



Anti-money laundering and counter-terrorist financing measures

Lesotho

Mutual Evaluation Report

September 2023





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 20 countries and includes a number of regional and international observers such as Portugal, United Kingdom, United States of America, COMESA, Commonwealth Secretariat, EAC, Egmont Group of Financial Intelligence Units, FATF, GIZ, IMF, SADC, United Nations, UNODC, 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.

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MUTUAL EVALUATION REPORT

of

Kingdom of Lesotho

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Executive Summary

1. This report summarises the AML/CFT measures in place in the Kingdom of Lesotho as at the date of the on-site visit conducted from 21st November to 2nd December 2022. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Lesotho's AML/CFT system, and provides recommendations on how the system could be strengthened.

Key Findings

- a) Lesotho has made improvements to its AML/CFT legal and institutional frameworks since its MER was adopted in 2011. It has established the FIU and capacitated it to a certain extent, amended the MLPCA, enacted the PSTA, promulgated various new Regulations, conducted NRA, approved a national AML/CFT Strategy and started implementing RBA to supervision. However, there are outstanding strategic gaps in its technical compliance and effectiveness which need to be addressed.
- b) Lesotho has demonstrated an understanding of its ML risks to some extent. It has identified corruption, fraud and forgery, and tax crimes as the major proceeds-generating crimes. However, there is limited and uneven understanding of TF risks. The NRA has not been updated. However, CBL conducted a sectoral risk assessment for the banking sector, which provides an updated understanding.
- c) Lesotho has coordination mechanisms on ML/TF both at policy level through the NCC and at operational level through the NTT. However, there is no coordination for PF.
- d) The FIU produces reasonably good financial intelligence, on ML, and generally, the disseminations by the FIU are consistent with the ML risk profile of the country. However, financial intelligence related to TF has not been developed. The FIU does not benefit from the NBFIs as they submit negligible STRs while the DNFBP sector has not yet started reporting STRs.
- e) LEAs do not proactively seek financial intelligence from the FIU to support their ongoing investigations or to trace and identify assets linked to ML and other financial crimes. The financial intelligence is used by LEAs primarily to pursue investigation of predicate offences. The authorities have not developed any financial intelligence in relation to suspected TF.
- f) The overall asset recovery efforts are not the reflection of the prevailing risk profile of the country.
- g) There is no capacity in LMPS to investigate or disrupt a TF offence and there is no implementation of TFS without delay for TF and has not carried out a sector risk assessment for NPOs to identify those that may be abused for TF.
- h) Lesotho does not have proper legal and institutional framework, neither has it come up with any mechanism to implement TFS relating to proliferation without delay.
- i) The understanding of ML/TF risks and AML/CFT obligations varies across the FIs and DNFBPs. Foreign banks and cross-border MVTs providers have a good

understanding of ML/TF risks and AML/CFT obligations than the smaller and other FIs.

- j) There is limited understanding of the BO concept by accountable institutions which consider the majority shareholder to be the same as BO, except foreign-owned banks.
- k) All FIs and DNFBPs, except insurance brokers and independent TCSPs, have designated supervisory authorities for AML/CFT purposes. CBL-BSD largely implements risk-based supervision (RBS) while other financial sector supervisors have started moving towards RBS. DNFBPs supervisors have not yet started AML/CFT supervision due to lack of capacity.
- l) Basic information on the creation, types and other relevant information on legal persons is publicly available. The ML/TF risks associated with different types of legal persons have not been assessed. The current legislative framework does not adequately provide for reasonable measures to enable identification and verification of a BO. Moreover, the legal framework on legal arrangements is limited to the creation and registration of legal arrangement and does not set out the obligations of all persons involved in the legal arrangement. Therefore, LEAs, have significant challenges in obtaining the accurate information in a timely manner when conducting investigations.
- m) Lesotho does not proactively seek or provide constructive and timely MLA and extradition. There is no comprehensive case management system to record and monitor MLA requests made or received by competent authorities.

Risks and General Situation

2. Lesotho is a small jurisdiction surrounded by South Africa. As such it is exposed to ML threats from proceeds of crime mainly emanating from within the country and internationally those emanating from South Africa. In the 2018 NRA, Lesotho established that corruption, fraud and forgery, tax evasion, and stock theft are major proceeds-generating crimes. Some criminal proceeds are also from drugs offences, diamond offences, human trafficking, motor vehicle theft, robbery, embezzlement of funds, theft, counterfeit currency, and extortion. These proceeds are mainly laundered within Lesotho. The criminal proceeds are mostly laundered using channels such as, financial institutions, lawyers, real estate and motor vehicle industries (See IO 4). During onsite, the authorities stated that the position remain as was assessed in the NRA.

3. Lesotho's TF risks are also closely linked to South Africa. In the NRA, overall Terrorism threat was assessed as medium while TF was assessed as low. However, based on the onsite interviews and the NRA, The AT are of the view that TF was not properly assessed. The NRA found that "there has however been detected AL Qaida growth by the intelligence community. The organisation was suspected of trying to radicalize and recruit Basotho to join the movement. Al Qaida is a highly sophisticated organization with presence in many parts of the world. However, the level of sophistication of their operations in the Country is low"¹. Lesotho is vulnerable to illegal cross border movement of cash as the controls are not being applied since 2018.

¹ NRA, 2018 p127

Overall Level of Compliance and Effectiveness

4. Since the adoption of the 1st MER in 2011, Lesotho has been improving its TC deficiencies which include strengthening of the legal and institutional frameworks for combating ML and TF. Lesotho established the FIU and extensively amended the MLPCA in 2016 which is the primary law dealing with AML/CTF. It enacted the Prevention and Suppression of Terrorism Act in 2018 and came up with various Regulations. Through those legislations, Lesotho has criminalised ML in line with the Palermo and Vienna Conventions. Lesotho has also criminalised TF which is largely in accordance with the TF Convention. The CBL has developed risk-based framework and commenced implementing it. Lesotho has also created administrative bodies to coordinate AML/CFT work. This includes the NCC which is responsible for development of AML/CFT policies and the NTT which is responsible for overseeing the implementation of the various AML/CFT measures. Despite efforts to strengthen the legal and institutional frameworks, significant TC shortcomings were noted, in particular, there is lack of requirements for BO, no legal framework for CPF, weak institutions to deal with confiscation, inadequate measures to implement targeted financial sanctions for both TF and PF, deficiencies affecting the TF offence and the regime applicable to NPOs at risk of TF abuse.

Assessment of risk, coordination and policy setting (Chapter 2; IO.1, R.1, 2, 33 & 34)

5. Lesotho understands its ML threats and vulnerabilities to a certain extent. The understanding is based on the 2018 NRA and the sectoral risk assessment for the banking sector done in 2021 by CBL. Further, the understanding of the ML threats across the competent authorities and supervisors is varied. There is generally an understanding of the highest proceeds generating crimes and this appears to be shared among the stakeholders. However, although approved in 2018 and re approved in 2022, the NRA has not been updated. The authorities understanding of Lesotho's ML risks is based on the NRA. Further, the competent authorities' objectives and activities are not adequately aligned to the ML/TF risks. There is generally lack of prioritisation and policy direction to mitigate the risks.

6. There is coordination both at policy and operational level in relation to ML. This coordination was demonstrated by both the NCC and the NTT. However, the coordination efforts are hampered by lack of resources at all levels.

7. There is a low understanding of TF risks except for the NSS who demonstrated some good understanding. The NRA stated that there was no information available that could have assisted the authorities to properly assess both terrorism threat and TF. This demonstrates lack of coordination for TF purposes. There was also no coordination for PF.

Financial intelligence, ML investigations, prosecutions and confiscation (Chapter 3; IO.6, 7, 8; R.1, 3, 4, 29–32)

8. Lesotho uses financial intelligence and other relevant information to a limited extent for purposes of investigating ML, associated predicate offences, TF, and tracing proceeds of crime. LEAs do not regularly request financial intelligence from the FIU to support their ongoing investigations or to identify and trace proceeds of crime. The FIU receives STRs and Threshold Transaction Reports mainly from the banking sector and is yet to start receiving STR from the DNFBP sector. Furthermore, the FIU has not been receiving cross-border currency reports since 2018. This means that not all of the available information is exploited in an optimal manner and it might have negatively impacted the FIU's ability to disseminate increased number and value of intelligence reports to competent authorities. In addition to conducting operational analysis, the FIU develops some strategic analyses, mainly in the form of typologies, which has helped to enhance exchange control policies. However, majority of competent authorities and the private sector would appreciate regular availability of strategic analyses in order to assist them to improve their understanding of emerging ML/TF risks.

9. Lesotho has some good legal framework to investigate and prosecute ML. The ML offence has been criminalised and to some extent there are mechanisms in place to identify potential ML cases. However, there is no correlation between types of ML being investigated and prosecuted and the risk profile of the country which is mainly related to proceeds generated from corruption, fraud and forgery, tax evasion, stock theft, and drug related offences. There is also a limited use of financial intelligence from FIU. Therefore, Lesotho has demonstrated limited ability to identify and investigate ML. Although Lesotho has developed AML/CFT strategy, there is however, no national policy to guide ML investigations and prosecutions. Lesotho prioritizes predicate offences over ML, consequently, only a few investigations have been concluded resulting in negligible prosecution of ML cases. There is some evidence of parallel financial investigations being undertaken by the DCEO and RSL. The LMPS has not, however, concluded any ML investigation. Out of 101 ML cases being investigated only four (4) cases related to self-laundering. Lesotho does not generally appear to categorize, investigate and prosecute the different types of ML despite there being clear evidence that the different types of ML were being committed within and outside the jurisdiction. Hence this makes it difficult to apply a RBA to AML, as required. The authorities attribute this to the lack of capacity to detect and investigate the different types of ML cases.

10. Lesotho has only concluded two ML cases in the review period. In one of the cases, the convict was handed a sentence of 10 years out of the possible 25 years in jail and suspended sentence of five years on 8 other counts of corruption. In the second case the authorities entered into a plea agreement where, in consideration for pleading guilty and restitution of the lost money, he was sentenced to serve 10 years (out of a possible 25 years) or a fine of M10,000 (\$588.58) (out of possible M 25,000,000 (\$1, 471, 453.80)) of which $\frac{3}{4}$ was suspended for 5 years, for the three counts, which sentences were to run concurrently. Therefore, the AT's conclusion was that the range of sanctions imposed for ML are not effective, dissuasive, and proportionate.

11. The LEAs do not provide feedback to the FIU on the financial intelligence reports referred to them and potential ML investigations arising from the reports. The DCEO, which is the main institution mandated to investigate corruption and the predicate offence for ML is understaffed, and as such, falls short of effectively pursuing money laundering investigations and their primary mandate (being investigation and prosecution of corruption cases).

12. Lesotho has developed an Assets Forfeiture and Management Policy which was approved in August 2022 and is in the process to establish a forfeiture Office at National level. Lesotho pursues confiscation of criminal proceeds, instrumentalities and property of corresponding value as a policy objective to a limited extent due to capacity and resource constraints. This is reflected in the pending of confiscation matters that are before courts since 2018 and a template that provisional confiscation measures are not comprehensively utilised. It is noticeable that proceeds derived from domestic predicate offences and laundered in foreign jurisdictions have to a limited extent been pursued in contrast to the recovery of proceeds generated from foreign predicate offences. Moreover, there was no confiscation associated with TF and falsely declared or undeclared cross border movement of currency/BNI, which reflect that the application of ML/TF policies and priorities are only pursued to a limited extent.

Terrorist and proliferation financing (Chapter 4; IO.9, 10, 11; R. 1, 4, 5–8, 30, 31 & 39.)

13. Lesotho has a good legal framework for TF investigations and prosecution. The country has no sufficient capacity among the Police to investigate or disrupt a TF offence. The authorities demonstrated limited understanding of TF risks. The main concern of the authorities appeared to be more related to terrorism than TF offences. The NSS has the necessary capacity to gather intelligence on TF and terrorism and a good understanding on the TF risks. There is cooperation and coordination to a lesser extent among the relevant authorities and the same is not integrated with, or used to support national strategies. Authorities could not demonstrate that the sanctions imposed on natural or legal persons for the offence

of TF are effective, proportionate and dissuasive as no case of TF has been investigated and prosecuted. The authorities have not applied other criminal justice measures to disrupt TF activities where it has not been possible to investigate, prosecute and secure a TF conviction.

14. Lesotho has mechanisms for the receipt and dissemination of UNSC Sanctions list to accountable institutions. The Ministry of Finance, based on advice of the Anti-Terrorism Committee (ATC) is mandated to disseminate the Sanctions Lists pursuant to UNSCR 1267 and identify entities and individuals for Listing pursuant to UNSCR1373. The AT found that the List was not circulated in a systematic manner to make sure that there is TFS without delay. In addition, Lesotho has neither identified the subset of NPOs falling within the FATF definition nor done NPO TF risk assessment to focus on high risk NPOs thus no application of RBA on their supervision. Lesotho has not demonstrated its ability to deprive terrorist, terrorist financier and terrorist organization of TF assets and instrumentalities during the period under review.

15. Lesotho does not have proper legal and institutional framework, neither has it come up with any mechanism to implement TFS relating to proliferation without delay. There is no system in place to develop and ensure that reporting entities comply with obligations relating to implementation of TFS related to PF. There is a low level of understanding/awareness with regards to implementation of TFS obligations relating to PF amongst the FIs and DNFBPs in Lesotho.

Preventive measures (Chapter 5; IO.4; R.9–23)

16. The MLPCA is the primary law which sets out AML/CFT measures for FIs and DNFBPs to implement, which are commensurate with the risks they face. However, insurance brokers and agents are not designated as accountable institutions in the country. In general, the foreign owned banks displayed better understanding of AML/CFT obligations than the other FIs. The foreign owned banks and cross-border MVTS providers have demonstrated greater understanding of ML risks and average understanding of TF risks while the other FIs have average understanding of ML/TF risks facing their sectors. Unlike the other FIs, foreign owned banks and cross-border MVTS providers have conducted their risk assessments based on the requirements from their group-level and the guidance from CBL.

17. DNFBPs (except casinos) have low understanding of their obligations and overall, they lack understanding of ML/TF risks. The low understanding of ML/TF risks and AML/CFT obligations in the DNFBP sector and varied understanding of obligations and ML/TF risks among FIs (except foreign owned banks and cross-border MVTS providers) is a major concern as some sectors such as real estate and lawyers are considered in the NRA as having high ML vulnerability. The AT could not determine existence of Virtual Assets Service Providers or occurrence of Virtual Asset transactions in Lesotho.

Supervision (Chapter 6; IO.3; R.14, R.26–28, 34, 35)

18. All the regulated activities which fall under the FATF Standards are covered and supervised for AML/CFT compliance under the Lesotho regime, except insurance broking. There are fairly strong systems to determine fitness and probity at market entry level and on an ongoing basis. Unauthorised market players in the financial sector are identified and sanctioned accordingly. However, the fitness and probity test does not extend to BO across all sectors except for dealers in precious metals and stones and lawyers whose licenses are granted to individuals.

19. The CBL-BSD has relatively good understanding of ML/TF risks in the banking sector while all regulators in the other financial sub-sectors have a limited understanding of the ML/TF risks. Except for the Casino Board, all DNFBP regulators do not understand the ML/TF risks in their sectors. Risk-based AML/CFT supervision for banks commenced in 2019; however, the frequency and intensity of inspections in the sector has been relatively low due to lack of resources. The rest of the FIs have only

been examined for AML/CFT compliance as part of prudential inspections. All DNFBP regulators have not commenced AML/CFT supervision.

20. The CBL has consistently issued one type of sanction for AML/CFT non-compliance whose impact is minimal as only one institution showed progress in the implementation of corrective measures. All sectors have not been sanctioned for non-compliance with AML/CFT requirements.

21. The DNFBP supervisors do not have adequate resources and do not have necessary expertise to undertake their supervisory functions effectively. They have just started engagements of the accountable institutions and results are yet to be seen. Guidance on implementation of BO requirements, counter terrorist financing and TFS requirements is still lacking.

Transparency and beneficial ownership (Chapter 7; IO.5; R.24, 25)

22. In Lesotho, different types of legal persons and legal arrangements can be created. The Registrar of Companies is responsible for the registration of legal persons while the Registrar of Deeds is responsible for the registration of legal arrangements. Basic information on the creation and registration of the different types of legal persons is publicly available and online. The Registrar of Companies operates an open registry system where basic information is available to the public and competent authorities while there is no public information on the creation/registration of legal arrangements. Both registries have limited understanding of BO requirements which is mostly understood as the person being the majority shareholder.

23. Lesotho has not undertaken a ML/TF risk assessment of all forms of legal persons in order to understand the vulnerabilities within that sector and to have mitigating measures in order to prevent them from being abused. Consequently, there is limited understanding from the different sectors (public and private) of the risks associated with legal persons. The NRA has identified misuse of legal persons for fraud and embezzlement of public funds, but has not considered the nature and extent of the abuse.

24. Lawyers are predominantly offering trust services in Lesotho, given that they have the knowledge of drafting the deed agreement. Trustees are not required to file or disclose any information under the current framework on the beneficiary or control of trusts and thus the information on BO is not adequate, accurate and up-to-date.

25. Although the Registrar of Companies has imposed sanctions on legal persons for failing to submit statutory filings, the sanctions are not effective, proportionate and dissuasive while the Registrar of Deeds does not have powers to apply sanctions.

International cooperation (Chapter 8; IO.2; R.36–40)

26. Lesotho has a legal and institutional framework to enable implementation of MLA, extradition and other forms of international cooperation. However, the MLA and extradition regime is not effective partly on account of the time it takes to attend to the requests by the relevant competent authorities and the lack of implementation of a comprehensive Case Management System. Further, the number of requests made by Lesotho is not in line with the risk profile of the country in relation to ML/TF cases with cross-border elements and there is no prioritisation mechanism to handle international cooperation in a timely and constructive manner. Even though the competent authorities have bilateral and other arrangements that can be used for purposes of providing and seeking information from other jurisdictions for purposes of ML/TF cases, only the FIU has proactively used this channel for purposes of aiding LEAs with their investigations. The absence of a robust and comprehensive Case Management for dealing with MLA requests also leads to inordinate delays in attending to requests as well as prioritising the same. In addition, in both MLA and other forms of international cooperation, the authorities do not usually give feedback to the requesting authority regarding the use of the information received.

Priority Actions

- a) Update the NRA to continue to build on the existing understanding of all ML/TF risks including those that are evolving. The NRA should assess all ML threats and, at a minimum, the highest proceed generating activities. Assessment of TF risks should be broadened and all possible threats considered and channels which can be abused for TF purposes. Ensure that all relevant stakeholders are made aware of the risks, the national AML/CFT Strategy and Action Plan. Also ensure that activities of competent authorities and supervisors are informed by the identified ML/TF risks.
- b) Increase the financial and human resource capacity of the FIU, competent authorities and supervisors to be able to implement the strategic AML/CFT requirements.
- c) Prioritize ML investigation and prosecution alongside associated predicate offences to increase the extent these are pursued in line with Lesotho's risk profile. LEAs should also maintain comprehensive statistics, categorizing the ML cases in accordance with the different types (stand-alone, third party and self-laundering); and where there are convictions, apply dissuasive, effective and proportionate sanctions.
- d) Strengthen asset recovery regime by pursuing confiscation as a policy objective.
- e) Improve on TF/PF coordination among all relevant stakeholders to identify and investigate any TF cases and where necessary, prosecute TF cases.
- f) Conduct sectoral and institutional level ML/TF risk assessment for NPOs, legal persons and arrangements, insurance sector, securities sector and DNFBPs.. Based on the findings, develop capacity and implement robust AML/CFT risk based supervisory frameworks. All supervisory authorities should regularly review risk profile of the institutions to take into account evolving risks in order to ensure that the supervisory cycles are consistent with the updated risk profiles of the institutions.
- g) Authorities should sensitise the accountable institutions on the obligations to collect and maintain appropriate BO information. Ensure that there is a competent authority with appropriate powers and resources in order to monitor compliance of legal arrangements with obligations.
- h) Develop and implement a strategy to ensure that the execution of MLA and extradition requests are prioritised and executed in a timely and risk-based manner, giving priority to the highest proceeds generating crimes' and establish an efficient case management system for the receipt and dissemination of MLA and extradition information.

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings²

IO.1	IO.2	IO.3	IO.4	IO.5	IO.6	IO.7	IO.8	IO.9	IO.10	IO.11
LE	LE	ME	ME	LE	LE	LE	LE	LE	LE	LE

Technical Compliance Ratings³

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

² Effectiveness ratings can be either a High- HE, Substantial- SE, Moderate- ME, or Low – LE, level of effectiveness.

³ Technical compliance ratings can be either a C – compliant, LC – largely compliant, PC – partially compliant or NC – non compliant.

