds of the prospective customer; and (c) conduct enhanced ongoing monitoring of the business relationship, in relation to a PEP or beneficial owner of a PEP (Section 10B of the FI Act). The definition of a prominent influential person is consistent with the definition of a PEP under the FATF Standards.

In terms of s.9 as read together with s.10B of FI Act, FIs are also required to put in place risk management systems to determine whether a customer or the beneficial owner is a PEP. However, FIs are not required to take reasonable measures to establish the source of wealth of a PEP or beneficial owner of a PEP (c.12.1). The requirements of Section 10B also apply to domestic PEPs, family members and close associates of a PEP since the definition of a prominent influential person includes a domestic PEP and family members and close associates of a PEP (see the analysis under c.12.1).

In relation to a life insurance policy, a FI is required to establish the identity of the beneficiary at the time of payout; or the identity of the beneficial owner if the beneficiary is a legal person or arrangement. Furthermore, a FI is under obligation to obtain sufficient information concerning the beneficiary to satisfy itself that it will be able to establish the identity of the beneficiary at the time of payout. Furthermore, FIs are required to take reasonable measures at the time of payout to determine whether a beneficiary of a life insurance policy or the beneficial owner of the beneficiary is a PEP. However, there is no requirement to inform senior management before a payout of the policy proceeds or to conduct enhanced scrutiny on the whole business relationship and to consider filing an STR.

On this basis, Botswana is re-rated as largely compliant with R. 12.

3.1.13 Recommendation 13 (Originally rated NC: re-rated PC)

The MER observed that Botswana did not have legal or regulatory requirements dealing with correspondent banking.

S.10F of the FI Act requires FIs which provide correspondent banking services to (a) to gather sufficient information about a respondent bank to understand the nature of the respondent's bank business; (b) determine, from publicly available information, the reputation of the respondent bank it proposes to enter into a correspondent banking relationship with. **However, there are no requirements in relation to the quality of supervision, including whether it has been subject to a ML/TF investigation or regulatory action; (b) assess the respondent institution's AML/CFT controls; (c) obtain approval from senior management before establishing new correspondent relationships; and (d) clearly understand the respective AML/CFT responsibilities of each institution (c.13.1).**

FIs which intend to enter into correspondent banking relationship with other FIs are required to be satisfied that the respondent bank has conducted CDD on the customers having direct access to accounts of the correspondent bank and that be satisfied that the respondent bank is able to provide relevant CDD information upon request to a correspondent bank (S. 10F of the FI Act). In addition, Botswana prohibits FIs from entering into, or continuing, correspondent banking relationships with shell banks and requires FIs to satisfy themselves that respondent FIs do not permit their accounts to be used by shell banks [Section 10D (1) and Section 10F(d) of the FI Act].

On this basis, Botswana is re-rated as partially compliant with R.13.

3.1.14 Recommendation 15 (Originally rated NC: re-rated PC)

The MER identified the following deficiencies: FIs were not required to apply AML/CFT requirements on financial services provided through new technologies platforms; there was no requirement for FIs to undertake risk assessments prior to the launch or use of new or pre-existing products, practices and technologies and FIs were not required to take appropriate measures to mitigate risks relating to new technologies

Botswana has not identified and assessed ML/TF risks related to development of new products and new business practices. Authorities shared 1 sample of a financial institution which identified and assessed ML/TF risks in relation to development of a new product. However, FI's are generally not required to have internal policies and procedures to assess ML/TF risks for new products and new business practices that are being adopted. In

addition, there is no indication that authorities have mechanisms in place to facilitate this evaluation of FIs' risk assessments, policies and procedures in relation to new products and new business practices.

FIs are required to conduct risk-based assessment on new products, practices, technologies and delivery mechanisms prior to their launch (Section 9(1)(f) of the FI Act). Although the terms 'risk-based assessment' and 'risk assessment' have different meanings, perhaps this was just an oversight on the part of the authorities. However, FIs are not required to take appropriate measures to manage and mitigate the ML/TF risks associated with new products, new technologies and new business practices.

On this basis, Botswana is re-rated as partially compliant with R.15.

3.1.15 Recommendation 16 (Originally rated NC: re-rated PC)

The MER observed that, other than reports of wire/electronic transfer transactions (including name of originator) above P 10,000 being required to be made to FIA, FIs are not required to ensure that all cross-border wire transfers carry the name of originator. All the other requirements of R. 16 were not met.

Botswana has amended its FI Act and FI Regulations to address deficiencies identified in the MER in relation to R.16. For instance, FIs are required to ensure that cross-border wire transfers contain name of originator, originator's account number, originator's address and national identity, name of beneficiary, beneficiary account number, the source and purpose of funds [Regulation 19(6) of FI Regulations]. In general, FIs are prohibited from applying simplified CDD measures where there is a suspicion of ML/TF. This means that if there is a suspicion of ML/TF in transactions of less than P10, 000 (USD1,000), FIs should verify the originator and beneficiary information [Regulation 4C). All the information must accompany the wire transfers and FIs are required to maintain originator and beneficiary information in accordance with R.11. However, FIs are not expressly prohibited from executing a wire transfer transaction where it is unable to comply with requirements set out under c.16.1-16.7).

In addition, there is no requirement, in law or other enforceable means, for an intermediary FI to retain with the cross-border wire transfer all originator and beneficiary information that accompanies it. The FI Act or FI Regulations do not cover the specific situations where intermediary FIs experience problems or use a payment system with technical limitations. However, generally FIs are required to keep records of all transactions, which include originator and beneficiary information for at least 5 years from the date of the transaction [ss 11 and 12 of the FI Act as read together with s.21A(5) of the FI Act]. On the other hand, there is no requirement for an intermediary FI to take reasonable measures, which are consistent with straight-through processing, to identify cross-border wire transfers that lack required originator information or required beneficiary information. Similarly, there is no

requirement for an intermediary FI to have risk-based policies and procedures for determining: (a) when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and (b) the appropriate follow-up action. This criterion is therefore considered not to have been met (c.16.9-c.16.12).

There are also no relevant provisions in law or regulation addressing c.16.13- c.16.17. However, all natural and legal persons in Botswana, including FIs, are required to take freezing action and comply with prohibitions from conducting transactions with designated persons and entities when conducting wire transfers (see analysis of R.6).

On this basis, Botswana is re-rated as partially compliant with R. 16.