MUTUAL EVALUATION REPORT

Preface

27. This report summarises the AML/CFT measures in place as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system, and recommends how the system could be strengthened.

28. This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by the country, and information obtained by the evaluation team during its on-site visit to the country from 21st November - 02nd December 2022.

29. The evaluation was conducted by an assessment team consisting of:

Assessment Team

- Ms. Jean Couvaras-Kamanga, Bank of Zambia, Zambia (Legal Expert)
- Mr. Jacob Nyakundi Ondari, Ministry of Foreign Affairs, Kenya (Law Enforcement Expert)
- Ms. Nomfanelo Kunene-Thobela, Bank of Eswatini, Eswatini (Financial Sector Expert)
- Mr. Masautso Ebere, Financial Intelligence Authority, Malawi (Financial Sector Expert)
- Mr. Tichafa Chigaba, FIU, Zimbabwe (FIU Expert)

30. Observers

- Ms. Cynthia Ngwane, South African Reserve Bank, South Africa (Financial Sector Expert)
- Mr. Frans Nyundu, FIC, South Africa (FIU/Law Enforcement Expert)

31. ESAAMLG Secretariat

- Chris Likomwa (Team Leader)
- Tom Malikebu, Senior Financial Sector Expert (Financial Expert)
- Muluken Yirga Dubale, Senior Legal Expert (Legal Expert)
- Bhushan Jomadar, Financial Sector Expert (Financial Expert)
- Valdane Joao, Law Enforcement Expert (Law Enforcement)

32. The report was reviewed by Ms. Antoinette Kula, Botswana; Lilian Mubialelwa, Zambia, World Bank and the FATF Secretariat.

33. Lesotho previously underwent a FATF Mutual Evaluation in 2011, conducted according to the 2004 FATF Methodology. The 2011 Mutual Evaluation Report has been published and is available at https://www.esaamlg.org/index.php/Mutual_Evaluations/readmore_me/22.

34. That Mutual Evaluation concluded that the country was compliant with four Recommendations; largely compliant with none; partially compliant with 17; and non-compliant with 27. One Recommendation was rated not-applicable. Lesotho was rated compliant or largely compliant with none of the 16 Core and Key Recommendations and was placed under enhanced follow-up process.

35. Lesotho entered the follow-up process soon after the adoption of its MER in 2011 and exited follow-up in April 2022 since it had started its mutual evaluation process under the ESAAMLG 2nd Round of Mutual Evaluations. By April 2022, Lesotho had not addressed all the core or key Recommendations which were rated PC and NC.

CHAPTER 1. ML/TF RISKS AND CONTEXT

36. The Kingdom of Lesotho is situated in Southern Africa. It is landlocked and completely surrounded by the Republic of South Africa. It gained independence from the British Protectorate in 1966. Its capital is Maseru. It is a member of the Africa Union (AU), Southern Africa Customs Union (SACU), Common Monetary Area (CMA) (with Eswatini, Namibia, and South Africa and the South African Rand (ZAR) is the legal tender in the CMA), Southern Africa Development Community (SADC), Commonwealth of Nations, Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) and the United Nations (UN), among others.

37. Lesotho has a total land area of 30 355 square kilometres and is divided into 10 administrative districts. Nine districts border South Africa in particular the three provinces of South Africa, namely; Free State, KwaZulu-Natal and Eastern Cape. The Kingdom of Lesotho has a population of around 2 million people (2016 census) and has an urban population of about 31.7%. The official languages are Sesotho and English.

38. In 2021, the GDP of Lesotho stood at USD 2.5 billion. With a GDP per capita of USD1,094.1, Lesotho is a lower middle-income country. The GDP is expected to expand by 2.6% in 2023. The unemployment rate for 2021 was 24.60%, which was an increase by 0.04% in 2020. Lesotho's economy is strongly linked to South Africa and it is estimated that 80% of her imports originates from it. The remaining 20% of imports originates from other countries including those in the Southern African Development Cooperation (SADC) Region. The main export products are mohair, wool and diamonds. The local currency is called Maloti. The main sectors contributing to the GDP are agriculture (4,78%) industry (35.1%) and services sector (49.1%). Within the services sector, remittances constitute an important contributor to the country's economy. In 2021, personal remittances represented 20 percent of GDP.

39. South Africa is the major destination country for about 99.7% of all Basotho emigrants (mainly men aged 20-49 years who migrate as economic migrants in the area of mining (legal and illegal) industry.

40. Lesotho is a constitutional monarchy. The King is the Head of State while the Prime Minister is the Head of Government and Cabinet. The Government comprises the King and Cabinet Ministers. The Constitution is the supreme law of the country. Parliament provides the legislative arm of government. An Act of Parliament has to be assented to by the King for it to become law. Elections are held in five-year cycles to elect members of parliament by direct universal suffrage. The Parliament comprises the National Assembly and the Senate. National Assembly has 120 members, 80 of which are elected by constituencies and 40 is proportional representation. The Senate has 33 members composed of 22 principal chiefs and 11 members nominated by the King acting on the advice of the Council of State.

41. Lesotho legal system is Roman Dutch Common law. The judicial system comprises of the Court of Appeal, which is the highest court, the High Court, with unlimited original jurisdiction to hear and determine any civil or criminal matter and the power to review the decisions of the lower courts and the Subordinate Courts which comprise different classes ranging from resident magistrates, second- and first-class magistrate courts in that order. The High and Appeals Courts were created by the constitution while the Subordinate Courts were created by Statute.

42. Judicial decisions are authoritative and constitute legal precedents. This means the decisions of the Court of Appeals are binding on the lower courts.

ML/TF Risks and Scoping of Higher Risk Issues ***Overview of ML/TF Risks***

43. Lesotho faces a range of significant ML threats, mainly emanating from within the country, and to some extent, from proceeds of crime committed outside the jurisdiction. The major proceeds-generating crimes are corruption, fraud and forgery, Tax evasion, Stock theft, drug offences, diamond offences, car

theft and human trafficking. Stock theft has the highest number of cases investigated and the highest amount of proceeds confiscated. However, proportionately, corruption has a higher amount of proceeds generation and confiscation. Proceeds generated from these crimes are laundered through the banking, lawyers, and real estate sectors. There are indications that some of this involves misuse of legal persons and legal arrangements for both predicate offences and ML. Lesotho has identified the laundering of the proceeds of corruption by PEPs outside the country. There is also a cross border threat from proceeds of illegal mining in South Africa⁴ being laundered in Lesotho. However, the authorities have not assessed existence and misuse of virtual assets for ML.

44. Lesotho is exposed to TF threat. There have not been any terror attacks in the country and this influenced the authorities' low rating of TF risk. However, there are potential TF threats linked to Lesotho from both Basotho and foreigners. For instance, the Thulsie twins (South Africans) travelled to Lesotho in 2015 where they secured false passports in the names of Christian Adams Leroy and Germain Adams Troy reportedly to attempt again to travel to join Islamic State⁵. The NPO sector has not been assessed for purposes of determining those NPOs at risk of TF abuse. Further, the authorities identified existence of radicalisation in religious schools and establishments.

Country's Risk Assessment & Scoping of Higher Risk Issues

45. Lesotho conducted NRA in 2017 using the World Bank tool and completed it in 2018. It established an NRA Working Group which was chaired/coordinated by the FIU Director. The Working Group was composed of all relevant AML/CFT public sector institutions who are also part of the NTT. There was negligible representation from the Private sector as only one person participated. All Teams were composed of at least 5 members with all teams drawn from the public sector except one which included the private sector representative. The NRA report had not been published at the time of the onsite.

46. The NRA analysed the ML threats to which Lesotho is exposed and the major predicate offences that generate most amounts of criminal proceeds, and the level of TF threats. It also examined the country's ML/TF combating ability in both the public and private sectors particularly the vulnerabilities of the financial and DNFBPs sectors. To some extent, the NRA covered identification of high TF risks facing the NPO sector.

47. In order to identify areas of higher focus during the onsite, the AT reviewed TC and Effectiveness information/reports provided by the authorities and information from reliable third-party sources (e.g., reports by governments or other international organisations). Based on this, the AT paid more attention on the following areas of focus:

- a. **Understanding of ML/TF risks:** The AT sought to establish Lesotho's understanding of the main ML and TF threats and vulnerabilities, and which activities, sectors, type of FIs/DNFBPs presented higher ML or TF risks. This was so because the 2018 NRA had not been updated and there was need to assess whether the authorities' understanding of their risks is current.
- b. **Corruption:** The AT examined the extent to which proceeds and the channels of corruption are being laundered as well as successes of the measures used by the Authorities for such as investigating, as well as the use of parallel financial investigations, prosecuting and recovering assets in line with the country's ML/TF risk.
- c. **Other high proceeds generating crimes:** The AT further focused on other high proceeds generating crimes such as fraud and forgery, tax evasion and stock theft as understood by the Authorities as well

⁴ <https://www.enca.com/news/cele-zama-zamas-are-highly-sophisticated>

⁵ INSURGENCY, ILLICIT MARKETS AND CORRUPTION: The Cabo Delgado conflict and its regional implications; Global Initiative Against Organised Crime; Hanns Sediell Foundation (February 2022)

as ranked in the NRA report, how the proceeds are being laundered and pursued by the Authorities to investigate, prosecute and recover assets

- d. **Use of Financial Intelligence, Investigation, Prosecution and Confiscation:** The NRA noted that there is a limited usage of financial intelligence information by LEAs. During the onsite, the AT established that the position remains the same. Therefore, the AT sought to establish the ways in which predicate offences are prioritised and the extent to which the FIU is disseminating financial intelligence and other relevant information and how this has been used in investigations to develop evidence and trace criminal proceeds related to money laundering, predicate offences and TF. Further, the AT sought to establish the effectiveness of the multi-disciplinary teams employed by LEAs for recovery of assets that are within and outside of Lesotho.
- e. **Supervision and monitoring of high-risk sectors:** The AT focused on how well supervisors applied risk-based supervisory measures to ensure compliance with AML/CFT obligations by regulated entities such as banks, MVTS providers, Cooperatives, lawyers and real estate.
- f. **Access to BO information:** The NRA did not assess ML/TF risks associated with legal persons and legal arrangements. The AT therefore sought to assess the extent to which Lesotho understands risks posed by different types of legal persons and arrangements and how well do Authorities obtain and keep up to date accurate BO information and make it accessible to competent authorities and supervisors to prevent misuse of the legal structures by criminals
- g. **Use of cash, informality and border controls:** The AT focused on how well the authorities understand the risks emanating from the use of cash and lack of border controls and the extent to which measures in place reduce the risks for ML/TF in the informal sector and how ML/TF risks are being managed. There was also increased focus on customs and border controls due to cash smuggling as found in the NRA and established during onsite.
- h. **Financing of terrorism:** Although TF was rated as low in the 2018 NRA, and there was no single case of TF investigation or prosecution. The AT focused on (i) the capacity of and coordination by the agencies to identify potential TF cases and the available capacity for TF investigations and prosecution in line with the risk profile of the country.

Materiality

48. In 2021, the GDP of Lesotho stood at USD 2.5 billion. With a GDP per capita of USD1,094.1, Lesotho is a lower middle-income country. The main sectors contributing to the GDP are agriculture (4,78%) textile industry (35.1%) and services sector (49.1%). Within the services sector, incoming remittances predominantly from South Africa constitute an important contributor to the country's economy which accounted 20 percent of GDP in 2021.

49. The country has a relatively small financial sector, with significant links with the South African financial sector. The banking sector consists of four banks out of which three are subsidiaries of South African banks and one is government owned. The banks have combined total assets amounting to USD 1.22 billion which represents 70.81 percent of the total financial sector assets as at the end of 2022. The non-bank financial institutions (NBFIs) sector is small and less complicated. This sector is also characterised by a significant NBFIs with foreign ownership with dominance by South African institutions. For instance, 2 MVTS providers out of four (4) are also foreign owned while 4 out of 6 life insurance companies are foreign owned. Ordinarily, the foreign owned entities were expected to have robust AML/CFT systems, benefiting from their financial groups which are well developed. There are significant cross-border remittances through MTVS providers most of which is attributed to Basotho working in South African mines. In view of the size of the NBFIs sector in terms of the number of players and the asset size, it is considered to be of less materiality for AML/CFT purposes (see Section 1.4.3 for detailed analysis).

50. In relation to the DNFBPs, there are 4 casinos, which are subsidiaries of foreign based casinos. Just like the rest of the DNFBP sector (except lawyers and real estate), the volume of financial activities is low and therefore the sector is considered to be of low importance. The size and nature of ML/TF risks of VASPs is not known. It is, however, likely that VA activities are negligible.

Structural Elements

51. Lesotho has all structural elements necessary to support an effective AML/CFT system. The country is politically stable and has established stable institutions which are supported by adequate legal frameworks. Corruption was noted to be a serious issue in the previous regime. The new government has demonstrated a strong commitment at the highest level to fight financial crime in general, and ML/TF in particular. Interactions with government agencies also showed similar commitment. However, there are some limitations in relation to provision of resources to effectively implement the measures to combat ML and TF.

Background and Other Contextual Factors

52. Lesotho is a jurisdiction that is surrounded by South Africa. The NRA identified corruption as among the five main illicit proceeds generating offences. During the time of the onsite, there was a developing case of public corruption being referred to as a M50 million case where public officials and private individuals had used legal entities in Lesotho to siphon public money from Ministry of Finance to South Africa. The authorities were making efforts to seize and recover the proceeds while investigation of the offences and individuals involved was continuing.

53. According to Financial Inclusion Refresh 2021, overall, the percentage of adults (18+) with access to at least one formal financial product increased from 61% in 2011 to 87% by 2021⁶. This means that Lesotho has made significant efforts to financially include its citizens. However, it remains a cash-based economy due to its large informal sector.

54. Lesotho has strengthened its AML/CFT institutional framework since the adoption of its MER in 2011, for instance, the operationalisation of the FIU, the creation of Asset Recovery Unit within the DCEO and creation of the Cyber and ML Unit within the LMPS. However, there is a public statement issued by the Council of Ministers of ESAAMLG highlighting, while acknowledging progress made, strategic deficiencies that are outstanding, namely; lack of an effective counter financing of terrorism (CFT) framework for targeted risk-based supervision or monitoring of the non-profit organisation (NPO) sector.

55. Lesotho has severe resource challenges which undermine effective functioning of AML/CFT institutions.

AML/CFT strategy

56. Lesotho has AML/CFT Strategy approved in November 2022 to assist the authorities to implement AML/CFT/CPF requirements. The last Strategy expired in 2015. Apart from the Strategy, Lesotho does not have written AML/CFT policies. Since the strategy was adopted while the AT were onsite, it was not possible to assess whether or not the authorities have started implementing it. The Strategy has nine broad objectives (See Chapter 2 below).

57. Lesotho approved Assets Forfeiture and Management Policy in August 2022. The aim is to establish an Asset Recovery office at national level and manage any seized and confiscated criminal assets. The policy is yet to be implemented as well. Lesotho has a Counter Terrorism Policy approved in 2018 which does not address TF.

⁶ <https://www.uncdf.org/article/7281/lesotho-financial-inclusion-refresh-2021>.

Legal & institutional framework

58. Since the 2011 assessment, Lesotho has improved its legal and institutional frameworks through amendments to the Money Laundering and Proceeds of Crime Act (MLPCA) 2008. It also enacted a new law on Prevention and Suppression of Terrorism Act 2018 which have largely addressed the technical compliance deficiencies. Further to these laws, Lesotho has also enacted Mutual Legal Assistance Act 2018 and amended the Mutual Legal Assistance Act in Criminal Matters in 2020 and the Fugitive Offenders Act 2020 all aimed at addressing international cooperation. It also promulgated various AML/CFT Regulations including the ML Regulations 2019, ML (Currency and BNI) Regulations 2015, and Financial Institutions (AML/CFT) Regulations 2015.

59. Lesotho's FIU was established after the adoption of the MER. It acts as a secretariat at various levels of the AML/CFT framework. The Ministry of Finance is responsible for AML/CFT policy. There is NCC which was created together with the NTT. The NCC is responsible for the AML/CFT policies and advises the Ministry of Finance on such policies. The NTT then operationalise the NCC decisions. The legal and institutional framework improvements have assisted competent authorities to implement AML/CFT requirements and enforce obligations on the accountable institutions.

60. Lesotho's AML/CFT institutional frameworks is as highlighted below;

Relevant ministries and co-ordinating bodies

Policy-setting authorities:

61. **Ministry of Finance:** The line ministry responsible for the FIU and holds responsibility for all Policy and Strategy issues related to AML/CFT/CPF in the country. It is also responsible for receiving and circulating the UNSC sanctions lists.

62. **Ministry of Foreign Affairs:** Is a key player in the Mutual Legal Assistance and Extradition regime. It also receives the Sanctions List from UN and forward the same to Ministry of Finance.

63. **Ministry of Justice:** is a key player in the Mutual Legal Assistance and Extradition Regime with the Attorney General being the Central Authority in MLA matters. It is also responsible for the enactment or amendments of all legislation.

64. **Ministry of Trade:** Responsible for supervision of Real Estates agents and registration of companies.

65. **Ministry of Local Government:** Responsible for registration of real estate agents. This is a new arrangement as the Ministry is in the process of taking over from Ministry of Trade.

66. **Ministry of Home Affairs:** Responsible for immigration and identification of citizens and non-citizens.

67. **The National Coordination Council (NCC):** is the highest AML/CFT/CPF policymaking and coordination body in Lesotho. It comprises of all key agencies/institutions. It is chaired by Principal Secretary in the Ministry of Finance and the FIU acts as the Secretariat. It is an administrative body. Recently, its Terms of Reference has been amended to include CPF.

68. **The National Task Team (NTT):** is the operations body for implementation of the AML/CFT/CPF decisions. It comprises all public institutions/agencies that are represented in the NCC. It is also chaired by the same Principal Secretary in the Ministry of Finance and the FIU also acts as Secretariat. Its terms of Reference too have been amended to include CPF.

69. **The Director of Public Prosecution (DPP):** is an office under the Ministry of Justice with a general mandate to prosecute all criminal cases in the country including ML and TF. It also deals MLA matters.

70. **Lesotho Mounted Police Service (LMPS):** It is the main law enforcement authority that is responsible for investigating all type of offences.

71. **Directorate of Corruption and Economic Offences (DCEO):** A body mandated to combat and prevent corruption and economic crimes and other fiscal offences. It is also mandated to investigate and prosecute ML under the MLPCA 2016 amendments. It also has an Asset Recovery Unit which is responsible for seizures and confiscation of proceeds of corruption and other matters.

72. **Revenue Services Lesotho (RSL):** A body established by an Act of Parliament, mandated with the responsibility of assessing, collecting and accounting for all revenue on behalf of the Kingdom of Lesotho. It is also mandated to investigate and prosecute ML under the MLPCA 2016 amendments.

73. **National Security Service (NSS):** is responsible for collection and analysis of intelligence and providing appropriate advice to the government.

74. **Financial Intelligence Unit:** It is the national centre responsible for assisting in the identification of the proceeds of crime and the combating of ML and TF. It is also the overall AML/CFT supervisory authority in particular for DNFBP's.

75. **Registrar of Companies (ROC):** is responsible for registering and de registering legal persons.

76. **Registrar of Deeds:** Is responsible for registration of legal arrangements.

77. **Registrar General:** Is responsible for registration, regulation and supervision of NPOs.

Financial sector supervisors

78. **Central Bank of Lesotho (CBL):** It is responsible for registration and licensing and prudential activities undertaken by banks and other financial institutions including insurance, capital markets and retirement Benefits schemes. Also responsible for and AML/CFT compliance through: CBL-Banking Supervision Department (BSD) responsible for banks, cross border MTVS and large financial cooperatives; the CBL-Other Financial Institutions Department (NBFI) is responsible for insurance companies, capital market players, micro-finance companies, pension funds and pension funds service providers; and the CBL Payments and Settlements Department responsible for issuers of payments instruments and domestic MVTs providers.

79. **Department of Cooperatives:** Responsible for registration, regulation and supervision of cooperatives.

DNFBP sector supervisor and self-regulatory bodies

80. **Lesotho Institute of Accountants:** it is responsible for the registration of accountants and accounting firms, as well as regulating the activities carried out by the practice of certified accountants in Lesotho. Established under the Accountants Act 1977. It is a SRB and is designated as a supervisory body under ML Regulations 2019.

81. **Casino Board:** it is responsible for regulation and supervision of the casinos. Established under the Casino Act 1989 and is designated as a supervisory body under the ML Regulations of 2019.

Law Society of Lesotho: A statutory SRB designated as a supervisory body under the ML Regulations 2019. responsible for regulating legal practitioners and ensuring AML/CFT compliance by legal practitioners.

82. **Mining Board:** It is responsible for regulating and supervising the precious metals and stones. Established under the Minerals and Mines Act 2015. Designated as a supervisor under the ML Regulations 2019.

83. **Ministry of Trade:** It is responsible for supervising estate agents and designated as a supervisor under the ML Regulations 2019. It also supervises the Motor Vehicle Dealers which the country determined to be high risk.

84. **The Financial Intelligence Unit:** Established under the MLPCA and is overall supervisor.

Financial sector and DNFBPs

85. FI and DNFBP sectors were classified according to their relative importance in Lesotho (see details in Table 1.1 and 1.2 below) based on materiality and ML/TF risks which informed the focus of analysis and conclusions, by assigning a higher weighting to positive and negative points in the implementation of the AML/CFT system for sectors of great importance than for sectors of lesser importance. This approach has been used throughout the report, but it is more apparent in Chapter 6 on IO.3 and Chapter 5 on IO.4.

Table 1.1: Size and Structure of the Financial Sector- 2022

Type of FI	No of Entities	Total Assets (USD)	Foreign majority Owned	Locally majority Owned	Supervisor
Banks	4	1,217,108,322	3	1	Central Bank of Lesotho
Leasing	1				
Microfinance	131	78,327,480	6	125	
MVTS providers	4	32,421,762.86	4		
Money changers	2	979, 549. 68	2		
Life Insurance	6	41,629,546	5	1	
General Insurance	4	41,599,077	1	3	
Insurance Brokers	47		2	45	
Insurance agents	500				
Pension funds	7	163,639,807		7	
Collective portfolio management	4	176,574,456		4	
Investment Dealers	3		3		
Investment Advisor	3		3		
CIS Managers	2		2		

Source: Information provided by the authorities- 2022

Rate USD 1=16.99

Mostly Important Sectors (Most heavily weighted)

86. **Banking Sector:** The banking sector consists of 4 banks out of which 3 are foreign-majority owned and 1 is locally majority owned with combined total assets amounting to USD 1.22 billion which represents 70.81 percent of the total financial sector assets (see Table 1.1). All the three foreign owned banks are subsidiaries of South African banks while the locally owned bank is a government owned bank. These institutions provide banking services, including cross-border financial transaction services, to both the public and private sector entities some of which were involved in fraudulent activities (See IO.7). Although the NRA found that the ML threat of the

banking sector was medium, subsequent sector risk assessment found that 3 out of the 4 banks were highly exposed to ML risks. In view of the size of the banking sector relative to other sub-sectors of the financial sector and the scope of its exposure to ML/TF risks, it is considered to be of very great importance.

Important Sectors (Heavily Weighted)

87. **Lawyers:** Lawyers carry out the following services on behalf of their clients: creation of legal persons and trusts; selling and buying of real property; management of funds, management of clients' bank, savings and securities accounts. Whereas lawyers receive funds and make payments on behalf of their clients, they do not verify the source of those funds. In addition, the NRA found that ML vulnerability of lawyers was high. As at the onsite date, lawyers were not implementing their AML/CFT obligations in relation to these services. In addition, although the LSL is a designated AML/CFT supervisor, lawyers were not being supervised for AML/CFT purposes. Based on these factors, lawyers were heavily weighted.

88. **Real Estate Agents:** Real Estate Agents bring together people who have properties for rent or sale and people seeking properties to rent or purchase. The agents can be a sole proprietor, partnership or company. There are no specific requirements for entry into this market apart from getting a business registration from the Ministry of Trade and Industry. There are 146 registered real estate agents; however, the authorities did not provide the volume of transactions passing through the sector. Payment for acquisition of property can be made by cash or through a bank. The NRA found that proceeds of crime are channelled through real property and ultimately integrated into the legitimate economy. In some cases, criminals use corporate vehicles or trusts to acquire real property so that the identity of the beneficial owners is veiled. The NRA concluded that the real estate sector's exposure to ML risk was high. The sector has not yet started implementing AML/CFT obligations and the designated supervisory authorities have not yet started supervisory activities. On the basis of these factors, the real estate sector is considered to be of great importance.

89. **MVTS providers:** There are 4 remittance companies and they conduct domestic and cross-border remittances. These companies are subsidiaries of South African remittance companies. The AT noted that some remittances from South Africa are made through TEBA (for Basotho working in RSA) and for the rest of Lesotho citizens, remittances are made through Shoprite, Interchange Lesotho, Sasai Econet Lesotho, VCL financial service providers and Mukuru. Although the NRA found the sector to be of low ML risk, some studies indicate that proceeds of illegal mining in South Africa are also channelled through these mechanisms into Lesotho. In addition, the authorities also detected some inward funds which passed one supermarket to people who were planning to be involved in terrorist activities in a foreign country. CBL has not issued guidelines to these supermarkets/stores (described as money market players by CBL). In view of these factors, the remittance sector is considered to be important.

Table 1.2: Designated Non-Financial Businesses and Professions

Type of DNFBP	No. of Licensed/Regulated/Registered	AML/CFT Regulator/Supervisor	AML/CFT Laws*/Enforceable Means for Preventive Measures
Casinos	4	Casino Board	Casino Order 1989 Casino Regulations 1990 MLPCA

			MLPCR Companies Act 2011
Real Estate Agents	146	Ministry of Trade & Industry	Companies Act Companies Regulations, Business Licensing and Registration Act and Business Licensing and Registration Regulations MLPCA MLPCR
Precious Metals & Stones Dealers	25	Department of Mines	Precious Stones Order (as amended) Precious Stones (Diamond Dealers Licence Grant and Renewals) Regulations MLPCA MLPCR
Lawyers	226	Law Society of Lesotho	Legal Practitioners Act Law Society Rules MLPCA MLPCR
Notaries	4	Law Society of Lesotho	Legal Practitioners Act Law Society Rules MLPCA MLPCR
Accountants	752	Lesotho Institute of Accountants	Accountants Act. But yet to be amended to accommodate AML/CFT requirements. MLPCA MLPCR
Trust & Company Service Providers		FIU	MLPCA MLPCR

Moderately and less Important Sectors

90. ***Other FIs-*** There are 131 microfinance institutions. Largely, they lend money to people in formal employment. It is the employer that is on boarded and the repayments are deducted at source. Usually, the amounts involved are low. Although the sector is not adequately supervised for AML/CFT purposes, the nature of the activities are perceived to pose low ML risk. In relation to life insurance companies, there are 6 companies and the asset size of the sector represents 2 percent of the financial sector. Most of the customers are corporates which arrange policy covers for their employees. Pension funds also operate along similar lines in the sense that they manage institutional funds for the benefit of employees. In that context, life insurance sector and pensions funds are considered to be of low importance.

91. ***Other DNFBPs-*** There are 4 casinos (3 are operational while 1 was yet to start), which are subsidiaries of foreign based casinos. The head offices have AML/CFT systems which are replicated in the subsidiaries. In addition to this, the head offices monitor their activities. Although the Casinos are not adequately implementing AML/CFT obligations, the volume of activities is low and therefore it is

considered to be of low importance. Similarly, the Dealers in Precious Metals and Dealers in Precious Stones sector is of low importance in view of the size and volume of activities. Although the sector does not adequately implement AML/CFT obligations and supervision has not yet started, it is considered to be of low importance in the context of Lesotho. Chartered accountants also incorporate legal persons on behalf of clients and provide company secretarial services. However, the volume of services is relatively low compared to lawyers. Based on the forgoing factors, these DNFBP sectors are considered to be of low importance in the context of Lesotho.

92. **VASPs-** The authorities are aware of the possible existence of virtual assets and virtual asset service providers. However, they do not know the size of the market and have not taken any regulatory measures. CBL is considering undertaking research in future to establish the size of the market and scope of the activities. In this regard, the AT could not assign any level of importance.

Preventive measures

93. The primary legislation which sets out the AML/CFT obligations for FIs and DNFBPs is the MLPCA. There are deficiencies with regards to application of higher risk countries, internal controls and implementation of new technologies. These shortcomings affect implementation of the requirements by the accountable institutions to some extent. Although the MLPCA covers a wide range of FIs and DNFBPs, this is not extended to insurance agents and brokers as they were omitted and the deficiency has not been rectified.

94. Lesotho does not have a legal and institutional framework to allow VAs and VASPs activities to be carried out.

95. In addition to the DNFBPs per the ones designated under the FATF Glossary, the AML/CFT law covers motor vehicle dealers and NPOs under the category of DNFBPs' as reporting persons. However, the designation of NPOs as accountable institutions was not based on a ML/TF risk assessment.

Legal persons and arrangements

96. The Registrar of Companies (ROC) is the authority for creation of legal persons in Lesotho. Legal persons are created under the Companies Act, 2011 which also established the Registrar of Companies and provides for the powers of the Registrar. Public information on the creation and types of legal persons that can be created is freely available through the online platform at the Ministry of Trade & Industry website: <https://www.companies.org.ls/>. The ROC operates an open platform whereby everyone can access information on legal persons created and registered in Lesotho. Lesotho legal framework provides for the establishment of the following legal persons: private or public limited liability companies; single shareholding companies; non-profit making companies; external companies (being branches of foreign corporate bodies); sole proprietorships; partnerships, co-operatives and statutory corporations.

97. There are 28611 companies registered in Lesotho, with 14,583 having been registered in the last five years as provided in the table below:

Table 7.1: Number of registered companies for the period under review

Year	No of registered companies
2018	3620
2019	3072
2020	2943
2021	2581
2022	2367

98. Legal arrangements can take the form of trusts or partnerships as per the Deeds Registry Act 1967 and the Proclamation 78 of 1957. Trust can be created by a person, which is the settlor,

for the purpose of managing assets placed under the control of a trustee for the ultimate benefit of a specific purpose or beneficiary. The Registrar of Deeds (ROD) is responsible for the registration, which is mainly facilitated by lawyers and record keeping of all trusts registered in Lesotho, however, information on their creation is not publicly available.

99. The ROD maintain physical registration of all legal arrangements in Lesotho. Initially, the ROD was mandated to register deeds for acquisition of immovable property until 2010. The AT could not make a determination on the registration of partnerships as the information with regards to partnerships was provided late during the onsite process to probe further.

Supervisory arrangements

100. Lesotho has designated supervisors to monitor compliance of FIs and DNFBPs with AML/CFT requirements as set out in MLPC Act (see details in R.26 and R.28). CBL is responsible for supervising banks, insurance companies, capital markets, retirement Benefits schemes, MFIs, MVTs, pension funds and pension funds service providers while the Registrar of Cooperatives under the Ministry of Small Business Development, Cooperatives and Marketing is responsible for supervising SACCOs. Insurance brokers and agents do not have an AML/CFT supervisor. In relation to DNFBPs, the supervisors are as follows:

- Casino Board responsible for Casinos
- The Law Society of Lesotho for Lawyers,
- The Mining Board for dealers in precious stones and metals;
- Lesotho Institute of Accountants for accountants and auditors;
- Ministry of Trade for the real estate sector.

101. Supervisors have powers to effectively monitor and supervise relevant persons in their own sectors as well as take necessary measures to enforce compliance under the MLPC Act. The basic powers of these supervisors are set out in more detail in R.27 and R.28.

International cooperation

102. Lesotho has a legal and institutional framework to cooperate and exchange information with foreign counterparts. Lesotho has ratified all the international instruments (Vienna, Palermo, CFT and UNCAC) relevant to AML/CFT, which it has domesticated to support its international cooperation requirements. In addition, Lesotho has entered into bilateral and multilateral agreements (e.g., the Harare/Commonwealth MLA Scheme and SAPRCO for regional police) with other countries to facilitate international cooperation.

103. The LEAs and the DPP in particular, (handles MLA requests) have made and received requests on cases with their foreign counterparts but are not related to ML/TF. The FIU has signed MoUs, though not a prerequisite, predominantly with FIUs in the Eastern and Southern African region on the basis upon which requests for exchange of information are made. Financial sector supervisory bodies cooperate and exchange prudential information with counterparts. However, there was no exchange of information related to ML/TF.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings and Recommended Actions

Key Findings

- a) Lesotho has demonstrated an understanding of ML risks to some extent. It has identified threats from corruption, fraud and forgery, tax crimes, drug offences and stock theft as the major proceeds-generating crimes. However, the NRA has not been updated. Other than the sector risk assessment by the CBL, the risk assessment has not been updated. There is no understanding of TF risks amongst majority of the competent authorities other than NSS which demonstrated a good understanding.
- b) The NCC is leading the promotion of coordination and collaboration of the competent authorities responsible for AML/CFT. Decisions of the NCC are implemented by the NTT, which coordinates operational activities. Through the NCC and NTT, authorities have effectively cooperated and coordinated to produce the NRA, various legislative amendments, and the National Strategy. However, there is limited inter-agency cooperation and coordination as evidenced by failure to coordinate or cooperate on CFT and CPF and limited cooperation and coordination among the Supervisors for ML/CFT purposes.
- c) Lesotho has developed and adopted a national AML/CFT Strategy. However, the competent authorities' objectives and activities are not consistent with the ML/TF risks identified in the NRA. They do not have strategies or action plans flowing from the NRA or the National Strategy.
- d) The Insurance agents and brokers were omitted as Accountable Institutions and the omission is not supported by outcome of a risk assessment.
- e) Lesotho has promoted ML/TF risk awareness among FIs and DNFBPs using the findings of the NRA to a lesser extent. Most of the private sector representatives had not yet received the NRA report while others indicated that they had received it a week before or during the onsite.

Recommended Actions

- a) Lesotho should strengthen its understanding of ML risks by regularly updating its ML risk assessment. It should also promote risk understanding of TF by designating a correct risk rating consistent with the identified vulnerability and threat. The understanding should be shared amongst the relevant competent authorities.
- b) Lesotho should promote inter-agency cooperation and coordination in all areas of CFT and CPF. There should also be coordination among the LEAs on the major proceeds generating crimes particularly, corruption, fraud and tax evasion, for example by establishing a LEA-level group to regularly share information; making additional use of joint investigation teams; improving information-sharing mechanisms.
- c) Lesotho should ensure that competent authorities develop strategies and action plans which address the identified ML/TF risks and that those strategies are in alignment with the national strategy. There must also be alignments between the objectives of competent authorities and the identified ML/TF risks. Lesotho should take steps to include Insurance agents and brokers as Accountable Institutions.
- d) Lesotho should take steps to promote ML/TF risk awareness among FIs and DNFBPs using the findings of the NRA.

104. The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The Recommendations relevant for the assessment of effectiveness under this section are R.1, 2, 33 and 34.

Immediate Outcome 1 (Risk, Policy and Coordination)

Country's understanding of its ML/TF risks

105. **Lesotho's understanding of the ML/TF risks is based on its National Risk Assessment (NRA) findings.** In view of some inconsistent ratings within the NRA report and the fact that the NRA has not been updated, the understanding may not fairly represent current level of risks subsisting in Lesotho. The financial sector supervisor (CBL) has conducted a sectoral risk assessment of banks which has assisted in an updated level of understanding. The assessment team's findings are based on: a review of Lesotho's NRA, sectoral risk assessment of the banking industry and interviews with competent authorities during the onsite visit.

106. With a view to identify and understand its ML/TF risks, Lesotho conducted a national risk assessment (NRA) in 2017 using the World Bank tool and completed it in 2018. It established a Working Group which was chaired/coordinated by the FIU Director. The NRA Working Group was composed of all AML/CFT public sector institutions who are also part of the National Task Team which is responsible for national efforts to combat ML and TF. These include relevant ministries, financial sector and DNFBP supervisors and law enforcement agencies. However, the private sector was not well represented since only one person from this sector participated. The NRA assessment involved assessment of ML threats and ML vulnerabilities. **The overall ML risk for Lesotho is rated as Medium High** while national vulnerability was rated medium and ML threat medium high. It concluded that corruption, bribery, fraud and forgery, tax evasion and stock theft pose high money laundering threat. The NRA further established that the real estate sector and motor vehicle dealers are highly vulnerable to ML while the overall vulnerability in the banking sector was considered medium. Subsequent sectoral risk assessment carried out by CBL indicated that 3 of the 4 banks were highly vulnerable to ML while 1 bank was rated medium. This suggests that the sectoral ML risk is higher than medium. The NRA has not been updated and most of the competent authorities are of the view that the ratings remain the same. However, representatives of some DNFBPs were not aware of the NRA and therefore do not know the ML rating of their sectors. In addition, the NRA does not include analysis of risks associated with the 'Zama Zama' and the authorities did not make any reference to this during the onsite. However, when the AT raised the issue, the authorities acknowledged that they were not aware of the magnitude of proceeds from illegal mining in South Africa which are laundered in Lesotho and the channels used. Considering that the NRA was conducted in 2018 and has not been updated, absence of revision of the NRA, may therefore have an impact on the consistent and up to date understanding of the risks, especially for the supervisory authorities in charge of DNFBPs.

107. **TF was rated as low.** However, the overall TF threat (see page 12 of NRA report) was found to be Medium High while TF vulnerability was medium low (page 135). Since risk is a function of threat and vulnerability, the AT do not understand how the overall TF risk was rated low. These inconsistencies were brought to the attention of the authorities to guide the AT on the correct finding of TF risk. The NRA considered various vulnerabilities and threats. However, there was no detailed analysis of the channels which could potentially be used for TF purposes. For instance, the report acknowledged that money was being channelled through NPOs and retail shops for possible TF. In view of the inadequate supervision and monitoring, the authorities do not have information about NPO donors, beneficiaries and how NPOs use their funds. Furthermore, the report also noted that cash smuggling through the ungazetted border posts could be another channel for TF. In addition, implementation of cross-border currency transportation had been halted since

2018 and therefore it was not possible to know the magnitude of currency and BNIs crossing the borders. Although the NRA noted that some remittances were sent to high-risk countries, it was not possible to link them to TF. Despite these gaps, most of the authorities indicated that their TF understanding was the same as the one reflected in the NRA. However, the NSS indicated that TF risk could be higher than low although this understanding is not shared across the rest of competent authorities.

National policies to address identified ML/TF risks

108. Lesotho recently adopted its National Strategy on AML/CFT/PF and is yet to implement it to mitigate the identified ML/TF risks. Hence, the AT could not determine the extent to which the Strategy has addressed the risks.

109. Lesotho developed its National Strategy on AML/CFT/PF (which was approved by the NCC on 21st November 2022) while the AT was onsite, four years after completion of the NRA. The Strategy was prepared by the Task Team Working Group consisting of members from the National Task Team. The strategy has a five-year plan from November 2022 to 2027. Prior to this, the country had a Strategy which was from 2012 to 2015 and there was no strategy/policy in place from 2015 to 2022. In view of the fact that the previous Strategy was developed before the 2018 NRA and the period falls outside the period of this ME, the AT could not apply it to assess whether it addressed the ML/TF risks. The Strategy was essentially based on the previous MER.

110. The current Strategy (2022) has seven strategic pillars namely; (a) enhance Compliance with the FATF Standards; (b) Strengthen Legal Systems to Combat ML/TF/PF; (c) Enhance Domestic Coordination and Cooperation on Matters Related to AML/CTF/CPF. (d) Strengthen International Cooperation and Coordination. (e) Strengthen AML/CFT/CPF Enforcement Structures; (f) Strengthen Capacity of Stakeholders to Implement AML/CFT/CPF Measures; and, (g) Enhance Awareness and Application of AML/CFT/CPF Measures. In addition to the Strategy, the authorities prepared an Action Plan which sets out general activities to be carried under each Strategic Pillar. For instance, under Pillar 1, the authorities are supposed to ‘develop and implement Risk Based Supervision (RBS) frameworks for the financial and DNFBP sectors’ by March 2023. This activity does not isolate sectors which were identified as highly vulnerable to ML such as the real estate sector. It put all sectors in one basket irrespective of their risk profiles. In addition to this, Lesotho had not come up with RBS framework for the high-risk sectors by the time of F2F meetings (May 2023) although this activity was supposed to be completed by March 2023. Hence, the AT was not able to see a clear alignment of priority of intervention in the strategic pillars with the level of risks that were identified in the NRA. Further, apart from the FIU, the competent authorities were not fully conversant with its contents and that they had not yet started implementing it.

111. Since the MER was adopted in 2011, Lesotho has taken a broad range of steps to address more fundamental gaps in its AML/CFT framework that were identified in the MER. The measures are also aimed at complying with the requirements of the revised FATF Recommendations adopted in 2012. The measures include establishment of the FIU, the National Coordination Committee and amendment of the MLPC Act etc. Although the actions were not directly informed by the outcome of the NRA, they have positively contributed to Lesotho’s AML/CFT regime.

Exemptions, enhanced and simplified measures

112. Results of NRA have not been used to support the application of enhanced measures for higher risk scenarios or simplified measures for lower risk scenarios. Lesotho has not applied risk-based exemptions on sector or products.

Sector coverage

113. The scope of AML/CFT requirements does not extend to insurance brokers, insurance agents and entities which provide safekeeping and administration of cash services. They are not required to comply with the AML/CFT obligations. The authorities explained that these were omissions rather than exemptions.