3.1.16 Recommendation 18 (Originally rated PC: not re-rated)

The MER identified the following deficiencies: There was no requirement for the programmes against ML/TF to have regard to the ML/TF risks and the size of the business; Financial groups were not required to implement group-wide programs against ML/TF risks to all branches and subsidiaries of the financial group and there were no requirements for FIs to ensure that their foreign branches and majority-owned subsidiaries apply AML/CFT measures consistent with the home country requirements, where the requirements of the host country are less strict. The revised part of R.18 has equally been assessed.

In terms of S. 9(1)(g) of the FI Act, FIs are required to implement programmes which have regard to identified ML/TF/PF risks and commensurate to the size of business and are also required to implement group wide programmes which should be applicable and appropriate to all branches and majority owned subsidiaries of the financial group [Section 9(1)(h) of the FI Act]. However, there is no specific obligation to include measures set out under c. 18(1) and c.18.2 (a) - (c). Additionally, the revised part of R.18 related to information sharing within a group, has not been addressed.

FIs are required to ensure that their foreign branches and subsidiaries apply AML/CFT measures consistent with those applicable in Botswana, if it is deemed that the AML/CFT measures in the host country are less strict [Section 9(1)(g) of the FI Act and Regulation 4E]. On the other hand, there is no requirement for FIs to apply appropriate measures to manage the ML/TF risks, and inform Botswana supervisory authorities in situations where the host country does not permit foreign branches or subsidiaries to implement Botswana AML/CFT measures.

On this basis, the rating of partially compliant for R.18 is retained.

3.1.17 Recommendation 19 (Originally rated NC: not re-rated)

The MER identified the following deficiencies: no legal requirement to apply enhanced due diligence to business relationships and transactions with natural and legal persons from

countries for which this is called for by the FATF; Botswana does not apply countermeasures proportionate to ML/TF risks when called upon to do so by the FATF or independently of any call by the FATF to do so and no mechanism in place to ensure that FIs are advised of concerns about the weaknesses in the AML/CFT systems of other countries.

S.10 (1) of FI Act addresses obligations in relation to identification of customers and the opening paragraph states that *'a specified party shall not establish a business relationship or conclude a transaction with a customer unless the specified party has undertaken due diligence measures and such other steps as may be prescribed-...'* On the other hand, ss. 10(1)(d) is referring to the obligation to carry out enhanced due diligence when dealing with business relationships with customers from countries for which this is called by the FATF and when dealing with transactions for a high risk business. This subsection, when read in totality, is mixed up and would not be appropriate for c.19.1 as it talks about "not to conclude a transaction and at the same time 'conduct enhanced due diligence'. In addition, the obligation does not extend to transactions and it does not require that the measures should be proportionate to the risks. Furthermore, Botswana does not have powers to apply countermeasures proportionate to ML/TF risks when called upon to do so by the FATF or independently of any call by the FATF to do so (c.19.2).

One of the functions of the FIA is to communicate the list of high-risk countries to specified parties, accountable institutions and supervisory authorities. The definition of high-risk jurisdictions includes those which have weak AML/CFT systems and those identified by the FATF as a high-risk jurisdiction. **However, authorities have not described the mechanisms they use to communicate the concerns to reporting entities.**

On this basis, the rating of NC has been retained.

3.1.18 Recommendation 20 (Originally rated PC: re-rated to C)

The MER identified the following deficiencies: the period allowed for submission of a suspicious transaction report falls short of the required urgency; certain transactions have been exempted without a proper ML/TF risk assessment being carried out and s. 43 of the Banking Act might also inhibit compliance of banks with the reporting obligations.

The amended law requires FIs to report a suspicious transaction to the FIA within 5 working days after the suspicion was formed unless the FIA approves a delay in submitting the report (S.17 of the FI Act) and Regulation 18(1). The exemption which existed during the previous ME exercise has been removed through the repeal of S.37 of FI Act. In addition, S.21 of the Banking Act was repealed so that STRs are no longer required to be sent to Bank of Botswana.

On this basis, Botswana is re-rated as compliant with R. 20.

3.1.19 Recommendation 21 (Originally rated NC: re-rated to LC)

The MER identified the following deficiencies: S. 43 of the Banking Act was in conflict with the requirements of s. 26 of the FI Act and there was no overriding provision in the FI Act to the provisions in Banking Act; the provision on tipping off was only limited to the person involved in reporting an STR. The revised part of R.21 has equally been assessed.

Botswana has amended Section 43(2) of the Banking Act to remove the secrecy obligations placed on directors, principal officers, officers, employees or agents of a bank or any other person having access to records of a bank. The Section provides that the duty of confidentiality imposed on a banker in accordance with subsection (1) shall not apply in the following circumstances (selected):

- (i) the information is required by the Agency, in accordance with the provisions of the Financial Intelligence Act;
- (k) the bank is required to provide additional information to the Agency on a suspicious transaction report that it has filed with the Agency, in accordance with the provisions of the Financial Intelligence Act;
- (n) the disclosure of the information is required by this Act or by any other law.”

For the purpose of c.21.2, there is no explicit provision which prohibits a FI, director, officer and employees other than the person involved in reporting an STR from disclosing that an STR or related information is being submitted to FIA. S. 25(3) of the FI Act does not cover the key elements of criterion 21.2, as the criterion refers to disclosing the fact that an STR or information is being filed with an FIU- and not about information related to an investigation. Furthermore, the section covers only disclosure of information requested by the FIU- which excludes information which a FI discloses spontaneously.

On this basis, Botswana is re-rated as largely compliant with R.21.

3.1.20 Recommendation 22 (Originally rated NC: not re-rated)

The MER identified the following deficiencies: the AML/CFT legal framework covering obligations of DNFBPs in relation to CDD and record keeping were deficient as they did not meet most of the criteria under R. 10; the legal framework does not extend to PEPs; introduction of new technologies was not regulated and there were no requirements to carry out an ML/TF risk assessment before introducing a new technology, related products or services.

Botswana has designated dealers in precious metals and TSCPs as reporting entities under FI Act (Schedule I of FI Act) and therefore they are subject to CDD requirements. However, the deficiencies highlighted under R.10 also apply here (c.22.1). In relation to record keeping requirements, S.12(1) of FI Act obliges specified parties to keep records obtained through CDD measures, account files and business correspondences and results of any analysis undertaken for at least five years from the date a transaction is concluded and after the termination of a business relationship.” However, minor shortcomings were highlighted under R.11 above.

Furthermore, Botswana requires all reporting entities including DNFBPs to comply with all obligations under R.12. On the other hand, there are no requirements or mechanisms for Botswana to identify and assess ML/TF risks that may arise in relation to the development of new products and new business practices. In addition, there is no obligation for DNFBPs to carry out risk assessment before a launch or use of such products, practices and technologies. S. 9(1)(f) of the FI Act refers to conduct risk-based assessment and not risk assessment. Risk-based assessment is logically referring to post risk-assessment.

On this basis, the rating of NC has been retained.

3.1.21 Recommendation 23 (Originally rated PC: re-rated to LC)

The MER identified the following deficiencies: Limitations relating to preventive measures on suspicious transaction reporting, internal controls, tipping off and legal immunity set out in the FI Act, also apply to DNFBPs; tipping off obligations were limited to persons involved in handling an STR; the legal framework did not cover obligations in relation to high risk countries; the legal framework did not provide for the application of countermeasures proportionate to the risks when called to do so by the FATF and independently of any call by the FATF and there was no mechanism for DNFBPs in Botswana to be advised of concerns about weaknesses in the AML/CFT systems of other countries.

Botswana requires all DNFBPs to submit STRs to the FIA in terms of S.17 of the FI Act as read together with Regulation 18(1). Furthermore, Schedule I has been amended to include dealers in precious stones and TCPs as designated entities for AML/CFT purposes and therefore covered by the provisions of Section 17 of the FI Act in regard to reporting of suspicious transactions (c.23.1). However, there are no legal or regulatory requirements to implement group-wide programs against ML/TF risks to all branches and subsidiaries of the group and to ensure that the foreign branches and majority-owned subsidiaries apply AML/CFT measures which are consistent with the home country requirements, where the requirements of the host country are less strict.

S. 9(1) of the FI Act is related to FIs based on the definition of 'financial group' in the FATF Standards. Similarly, obligations set out in Regulation 4E relate to FIs and not DNFBPs. With regard to dealing with high risk countries, the deficiencies observed under R.19 also apply. However, the deficiencies are considered to be of less importance in view of the context of DNFBPs in Botswana. The provisions in the FI Act and Banking Act do not fully address the requirements of R.21 (see discussion under R.21).

The deficiencies are considered to be minor taking into account the context of Botswana. **On this basis, Botswana is re-rated as largely compliant with R. 23.**

3.1.22 Recommendation 24 (Originally rated NC: re-rated to PC)

The MER identified the following deficiencies: there were no mechanisms to obtain information on beneficial ownership, or to ensure that it is available at a specified location, or that it can be determined in a timely manner by a competent authority; no measures had been put in place to ensure that bearer securities are not misused for ML/TF; no mechanisms had been put in place that nominee shares and directors are not misused for ML/TF and the sanctions provided were not proportionate and dissuasive.

Botswana amended its Companies Act in 2018 to include the requirement for an application form to include full names and residential address of beneficial owners [s. 21(2) of the Companies Act]. The definition of a beneficial owner in the Companies Act is consistent with the FATF definition. Furthermore, the country enacted a Company Re-registration Act in the same year which requires that every existing company shall apply to the Registrar for registration. Every application is required to include the full names and residential address of a beneficial owner (s. 3(3) of the Company Re-registration Act). The provisions in these two legislations will facilitate collection of beneficial ownership information both for existing and new companies. Although, s.10(1) of the FI Act requires reporting entities to establish and verify the identity of a beneficial owner before establishing a business relationship or concluding a transaction, it is observed that the definition of beneficial owner is deficient (see analysis under R.10).

Botswana uses a variety of mechanisms to ensure availability and access to information on the beneficial ownership of a legal person. The company registry obtains and maintain particulars of beneficial owners of legal persons (see analysis under 24.1 above). In addition, pursuant to s.10 of the FI Act, FIs and DNFBPs are also required to identify and take reasonable measures to verify beneficial owners as part of their CDD requirements (c.24.6). In terms of updating the information, S. 217 of the Companies Act requires a legal person to file an annual return at least once every year. The annual return provides updated information on shareholders, beneficial owners, directors etc. Companies are also required under the

Companies Act to notify the registry whenever there are changes in the information within a period of 10 to 21 working days (c.24.7).

Furthermore, S. 257 of the Companies Act provides that when a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidator shall be delivered to the Master (of the High Court) and such books and papers shall not be destroyed for a period of 5 years from the date of dissolution of the company. In addition, reporting entities are required to keep CDD information for at least 5 years after termination of the business relationship (s.12(1) of the FI Act) (c.24.9). On the other hand, the sanctions for failure to comply with the obligations in the Companies Act have not been enhanced after adoption of the MER and therefore they are still not proportionate (c.24.13).

In view of the above noted shortcomings and other criteria which have not been addressed, **Botswana is re-rated as partially compliant with R.24.**

3.1.23 Recommendation 25 (Originally rated NC: re-rated to PC)

MER identified the following deficiencies: Botswana did not have any legal framework or other mechanisms requiring trustees of any express trust to obtain and hold adequate, accurate, and current information on the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and other natural person exercising ultimate effective control over the trust; the absence of a requirement to have all trusts registered also prevents the authorities from monitoring whether all the above information is being obtained by trustees and the Deeds Registry Office, to ensure that such information is obtained upon registration of the trust; FIs were not required to obtain and maintain information on beneficial ownership and control of trusts when establishing a business relationship or conducting an occasional transaction; there were no specific provisions enabling access by foreign competent authorities to basic information held by the Deeds Registry, exchanging domestically available information on trusts and use by competent authorities of their domestic investigative powers to obtain beneficial ownership information on behalf of foreign counterparts; trustees had no obligation to disclose their status to FIs and DNFBPs.

In terms of s.7(3) of the Trust Property Control Act, trustees are required to provide to the Master of the High Court the full name, nationality, age, gender and residential address of the individual(s) who are beneficiaries. However, they are not obliged to obtain and hold adequate, accurate, and current information on the identity of the settlor, the trustee(s), or any other natural person exercising ultimate effective control over the trust. In addition, Botswana does not require trustees to hold basic information on other regulated agents of, and service providers to, the trust, including investment advisors or managers, accountants,

and tax advisors. On the other hand, professional trustees (who are obliged entities) are required to maintain this information for five years after their involvement with the trust ceases (see analysis under c.22.2).