Enhanced and simplified measures

114. Lesotho's provisions for applying enhanced and simplified measures is based on the legal and regulatory frameworks. FIs and DNFBPs are required to adopt a risk-based approach in order to ensure that they apply measures which are commensurate with the level of risk. In particular, accountable institutions are required to apply enhanced measures where higher risks are identified. Conversely, where FIs and DNFBPs identify lower risks, they are allowed to use simplified measures, provided there is no ML/TF suspicion (see R.1). These provisions are based on the results of the NRA.

115. In relation to the existence of provisions requiring enhanced or simplified measures, the authorities have not provided any guidance on sectors, customers, products etc., which are of higher or lower risk. In this regard, discretion is left to FIs and DNFBPs for them to determine high- and low-risk scenarios and the applicable enhanced or simplified measures. The authorities have not provided evidence that they have assessed the scenarios whereby FIs or DNFBPs have applied enhanced or simplified measures and whether these are properly supported by outcome of risk assessment. If FIs or DNFBPs do not adequately understand and assess their ML/TF risks, this may lead to inappropriate conclusions.

Objectives and activities of competent authorities

116. The objectives and activities of the competent authorities and SRBs are, to some extent, consistent with evolving national AML/CFT policies and the identified ML/TF risks.

117. As indicated, Lesotho approved a National AML/CFT Strategy in November 2022 with a five-year Action Plan (2022-2027). Based on the information provided by the authorities during on-site, most of the competent authorities had not started implementing their respective parts of the National Strategy. On the other hand, some ongoing activities of other competent authorities were consistent with the Strategy and identified ML/TF risks. For instance, CBL-BSD, developed RBS framework in 2019 and enhanced it in 2022. The RBS framework was informed by the results of the NRA and Sectoral ML/TF risk assessment; thus, CBL-BSD applies more focus to the areas of highest risk. However, there has not been effective implementation of the RBS framework due to limited resources (see IO.3 for details). The other CBL Departments with AML supervision among its functions had not started any AML/CFT supervision. Also, the Department of Cooperatives has not implemented any AML/CFT supervision. DNFBPs supervisors as well have not carried out any activities which are in line with the risk profile of their sectors, largely due to lack of resources and expertise.

118. The LMPS has no strategy or action plan derived from the NRA or the strategy. This is reflective in how the LMPS is investigating ML cases which is not consistent with the country's risk profile. This could be one of the reasons also why MLPS has not concluded any ML case. The

focus of LMPS investigations is on the predicate offence. Therefore, the LMPS has not demonstrated that its objectives and activities are consistent with the identified risks. Similarly, the DCEO has no strategy and Action Plan based on the findings of the NRA or the Strategy. The two ML cases (See IO 7) that were identified, investigated and prosecuted by the DCEO were not based on any prioritization mechanism or policy direction. The Asset Recovery Unit of the DCEO is critically understaffed. The Unit is hampered by lack of resources and as a result they cannot effectively implement a robust asset forfeiture regime that Lesotho has enacted. The RSL also does not have an action plan or strategy based on the NRA findings or the National Strategy. Its priority is to collect revenue. The lack of action plan or strategy results in the failure to utilize the power it has in the MLPCA as a competent authority. Also, the failure to implement the Cross Border Currency Declaration System, is a result of the lack of action plan. The Registrar of Societies has an Action Plan developed in 2022. However, the Action Plan also does not seem to be based on the NRA findings or the National Strategy and none of the Action Plan items has been implemented. The SRBs, similarly, have not carried out activities based on the NRA or the Strategy.

119. The Ministry of Trade (Registrar of Companies) and the Registrar of Deeds have not focused on BO transparency of legal persons and legal arrangements. The ROC has taken steps to implement the BO requirements while the ROD does not have a law or resources to implement BO requirements. For the ROD, the situation is complicated with lack of ML/TF risk understanding. Overall, the Assessment Team's view is that the actions of the competent authorities and SRBs are not consistent with the findings of the NRA.

National coordination and cooperation

120. Lesotho has coordination and cooperation mechanisms especially at policy and technical level on AML. The NCC, chaired by the Principal Secretary in the Ministry of Finance is the highest policy making body on AML/CFT/PF matters. It was established in 2011. It is an administrative body with its own Terms of Reference. The members are drawn from all ministries responsible for AML/CFT and other competent authorities. Since then, the NCC has championed a lot of policy changes and development for AML/CFT that were largely aimed at addressing the deficiencies that were identified in the 1st Round MER. The NCC decision led to various legislative changes on AML/CFT. There is enough evidence that the NCC meets regularly and it is responsible for advising Government (Cabinet).

121. Immediately below the NCC is the National Task Team with a similar membership although they also attempted to add institutions such as the Law Society and the Lesotho Institute of Accountants. However, these institutions have never attended the NTT meetings. The NTT implements the decisions of the NCC and similarly they meet regularly to carry out the activities assigned to them by the NCC. However, the two bodies work is also hampered by lack of resources to implement some of their decisions.

122. There are various MOUs that have been signed among the Competent authorities locally mainly for exchange of information. These MOUs are both bilateral and multilateral. There are MOUs between FIU and LMPS, Immigration, CBL, DCEO, Ministry of Trade, Registrar General (Societies) and RSL among others.

123. Law enforcement agencies have used coordination and collaboration mechanisms to pursue investigations and prosecutions of proceeds of predicate offences and ML to a lesser extent

(See IO.7). One case that shows coordination and collaboration is the M50 Million case that was still on going at the time of on-site. It has seen the LMPS, DCEO, RSL, and FIU jointly investigating various aspects of the case and so far there is a success story in that some assets that were taken out of the jurisdiction have been successfully frozen, seized, confiscated and repatriated. There is no coordination and collaboration for TF purposes (IO.9).

124. CBL supervisors cooperate while the same could be found in relation to cooperatives and DNFBPs. (See IO.3).

125. There are no monitoring mechanisms by the NTT or the NCC to ensure that institutions responsible for various sectors are implementing the AML/CFT obligations.

126. There are no structures to promote coordination and collaboration on PF measures.

Private sector's awareness of risks

127. Lesotho finalized its NRA in 2018. However, the report thereof was re-approved in July 2022. The NRA report has not yet been published. The private sector officers who participated in the NRA exercise are believed to be aware of the results of the NRA. The AT do not believe that participation of one person from a sub-sector of reporting entities in the NRA exercise would automatically mean that all the officers in the respective reporting entities represented in the NRA become aware of the results of the assessment. Moreover, it was also noted that participation of the private sector was to a limited extent as representatives only came from the banking sector and the Lesotho Institute of Accountants. This point was also confirmed during the meetings with the private sector representatives. Most of the private sector representatives informed the AT that they had not yet received the NRA report while others indicated that they had received it a week before the onsite visit and others received the NRA during the onsite.

Overall Conclusion on IO.1

128. Lesotho has demonstrated an understanding of ML risks to some extent. However, since its completion in 2018, the NRA has not been updated to ensure that the understanding is in tandem with evolving risks. Since the NRA, Lesotho has developed a National Strategy in August 2022 which is aimed at addressing the NRA findings. However, it was not possible to assess the Strategy's alignment with the level of the identified ML/TF risks since competent authorities had not started implementing it. There is low understanding of TF risks among competent authorities, exception being the NSS. The activities and objectives of competent authorities are not consistent with the identified risks in the NRA. In addition, there are resource allocation challenges at all levels. While there is good coordination and collaboration at policy level on ML, The Assessment Team noted lack of coordination and collaboration among supervisors, and competent authorities for TF and PF. Lesotho has disseminated the NRA report to some private sector representatives but has not published it. As such there is limited awareness of the risks identified in the NRA by the private sector.

129. Lesotho is rated as having a low level of effectiveness for IO.1.

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key	Findings
Immediate Outcome 6	
	<ul style="list-style-type: none"> a) Competent authorities' access and use financial intelligence and other financial information to identify potential predicate offences and trace proceeds of crime but less so for potential ML and TF cases. b) LEAs do not proactively seek financial intelligence from the FIU to support their ongoing investigations. While some LEAs indicated that they seek financial intelligence and other financial information from other competent authorities, they generally do not keep statistics and document the usefulness of the information. c) The FIU receives STRs and TTRs and cross-border currency reports. Most of the STRs are filed by the banking sector, and a few from other FIs, whilst the DNFBP sector has not yet started reporting STRs. The FIU has necessary systems/tools to support its analysis function. The lack of STRs from the DNFBPs and limited reports from other FIs deprives the FIU of information to enrich its financial intelligence reports. d) The FIU, LMPS, DCEO and RSL cooperate and exchange information to support joint investigations of complex cases, although the level of cooperation can be improved especially in relation to TF identification and investigation. e) The FIU has inadequate financial and human resources which hampers the effective discharge of its core functions of receipt, analysis and dissemination of financial intelligence.
Immediate Outcome 7	
	<ul style="list-style-type: none"> (a) Lesotho has criminalized the offence of ML and to some extent, there are mechanisms in place to identify potential ML cases. However, there is no evidence of direct correlation between types of ML investigations and the risk profile of the country which is mainly related to proceeds generated from corruption, fraud and forgery, tax evasion, stock theft, and drugs related offences. Lesotho has demonstrated limited ability to identify and investigate ML. (b) Lesotho has developed AML/CFT strategy to guide ML investigations and prosecutions. However, Authorities are yet to align the investigation and prosecution of ML cases with the policy formulated and the country's risk profile in order to mitigate ML risks. There are no institutional, prioritized action plans to implement the strategy formulated. (c) Lesotho prioritizes predicate offences over ML, consequently, only a few investigations and prosecution of ML are being conducted. (d) Lesotho conducts parallel financial investigations to a limited extent. The LMPS has not however, carried out parallel financial investigations. (e) The DCEO has demonstrated to a limited extent that they can identify the different types of ML cases but focused mainly on investigating predicate offences, self-laundering and to small extent, third party laundering. (f) Lesotho does not apply other criminal justice measures in cases where a ML investigation has been pursued but where it was not possible, for justifiable reasons, to secure a ML conviction for ML.
Immediate Outcome 8	
	<ul style="list-style-type: none"> (a) Lesotho has a fairly developed legal framework and to some extent the authorities are still in their early stages of pursuing confiscation of criminal proceeds, instrumentality and property of

corresponding value as a policy objective through the adoption of a criminal asset recovery fund policy, which also directs on the management of seized and confiscated assets and setting up of an asset recovery office which was still to be established at national level.

- (b) Other than the one recent case, where all the Competent Authorities collaborated in the asset recoveries of a case involving M 50 million (USD \$2, 942, 907.59), the authorities do not prioritise nor pursue proceeds generated by the majority of the high proceed generating predicate offences.
- (c) There are no adequate monitoring mechanisms to control the physical transportation of currency and BNIs at the ports of entry and exit as evidenced by gaps created by the omission of listing of BNI threshold and lack of cargo and mail declaration requirements. There are no effective and proportionate sanctions applied against false declaration nor are such cases detected.
- (d) Lesotho lacks adequate resources (Human and Financial) across the agencies to effectively promote provisional and confiscation measures.
- (e) The statistical information provided is lacking in detail and to enable a proper assessment of seizures and confiscations done throughout the value chain mostly attributed to limited coordination between the RSL, DCEO and the FIU.
- (f) Lesotho's asset recovery efforts might significantly be affected by the technical compliance deficiencies identified against Recommendations 4 and 38.

Recommended Actions

Immediate Outcome 6

- (a) LEAs should prioritise the use of financial intelligence, requests for financial information from the FIU and other competent authorities to assist in identifying and supporting ML and TF investigations.
- (b) DCEO and LMPS should enhance their skills and resources for use of financial intelligence for financial investigations and tracing assets.
- (c) Authorities should increase resources (budget, human and technical) of the FIU to enable it conduct its core functions effectively.
- (d) Authorities should ensure that NBFIs and DNFBPs particularly high-risk sectors detect and file STRs to the FIU.
- (e) The authorities should resuscitate implementation of cross border currency and BNIs declarations at all border posts and ensure that the FIU has timely access to the declarations.
- (f) The FIU should conduct strategic analysis and share the results with LEAs for use in identifying potential ML and TF cases.

Immediate Outcome 7

- (a) Lesotho should pursue the different types of ML cases in accordance with the risk profile of the country which is mainly related to proceeds generated from corruption, fraud and forgery, tax evasion, stock theft, diamond offences, car theft, human trafficking and drugs related offences.
- (b) Lesotho should conduct more parallel ML investigations arising from corruption, fraud and forgery, tax evasion, stock theft, diamond offences, car theft and drugs related offences alongside investigation of the predicate offences.
- (c) Lesotho should align the investigation and prosecution of ML cases with the AML/CFT strategy formulated to guide ML investigations and prosecutions and the country's risk profile in order to mitigate ML risks.
- (d) Lesotho should prioritize investigation and prosecution of ML cases in accordance with the identified risks. It should also ensure that LEAs pursue different types of ML cases and criminal proceeds consistent with the ML and associated predicate offences risks.
- (e) Lesotho should categorise and keep records and statistics of the different types of ML in the jurisdiction, in order to assess which types pose the greatest risk and utilize a RBA to its AML investigations.

- (f) Lesotho should capacitate the competent authorities with adequate human and financial resources to improve their effectiveness in ML investigations and prosecutions. Further, capacity building should as a matter of priority be provided to officers under the competent authorities to enable them to carry out their mandates which is the investigation and prosecution of predicate offenses for ML.
- (g) Lesotho should apply other criminal justice measures in cases where a ML investigation has been pursued but where it was not possible, for justifiable reasons, to secure a ML conviction.

Immediate Outcome 8

- (a) The authorities should speed up the process to establish the Asset Recovery Office at national level to operationalise the management of seized and confiscated.
- (b) Lesotho should prioritise the confiscation of proceeds and instrumentalities of crime and property of equivalent value by all the relevant Competent Authorities.
- (c) Lesotho should strengthen coordination and monitoring mechanism amongst all LEAs deployed at the border ports and create an appropriate platform for RSL and FIU to develop a framework on the implementation and enforcement of the declaration system on all cross-border movement of currency and BNIs to ensure that relevant measures are applied.
- (d) Lesotho should ensure that the core agencies responsible for monitoring the movement of cross border currency or BNI are properly funded and well-resourced to acquire the necessary staff compliment and the necessary equipment to enhance their work.
- (e) Lesotho should start keeping comprehensive statistics relating to confiscations to enable adequate accounting of assets recovered throughout the value chain and determining areas under the AML/CFT confiscation regime requiring further strengthening.
- (f) Lesotho should address the identified deficiencies in the legislation to enable the authorities to widen their scope in implementing provisional and confiscation measures in accordance with the FATF Standards.

130. The relevant Immediate Outcomes considered and assessed in this chapter are IO.6-8. The Recommendations relevant for the assessment of effectiveness under this section are R.1, R. 3, R.4 and R.29-32.

Immediate Outcome 6 (Use of Financial Intelligence)

Background and Context

131. Lesotho has established the Financial Intelligence Unit as an operational and independent statutory body under the oversight of the Ministry of Finance and Development Planning. The FIU is mandated to receive financial information from reporting entities and make disclosures of results of its analysis of the financial intelligence and other information to competent authorities responsible for conducting investigations and prosecution on proceeds of predicate offences, ML and TF. The FIU has two core departments, namely, Monitoring and Analysis and Legal and Compliance, as well as two support departments, namely Information Communication Technology, and Finance and Administration.

132. The FIU is poorly funded as shown by government approving only an average of 67% of their annual budget bids for the past five years. The Monitoring and Analysis Department, which is responsible for its core functions is staffed with only three (3) analysts and the head of the department. The lack of resources has affected the FIU's ability to perform its core functions effectively. The FIU has made unconditional application for Egmont Group membership in 2023.

Use of financial intelligence and other information

133. Competent authorities have powers to access financial intelligence and other relevant information held by accountable institutions and relevant public institutions necessary to develop evidence and trace criminal proceeds related to ML, associated predicate offences and TF. However, there are concerns about the limited range of sources and scope of the use of the financial intelligence by LEAs. LEAs also do not routinely request for financial intelligence from the FIU to support their ongoing investigations nor to identify and trace criminal assets or tax evasion.

Access and Use of Financial Intelligence by the FIU

134. The main source of financial intelligence is STRs from Accountable Institutions, particularly banks. The FIU accesses and receives financial, administrative and law enforcement information that includes data from public and private bodies or individuals as tabulated below:

Table 3.1 Access to financial information by the FIU

Source of information	Database	Information
Ministry of Trade's Company Registry	Automated	Company basic ownership information
Revenue Services Lesotho (RSL)	Automated	Tax Information,
LEAs (DCEO and LMPS)	DCEO (automated) and LMPS (manual)	Criminal Record Information
Deeds Registry	Automated	Property Ownership and Trusts
Department of Traffic	Automated	Motor Vehicle ownership information
Land Administration Authority and Lesotho Housing	Automated	Land Ownership / ownership of houses
Ministry of Home Affairs	Automated	National population registry and immigration information

135. Information from the Company Registry is accessed electronically whilst information from the other public databases is requested through email. Turn-around time for feedback, for mail requests, was given as an average of one week. The FIU is also empowered to receive terrorist property reports from accountable institutions, however, no statistics on such receipts were availed to the assessment team, hence its inability to assess the usefulness of such information. Table 3.2 below, provides details of the requests that were made by the FIU to the various competent authorities during the period under review. The statistics indicate limited access of financial information from other competent authorities.

Table 3. 2: Requests Made by FIU to Other Agencies

	2017	2018	2019	2020	2021	2022	Total
Registrar of Companies	61	53	37	39	26	0	216
Parastatals	2	1		1		5	9
Administrative bodies	4	4	2	0	4	13	27
Privately owned database	1	0	1	0	2	5	9
DCEO	1	0	2	3	7	5	18
LMPS	14	9	2	1	13	1	40
RSL	17	13	11	7	28	9	85
Total	100	80	55	51	80	38	

Source: FIU

136. The FIU does not appear to exploit the broad range of sources of financial intelligence and other information in line with its powers to support its analysis. As indicated under Core Issue 6.2 below, the FIU is not receiving STRs from DNFBPs which deprives it of information. This is a concern considering the conclusions in the NRA report where the real estate sector was rated as highly vulnerable to abuse by money launderers. There is also concern over lack of implementation of the cross-border currency declaration system between 2019 and 2022 as the borders may be used to smuggle cash proceeds of crime in and out of Lesotho for laundering. While the FIU receives TTRs, it was noted that these are submitted to the FIU monthly and this impacts on timeliness. It was further noted that the FIU does not conduct any data mining but only uses them as additional information to enrich analysis of STRs. Additionally, the FIU does not request information from NSS related to potential TF. This is also a cause for concern as the risk of TF appears to be higher, based on submissions made during the onsite.

Access and Use of Financial Intelligence and Other Information by LEAs

137. The LEAs receive financial intelligence from the FIU; however, they use the financial intelligence reports to a limited extent. Besides information from the FIU, the LMPS also accesses information from various public and private sector agencies as well as other LEAs such as the RSL and DCEO. Authorities explained that LEAs also exchange intelligence through joint investigations. However, statistics on joint investigations indicate that the LMPS and the RSL have engaged in very few joint investigations during the period from 2017 to date. LMPS also receives company information from the Company Registry through requests. The turn-around time of these requests is one month, which raises concern of timeliness for successful investigation and securement of proceeds of crime.

138. The DCEO accesses financial intelligence from the FIU, whistle blower reports, open sources, ARINSA portal, Auditor General reports, and referrals from other law enforcement agencies, namely RSL and LMPS. The DCEO received 16 financial intelligence reports from the

FIU over the period under review. However, at the time of the onsite, the DCEO had not yet concluded ML investigations on all the cases.

139. The RSL is the biggest beneficiary of disseminations, from the FIU, as they received a total of 121 reports over the period from 2017 to 2022. Out of these disseminations, only one case (referred in 2017), resulted in the recovery of M433,671.71 (US\$24,092.87). Other cases referred to the RSL are still at various stages of investigation. Most of the cases have been referred to audit for tax assessment and no ML cases have been prosecuted. RSL is currently pursuing 4 prosecutions for the predicate offence of tax evasion. Only one of the four cases originated from the FIU. RSL also accesses company ownership information from the company registry, as well as bank account statements and KYC records from the banking sector. Based on the information provided, the RSL is mainly targeting investigation and prosecution of the predicate offence of tax evasion and are not pursuing ML.

140. It was observed from the interactions with authorities in Lesotho that TF is another area that has not benefitted from the use of financial intelligence. Authorities responsible for TF investigation did not use the FIU to access information that would have assisted in their investigation in a case that involved some foreign nationals who received funds through an MVTS provider. In addition, all the LEAs (e.g. the LMPS, DCEO, NSS) do not access or use cross-border cash declarations for intelligence or investigative purposes although the authorities are aware that some proceeds of illegal mining in South Africa are brought into Lesotho through cash smuggling.

STRs received and requested by competent authorities

141. Competent Authorities are receiving and requesting reports, to some extent, that contain relevant and accurate information that assist them to perform their duties. The FIU receives STRs, threshold reports for all transactions (cash and electronic funds transfers) of amounts equivalent to M100,000 or more from banks and a few non-bank financial institutions. DNFBPs have not submitted STRs during the period under review and the FIU only had access to cross border currency reports during the period from 2017 to 2018.

142. During the period from 2017 to 2021, the FIU received a total of 1,282 STRs. There has been a general positive trend in the numbers of STRs received in successive years, as STR submissions increased by 48%, over the five years' period (see IO.4 for breakdown by sector). Out of the total number of STRs received, 1,230 STRs were from the banking sector, which represented 96% of the total STRs. The other 4% of STRs submitted originated from Asset Management companies, Cooperatives, Credit Only institutions, Insurance, Mobile Money and Money Transfer Services. All these sectors were rated as low risk for ML in the NRA report. However, some sectors which were found to be of high ML risk in the NRA report, such as the real estate sector, did not submit any STRs over the period under review.

143. During the period under review, the FIU received four STRs on TF, which were closed after analysis due to lack of evidence of possible TF, and this appears to be consistent with the country's TF risk, which is rated as Medium Low. Generally, the FIU finds the quality of STRs to be of good quality, especially those filed by the banks. The STRs include details of the persons involved, the amount, account numbers and description of the suspicion, and are also supported by relevant documents. In some cases, the FIU requests for additional information and clarification from the reporting entities.

144. The increase in STR reporting by banks, may be partly attributed to the fact that the CBL issued AML/CFT Risk Management Guidelines which includes red flags and indicators for ML and TF. The FIU has also issued Money Laundering Guidelines for the Financial Sector. In relation to absence of STRs from the DNFBPs, this may be attributed to lack of AML/CFT supervision and capacity building to assist the reporting entities on identification of suspicious transactions. Although the FIU issued guidelines, it was noted that they lacked sector specific red flags and indicators for both ML and TF to assist the reporting entities in detecting suspicious transactions. The STRs filed were generally consistent with the country's risk profile as they were mainly related to the high-risk predicate offences of corruption and fraud.

145. The FIU acknowledges receipt of STRs but does not provide feedback to the reporting entities on the progress or outcome of the STR filed. Some of the reporting entities indicated that they would appreciate receiving feedback on specific STRs, which would improve the STR quality, where necessary. In addition to the feedback, all reporting entities which the AT met, indicated that they would benefit from regular publication of typologies reports by the FIU. The FIU had published one typology report in 2016 and they have not undertaken any additional typologies study since then. The assessment team has concerns about the fact that only around 13% of the STRs resulted in disseminated reports to LEAs. While it is appreciated that, in practice, each STR does not necessarily lead to a dissemination and that one dissemination may arise from more than one STR, 13% is still considered to be low, bearing in mind that majority of the STRs come from banks and the FIU acknowledged that banks submit STRs of good quality.

146. The FIU received cross-border currency reports (from 2017 to 2018) from the RSL. The FIU received a total of 5 declarations in 2017 and another 20 in 2018. After 2018, no declarations were received by the FIU from all ports of entry or exit. The cross-border currency declaration requirements were not being implemented between 2019 and 2022. due to transfers of staff who had been trained on the cross-border currency declaration system.

147. The FIU also receives threshold transaction reports for all transactions above M 100,000 or its equivalent. These threshold transaction reports include cash transaction reports, domestic electronic transaction reports and international transaction reports. The reports contain account holder, account number, type of transaction, date and amount transacted. These reports are filed monthly and the FIU consults them whenever they receive an STR. Apart from this, the FIU does not follow up with the reporting entities on any report in order to gather more additional financial intelligence relating to the subjects and their accounts.

Operational needs supported by FIU analysis and dissemination

148. The FIU analysis and dissemination is supporting the operational needs of competent authorities to a limited extent. The FIU makes proactive disclosures arising from its analysis and also provides information to LEAs in response to their requests.

149. The FIU receives STRs through a secure email and the reports are subjected to a risk assessment process to identify high risk reports for analysis. The FIU gives priority to STRs which accounts frozen by reporting entities, which involve amounts above M500,000 and top 5 crimes identified in the report. STRs which involve PEPs (and related associates) and which involve previously reported subjects are assigned medium and low priority respectively.

150. The FIU employs an all STR approach where all STRs are screened for analysis and processed according to their ranking in terms of risk. The prioritisation process considers variables such as the high-risk crimes noted in the NRA, as well as the value involved in the case. The high risk STRs are used to create cases that are allocated to Analysts based on expertise. The Analyst carries out searches on FIU databases to identify known information on the subjects of analysis. The Analysis involves accessing of relevant additional data and financial information from external databases to enrich the quality of the financial intelligence analysis. The FIU employs i2 Analyst Notebook and other Microsoft software tools.

151. The FIU only analyses STRs and uses other reports such as TTRs as sources of additional information to support analysis of STRs. While acknowledging the staff shortages, the AT considers that this is a missed opportunity as the analysis of international wire transfers and cross border currency reports could enrich the quality of analysis provided by the FIU and in some circumstances lead to identifying cases of ML, TF and tax evasion.

152. The FIU does not have a dedicated team to deal with strategic analysis, possibly due to the shortage of staff within the Monitoring and Analysis Department. This may also explain the small number of strategic analysis reports and typology studies. The AT also noted that the FIU Standard Operating Procedures do not detail how strategic analysis projects are initiated and done, and this may also be the cause for the limited numbers of strategic analysis projects.

153. The FIU disseminates spontaneous intelligence reports to the LMPS, DCEO and the RSL. Table 3.7 details the disseminations made by the FIU to the various LEAs during the period from 2017 to 2022.

Table 3.7: Statistics on ML disseminations, per law enforcement agency.

LEAs	2017	2018	2019	2020	2021	2022	Totals
LMPS	5	4	6	2	6	6	29
RSL	37	30	28	5	8	13	121
DCEO	4	3	1	3	1	4	16
Totals	46	37	35	10	15	23	166

154. Although the LEAs testified to the high quality of dissemination by the FIU, the AT noted that FIU disseminations have not led to successful ML/TF and predicate offences investigations and prosecutions except one successful prosecution of tax evasion and recovery of M433,671.71 (US\$24,092.87). the gap could be attributed to lack of expertise in financial investigations of the LEAs. pursuance of ML/TF investigations, prosecutions and convictions.

155. In addition to receiving spontaneous financial intelligence reports, LEAs also request information from the FIU or other competent authorities which takes about five days, for simple cases and longer for more complex cases such as where the FIU requests information from foreign FIUs. The Table below summarises the requests made by LEAs to the FIU.

Table 3.8: Requests Made by LEAs to the FIU

LEAs	2017	2018	2019	2020	2021	2022	Total
DCEO		1	2	2	2	5	12
LMPS	3	4	2	0	2	2	13

NSS	2	3	1	1	0	0	7
RSL	0	0	0	0	0	1	1
Total	5	8	5	3	4	8	33

156. Source: FIU The number of requests made to the FIU, by the respective LEAs demonstrates the limited use of financial intelligence by the investigative authorities. For instance, corruption, fraud and tax crimes were identified as high proceeds generating crimes in Lesotho. However, compared to the number of investigations related to predicate offences, the requests for information recorded during the period under review (see Table 3.8 above) were low. However, all the agencies made only 33 requests to the FIU over the same period. LEAs might have missed an opportunity to detect proceeds of crime and other financial transactions associated with the predicate offences based on information available in the FIU database. The competent authorities indicated that apart from the FIU sources, the LEAs have access to a wide range of financial intelligence from other government agencies throughout the lifecycle of an investigation. However, no empirical evidence was available to the assessment team to confirm this assertion. They also use powers to obtain information from reporting persons either directly (see R.31 for details) or through the FIU. However, in the absence of statistics, the AT could not verify the extent to which the authorities are using the other sources of intelligence to pursue ML and trace proceeds of crime.

157. Despite the limited use of financial intelligence reports from the FIU and requests for information from LEAs, Lesotho has registered successful use of financial intelligence in a joint investigation involving the FIU and various LEAs. The intelligence that was provided by the FIU showed a nexus with the alleged offences as described in the case below.

Text Box 6.1: Intelligence Information disseminated to LEAs resulted in ML Investigation

In 2016, the FIU received an STR involving about R20 000.00. The analysis was commenced, and the funds were linked to one of the former Ministers. The FIU requested some information from the DCEO which confirmed to be investigating the case akin to the STR that was being analyzed by the FIU. The Financial Intelligence Report was therefore shared with the DCEO as an additional information to what they were already working on. As the funds in question originated from South Africa, the FIU requested some information from FIC SA on behalf of the DCEO. The FIC SA was even authorized to share findings revealed when handling the request with the LEAs in SA. The response received from FIC made it possible for the DCEO to draft MLA and request evidence to be used in court. Ultimately, the DCEO was able to take perpetrators to court. Further, SA initiated investigations on foreign bribery based on that request. SA authorities have drafted MLA to request evidence on that case and to that end, the FIU have constant meetings with DCEO to assist South Africa with the required information.

Cooperation and exchange of information/financial intelligence

158. The FIU and other competent authorities co-operate and exchange information and financial intelligence to a limited extent. The cooperation between the FIU and the LEAs is largely through ‘spontaneous disclosures’ and ‘upon request’. During the period from 2017 to 2022, the FIU received and responded to thirty-three (33) requests for intelligence from the three LEAs. Generally, the FIU and LEAs coordinate and cooperate on exchange of information and financial intelligence facilitated through the existing joint MOU between the FIU, LMPS, DCEO and the RSL. The MOU provides for exchange of information in support of criminal investigations, including ML and TF as well as joint investigations. During the period from 2017 to 2022, the FIU and LEAs carried out 8 joint investigations. The case, detailed below, is an example of fruitful joint cooperation between the FIU, LMPS, RSL and DCEO which resulted in the recovery of funds that had been stolen from the Government of Lesotho.

159. Security of information exchanged by the FIU and some of the reporting entities who submit reports through encrypted email is relatively secure whilst the security of information exchanged with LEAs such as the DCEO and the LMPS is limited by the fact that it is done manually. This conclusion is based on an analysis of the extent of the cooperation between the FIU and competent authorities as well as discussion and analysis of information delivery channels.

Overall conclusions on IO.6

160. Competent authorities use financial intelligence from the FIU and other sources to develop evidence of predicate offence and trace criminal proceeds to some extent. However, the use of financial intelligence to identify ML and TF offence has been limited. The FIU plays a pivotal role in the AML/CFT regime through provision of financial intelligence and other information to support the operational needs of LEAs. However, the LEAs have not always made effective use of the information to initiate investigations or support ongoing investigations. Majority of the STRs are filed by banks. The other FIs are barely submitting STRs and other reports, whilst the DNFBP sector is yet to commence reporting suspicious transactions. Hence, the contents of financial intelligence reports may have been negatively impacted by unavailability of potential financial information from these sectors. In addition, the FIU does not have adequate human and financial resources and this has also affected its operational and strategic analysis functions. Based on the risk and context of Lesotho, this Immediate Outcome is considered to have been achieved to a limited extent.

161. Therefore, Lesotho is rated as having a low level of effectiveness for IO.6.

Immediate Outcome 7 (ML investigation and prosecution)

Background and Context

162. The MLPCA designates the DCEO, LMPS, RSL as competent authorities to investigate money laundering and predicate offences for ML. The LMPS, in addition to the above designation, based on the general investigative powers it has under the Police Act to investigate any criminal offence in Lesotho, is empowered to investigate ML. The DCEO is responsible mainly for investigating corruption offences under the PCEOA, however, its mandate has been extended to investigating ML under the MLPCA. Similarly, the RSL in addition to being empowered to investigate all tax crimes, it also has a responsibility to investigate ML under the MLPCA. The Office of the DPP is responsible for all criminal prosecutions in Lesotho, including on ML. The DCEO requires consent from the DPP to prosecute corruption and ML cases on a case-by-case basis. The RSL has been granted a one-off consent by the DPP to prosecute any ML cases arising from tax crimes. The MLPCA has some limitations as well. S. 25 (5) of the MLPCA makes conviction a pre-requisite for the imposition of civil and administrative sanctions, thus limiting the extent to which other criminal justice measures may be used. Further, Crimes such as Illicit Trafficking in Narcotic Drugs & Psychotropic Substances, Corruption, Bribery, Fraud, Forgery and tax crimes do not meet the threshold for minimum penalty and therefore are not considered to be predicate offences for ML. Despite the DCEO, LMPS and RSL being empowered to investigate ML since December 2016, the number of investigated and prosecuted ML cases has remained low mainly due to limited resources and capacity to effectively identify, investigate and prosecute ML cases.

167. Some of the ML cases identified by LMPS have a foreign element as shown in the table below. However, there was no a breakdown of statistics in terms of knowing from which sources the cases were obtained though the authorities indicated that most of these cases emanated from the FIU and walk in complaints.

Table 3.9: ML CASES THAT HAVE FOREIGN ELEMENT

2017	2018	2019	2020	2021	2022	Total
3	3	7	3	15	1	32

168. None of the investigations though from the above tables have been concluded. There are also more completed and initiated cases on predicate offenses compared to ML which may show that the extent to which the authorities were conducting parallel financial investigations were very minimal. No statistics was provided to show to what extent is parallel financial investigations conducted. It was further difficult to determine this since there were no completed cases. The reasons provided by the authorities for the failure to conclude the ML cases range from lack of technical capacity and training, courts delays, lack of financial and human resources including not having in house financial forensic experts. Though the CCCU provided a case on the use interception as special technique to investigate ML, it did not demonstrate the point on interception. No information was provided on the use of the other technics.

DCEO

169. In addition to the offences outlined in the PCEO that it can investigate aligned to corruption, the DCEO, is also mandated to investigate ML and other offences set out in the MLPCA as amended in 2016. Included in these powers is the power to identify and investigate ML and the use of appropriate financial investigative techniques. Although the authorities stated that each investigation involve parallel financial investigation, there were no statistics provided to support the assertion. Historically, DCEO used to be the Anti Money Laundering Authority. The MLPCA was amended in 2016 and renamed the Anti-Money Laundering Authority to mean a designated competent authority in terms of the MLPCA (as amended). As such it still exercises more or less the same powers that were available to the Anti-Money Laundering Authority.

170. The DCEO is headed by the Director General and is assisted by two deputy DGs. There are three Directorates responsible for Investigations, Administration and Prosecutions; Chief Investigations Officers (Public education and Intelligence) and asset recovery. The DCEO has a staff compliment of 70 staff members including 20 investigators all based in Maseru as it has one office only across the country. ML investigations is done under the Investigations Department of the DCEO.

171. DCEO investigators have received training in financial investigation, assets recovery, extradition and mutual legal assistance, forensic accounting, mineral & wild-life and endangered species in Africa, open-source intelligence, block chain technology, cybercrime, TF and anti-corruption. However, given the ideal number of 30 investigators as per the establishment compared to the current 20(12 Principal and 2 Chief investigators), the institution is understaffed and as such, falls short of effectively pursuing ML investigations, added to this is DCEO's primary mandate to investigate corruption and other predicate offences.

Table 3.10: - ML cases predicated on the offence of corruption and fraud investigated and prosecuted from the FIU and other sources

YEAR	PREDICATE OFFENCE	MONEY LAUNDERING	SELF LAUNDERING	3RD PARTY
2017	Corruption	10	5	
	Fraud	5	2	
2018	Corruption	11	6	
	Fraud	8	4	
2019	Corruption	9	16	
	Fraud	7	9	
2020	Corruption	11	8	
	Fraud	9	7	
2021	Corruption	15	14	
	Fraud	8	9	
2022	Corruption	5	4	
	Fraud	7	7	

172. Though the DCEO indicated that they identified potential ML cases from different sources including disseminations from the FIU, ongoing predicate criminal investigations, informers, referrals from other LEAs, media, whistle-blowers, foreign requests for assistance, among others. However, there was no evidence to substantiate this save from the FIU.

173. Once a complaint has been lodged, there is a Panel of Heads of Division that discusses the case and make a decision whether to proceed to investigate or not. The FIU disseminations are also handled in the same manner. Prioritisation is given to those cases which will require parallel financial investigations. Once the Panel makes a decision, then investigations are commenced. DCEO has no written Standard Operating Procedures to guide its officers on how to handle simple and complex ML cases. Most of the cases where ML was identified and an investigation ensued arose from FIU disseminations and walk-in complains. However, of the cases where ML was identified and investigated, DCEO did not have statistics showing which of the cases emanated from disseminations from the FIU and those from other sources (see CI 7.2 below for description of the cases).

174. As shown on the table below, the DCEO instituted 105 ML investigations between 2017 and June 2022. Most of these arose from FIU disseminations and Walk-ins. Of these 101 investigations were suspected self- laundering and only 3 cases were third party laundering. There was no stand-alone investigation during the assessment period. There was no statistics however, showing how many of these cases arose from FIU and how many emanated from other sources.

Table 3.11: - ML Cases Investigated				
YE A R	PREDICATE OFFENCE	MONEY LAUNDERING	SELF LAUNDERIN G	3RD PARTY
2017	Corruption	10	5	
	Fraud	5	2	
2018	Corruption	11	6	
	Fraud	8	4	
2019	Corruption	9	16	
	Fraud	7	9	
	Corruption	11	8	

2020	Fraud	9	7	
2021	Corruption	15	14	1
	Fraud	8	9	1
2022	Corruption	5	4	1
	Fraud	7	7	

175. Most of the cases were still pending investigation. Since the cases were pending it was difficult to determine fully the extent to which the authorities were conducting parallel financial investigations and how much such investigations were aiding in the identification of ML cases. The authorities could not demonstrate that they were using special investigative techniques in identifying and investigating ML cases. This is largely attributable to the lack of human, technical expertise and financial resources.

RSL

176. The RSL is responsible for the assessment, collection and remittance of revenue to the Government.

177. The RSL investigates tax evasion and fiscal offences. It is also empowered to investigate ML emanating from tax and custom related offenses. The RSL is headed by the Commissioner General with three Divisions. The Divisions are headed by Commissioners. Among the divisions, the Investigations and Anti-Smuggling Division is responsible for tax offences investigations including ML.

178. ML cases are identified from the tax cases investigated or referred to RSL from other agencies, informants and FIU disseminations. ML is investigated if there is evidence in the course of investigation of a tax crime suggesting that the offence of ML has been committed.

179. After completion of tax crimes investigation, the RSL prioritises tax collection rather than the criminal prosecution. They proceed to raise a tax assessment together with penalties. Once the assessed taxes and fines are imposed and collected, the case is closed. Most of the disseminations received from FIU have been disposed of in this manner. The RSL does limited parallel financial investigations for purpose of ML although no statistics was provided. In pursuing tax crimes only for purposes for tax collection and administrative fines in the majority of cases, RSL is not exhaustively identifying and investigating ML arising there from coupled by the next to none parallel financial investigations being done. The Investigations and Counter-Smuggling Department identifies and investigates tax crimes.

180. The RSL during the period under review identified and investigated 108 ML cases, with four (4) of the investigations emanating from financial intelligence reports received from the FIU. As will be described under CI 7.2, none of these cases has been concluded.

181. The RSL received the largest number of financial intelligence reports totalling about 121, during the period under review (see IO 6) and yet the number of identified cases of ML (4) serves to show that more effort needs to be made by the RSL in identifying ML cases. The limited number of ML cases identified out of financial intelligence reports disseminated by the FIU confirms the observation that RSL when investigating tax crimes, it does so with the aim of revenue collection.

182. To enable joint investigations to be carried out, the DCEO, FIU, LMPS and RSL entered into a multi-agency MOU on Cooperation. The objective of the MOU is to set up a framework for the LEAs to facilitate coordination, cooperation and mutual assistance in investigations, preventive programmes and exchange of information. In situations where a potential ML was identified, the MoU enabled the LMPS to seek assistance from its counterparts like the DCEO. One case in point, where there was a joint investigation involving the DCEO, LMPS, FIU and RSL was a Ministry of Finance involving M50 million (\$2, 942, 907.59). The joint investigation led to the identification and recovery of assets amounting to approximately M42,044,057.81 (\$2, 474, 635.54) (see IO 8). However, at the time of the on-site, investigations in this case were still on-going. The tables below show a number of cases that joint investigations were carried out by the various LEAs.