The legal framework in Botswana does not require that any information held pursuant to this Recommendation is kept accurate and is updated on a timely basis. Although, there is no express obligation for trustees to disclose their status to FIs or DNFBPs, they are identified and their identity is verified when entering into a business relationship or conducting a transaction in their capacity as trustees (see analysis under R.10). LEAs in Botswana have powers under their respective legislations to obtain timely access to any information held by FIs and DNFBPs where this is of relevance to a criminal or civil investigation (see analysis under R.31).

Botswana is able to provide rapid international co-operation relating to information on trusts and other legal arrangements. In particular, competent authorities have general powers to share information which includes information on trusts and related beneficial ownership, with other competent authorities and law enforcement. Furthermore, competent authorities can use their general powers to share domestically-available information on trusts or other legal arrangements (see R.37 and 40). In addition, LEAs are also able to exercise domestically-available investigative powers to obtain information from any persons or entity including from trusts and related beneficial ownership information, on behalf of their counterparts.

The Trust Property Control Act does not contain most of the obligations which are relevant to this Recommendation and therefore no provisions are available to assist with the assessment of compliance with the criterion, including sanctions (c.25.7). LEAs have sanctions available under their respective legislations to apply against any person or entity which fails to grant access to information [s.18 of Corruption and Economic Crimes Act, Section 58 Police Act, s.16(2) (a) and (b) of the Customs Act and ss.64 and 65(4) of the Proceeds and Instruments] (c.25.8).

On the basis of the outstanding deficiencies, Botswana is re-rated as partially compliant with R.25.

3.1.24 Recommendation 26 (Originally rated NC: re-rated to PC)

The MER identified the following deficiencies: MVTS and savings and credit societies were not subjected to licensing or registration requirements; the legal or regulatory requirements or measures to prevent criminals or their associates from holding (or being beneficial owners) of significant interest and management function in FIs were inadequate and Botswana had not adopted AML/CFT risk-based supervision.

NBFIRA

In order to deter criminals from participating in the ownership, control or management of FIs, a fit and proper test is required under the NBFIRA Act, where guidelines have been issued (issued in November, 2017) in relation to appointment of controllers as a way to regulate market entry. This requirement extends to beneficial owners as defined by the FATF Standards. The fit and proper guidelines cover areas such as criminal, financial and supervisory indicators regarding prospective controllers' approval. Applicants who are not fit and proper are not approved. The vetting is a continuous process, and the approval is revoked as and when there is non-compliance. NBFIRA has rejected as well as revoked Applicants' prior or previous approvals who are not fit and proper. Breaches are detected through inspections, tip-offs and media reports.

Bank of Botswana

BoB has put in place sound measures to ensure that controlling shareholders, directors and senior management of banks are subject to fit and proper assessments. For instance, Paragraph 4. 19 of the BoB Licensing Policy provides for a safeguard against criminals becoming beneficial owners of banks. BoB also uses the Banking Act, the Guidelines on the Appointment of New Directors and Senior Management Officials of Banks (Guidelines) and the Licensing Policy to ensure that criminals do not participate in the ownership, control or management of banks. The fit and proper test covers areas such as criminal and financial background checks on prospective directors, senior management, controlling shareholders and promoters (where there is no single controlling individual (s). No person shall serve as a senior management official or a director of a bank unless he/she has passed a fit and proper test.

The fit and proper test is conducted at licensing stage and as and when there are changes to the board of directors, senior management or shareholding in banks. In addition, the fit and proper is a continuing test. Annually, every serving board member of a bank is required to complete and submit to the central bank a completed personal questionnaire which is a declaration by individuals as to whether they have been convicted of any criminal offences, amongst others. Any director or senior management official found to be unfit / or improper is terminated.

The regulation and supervision of core principles institutions under BoB and NBFIRA are in line with the core principles, except the application of consolidated group supervision for AML/CFT purposes. However, this is considered a minor shortcoming considering that the

institutions in Botswana do not have foreign subsidiaries. BoB and NBFIRA supervise FIs' obligation to establish and maintain policies, controls and procedures to mitigate and manage ML/TF risks. Botswana has not otherwise demonstrated progress in addressing the other deficiencies in the MER.

On this basis, Botswana is re-rated as partially compliant with R.26.

3.1.25 Recommendation 27 (Originally rated LC: re-rated to C)

The MER identified the following deficiencies: The FI Act did not provide criminal sanctions against serious violations of the FI Act and most fines only applied to the financial institutions, leaving out their directors and senior management.

Supervisors have powers to supervise and ensure compliance by FIs with AML/CFT requirements. In relation to sanctions, Botswana has made various amendments so that they can become proportionate and dissuasive. Supervisors are authorized to impose sanctions, including criminal sanctions on directors and senior management (S. 26A of the FI Act).

Therefore, Botswana is re-rated as compliant with R.27.

3.1.26 Recommendation 28 (Originally rated NC: re-rated to PC)

The MER identified the following deficiencies: With the exception of casinos, there were no provisions enabling competent authorities to take legal and regulatory measures to prevent criminals or their associates from holding a significant or controlling interest or from operating a DNFBP; supervisors had not yet started monitoring the licencees for compliance with AML/CFT requirements; authorities had not carried out a risk assessment of the DNFBP sector to inform development and implementation of AML/CFT risk-based supervision.

In order to address the deficiencies, Schedule II of the FI Act has been amended to include the Ministry responsible for Trade and Investment. However, there is no accompanying narration stating that the Ministry shall be responsible for AML/CFT supervision of dealers in precious metals. The same observation applies to TCSPs. Although TCSPs have been included in Schedule I, it is not clear from Schedule II which agency has been designated as the supervisory authority for independent TCSPs. On the other hand, the rest of DNFBPs (in addition to casinos) are subject to regulation and supervision in terms of S. 27(a) of FI Act. S. 27(e) further requires supervisors to conduct AML/CFT risk-based supervision. The objective of regulation and supervision is to monitor compliance with the requirements (c.28.2 and c.28.3).

There are no measures taken to prevent criminals or their associates from holding (or being a beneficial owner) or significant shareholding or holding a management function in a DNFBP as described below.

Legal practitioners

Section 4 of the Legal Practitioner's Act, provides requirements for admission of attorneys and inter alia, requires that they should be 'fit and proper'. However, the Act does not define what 'fit and proper' means. In addition, the criterion requires supervisory authorities to take necessary measures to prevent criminals or their associates from holding (or being a beneficial owner) or significant shareholding or holding a management function. This refers to practical measures to be taken to establish whether or not an applicant is a 'fit and proper' person.

The example which authorities provided to demonstrate compliance (AG v Gerekwe) refers to measures taken after a person had already been admitted as a legal practitioner, which only covers part of the criterion- the main issue of the criterion being the due diligence or vetting process which should happen at the entry point.

Dealers in precious metals

S. 8 of the Precious and Semi-Precious Stones (Protection) Act states that an applicant for a dealer's licence must be a 'fit and proper' person. However, the Act does not define what 'fit and proper' means. In addition, the criterion requires supervisory authorities to take necessary measures to prevent criminals or their associates from holding (or being a beneficial owner) or significant shareholding or holding a management function. This refers to practical measures to be taken to establish whether or not an applicant is a 'fit and proper' person.

Real Estate Agents

Section 20(3)(b) of the Real Estate Professionals Act provides that, in order to be registered under the Act as an estate agent, a person must have a Certificate in Property Management or Estate Agency, or a Certificate in Real Estate Auctioneering. Subsection (4) states that the Council may require an applicant to satisfy the Council that he/she is fit and proper person to be registered under this Act. However, the Act does not define what 'fit and proper' means. In addition, the criterion requires supervisory authorities to take necessary measures to prevent criminals or their associates from holding (or being a beneficial owner) or significant shareholding or holding a management function. This refers to practical measures to be taken to establish whether or not an applicant is a 'fit and proper' person.

Authorities have not provided satisfactory progress to indicate that supervision of DNFBPs is carried out on a risk-sensitive basis as described in c.28.5 (a) and (b).

In view of these outstanding deficiencies, Botswana is re-rated as partially compliant with R.28.

3.1.27 Recommendation 29 (Originally rated NC: re-rated to LC)

The MER identified the following deficiencies: FIA was not the central agency for the receipt of disclosures in respect of the banks as explained under c. 29.2; obtaining of additional information from the banks by the FIA was constrained by s. 43(1) of the Banking Act; FIA was not conducting strategic analysis and FIA had not applied for EGMONT membership.

Botswana amended Section 21 (4) of the Banking Act so that the banking sector is no longer required to file STRs to the Bank of Botswana. This makes the FIA the only agency which receives STRs. In addition, FIA has powers to obtain additional information which it may require from reporting entities, including banks, as needed to perform its functions. The restriction in the Banking Act has been removed through the introduction of section 43 (2) (i) which states that the duty of confidentiality placed on banks shall not apply where the information is required by FIA, in accordance with the provisions of the Financial Intelligence Act.

FIA has started conducting strategic analysis. The authorities produced a report titled: 'Money Laundering Prevailing Threats and Trends' but did not contain in-depth analysis of information. It was meant for internal use and was not shared with supervisory authorities, other agencies or reporting entities to assist them understand the related ML trends and patterns. In addition, the report does not cover TF.

FIA has powers to disseminate disclosures of financial information to LEAs as required under the FI Act or under any enactment (S. 4(1)(b) of the FI Act). In addition, various LEAs do have provisions in their respective laws which empower them to request for information from any person. For instance, the DCEC has powers to request information or reports from any person, including the FIA which may be useful in its investigations [S. 7(1) of the Corruption & Economic Crime Act].

The FIA has applied for EGMONT membership and secured sponsors to guide it through the process, including carrying out preparation for the assessment.

In view of the minor shortcoming in relation to strategic analysis, Botswana is re-rated as largely compliant with R. 29.

3.1.28 Recommendation 30 (Originally rated PC: re-rated to LC)

The MER identified the following deficiencies: the Corruption and Economic Crime Act (CECA) did not define what fiscal or revenue laws are and it could not be conclusively said they include money laundering; powers to conduct parallel financial investigations were only assumed based on the general powers both the DCEC and BPS have to investigate crime and there were no specific provisions designating one or more competent authorities to expeditiously identify, trace, and initiate freezing and seizing of property that is or may become, subject to confiscation, or suspected to be proceeds of crime.

There is no definition of fiscal and revenue laws under Corruption and Economic Crime Act to allow for its application to other fiscal and revenue laws that have nothing to do with the collection of taxes, for example Public Finance Management Act. This seems to be satisfactory and therefore this criterion is considered to have been met. In relation to parallel financial investigations, S. 2(2) of the Criminal Procedure and Evidence Act provides that a financial offence may be enquired into or otherwise dealt with by an investigatory authority simultaneously with any other offence.

The DPP is designated under the Proceeds and Instrument of Crime Act to initial proceedings for confiscation order against proceeds or instruments relating to that offence or offences (S. 18). Furthermore, in terms of S. 26, the DPP or a prescribed person may apply to a magistrate's court or to the High Court for a civil forfeiture order over property that is a proceed or an instrument of a serious crime related activity or foreign serious crime related activity. **However, it is not expressly provided for that one or more designated competent authorities should expeditiously identify, trace, and initiate freezing and seizing of property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime (c.30.4).**

On this basis, given the minor remaining deficiency, Botswana is re-rated as largely compliant with R. 30.

3.1.29 Recommendation 31 (Originally rated PC: re-rated to LC)

The MER identified the following deficiencies: the powers of law enforcement and investigative authorities are limited in scope as they do not extend to recording of witness statements, carrying out undercover operations, and asking for all relevant information held by the FIU and applications for production orders are not explicitly provided for as ex parte applications, which might defeat the whole objective of making such applications.

In terms of S.214 of the Criminal Procedure and Evidence Act LEAs can obtain witness statements from any person not expressly excluded by the Act. Furthermore, Order 29 (2) of the Magistrates' Court Rules and Order 12 rule (5)(1) of the High Court Rules provide that an ex parte application shall be made in writing stating briefly the terms of the order applied for

and the grounds on which the application is made and shall be signed by the party making the application.

Section 4(1)(b) of the FI Act empowers the FIA to disseminate disclosures of financial information to LEAs as required under the FIA Act or under any enactment. Various LEAs do have provisions in the laws which empower them to request for information from any person. For instance, the DCEC has powers to request information or reports from any person, including the FIA which may be useful in its investigations (section 7(1) of the Corruption and Economic Crime Act.

The deficiency noted under c.31.2 has not been addressed and on this basis, **Botswana is re-rated as largely compliant with R.31.**

3.1.30 Recommendation 32 (Originally rated PC: re-rated to LC)

The MER identified the following deficiencies: the declaration system does not include BNIs; offences committed and sanctions provided are only limited to violations of the Customs and Excise Duty Act which does not cover ML or TF, or any other predicate offences outside this Act; S. 124(5) of the CEDA is also limited in its application as a customs officer has got no powers to directly use the section without being requested to do so by either the police or authority responsible for administering a particular Act and Customs officers have no specific direct powers in terms of CEDA to detain goods where there is suspicion of ML or TF or any other predicate offences outside the CEDA.