Table 3.12: JOINT INVESTIGATION WITH DCEO

2017	2018	2019	2020	2021	2022
2	1	1	NIL	1	NIL

Table 3.13: JOINT INVESTIGATION WITH RSL

2017	2018	2019	2020	2021	2022
NIL	NIL	1	NIL	1	2

Table 3.14: JOINT INVESTIGATION WITH DCEO, LMPS & RSL

2017	2018	2019	2020	2021	2022
2	1	NIL	NIL	1	1

183. Of the ML cases identified jointly, some involve natural and legal persons as shown on the tables below;

Table 3.15 ML CASES INVOLVING LEGAL PERSONS

2017	2018	2019	2020	2021	2022
2	2	3	1	16	1

Table 3.16: ML CASES INVOLVING NATURAL PERSONS

2017	2018	2019	2020	2021	2022
3	4	6	3	8	1

184. All the LEAs with investigative powers have not adopted a prosecution-guided investigation approach to ML and predicate offences. In this regard, there is no prosecutor assigned to the investigators to provide guidance in evidence-gathering throughout the life-span of a case. However, the authorities stated that they do seek legal advice and direction from the DPP and in-house attorneys during investigations when needed. The AT are of the view that a more prosecution-guided investigation approach would have the potential to enhance cooperation among the investigative authorities and the prosecution office, and would contribute to efficient use of scarce resources and enhancement of the quality of the evidence obtained.

DPP'S OFFICE

185. The DPP's office has 33 Crown Counsel that serve the whole country on any prosecution. Although the office of DPP has specialised units to prosecute commercial crimes including money laundering and TF related cases, there is no specialization by prosecutors to handle ML or TF related cases. There are three Units including Commercial Crimes Unit where ML matters are handled. At the time of the onsite, the Unit had 4 Crown Counsel. There is no specialisation within the Unit as they handle any other commercial crimes. The DPP's office is understaffed and underfunded. A few officers have received limited training on money laundering and had not meaningfully assisted LMPS, DCEO and RSL investigators in identifying ML cases from files of high proceed generating offences investigated and brought for prosecution.

186. The authorities did not demonstrate that there is specific guidance (e.g. Standard Operating Procedures, manuals) provided in the identification and investigation of ML where major proceed generating offences are reported and investigated. There was no information provided indicating identification and investigation of ML is prioritised in such cases.

Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

187. ***Lesotho has not demonstrated that ML investigations and prosecutions pursued are in line with its ML risk profile.*** The High value proceeds generating crimes in Lesotho which include corruption and bribery, tax evasion, fraud, pyramid schemes pose a high money laundering threat. Other offences that contribute to ML are stock theft, car theft, drug offences, illegal mining including diamond smuggling and human trafficking. The country developed an AML/CFT strategy (See IO. 1) which is meant to provide policy direction in addressing the ML threats and risks identified in the NRA. However, the AML/CFT strategy and the Action Plan for 2022 to 2027 do not focus on giving policy direction for various investigative and prosecutorial agencies on combatting ML emanating from the high value proceeds generating crimes. The LMPS, DCEO and RSL have not institutionalised the national Strategy and Action Plan to assist them in their ML investigations and prosecutions. As indicated before, very few ML investigations have been finalised since 2017 and only the DCEO had concluded 2 ML prosecutions

188. Since the DCEO started ML investigations and prosecution, it has successfully completed two ML cases in 2020 and 2022 (See below CI7.4 Case Box 2 and 3), one involving private citizens and the other involving a public official where a conviction was obtained by a plea bargain. The DCEO is understaffed with only 3 investigators and 2 prosecutors working on ML investigations and prosecution. The DCEO is also underfunded. All these factors put together have limited the DCEO's capacity to adequately prioritise investigation and prosecution of ML cases according to the country's ML threats and risk profile.

Text Box 6.2: Case 2- Coordination among Competent authorities

In 2021, there was a case involving payments that were made to various business entities in Lesotho and South Africa which did not provide any services to the Government of Lesotho but made a misrepresentation as if they had provided services by using legitimate voucher numbers which belonged to other legitimate claims with the assistance of government officials in the Treasury Department within the Ministry of Finance. The LMPS, RSL, DCEO and the FIU were all involved in the investigation and intelligence gathering regarding this case. The analysis and the investigations revealed that more than M57 million belonging to the Lesotho Government was stolen destined to Bank accounts held in South African. To get the information from accounts in South Africa, LFIU made request for information from the Financial Intelligence Centre SA. Based on the MOU entered by and between the two Institutions, the requested information was received. The information received from FIC made it possible for the LEAs team to track the stolen funds destination. The team started freezing accounts in Lesotho and seizing some assets linked to the funds. Some other requests were made to FIC in South Africa to freeze the accounts. Ultimately about M18million was repatriated to the Government of Lesotho from RSA while there are cases pending in Courts of Lesotho and few others in South Africa.

Text Box 6.2: Case 2- Coordination among Competent authorities

In 2021, there was a case involving payments that were made to various business entities in Lesotho and South Africa which did not provide any services to the Government of Lesotho but made a misrepresentation as if they had provided services by using legitimate voucher numbers which belonged to other legitimate claims with the assistance of government officials in the Treasury Department within the Ministry of Finance. The LMPS, RSL, DCEO and the FIU were all involved in the investigation and intelligence gathering regarding this case. The analysis and the investigations revealed that more than M57 million belonging to the Lesotho Government was stolen destined to Bank accounts held in South African. To get the information from accounts in South Africa, LFIU made request for information from the Financial Intelligence Centre SA. Based on the MOU entered by and between the two Institutions, the requested information was received. The information received from FIC made it possible for the LEAs team to track the stolen funds destination. The team started freezing accounts in Lesotho and seizing some assets linked to the funds. Some other requests were made to FIC in South Africa to freeze the accounts. Ultimately about M18million was repatriated to the Government of Lesotho from RSA while there are cases pending in Courts of Lesotho and few others in South Africa.

189. The investigation of ML cases by the LMPS is also not consistent with the country's risk profile. At the time of the on-site visit the LMPS had not concluded any ML investigation covering the period under review. The focus of LMPS investigations is on predicate offences. For example, the 2022 to 2023 Annual Policing Plan has 4 objectives, namely: (1) to reduce incidents of stock theft by 35% from 2324 to 1511 by March 2023; (2) to reduce incident of murder by 9% from 923 to 840 by March 2023; (3) to intensify Crime Prevention Strategies throughout the country by March 2023; and (4) to eradicate incidents of Police brutality by March 2023. The plan is not in any way linked to the identified risks, neither could LMPS demonstrate this link. Therefore, the LMPS's investigative objectives and activities could not be determined to be consistent with prioritizing the investigation of ML arising from the identified high proceed generating predicate offences.

190. Most of the cases presented by the RSL were related to tax crimes, which was also identified as one of the major proceeds generating crime. As indicated under CI 7.1, during the period under review, the RSL conducted 108 ML investigations. These were mainly cases where during the course of investigating other crimes, elements of ML would be identified and an investigation of the ML offence proceeded with. However, none of the ML investigations had been concluded by the time of the on-site. Hence no prosecution of a ML case emanating from RSL had been done during the period under review.

191. The DPP's office has also not conducted nor concluded any ML prosecution. The DPP's Office indicated that during the period under review, it had 5 cases approved for prosecution and one case was referred back for further investigations. The five cases approved for prosecution had been referred to the DCEO for prosecution and such prosecutions were on-going at the time of the on-site visit. In the DPP's Office, there is no policy or prioritisation of ML prosecution considering the ML threats and the risk profile of Lesotho. The AT noted that the office of the DPP's understanding of ML threats and risk profile was limited, hence consideration and prosecution of ML cases were not informed by identified ML threats. Furthermore, Prosecutors were not fully involved in the initial stages of ML investigations as it has already been discussed above that Lesotho does not conduct a prosecution guided investigation.

192. As highlighted above and through analysis of statistics provided by the LEAs, it was noted that ML investigations and prosecution pursued were not consistent with the threats and risks identified by the NRA. Consequently, the Authorities could not demonstrate that they prioritize ML investigations and prosecutions according to the country's risk profile.

Types of ML Cases

193. Lesotho has to a limited extent prosecuted the different types of ML cases.

194. The DCEO has demonstrated to some extent that they can identify the different types of ML cases but focused mainly on investigating predicate offences, self-laundering and to a small extent, third party laundering. All the investigative authorities do not keep statistics on the type of ML being investigated. As shown on Tables 3.17 and 3.18, it was difficult for the AT to determine how many of the cases exactly were relating to self and third-party laundering and the numbers are not aligned.

195. Between 2017 and June 2022, the DCEO instituted 105 ML investigations. Of these 101 investigations were of suspected self- laundering cases and only 4 cases were third party laundering. There was no cases of stand-alone ML investigated during the period under review. Of the ML cases investigated, only two have been completed and it is not clear how many are cases are still pending in court and also not clear on those cases that have been closed due to lack of evidence.

Table 3.17 ML CASES INVOLVING LEGAL PERSONS

YEAR	PREDICATE OFFENCE	MONEY LAUNDERING	SELF LAUNDERING	3RD PARTY
2017	Corruption	10	5	
	Fraud	5	2	
2018	Corruption	11	6	
	Fraud	8	4	
2019	Corruption	9	16	
	Fraud	7	9	
2020	Corruption	11	8	
	Fraud	9	7	
2021	Corruption	15	14	
	Fraud	8	9	
2022	Corruption	5	4	
	Fraud	7	7	

196. The LMPS has not been able to conclude any ML investigation during the review period. Of the 50 ML cases identified by the LMPS (see CI 7.1), none of them were categorised according to the type of ML during the investigation. Further, 26 of the cases were indicated to have a foreign element but the LMPS could not provide the specific details of those elements. Also given the geographical proximity of Lesotho to South Africa (Surrounded by South Africa) with a lot of perennial movement of labour from Lesotho into South Africa, it would be expected that the impact of foreign predicate offences would have been high, and the 26 cases indicated by the authorities would still be on the low side.

197. The RSL indicated that had been investigating 108 of ML cases at the time of the on-site. Similarly like with the LMPS, none of these cases had been categorised into the different types of ML investigated, neither had any of the investigations been completed. As already indicated above, the RSL seem to focus less on ML investigations but tax crimes for purposes of revenue collection. The ML identified arising from the proceeds generated out of the tax crimes, based on the fact that none of the investigations have been completed for the period under review, seem to be understood to a limited extent hence no types of ML offences have been categorised.

198. The DPP's office has also not conducted nor concluded any ML prosecution. The DPP's Office could not demonstrate that it was able to identify the different types of ML from the cases brought to it by the LEAs. It could not demonstrate that of the high proceed generating cases referred to it during the period under review, it had returned some of the cases to LEAs for further investigations after having identified elements of specific types of ML in the cases. The mere fact that the DPP's Office had not prosecuted not even one case of ML does not demonstrate an office with the capacity to identify and prosecute the different types of ML.

199. The authorities attributed the low levels of achievement to capacity in terms of training of personnel and at times unable to get international mutual assistance to pursue some of the cases as highlighted under IO 2 of this Report. The same challenge of lack of capacity was also highlighted in the NRA and the onsite interviews. The table below shows types of ML cases submitted to the DPP with most of them closed.

Table 3.18 CASES SUBMITTED TO DPP BY DCEO

YE AR	NUMBER OF CASES	ML	ML TYPE	CORRUPT ION	FRA UD
2017	3	NO ML	NO ML	1	2
2018	2	NO ML	NO ML	2	
2019	14	2	SELF LAUDERING	6	8
2020	11	2	SELF LAUDERING	10	1
2021	13	3	SELF LAUDERING	8	5
2022	2	2	SELF LAUDERING, 3RD PARTY	2	

Effectiveness, proportionality and dissuasiveness of sanctions

200. **Lesotho has not proved that the sanctions applied against natural or legal persons convicted of ML offences are effective, proportionate and dissuasive.** A person convicted of an offence of ML shall, on conviction be liable to imprisonment for a period not exceeding 25 years or a fine not exceeding M25 000 000. 00 or both, and in a case of a legal person a fine not exceeding M100 000 000.00. Lesotho has only concluded the prosecution of two cases of ML. However, only one case (*The Mofereferere case*) was successfully investigated, prosecuted, and accused convicted. He was sentenced to serve 10 years imprisonment for fraud (of which five (5) years were suspended on condition that the accused is not, during this period, convicted of any offence involving dishonesty for which he is sentenced) and to serve 10 years on all 8 counts of money laundering. The sentences were to run concurrently.

201. In the second case, the authorities decided to negotiate a plea agreement, which led to the confiscation of several assets. Based on these two cases, the AT could not determine that the ML sanctions imposed were effective, proportionate, and dissuasive. It was also difficult to determine the effectiveness of sanctions within the reporting period since most of the cases were pending and delayed.

Case Box 2- Fraud and Money Laundering case**REX vs MOFEREFERE TEBELLO SENATLA LEJONE**

The accused was charged and convicted of 1 count of fraud and 8 counts of money laundering. He is said to have defrauded his employer, a funeral company where he worked to the tune of M2 328 000, 00.

The method by which this amount of money was defrauded from the complainant company was that the accused presented deposit slips reflecting the actual amount that he intended to bank on each transaction. After the bank teller has issued the confirmation of cash deposit, the accused would alter the client's cash deposit slip by inserting the figures such as would be consistent with the amount he would have signed for at the company office. The accused laundered the money by setting up local businesses and acquiring vehicular assets. Those motor vehicles were however, seized and the accused was forced to surrender these ill-gotten proceeds of his criminal conduct.

He was sentenced to serve 10 years imprisonment for fraud (of which five (5) years were suspended on condition that the accused is not, during this period, convicted of any offence involving dishonesty for which he is sentenced to imprisonment without the option of a fine) and 10 years imprisonment for ML. The sentence in count one was ordered to run concurrently with that in the remaining 8 counts.

Case Box 3- Case of money laundering and fraudulent accounting

REX VS. TEFO MAJORA

The accused worked with the National University of Lesotho at the Institute of Extra Mural Studies in the account's office. His duties were to check and ensure that students have paid for the services and block those who had not paid for the services. Using passwords assigned to him he unblocked students who had been blocked for non-payment of fees and received the cash from the students. As a result, the University lost M363,558.00

He was charged under section 13 of the PCEOA, 1999; S. 33 (1)(a) of PCEOA,1999 and S. 25 of the MLRCA, 2016. He entered into a plea agreement where in consideration for pleading guilty due to the overwhelming evidence and restitution of the lost money, he was sentenced to serve 10 years or a fine of M10,000 of which $\frac{3}{4}$ was suspended for 5 years, for the three counts which sentences

Alternate Measures

202. Other than a few cases where the authorities have opted to use civil forfeiture procedure (see IO.8 below), Lesotho has not demonstrated that it has properly and successfully applied other criminal justice measures in cases where a ML investigation has been pursued but where it was not possible, for justifiable reasons, to secure a ML conviction. There is no record or data on the use of other alternative measures.

Overall Conclusion on IO.7

203. Lesotho has some legal and institutional frameworks to pursue ML and its associated predicate offences. However, ML activities and in particular major proceeds –generating offences have not been adequately prioritised, identified, investigated and prosecuted consistent with Lesotho's risk profile. There is a greater emphasis in most, if not all the ML convictions linked to the prosecution of the predicate offense and frequently involve self-laundering and somehow third-party laundering. The authorities have not addressed stand-alone ML. There is low capacity to identify and investigate and prosecute ML activities focusing on serious proceed generating crimes such as corruption and illegal mining and money laundering enablers. Further, Lesotho has only successfully prosecuted 2 ML cases (with one being a plea bargain) which shows very limited prioritisation of investigations and prosecution of ML cases. It was not possible to determine if the sanctions imposed were effective, proportionate, and dissuasive. Authorities have not been able to employ alternative criminal justice measures in ML cases when it is not possible to secure a ML conviction.

204. Lesotho is rated as having a low level of effectiveness for IO.7.

Immediate Outcome 8 (Confiscation)

Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective

205. ***Lesotho pursues confiscation as a policy objective to a negligible extent.*** It has some mechanisms and frameworks to enable the competent authorities to take provisional and confiscation measures (see Rec 4). The competent authorities involved in the asset recovery process include the DCEO, RSL, LMPS and FIU. The DCEO, as the key asset recovery body,

has a dedicated Asset Recovery Unit (ARU) established in 2018. The DCEO has a staff complement of 70 and 5 officials are allocated to the Asset Recovery Unit, comprised of a Chief Asset Recovery Litigation Officer, Principal Asset Recovery Officer and Principal Asset Recovery Manager and two prosecutors. The ARU investigators and prosecutors attended training on effective asset recovery and conviction and non-conviction-based asset forfeiture organized by UNODC. However, the staff compliment of ARU is very low to comprehensively discharge its mandate.

206. Identification of criminal assets and seizures is primarily done by the LMPS, with the DPP, DCEO and RSL vested with similar powers. Once the LMPS identifies and seizes criminal assets, it will refer the matter to the DCEO (ARU) to apply for preservation and confiscation orders. Below is a table reflecting the negligible use of provisional measures:

Table 3.18: Preservation and Forfeiture orders: 2017-2021

2017-2021						
Period	No. of cases where assets were identified and traced		No. of realized preservation orders	Value of realized preservation orders	No. of forfeiture orders	Value of forfeiture orders
	Domestic	Foreign				
2017	1 (Fraud)				1	None
2018	2 (Fraud)		1	M2 000 000	1	M60 000
2019	1 (Fraud)		1	M5 000 000		
2020	2 (Corruption)		0 (Dismissed)	M15 000 000	1 (Pending)	R28 000.00
2021	1 (Fraud)		1	M50 000 000		
2022	1 (Fraud and Corruption)	1 (Fraud and Corruption)			2	M7 389 093 M18 610 000

207. The DCEO also entered into an MoU with RSL, LMPS and the FIU in 2021 with a view to maximize their cooperation on asset recovery matters. Lesotho had further adopted the National Assets Recovery and Management Policy Framework in August 2022. The signed MoU has enabled the authorities to secure preservation orders against individuals and companies linked to fraud and corruption offences involving M50 million (USD 2,9M) stolen from the Ministry of Finance. This culminated in the granting of forfeiture orders in 2022, which included movable properties sold at an auction realizing the aggregate value highlighted in the table below:

Table 3.19: Preservation and Forfeiture orders: (M50M case)

South Africa Recoveries		Lesotho Recoveries	
Provisional Orders	Amounts (M)	Provisional Orders	Amounts (M)
1 st Forfeiture order	18 610 000.00	Property seized	1 400 000.00
2 nd Forfeiture order	7 000 000.00	Cash	1 374 700.00
3 rd Preservation order (Pending)	1 500 000.00		
Total	39 269 357.81	Total	2 774 700.00

208. However, the authorities are not effectively utilizing this framework, as it is not used on a regular basis. Moreover, due to its recent nature only the DCEO compared to the other Competent Authorities had started institutionalizing the asset recovery policy framework. Although DPP and RSL could further file for seizure and obtain preservation orders within the purview of their mandate, they both could not demonstrate that they were doing it. The DPP and RSL investigators and prosecutors had not taken any training on asset recovery which could have contributed to the failure to regularly obtain seizures or preservation orders.

209. Due to the National Asset Recovery and Management Framework Policy having been recently adopted, it could not be demonstrated whether the other competent authorities such as the RSL and LMPS including the DPP had also been incorporating the policy into their annual plans. Since there were pending cases dating back to 2018 at the time of onsite, it was not possible to determine the full extent to which the authorities are pursuing confiscation as a policy objective.

210. However, the figures of confiscation orders provided for the period under review (Table 3.18) totaling four concluded and one pending at the time of the on-site visit reflect a very weak regime of asset forfeiture and lack of prioritization of asset recovery. Of the high proceed generating crimes discussed in CI 7.2, the Authorities could not explain why only provisional and confiscation measures were only concentrated on the offences of fraud and corruption and not the other high proceed generating offences of bribery, tax evasion and pyramid schemes, and to a lesser extent stock and car theft, drug and human trafficking and illegal mining including diamond smuggling. So, to a large extent asset recovery is not evenly applied to the majority of the crimes generating proceeds that can be laundered. Limitations to identify and ultimately confiscate proceeds could also be due to the lack of effective implementation/use of parallel financial investigations by the Authorities. Although Lesotho had recently come up with policies on asset forfeiture, the policies are still to be effectively applied to achieve the desired results.

Confiscation of proceeds from foreign and domestic predicates, and proceeds located abroad

211. Lesotho pursues confiscation of proceeds from foreign and domestic predicate offences to a limited extent. In the main, Lesotho's statistics on domestic confiscation, repatriation, sharing, and restitution are negligible and not reflective of the country's broad confiscation powers. This is evident by the limited quantitative data covering the period 2017-2022 irrespective of origin or destination. The authorities could not demonstrate that there was a systemic or consistent approach to confiscation flowing from formal and informal requests involving illicit proceeds generated from foreign predicate offences given Lesotho's exposure to illegal mining (commonly known as Zama Zama's) and the laundering of said proceeds in Lesotho.