Botswana has amended S.2 of the Customs Act 2018 to include 'bearer negotiable instruments' in the definition of 'goods' and S. 96 of the Customs Act requires any person entering or leaving Botswana to declare goods in his or her possession to the Revenue Services. Furthermore, in view of the amended definition of 'goods', competent authorities have powers to request and obtain additional information from the carrier with regard to the origin of the BNIs in cases where the carrier made a false declaration or failed to declare the BNIs (S.2 and S. 6(14) of the Customs Act (c32.1-c.32.4). In addition, any person who makes a false declaration shall be subjected to proportionate and dissuasive sanctions [S. 95(1)].

In terms of S. 20 of the FI Act, the BURS is required to submit to the FIA declarations made in relation to cross-border cash and BNIs declarations. The legal framework provides for the Commission General of Revenue Authority to enter into an MoU with other Government agencies, trade entities or other institutions to enhance the enforcement of customs and other relevant legislation [(s.5(d) of the Customs Act]. However, authorities have not cited the actual MOUs which have been signed for this purpose. On the other hand, competent authorities have powers to detain or restrain currency or BNIs at any time for purposes of establishing compliance with the Act [(s.20 of the Customs Act]. This provision can broadly be interpreted to cover situations where there is a false declaration. In addition, under s. 375(1), a customs officer can detain currency.

Generally, the use of data and information collected through Botswana's declaration system is governed by data protection principles which prohibit unlawful disclosure, exchange or access to any information [s. 23(1) of the Customs Act]. However, the system permits sharing of information in accordance with international convention or agreement in respect of customs cooperation to which Botswana is a party. There is no evidence of unreasonably restriction on legitimate travel and trade. Persons who carry currency or BNIs related to ML/TF are subject to sanctions including confiscation. In addition, s. 385(1) of the Customs Act states that any person who contravenes a provision of this Act, where no specific penalty is provided, shall be liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding six months or to treble the value of the goods in respect of such offence, whichever is greater, and the goods and the container in respect of which the offence is committed shall be liable to forfeiture. The sanctions are considered to be proportionate and dissuasive.

On the basis of the minor deficiencies outstanding, Botswana is re-rated as largely compliant with R.32.

3.1.31 Recommendation 33 (Originally rated NC: re-rated to PC)

The key deficiency identified in the MER is that Botswana did not have the appropriate legal and institutional frameworks to enable the authorities to maintain comprehensive statistics on STRs received and disseminated, ML/TF investigations done and convicted cases, confiscations, types of court applications handled and the types of MLA requests handled.

Based on s.31 of the FI Act, the FIA is responsible for keeping the following: (a) statistics on the number of information disclosed to a comparable body; (b) the number of requests of financial information from a comparable body; (c) suspicious transactions reports received and disseminated; (d) anti-money laundering, terrorist financing, financing of proliferation of arms of war or NBC weapon investigations; (e) prosecutions and convictions of financial offences; (f) property frozen, seized and confiscated regarding financial offences; and (g) Mutual legal assistance or other international requests for co-operation. Authorities have provided statistics for the period 2017-June 2018: (i) STR, EFTRs, CTRs received (ii) disseminations broken down by agency; (iii) tax investigations; (iv) ML investigations with parallel investigations; (v) requests for information from FIA to other competent authorities; (vi) requests for information from other competent authorities to the FIA and (vii) MLA requests made by Botswana and requests made to Botswana. The statistics provide adequate information including period taken to provide/ receive assistance and status of outstanding requests. However, no statistics were provided on prosecutions, convictions, property frozen and confiscated.

On this basis, Botswana is re-rated as partially compliant with R. 33.

3.1.32 Recommendation 34 (Originally rated PC: not re-rated)

The MER identified the following deficiencies: With the exception of NBFIRA, all supervisory authorities have not yet provided any meaningful guidance and feedback to their supervised entities; FIA's guidelines should be enhanced to provide for more guidance on ML/TF risk assessment and detection of STRs, more specifically the implementation of the goAML system by reporting entities; guidance is also required to assist the supervisors, especially the DNFBP sector supervisors to understand their supervisory roles and, requirements to issue guidance are adequately provided for but inconsistent with the guidelines which have been provided by the supervising authorities.

Since the adoption of the MER, competent authorities have carried out some activities as described below.

FIA

The FIA has provided guidance and has developed a programme to engage the remaining reporting entities on the use of the goAML system. It provides feedback to reporting entities through recommendations made after onsite examinations. The FIA has not provided guidance on ML/TF risk assessment, feedback to entities which have not been subjected to an onsite visit, guidance on detection of unusual and suspicious transactions and has not sensitized DNFBP supervisory authorities on their obligations.

NBFIRA

The NBFIRA summarised the NRA findings and communicated to entities under its purview. It also issued Guidance Notes which contain STR obligation, what constitutes an STR, examples of sector specific suspicious transaction indicators. However, it does not provide feedback apart from sharing findings and making recommendation in an onsite inspections report.

Bank of Botswana

BoB provides feedback to reporting entities through recommendations made after onsite examinations. Information has been provided on guidelines issued to the reporting entities.

Competent authorities have not made sufficient progress to warrant a re-rating and therefore **the PC rating has been retained.**

3.1.33 Recommendation 35 (Originally rated NC: re-rated to PC)

The MER identified the following deficiencies: Botswana's current legal framework did not provide for sanctions for violations of R. 6 and R. 8 as the legal framework to implement these Recommendations is not yet in place and sanctions on preventive measures provided in the FI Act did not cover violations by directors and senior management of reporting entities and some of the sanctions are not dissuasive and proportionate.

Although Botswana has amended its laws and regulations to address the deficiencies, the legal and regulatory framework for implementation of requirements of R.6 does not provide for sanctions for non-compliance with the obligation to freeze funds without delay. On the other hand, Regulation 19 (1) and (2) states that a person who directly make funds, property or economic resources available, to or for the benefit of a designated person commits an offence specified in the Act. The Counter- Terrorism Act does not have specific sanctions against violation of this requirement.

In relation to R.8, authorities have not provided information which could assist in determining whether or not NPOs are liable to proportionate, and dissuasive sanctions for violations of their obligations (see R.8 above).