212. There has not been much effort demonstrated by the authorities in curbing foreign proceeds of crime through the successful repatriation of funds laundered in Lesotho derived from illegal mining conducted in foreign jurisdictions despite being identified as heightened risk. The authorities indicated that they had zero cases that can be linked to foreign predicate offences, hence not supported by statistical data. Therefore, the risk associated with proceeds laundered in South Africa and those brought to be laundered in Lesotho from illegal mining in South Africa, has not been adequately assessed and is not known or understood to enable such proceeds to be sufficiently pursued and confiscated or forfeited.

213. Notwithstanding the shortcomings of effectively dealing with illicit proceeds generated from foreign predicate offences, Lesotho has demonstrated limited success in the restitution of funds (M18 610 000 [\$1, 095, 350.20]) siphoned from the Ministry of Finance. The proceeds were laundered in a foreign jurisdiction (South Africa) generated from domestic predicate offences and the restitution was aided by an informal arrangement under the umbrella of ARINSA. However, South Africa forewent the possibility of claiming its share of the proceeds. Below is the presentation of the case study that led to the successful restitution of funds:

Box 5: NDPP V Lehlohonolo Selate and Others

During investigation of a case involving sums of money in excess of M50 million which was stolen from the Ministry of Finance in 2021, Lesotho requested assistance from South African authorities.

The accused persons made fraudulent claims using companies registered in Lesotho and South Africa. The CBL transferred monies into the shell companies accounts held in Lesotho and siphoned off to the bank accounts of shell companies opened in South Africa. Once the proceeds were in SA, they were transferred to various personal accounts and thereafter some of it used to purchase properties in South Africa.

The joint investigation between the FIU, LMPS and DCEO revealed that the accused persons bought vehicles in Lesotho and SA. Preservation orders were obtained in Lesotho to prevent dissipation of the properties and funds which were electronically transferred back to banks in Lesotho. Consequently, M18 610 000 was successfully repatriated back to the Government of Lesotho. Furthermore, an immovable property worth M6.1 million has been forfeited and the funds will be repatriated once the sale is finalised. While another property worth M2.4 million has been recovered in Lesotho.

214. Overall, it was not demonstrated that there is a systemic or consistent approach in pursuing confiscation of proceeds that have been moved to other jurisdictions and vice versa. Other than the summary case in Box 5, the authorities did not provide any other similar cases where they had successfully pursued proceeds from foreign predicate offences laundered in Lesotho or those from domestic predicate offences laundered across the border in South Africa, it being the only neighbouring country of Lesotho and the Kingdom having a lot of migrant workers working (lawfully and unlawfully) in South Africa.

Confiscation of falsely or undeclared cross-border transaction of currency/BNI

215. Lesotho has a legislative framework to prevent the cross-border movement of currency and bearer negotiable instruments (“BNI”) that are falsely or not declared at the point of entry or exit if they exceed the set threshold of M25 000.00. However, effective implementation of the legal framework could not be demonstrated as there had not been any confiscation arising from false declaration or non-disclosure since 2018 despite this area being identified as posing a risk in the NRA. Moreover, the implemented declaration system does not cover the scope of transportation through cargo or mail. The risks are further heightened by the fact that Lesotho has a cash-based economy which makes movement of value through cash a potential high risk, not to mention the omission of the requirement to declare BNIs above a certain threshold in the declaration of currency notice.

216. The RSL is responsible for the implementation of the declaration regime and work in collaboration with other competent authorities at all ports of entry and exit, including the dissemination of such reports to the FIU. However, the statistical information provided by the authorities regarding the implementation of the declaration regime demonstrated poor coordination in their operations to monitor and prevent illegal movement of currency and BNIs as depicted in the table, below:

Table: 3.20: CURRENCY AND BNI DECLARATION RECEIVED PER PORT OF ENTRY/DEPARTURE

	2017	2018	2019	2020	2021
Port of entry-departure	No of Declaration	No of Declaration	No of Declaration	No of Declaration	No of Declaration
Moshoeshoe 1 International Airport	3	5			
Peka	1				
Van Rooyens Gate	1				
Maputsoe		15			
Total	5	20			
DESTINATION					
Lesotho	2	3			
Botswana		1			
South Africa	2	15			
Canada	0	1			
Dubai	1				
Total	5	20	0	0	0
NATIONALITY OF DECLEARER					
Lesotho	4	17			
South Africa	1	1			

217. From the information provided in IO 6 and IO 7, it appears that none of this declaration intervention precipitated the LEAs to commence investigation into suspicious money laundering. Lesotho’s capacity to identify undeclared cross border currency and BNIs is hampered by lack of capacity and resources. There

are no scanners, x-ray machines, sniffer dogs or any other forms of physical examination to detect undeclared currency and BNIs at all ports of entry and exit. This demonstrates lack of controls as the system as demonstrated in the above Table seemed to have ceased being implemented in 2018. Beyond that no other information of declarations being made was provided by the Authorities.

218. The Authorities did not provide any cases of provisional seizures to investigate possible ML/TF during the period under review. This also extended to cases of any violations which might have led to specific sanctions being applied or confiscations of the undeclared currency taking place. The results generally resemble an ineffective cross-border monitoring regime.

Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities

219. The confiscation in Lesotho to a lesser extent reflects the recovering of proceeds derived from the predicate offences of fraud and corruption. While the other top predicate offences of tax crimes, drug trafficking and stock theft identified in the NRA are not prioritised. This is supported by the findings that the value of confiscated assets is not commensurate with the country's ML/TF risks.

Overall Conclusion on IO.8

220. Lesotho has, to a very limited extent, demonstrated that it pursues the recovery of proceeds of crime as a policy objective through its success in the recovery of funds stolen from the Ministry of Finance, both domestically and in foreign jurisdiction using available informal arrangements. However, such efforts are not being applied to the majority of the proceed generating offences facing Lesotho. Moreover, it has not been demonstrated that it confiscates currency or BNI as an effective, proportionate, and dissuasive sanction mechanism. No measures have been implemented to determine, take provisional steps and eventually forfeit assets/proceeds/funds associated with TF.

221. Overall, there is a low level of effectiveness in both conviction and non-conviction-based confiscation impacted upon by the limited understanding and the non-utilisation of parallel financial investigations at the commencement of criminal investigation which should aid the early identification of tainted assets.

Therefore, Lesotho is rated as having a low level of effectiveness for IO 8.

CHAPTER 3. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 9

- a) Lesotho does not have sufficient capacity among the Police and DPP to identify, investigate and prosecute or disrupt a TF offence.
- b) There is generally lack of adequate understanding of the TF risks which impact on the ability to investigate and pursue TF, especially given the fact that the FIU has not disseminated any TF related STR
- c) The NSS has the necessary capacity required to gather intelligence for the purposes of TF offences and a good understanding of TF risks
- d) The CFT cooperation and coordination between the NSS and FIU and the LEAs is minimal. Lesotho lacks a comprehensive CFT strategy which would include an outline of the role of the various security and law enforcement agencies involved in combating TF.
- e) There has been no TF case investigated and prosecuted in Lesotho. The effectiveness, proportionality and dissuasiveness of the sanctions and any other measures which could be implemented by the authorities to deter TF activities could therefore not be determined.
- f) The authorities have not applied other criminal justice measures to disrupt TF activities where it has not been possible to investigate, prosecute and secure a TF conviction.

Immediate Outcome 10

- a) Lesotho has a legal and institutional framework for the implementation of TFS on TF though not adequate.
- b) Lesotho is not implementing TFS without delay in a systematic manner.
- c) Lesotho has not identified the subset of NPOs that are likely to be at risk for TF and has not started applying a targeted approach on the supervision of and outreach activities to NPOs for CFT purposes.

Immediate Outcome 11

- a) Lesotho does not have proper legal and institutional framework, neither has it come up with any mechanism to implement TFS relating to proliferation without delay.
- b) There is no system in place to develop and ensure that reporting entities comply with obligations relating to implementation of TFS related to PF.
- c) Supervisory authorities have not issued instructions and guidelines and have not established mechanisms to implement the relevant TFS, nor do they monitor the entities under their supervision in this regard.
- d) UNSCRs on combating PF are not being implemented adequately by all national bodies, financial institutions, and DNFBPS, and this is due to the absence of comprehensive necessary procedures, instructions or mechanisms and weak awareness of the TFS system in relation to PF.

Recommended Actions

Immediate Outcome 9

- a) Lesotho should ensure that competent authorities are adequately capacitated and are able to investigate, prosecute or disrupt TF activities or identify, track or seize assets connected with a TF

offence by ensuring proper cooperation, coordination and collaboration in information sharing and ensure that CFT measures were incorporated into the AML/CFT strategy.

- b) Authorities should have sufficient human and financial resources and be adequately trained on TF.
- c) Lesotho should develop and implement a comprehensive counter-terrorism strategy that will also include a CFT component, outlining how TF will be identified and investigated
- d) Lesotho should establish a coordinated multi-agency framework comprising of all relevant entities to address issues of TF and to further promote effective exchange of TF information.
- e) Lesotho should proactively and in a timely manner conduct TF investigations into elements of money laundering established in its NRA, the absence of acts of terrorism notwithstanding.

Immediate Outcome 10

- a) Lesotho should amend its legal and institutional framework with regard TFS in order to comply with the requirements under the Standards.
- b) Lesotho should strengthen institutions and procedures for the implementation of TFS without delay in a systematic manner.
- c) Lesotho should undertake a comprehensive risk assessment of the NPO Sector to ascertain the vulnerability of the sector to TF risk, identify NPOs which might be most vulnerable to TF abuse and take appropriate measures, including outreach programmes, to mitigate their exposure to the TF risk.
- d) Lesotho should enhance understanding and awareness to implement UNSCRs obligations, related to terrorism and TF, to all the relevant competent authorities and reporting entities.
- e) Lesotho should develop and implement a TF strategy.

Immediate Outcome 11

- a) Authorities should develop a legal, regulatory, and institutional framework to monitor, supervise, and effectively implement TFS on PF in line with the requirements of Rec 7.
- b) The authorities should build awareness and provide guidance on targeted financial sanctions related to proliferation to reporting entities to enable competent authorities monitor compliance with implementation of targeted financial sanctions relating to financing of proliferation.
- c) Competent authorities should monitor and ensure that reporting entities are complying with the obligations relating to implementation of targeted financial sanctions related to proliferation.
- d) Lesotho should develop legal framework or mechanism to enable compliance with the implementation of TFS on PF related to VA and VASPs.

223. The relevant Immediate Outcomes considered and assessed in this chapter are IO.9-11. The Recommendations relevant for the assessment of effectiveness under this section are R. 1, 4, 5–8, 30, 31 and 39.

Immediate Outcome 9 (TF investigation and prosecution)

Background and Context

224. Lesotho has a fairly good legal framework to fight terrorism and terrorist financing. There are two primary laws that deal with terrorism and TF; The PSTA and MLPCA (as amended). The FIU and NSS collect intelligence related to TF matters. The LMPS are vested with the mandate to investigate all crimes including terrorism and TF. The DPP is vested with authority to prosecute TF and terrorism matters.

Prosecution/conviction of types of TF activity consistent with the country's risk-profile

225. The DPP has legal powers for prosecution of TF and related matters. The DPP has the discretion to decide whether to proceed with a prosecution or to withdraw it, subject to the provisions of the Constitution (Article 99(2)). Sections 6 and 289 of the Criminal Procedure and Evidence Act set out the

DPP's powers to withdraw charges before the accused has pleaded, and to stop proceedings thereafter. A prosecution can only be stopped with the written consent of the DPP or any other authorised person. The DPP has three Units. However, it was not made clear to the AT which officers under which unit among the three would be responsible for prosecution of TF in case there is need.

226. The NRA classified TF risk as low though the risk might be higher than what is pronounced in the NRA. The AT observed that the competent authorities, other than the NSS, do not understand the TF risks posed by TF activities connected to individuals and terrorist organisations. According to the NSS, there is a potential threat of using the financial sector and NPOs and Children Homes to collect funds from different sources abroad and within and using them to finance terrorist activities outside Lesotho using the financial sector, NPOs and Children Homes as transit points.

227. **Lesotho has not prosecuted any type of TF activity given that the LMPS is unable to investigate TF activities.** The DPP prosecutors have not also attended any training on terrorism or TF. They have no adequate capacity and resources to prosecute TF despite the fact that there was no TF case that was identified for investigation and prosecution. Though the NSS has a good understanding on TF Risk and TF, the information leading to such an understanding was not shared with the LMPS and DPP which might have further contributed to the absence of TF investigation and prosecution in the Kingdom. The situation is further complicated by the Authorities' belief that TF is of low risk in Lesotho due to the absence of any known terrorist activity having occurred before. The AT could not therefore determine the consistency of prosecution and convictions with the country's TF risk-profile or that if TF was to happen it would be successfully prosecuted.

TF identification and investigation

228. The National Security Services (NSS) and the FIU are responsible for gathering intelligence on terrorism and TF and disseminating the information to the relevant authorities including LMPS.

229. The NSS has a wide range of sources for obtaining information including from other intelligence networks. The NSS based on intelligence gathering were able to identify persons entering and exiting Lesotho linked to TF activities locally or in other countries. To identify potential TF threats, the NSS does risk profiling of visitors based on their places of origin and destinations and targeted surveillance, where necessary. Where the NSS sees the possibility of violent extremism it monitors the identified person(s) for any escalating levels of radicalization, which it said was still able to control and that it is able to track their movements. During the onsite, the AT learnt that there were some active cases being identified relating to TF by the NSS. The NSS appeared to have capacity required to gather intelligence for the purposes of combating Terrorism and TF offences and a good knowledge of the risks associated with TF.

230. However, as **indicated above, Lesotho has not investigated any terrorism or TF related cases. Though the NSS has identified potential TF cases, the same information was not shared with the FIU and LMPS.** The LMPS, although with mandate to investigate, has not identified any TF activity. They have no TF Unit and have no dedicated officers with adequate capacity to identify or investigate TF. During the onsite, the LMPS demonstrated a very limited understanding of TF and TF risks. They have no policy direction on TF activities. In some instances, some persons were forced to leave the country as a result of the NSS intelligence operation. However, the same information and others related to TF were not exchanged among the agencies responsible for the identification and investigations of TF. In terms of coordination, the NCC, NTT, and the ATC would be responsible to provide policy direction on TF matters. This would trickle down to NSS, Police, FIU and all stakeholders responsible for TF. However, the AT noted that no information related to TF was exchanged among the agencies responsible for the identification and investigations. It was clear that there is no coordination or cooperation between the agencies.

TF investigation integrated with –and supportive of- national strategies

231. **Lesotho has noted the importance of TF investigation as a part of its broader national CT strategy, but was not able to demonstrate more specifically how CFT measures were incorporated into the AML/CFT strategy.** The NSS does not have any specific/specialized unit to deal with CT and CFT. There is however, a desk dealing with terrorism. As stated, the NSS is the custodian of National Strategy for Preventing and Countering Violent Extremism and Terrorism (NSPCVET), 2022 which was approved on the 24th of May 2022. The Policy focuses on counter terrorism and radicalization. There is no TF component in the Policy.

Effectiveness, proportionality and dissuasiveness of sanctions

232. **Lesotho has not prosecuted and convicted any natural or legal person of terrorism or TF charges.** The authorities also did not provide information on any other measures, which have been taken against persons suspected of being connected to TF. The effectiveness, proportionality and dissuasiveness of the sanctions and any other measures which could be implemented by the authorities to deter TF activities could therefore not be determined.

Alternative measures used where TF conviction is not possible (e.g. disruption)

233. **There are no alternative measures being applied to deal with TF. Lesotho has not deported anyone or taken any action with the aim to disrupt TF or a terror activity.**

234. The NSS uses techniques such as surveillance and data profiling of visitors in a bid to carry out some alternative measures to deal with TF. As indicated above, some persons determined to be members of a terrorist group were forced to leave the country as a result of the NSS' intelligence operation. But no action in a form of deradicalisation for example were taken on the children home (orphanage centres) despite there were some indicators that the centres might have been used for radicalisation.

Overall conclusions on IO.9

235. Lesotho has not demonstrated that it has assessed and understood the country's TF risks. Further, the authorities have not demonstrated that they effectively identify, investigate and prosecute terrorist financiers or address TF through other alternative measures due to the inadequacy of coordination and cooperation among the various agencies dealing with TF. The cooperation and coordination between the NSS and FIU and the LEAs is minimal. Lesotho lacks a comprehensive CFT strategy which would include an outline of the role of the various security and law enforcement agencies involved in combating TF. The various law enforcement agencies do not focus on terrorist acts largely because no acts of terrorism have occurred in Lesotho hence not much emphasis has been placed on the prevention of TF. As a result, TF is not investigated and no prosecutions have occurred which make it difficult to determine the effectiveness, proportionality and dissuasiveness of sanctions on TF.

236. Lesotho is rated as having a low level of effectiveness for IO.9

Immediate Outcome 10 (TF preventive measures and financial sanctions)

Background and Context

237. The Ministry of Finance, as advised by the Anti-Terrorism Committee (ATC) is mandated to implement TFS pursuant to UNSCRs 1267 and 1373. Reg 26 of the ML Regulations

establishes the ATC whose main function is to advise the Minister of Finance on the implementation of the UNSCRs and on proposals for designations at the UN and domestic levels

Implementation of targeted financial sanctions for TF without delay

238. Lesotho has, to a limited extent, a legal and institutional framework for the implementation of targeted financial sanctions pursuant to both UNSCR 1267, its successor resolutions and UNSCR 1373. However, the implementation of TFS pursuant to UNSCRs 1267 and 1373 are not implemented ‘without delay’ in a systematic manner as they are hampered by operational and regulatory challenges.

UNSCR 1267

239. Designation of persons or entities by the UNSC are first received through the Permanent Mission to the United Nations, which then disseminates the List to the Minister responsible for Foreign Affairs for onward transmission to the Minister responsible for Finance (Minister). Upon receipt of the communication, the Minister issues the notice and communicates the notice, together with the List, to all accountable institutions, competent authorities, the FIU and the Supervisory Authorities. The system in place to implement TFS is causing delays in transmission of the Sanctions List to the relevant public and private stakeholders. In one instance, the Ministry of Finance received the Sanctions List in April 2022 and the List was only disseminated to the Banks in July 2022.

240. Although the MLPCR, 2019 requires that the List be disseminated to all accountable institutions, in practise, the Minister only disseminates to sector supervisory authorities and the FIU.

241. It was also noted that the sector supervisory authorities did not disseminate the List to the accountable institutions under their purview, save for the CBL that disseminated the List to the Banks (refer to discussion on Immediate Outcome 3 for purposes of understanding the mandate of the CBL) though the CBL is not receiving the List in a timely manner from the Ministry. The banks interviewed during on-site indicated that they receive the Sanctions List from the CBL, and this was done at long intervals with the last dissemination being received in August 2022. The banks further indicated that they had not received comprehensive guidance from the authorities regarding how to implement the Sanctions List. Two foreign-owned banks, however, indicated that they could access the updated Sanctions List using World-Check or Actimise software which could automatically update the List from the UN System. The findings among the other 2 banks (One foreign owned and one local) and certain non-bank financial institutions such as insurance companies were quite mixed. Some of them had received the UN Sanctions Lists from the CBL or FIU and had some knowledge of their obligations regarding the same, while others indicated that they did not receive the UN Sanctions List from the authorities and were not aware of their TFS obligations. No supervisory activity was done on the implementation of TFS related obligations.

242. Table below illustrates the delays that are prevalent in the dissemination of UNSCR 1267 Sanctions List to Banks in Lesotho:

Table 4.1 Time for the dissemination of UNSC Sanctions List to Banks

Year	Date of Update of UNSCR	Date of dissemination	Days taken for dissemination
2022	15/03/2022	15/07/2022	122 days
2021	April 2021	9/06/2021	Over 64 days

243. As a mitigation measure against the delay in the dissemination of the list, the FIU advised that they had a link on their website which accountable institutions could use to access the Sanctions List. However, there is no legal obligation for accountable institutions to use the FIU link.

244. For most non-bank financial institutions, DNFBPs and other accountable institutions, there is no communications of the Sanctions List to the sector by either the Minister or the sector supervisory authorities, and there is also no supervision for compliance in this regard. The DNFBPs did not understand their obligations in relation to TFS while some institutions from the Securities and Pension Sector had limited understanding of their TFS obligations based on guidance from their group structures.

245. Lesotho has not had any positive match for purposes of implementation of TFS. Further, it has not made any proposals for designation under UNSCR 1267 and successive resolutions.

UNSCR 1373

246. The MLPCR of 2019 provide for the establishment of the ATC which is responsible for recommending to the Minister for designation of persons and entities pursuant to UNSCR 1373. Even though the Regulations clearly provide for the composition of the ATC, it has not yet been operationalised and has not had any meetings to fulfil their functions. As a result, no recommendations for designation pursuant to UNSCR 1373 have been made to the Minister. Lesotho has also not received any request for designation from other jurisdictions. However, the NRA indicated detection of Al Qaida and Al Shabaab growth by the Intelligence Community who could potentially be raising and collecting funds within Lesotho with money being channelled through the NPO or retail sector as indicated in the Lesotho NRA. There is also intelligence information from the NSS indicating that there might be activities of terror by certain music groups in Lesotho that are linked to radicalization of Lesotho nationals. This is information that could have been considered by the ATC for possible Designation of entities and individuals involved pursuant to UNSCR 1373.