The legal framework related to preventive measures (R.9-23) has also been amended to enhance the sanctions so that they can become proportionate and dissuasive. Supervisors have the mandate to impose sanctions, including criminal sanctions on directors and senior management (Section 26A of the FI Act). However, the provision does not include criminal sanctions against a reporting entity.

On this basis, Botswana is re-rated as partially compliant with R. 35.

3.1.34 Recommendation 36 (Originally rated PC: re-rated to C)

The MER identified the following deficiencies: the provisions of the TF Convention have not been fully domesticated and the lack of criminalisation of some of the predicate offences to ML and of an individual terrorist, and the confusion created by not defining the term “funds” and its interchangeable use with the term “property” relating to TF offences create major deficiencies to the AML/CFT system of Botswana.

Botswana has criminalized the remaining predicate offences of illicit trafficking in narcotic drugs, illegal arms trafficking, hostage taking and illegal restraint) (see discussion in R.3). In addition, the new definition of ‘funds’ is consistent with the FATF definition as mentioned under R.6.

On this basis, Botswana is re-rated as compliant with R.36.

3.1.35 Recommendation 37 (Originally rated LC: not re-rated)

The MER identified the following deficiencies: Botswana did not have enabling provisions for competent authorities to use the same powers they have to carry out domestic investigations and apply them to investigations relating to foreign requests for MLA; there were no requirements to maintain the confidentiality of MLA requests received by the authorities in order to retain the integrity of the investigation or nature of inquiry.

Botswana has not addressed the deficiency which was identified in the MER in relation to c.37.1. SS.31 and 32 of the Mutual Assistance in Criminal Matters Act do not set timeframes to allow rapid provision of the mutual legal assistance. Authorities have provided statistics on cases under the DPP. However, this information does not explicitly address the deficiency identified in the MER. Assessors highlighted that the authorities did not provide information on whether there is a clear process which enables timely prioritization and execution of MLA requests.

Section 32A provides that the DPP or any person authorised by him shall regard, and deal with as confidential, all documents and information relating to a request made under this Act. With regard to 'dual criminality', SS. 5(2) (a) & (b) of the MACMA leaves the discretion to the Attorney General to refuse or accede to requests where there is no dual criminality. The circumstances when he may accede to such requests are not provided to determine whether it would include requests not involving coercive actions. The authorities have explained that prescribing the circumstances under which discretion may be exercised by the DPP would defeat the very essence for which discretion is to be exercised. This is intended to cater for circumstances where Government Policy may dictate that the DPP exercises discretion. This deficiency is considered minor since use of discretion will not result in automatic refusal.

In order to ensure consistence between domestic and foreign serious offences, Botswana has made some legislative amendments. The new definition of a "serious offence" lowers the threshold thereby encompassing the foreign predicate offences. In addition, all FATF designated predicate offences are criminalised in Botswana (See discussion under R.3). Furthermore, the definition of foreign serious crime related activity" has been amended so that an offence carried out outside Botswana is treated the same as it had occurred in Botswana for purposes of facilitating MLA.

There are no specific legal provisions which enable Botswana utilize all powers specified under R.31 in response to an MLA request. However, it is implied that the powers and investigative techniques available to the authorities for domestic offences would also be available for use in response to MLA requests subject to the same conditions (e.g. judicial approval). This includes production orders, search and seizure, and obtaining witness statements, in addition to other investigative techniques except undercover operations which have not been addressed under c31.2.

In view of the shortcomings described above, the rating of LC has been maintained.

3.1.36 Recommendation 38 (Originally rated PC: re-rated to C)

The MER identified the following deficiencies: The MACMA did not provide for MLA on requests relating to instrumentalities intended to be used in committing a crime and property

of corresponding value; the term “property” used in the Act was not defined to understand what it covers; there were no provisions authorising MLA requests on the basis of non-conviction based confiscation proceedings and sharing of confiscated property with other countries was not provided for.

Botswana has amended the MACMA Act by introducing definitions of ‘property’ and ‘instrument’ which state that these terms have the meaning assigned to them under the Proceeds and Instruments of Crime Act. In terms of Section 29(1) of the MACMA, the DPP has powers to provide assistance in relation to non-conviction based proceedings. In addition, all circumstances of absence such as a result of death, absconding or where his whereabouts being unknown are covered [S. 2(4) of the Proceeds and Instruments of Crime Act as read with S.29 of MACMA].

S. 46(5) of PICA gives powers to a Receiver to do anything that is reasonably necessary for the purpose of preserving the value of the property. In a decided case of AG v Unity Dow, the court ruled that the Receiver has wide powers to deal with the property, including disposing of the property. Furthermore, Botswana is able to share confiscated property with other countries (30A of the MACMA). Sub-section 30A (2) further states that the Minister responsible for finance may order that the whole or any part of the property confiscated under this Act, or the value thereof be remitted to the foreign country.

On this basis, Botswana is re-rated as compliant with R.38.

3.1.37 Recommendation 39 (Originally rated PC: re-rated to LC)

The MER identified the following deficiencies: Botswana does not extradite its own nationals and it does not have measures, upon request by the country seeking the extradition, requiring the case of the fugitive to be submitted without undue delay to its competent authorities for the purpose of prosecution of the offence provided in the request; although, dual criminality is adequately provided for under the Extradition Act, the different threshold for foreign offences to be regarded as predicate offences (although it will be the same conduct) for ML in Botswana could also affect the dual criminality of extraditable offences.

Authorities have explained that the process for extradition requests made in terms of section 11, 12 &13 is that,

1. A fugitive is brought to court within 48 hours of arrest.
2. The fugitive will be detained for a reasonable time while waiting for the original warrant from the requesting country.
3. The reasonable time will depend on the legal basis for the extradition, e.g. if it is with South Africa, Botswana goes by the South Africa Treaty which provides in article 15 the maximum period of 40 days. If the legal basis is SADC Protocol then the turnaround time is 30 days.

This process facilitates timely execution of extradition requests, however, it is not clear how cases are prioritised, in the absence of statutory time limits within which requests should be processed. In relation to extradition of its citizen, Botswana is able to prosecute a fugitive criminal at the request of a foreign country provided that the DPP is satisfied with the evidence supporting the case (s.8 of the Extradition Act). In addition, Botswana has amended the definition of (serious offence') which lowers the threshold and as such encompasses all serious crimes.

On this basis, Botswana is re-rated as largely compliant with R.39.

3.1.38 Recommendation 40 (Originally rated PC: re-rated to LC)

The MER identified the following deficiencies: Most of the competent authorities had no specific powers to exchange information with foreign counterparts; there were no requirements for competent authorities other than the BURS to provide feedback on information requested from counterparts by the competent authorities; there were limitations to provisions relating to confidentiality of information exchanged, its protection, and use of the information for the purposes it is requested for; absence of requirements or mechanisms to ensure that competent authorities do not refuse provision of exchange of information based on unreasonable or unduly restrictive conditions; FIA required the consent of supervisory authorities, investigatory authorities, statutory bodies or government agencies to disclose information which would have come from them to foreign counterparts; the provisions enabling the BoB to exchange information with other Central Banks were limited in scope as they did not cover exchange of information on AML/CFT and competent authorities had no provisions enabling them to exchange information with non-counterparts.

FIA applied for EGMONT membership and one of the Botswana's sponsors for Egmont Membership conducted an Egmont readiness assessment from in October 2018. FIA is working on an action plan derived from the preliminary report of the FIC. To date the FIA has addressed more than half of the deficiencies and plans to resubmit its application for membership in March 2019.

Competent authorities have legal basis for providing co-operation, as set out in various laws including in Multilateral/ regional or bilateral agreements [s.44A of Corruption and Economic Crime Act; s.6(1A) of the Police Act; ss.4(2) (g) and s.31(1) of the FI Act; s.55 (4) of the NBFIRA Act; s.43(10) of the Banking Act etc]. Nothing prevents competent authorities

from using the most efficient means to co-operate and relevant authorities do co-operate directly with their counterparts or through platforms like ARINSA and INTEPOL. ARINSA has clear and secure gateways, mechanisms or channels that facilitate and allow for the transmission and execution of requests. The Police uses INTERPOL channels for cooperation which are efficient, secure and timely. In addition, supervisory authorities have their own secure gateways for exchanging information. However, authorities have not provided satisfactory information to demonstrate that they have clear processes for the prioritization and timely execution of requests; and clear processes for safeguarding the information received (c.40.2).

Apart from having a legal basis, competent authorities such as FIA, NBFIRA, BoB and DPP have a range of bilateral and regional/multilateral agreements and MOUs to facilitate co-operation with foreign counterparts. FIA has a system in place to provide feedback in a timely manner to foreign counterparts from which they have received assistance, on the use and usefulness of the information obtained. The legal framework in Botswana provides for exchange of information as discussed under c.40.2 above [(s. 6(1A & B) of the Police Act, s. 43(d) of Counter Terrorism Act, s.28(2) of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, s.44 of Corruption and Economic Crime Act, s.43(10) of the Banking Act, s.23(2) of Customs Act and s.31(2) of the FI Act]. Botswana does not place unreasonable or unduly restrictive conditions on the provision of information or assistance based on any of the situations contained in c. 40.5(a)-(d). S. 32A of the MACMA states that the DPP or any person authorised by him shall regard, and deal with as confidential, all documents and information relating to a request made under this Act. Most of the competent authorities also rely on standards set by relevant international organisations such as INTERPOL or arrangements such as multilateral MoUs which usually have provisions prohibiting disclosure of information or documents to third parties without written prior consent. Other competent authorities such as FIA have internal arrangements to ensure that the information exchanged is used only for the purpose it was sought and they designated a contact person within their agencies which place responsibilities on the parties to keep the information confidential [32A of the Mutual Assistance in Criminal Matters, s.43(4) of the Banking Act, s.6 of the Police Act, s.28(3) of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, s.44 of Corruption and Economic Crime Act]. In terms of s.30 of the MACMA, competent authorities are able to carry out enquiries or investigations on behalf of, and exchange information with, their foreign counterparts.

The FIA gives feedback to its foreign counterparts, if requested or spontaneously, on the use of information as well as the outcome of the analysis conducted based on the information

received. On the other hand, the Banking Act does not have legal provisions permitting Bank of Botswana to exchange AML/CFT information with its foreign counterparts. Supervisory authorities ensure that they include, in the MoU governing exchange of information, a provision in relation to prior authorization of the requested supervisory authority for dissemination of information exchanged or use of the information provided.

LEAs have powers to exchange domestically available information with foreign counterparts for intelligence or investigative purposes relating to ML, associated predicate offences or terrorist financing cases [s. 6(1A) & (1B) of the Police Act, s. 43(d) of Counter Terrorism Act, s.28(2) of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, s.44 of Corruption and Economic Crime Act, and s.23(2) of Customs Act. The FIA has powers to exchange information with domestic agencies and its foreign counterparts [(s. 4((2)(g) and s.31(4) of the FI Act].

There are no specific legal provisions which prohibit LEAs from using their powers under the domestic law, including any available investigative techniques to conduct inquiries and obtain information on behalf of foreign counterparts. It is implied that the powers and investigative techniques available to the authorities for domestic offences would also be available for use in response to MLA requests subject to the same conditions (e.g. judicial approval). This includes production orders, search and seizure, and obtaining witness statements, in addition to other investigative techniques. There is no specific legal provision which prohibits LEAs from forming joint investigations with their foreign counterparts. One of the objects of the MACMA is to facilitate joint criminal investigations (s. 4(k) of MACMA). On the other hand, Botswana does not have legal provisions which permit competent authorities to exchange information indirectly with foreign non-counterparts.

In view of the minor shortcomings, Botswana is re-rated as largely compliant with R.40.

IV. CONCLUSION

Botswana has made good progress in addressing most of the TC deficiencies identified in its MER. The Reviewers are of the view that the remaining deficiencies under Recommendations 3, 5, 20, 27, 36 and 38 have all been addressed. In this regard, Botswana has been re-rated compliant with these Recommendations. In relation to Recommendations 1, 4, 11, 12, 21, 23, 29, 30, 31, 32, 39 and 40, Reviewers noted that there are still minor shortcomings and therefore, Botswana has been re-rated largely compliant. Reviewers have considered the progress on recommendations 6, 7, 9, 10, 13, 15, 16, 24, 25, 26, 28, 33 and 35 and re-rated Botswana as partially compliant. The reviewers further noted progress on 2, 8, 18, 19, 22, 34 and 37. However, the progress does not justify re-rating of the Recommendations.

Overall, in light of the progress made by Botswana since its MER was adopted, Reviewers have re-rated its technical compliance with the FATF Recommendations as follows:

Table 2. Technical compliance with re-ratings April 2019

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

Botswana will remain in enhanced follow-up and will continue to report bi-annually on its progress in improving and implementing its AML/CFT measures.