Targeted approach, outreach and oversight of at-risk non-profit organisations

247. Lesotho does not apply focused and proportionate measures to NPOs that may be vulnerable to terrorist financing abuse, in line with the risk-based approach. Further, Lesotho has not identified the subset of NPOs which are likely to be abused for TF and has weak oversight and financial controls in place. The banks consider all NPOs as high risk based on the findings of the NRA. Even though the banks understood the risks that could be posed by at-risk NPOs, this understanding was applied homogeneously to all NPOs without any categorisation based on activities, source of funding, etc. One of the reasons for the weak controls is limited capacity of the NPO regulatory authorities in dealing with TF and CFT oversight.

248. Most NPOs are registered and regulated by the Registrar General in the Ministry of Justice & Law under the auspices of the Societies Act, 1966, while some are registered by the Ministry of Trade as Non-Profit companies under the Companies Act. The Registrar is also a supervisor for AML/CFT purposes in accordance with Schedule 3 of the MLPCR which identifies NPOs as Accountable Institutions though its not a requirement in the FATF standards to designate NPOs as reporting entities. The Registrar indicated

that the most commonly registered NPOs are Voluntary organisations, Non-Governmental Organisations, Community Based Associations, Faith Based Associations and Public Benefit Associations.

249. There is limited outreach activity for NPOs and the donors for CFT purposes. The capacity building program on the same subject matter for the staff of the Registrar General is also very limited. The staff received some training on protecting NPOs' in the ESAAMLG region from TF abuse. The oversight powers that supervisory authorities of the NPO sector have on the accountability and transparency of the funds being received by the NPOs are not being adequately used. Further, there has not been any review of the NPO sector to collect information on its activities, size and other relevant features in order to identify the features and types of NPOs that are particularly at risk of being misused for TF or other forms of terrorist support by virtue of their activities or characteristics. They also don't have investigative capacity on NPOs. Since no CFT supervisory activity was carried out by the NPO regulators, no sanction was imposed in case there was any violation.

Deprivation of TF assets and instrumentalities

250. The MLPCA, 2008 provides for mechanisms for the deprivation of TF assets and instrumentalities. While the legal provisions are adequate for both civil based and criminal based deprivation of assets relating to TF, Lesotho has not investigated TF and the FIU has not received any STR on TF. Further, the LMPS have a limited understanding of TF risks and as a result do not have any measures in place to enable them detect TF related activities.

251. The NRA indicates that there is sufficient basis for the investigation of TF related activities as the authorities have identified the channels that are prone to TF abuse, such as the NPO and retail sector. Further, the lack of supervision in terms of implementation of disseminated Sanctions List in the DNFBP sector entails that the competent authorities may not have full information regarding assets held by terrorists, terrorist organisations and terrorist financiers within Lesotho. Further, the absence of a TF Strategy impacts on the authorities' approach to deprivation of assets.

252. In the absence of any freezing and/or confiscation of funds, financial assets or properties or any freezing, seizure or confiscation pursuant to the UNSCRs 1267 and 1373, the regime has not been tested and the AT could not determine the effectiveness of the system.

Consistency of measures with overall TF risk profile

253. The TF risks that Lesotho might be exposed to are higher than the authorities understand them to be. Apart from NSS, the LEAs do not have adequate understanding or appreciation of TF risks to which Lesotho is exposed. Therefore, the AT are of the view that measures being taken are not consistent with TF risk profile of Lesotho. Most competent authorities were of the view that the absence of terror activities entailed that Lesotho did not have TF risks. The inconsistent understanding of the risk appears to be as a direct result of limited coordination between the NSS and other LEAs such as LMPS with regard to TF.

254. Further, the authorities do not have an understanding of the categorization of the NPOs and which ones could be at risk of TF abuse. Therefore, the authorities are not able to apply a focused and proportionate approach to such NPOs in line with the FATF standards. Also, Lesotho had not adequately assessed its TF threats and vulnerability. The porous borders, potential abuse of MVTs and extensive use of cash might increase the TF risk in Lesotho. Due to lack of TF risk understanding by the various agencies, it was difficult to determine the overall consistency of CFT measures in Lesotho.

Overall Conclusion on IO.10

255. Lesotho has not demonstrated that the targeted financial sanctions pursuant to UNSCR 1267, its successor Resolutions and UNSCR 1373 are effected in a systematic and timely manner. In addition, disseminations are in fact only made to the banks. Further, there is no supervision or monitoring of the accountable institutions for implementation of TFS and as such it cannot be established if they have mechanisms to identify and freeze the assets.

256. Further, in spite of the finding in the NRA that the NPO sector could be liable to TF abuse, there has been no risk assessment conducted in the NPO sector to determine which NPOs are vulnerable to such abuse.

257. Lesotho has not demonstrated its ability to deprive terrorists, terrorist financiers and terrorist organizations of TF assets and instrumentalities during the period under review. There is low understanding of TF risks. Moreover, Lesotho does not have a CFT Strategy. Due to this, Lesotho's CFT measures are not effective.

258. Lesotho is rated as having a Low level of effectiveness for IO.10.

Immediate Outcome 11 (PF financial sanctions)***Implementation of targeted financial sanctions related to proliferation financing without delay***

259. **Lesotho is not implementing PF-related TFS. The country does not have the mechanism that would enable it to implement targeted financial sanctions related to proliferation financing without delay.** Lesotho does not have legal and institutional frameworks in place as well as mechanisms to facilitate the implementation of TFS related to PF without delay. Most of the accountable institutions have no framework to allow for the implementation of TFS related to PF. The majority of the accountable institutions interviewed were not aware of PF related sanctions.

Identification of assets and funds held by designated persons/entities and prohibitions

260. Lesotho has not identified funds or other assets of designated person and entities and has not demonstrated that it has prevented said persons from operating in the country. The lack of legal framework or mechanism to implement TFS relating to PF is a major deficiency identified by the AT. The absence of framework to identify assets or funds of designated person demonstrate that Lesotho is vulnerable to PF.

261. Furthermore, there is no administrative or voluntary mechanisms in place for reporting entities to apply measures relating to identified assets and funds held by designated persons or entities and prevent them from operating or executing financial transactions related to PF. The authorities are simply not taking any action regarding identification of assets belonging to designated persons for TFS related to PF. The FIU has published PF Guidelines in November 2022. However, there is no evidence that FIs and DNFBPs are aware of those guidelines. Despite having some international banks with access to worldwide databases for PF sanctions implementation, there is no evidence to suggest that such banks are taking advantage of those worldwide systems and identify such assets.

FIs, DNFBPs' and VASPs understanding of and compliance with obligations

262. **Lesotho FIs, DNFBPs comply with and understand their obligations related to PF TFS to a low extent.** In relation to VASPs, the authorities have not implemented requirements of Recommendation 15 and as such, they have not taken any action to identify VASPs. Therefore, the AT could not determine VASPs understanding of and compliance of their obligations on TFS related to PF. This is due the absence of the legal framework or mechanism to enable compliance with the implementation of TFS relating to PF. Some of large financial institutions, particularly the larger international banking institutions have some knowledge of PF understanding and compliance with the obligations imposed by country of origin (South Africa). As earlier stated, despite such knowledge, there are no obligations for the FIs to comply with and implement.

263. The Smaller financial institutions did not seem to have any awareness of their obligations to implement PF-related sanctions. This confirmed the NRA finding that, most of the DNFBPs were not aware of the obligation to monitor and report based on the sanctions list. In essence the DNFBPs' understanding of proliferation risks and the TFS related to proliferation is quite limited. Such FIs and DNFBPs merely made references to UN-related obligations on sanctions without distinguishing between TF and PF.

264. There was limited awareness and sensitization done to the private sector by the FIU or any other supervisory authority nor was any guidance issued by the authorities to help them understand and to comply with the requirements relating to PF.

265. The FIU and Sector Supervisory Authorities have not conducted any outreach programmes to FI and DNFBPs on TFS related to PF. Therefore, the authorities have not taken actions aimed at increasing the understand of obligations and how to implement the same. This was confirmed by the FIs and DNFBPs during the onsite as they stated that they had not been trained nor sensitized on these matters

Competent authorities ensuring and monitoring compliance

266. There is no evidence that the relevant competent authorities are monitoring and ensuring compliance by financial institutions, DNFBPs and VASPs with their obligations regarding TFS related to PF. Firstly, there is no evidence that the Ministry of Finance has ever circulated UNSCRs sanctions list related to PF. The CBL, for example, has only issued guidance or circulars to their Accountable Institutions in respect of UNSCR 1267. There is no similar action taken for TFS related to PF. The same applies to FIU (Except the published Guidance) and all other DNFBPs supervisors. Since there is an apparent lack of action taken by the authorities regarding the monitoring and assessment of the exposure of Lesotho's to possible financial connections to proliferation related sanctions contravention, the AT determined that competent authorities do not monitor and ensure compliance by FIs, DNFBPs and VASPs with their obligations regarding TFS relating to PF.

Overall Conclusion on IO.11

267. There is no legal or institutional framework in Lesotho to enable implementation of TFS relating to financing of proliferation by reporting entities. The authorities and reporting entities are not implementing their obligations on proliferation financing. For, VASPs, no measures have been taken to identify the VASPs operating within Lesotho and as a result, their compliance to the PF obligations could not be assessed. There is generally very little awareness on TFS relating to financing of proliferation by some of the competent authorities and the reporting entities. Some of the big FIs have some knowledge of PF obligations but are not implementing them due to the lack of legal framework. Accountable institutions are not aware on how the Regulations (though its validity is disputed) on TFS relating to PF have to be implemented.

268. Lesotho is rated as having a low level of effectiveness for IO 11.

PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

- a) There is no legal framework for insurance brokers and agents and VASPs to be supervised for AML/CFT.
- b) The understanding of ML risks is varied among FIs with foreign-owned banks and cross-border MVTs providers having greater understanding of ML risks. While casinos have a good understanding of ML/TF risks, the other DNFBPs demonstrated basic appreciation of ML/TF risks. FIs have shown average understanding of TF risks while DNFBPs have low understanding of the TF risks. There is varied understanding and application of AML/CFT obligations by FIs with the foreign owned banks demonstrating a greater understanding. DNFBPs, except casinos, have limited understanding of their obligations.
- c) CDD and record-keeping requirements are applied to a large extent by the FIs and to a limited extent by the DNFBPs. Customer identification and verification is, among others, affected by inadequate availability of BO information.
- d) Foreign-owned banks and cross-border MVTs providers apply EDD measures to a large extent, with measures for TFS and PEPs applied to some extent.
- e) The banking sector adequately identify and report suspicious transactions. Other FIs file STRs to a negligible extent while DNFBPs do not filing STRs. The low STR filing by the other FIs and lack of STR submission by DNFBPs is largely attributed to inadequate AML/CFT supervision and guidance.

Recommended Actions

- a) Authorities should review the relevant legal framework to cover insurance brokers and agents and VASPs for AML/CFT.
- b) NBFIs and DNFBPs should conduct ML/TF risk assessments to develop ML/TF risk understanding and apply it to risk-based programs. In addition, they should implement tailor-made training of staff on ML/TF risk assessments and AML/CFT obligations.
- c) DNFBPs should apply robust EDD measures including measures for higher risk situations such as PEPs. They should further prioritise TFS.
- d) Accountable Institutions should implement transaction detection systems for identification and filing of STRs and get appropriate guidance on STRs from FIU.
- e) Accountable Institutions should put in place or enhance compliance programs commensurate with their size, business complexity and risk profile and this should include increasing the human resource for the compliance function.

269. The relevant Immediate Outcome considered and assessed in this chapter is IO.4⁷. The Recommendations relevant for the assessment of effectiveness under this section are R.9-23.

⁷ When assessing effectiveness under Immediate Outcome 4, assessors should take into consideration the risk, context and materiality of the country being assessed. Assessors should clearly explain these factors in Chapter One of the mutual evaluation report under the heading of Financial Institutions and DNFBPs, as required by page 131 of the Methodology.

CHAPTER 4. PREVENTIVE MEASURES

Background Information

270. The MLPCA sets out AML/CFT obligations for FIs and DNFBPs. However, it does not cover insurance brokers and agents as accountable institutions. The laws have deficiencies with regard to higher risk countries and new technologies (Refer to analysis of Recs 15, and 19). The deficiencies affect implementation of the requirements by some accountable institutions to some extent. The law requires all FIs and DNFBPs to understand their AML/CFT obligations; identify, assess, and understand risks the respective accountable institutions face when they establish business relationships and conduct transactions; and apply mitigating measures commensurate with the identified risks, among others.

271. The banking sector accounts for more assets and percentage of the GDP than NBFIs. The cross-border MVTS providers, securities firms and large micro-finance institutions have majority foreign ownership. The large asset management firm deals with government pension funds only. The financial sector in Lesotho is dominated heavily by banks and NBFIs that are owned by South African institutions. Lesotho has four commercial banks (i.e., one large foreign-owned bank, two medium foreign-owned banks and one smaller locally owned commercial bank in terms of asset size). The local bank has low customer base. The NBFIs market is small while DNFBPs have a very small share contribution to the GDP of the country. Therefore, Lesotho's economy is driven by the financial sector while the DNFBP sector is very negligible.

272. Based on risk and materiality in the context of Lesotho, the AT weighted the implementation of preventive measures as follows:

(a) Most Heavily Weighted

- The banking sector is a very important sector in Lesotho in terms of asset value and exposure to ML risk.

(b) Heavily Weighted

- MVTS providers are regarded as posing low ML risk according to the NRA. However, among others the assessors took into account publicly available information that proceeds of illegal mining in South Africa are channelled through this sector into Lesotho.
- Lawyers were considered in the NRA as having high ML vulnerability because they were not implementing preventive measures despite engaging in a number of roles such as facilitation of creation of legal persons and arrangements, and receiving funds and making payments on behalf of their clients.
- The NRA indicated a high ML risk for real estate sector due to investment of proceeds of crime in the sector and inadequate implementation of AML/CFT measures. However, the assessors noted no evidence of ML or TF case linked to the sector.

(c) Less Heavily Weighted

- The other FIs (life insurance, microfinance, securities, capital markets and retirement benefit schemes, pension funds and pension funds service providers) carry medium ML risk, according to the NRA. They are involved in low value transactions or manage funds of corporate customers. Other DNFBPs (casinos, accountants and dealers in precious metals and stones) are either less developed or/and involved in low volumes of transactions. In addition, there was no evidence of ML or TF case been linked to any of these sectors.

Understanding of ML/TF risks and AML/CFT obligations

273. The understanding of ML/TF risks and AML/CFT obligations is varied across the FIs and DNFBPs. In general, the foreign banks and cross-border MVTs providers have a greater understanding of ML/ risks and AML/CFT obligations. The understanding has emanated from a number of factors which include conducting of own risk assessments annually, AML/CFT training, foreign or domestic ownership, size of the accountable institution's market share, and outreach and other interventions by the supervisors. Smaller and other FIs have average understanding of ML risks and AML/CFT obligations. The DNFBPs (except casinos) have low understanding of ML risks and AML/CFT obligations. Overall, there is average understanding of TF risks among the FIs while the DNFBPs demonstrated low understanding of TF risks.

Financial Institutions

274. The foreign-owned banks and cross-border MVTs providers have a good understanding of ML risks owing to their conducting of annual risk assessments and on-going training programs. These banks have been enhancing their risk-based approaches such as adoption of Business Risk Assessment Frameworks since 2021.

275. The participation of the private sector in the 2018 NRA process was low. Some FIs indicated that only banks were chosen to participate in the NRA process. Further, awareness on NRA findings for the banks and other FIs was done by way of sending the NRA Report by the CBL and FIU, with some FIs only receiving the Report in 2021 and January 2022. However, one bank out of four banks and some FIs (i.e. insurance, microfinance) had not yet received the NRA Report as at the time of the onsite visit. Therefore, the AT focused on the accountable institution's own understanding of the risks as at the time of the onsite visit.

276. To identify the ML/TF risks, banks mainly rely on their annual institutional risk assessments which are categorised into geographic risks, customer risks, products/services risks, occupation risks and delivery channel risks. They also rely on open-source information (media, etc). Before launching new products, the banks conduct risk assessments and develop controls which are analysed and then approved by the supervisory authorities. The banks identified corruption, fraud and tax evasion as recurring predicate offense posing ML threat to the sector. This is consistent with the NRA findings and crime types reported as STRs to the FIU. The banks identified PEPs, companies, NPOs, real estate and law firms as customers that pose high ML risks. Banks have identified high use of cash as posing difficulties to adequately identify proceeds laundered from illicit activities like illegal mining. The banks' understanding of threats and vulnerabilities specific to TF is underdeveloped with little efforts taken by them to understand the TF risks facing them and apply mitigating controls.

277. There is average understanding of ML/TF risks by NBFIs, except cross-border MVTS providers and large foreign-owned securities firms through conducting annual institutional risk assessments since 2021 covering risks associated with products, customers, delivery channel, geographical and delivery channels such as third party/agents consistent with the obligations by group and CBL.

278. The banking sector has, to a large extent, demonstrated their understanding of AML/CFT obligations. The banks and other foreign-owned FIs leverage their understanding on the AML/CFT compliance systems from their parent companies which include in-house training programs. FIs and DNFBPs, except banks, have demonstrated limited understanding and application of BO concept partly because the BO information is not adequately obtained and kept by the ROC. Most NBFIs (except cross-border MVTS providers) and the DNFBPs consider the information obtained from the ROC in Lesotho as also adequately covering UBO.

Virtual Assets (VAs) and Virtual Assets Service Providers (VASPs)

279. As at the time of the onsite visit, there was no legal and regulatory framework for VASPs and there were no known VASPs operating in Lesotho. VA activities could not be determined in Lesotho.

DNFBPs

280. Only casinos understand their AML/CFT obligations to some extent. Casinos in Lesotho are part of the parent group in South Africa hence apply the South African requirement for CDD requirements. Accountants demonstrated limited understanding of CDD, EDD and reporting obligations although some have majority foreign ownership. The DNFBPs have not conducted ML/TF institutional risk assessments which explains the low level of understanding of ML/TF risks. In addition, lack of supervision of the sector has led to poor implementation of AML/CFT obligations.

Application of risk mitigating measures

Financial Institutions

281. Overall, FIs apply ML/TF mitigation measures to some extent due to uneven understanding of ML/TF risks. The foreign-owned banks and cross-border MVTS providers apply mitigating measures commensurate with their risks to a greater extent. The foreign-owned banks have developed processes and procedures to identify, assess and document risks associated with their products or services, customers, delivery channels and geographical locations relating to their operations and transactions. Further, they have domesticated their group-wide AML/CFT policies and systems and developed institutional risk management frameworks. For instance, they conduct annual risk assessments and monitor implementation of risk mitigation measures and report to their management committees, group structures and the Board.

282. The foreign-owned banks have developed automated customer profiling risk systems to help identify high-risk customers at on-boarding stage or any moment during the course of the business relationship in case of change of status of a customer in terms of transactions or other areas (e.g., status – PEP particularly for those elected or appointed in public positions). This is done through monitoring and analysis of red flags regularly provided by the systems. The banks complement the automated systems with manual risk rating tools for profiling high-risk

customers and their related parties prior to on-boarding the customers. Where an STR has been generated on a customer or where there is negative or adverse news about a customer, the foreign-owned banks immediately review the customer's risk profile and, in some cases, consider adjusting the risk rating and the need for a continued business relationship is re-assessed. The same measures are applied to a customer who deals with high-risk jurisdictions. These measures help the banks in mitigating the risks they face to a greater extent.

283. All high-risk customers for foreign-owned banks are subject to application of EDD measures which include approval of establishing a relationship with them by senior management or High-Risk Client Committees (HRCCs) and increased automated transaction monitoring. Further, those banks have PEP screening embedded in their core monitoring systems and thus apply risk-based mitigating measures through monitoring or applying surveillance models aligned with specific nature of risk posed by the client. The locally-owned bank applies risk mitigating measures to a limited extent. Cross-border transactions are screened, and customers and customer transactions are manually screened against TFS lists. The bank attributed this to limited human resource for compliance function and lack of AML/CFT system.

284. Cross-border MVTS providers conduct risk assessments annually covering customers, products/services, geographical location, and third-party risk. They also apply tiered thresholds for transactions with those in higher tiers subjected to EDD measures such as sanctions screening during on-boarding and when processing transactions, PEP screening, and declaration of source of funds and source of wealth where they establish customers to be PEPs. The AT consider the measures applied to be commensurate with the risks faced by the sector.

285. The other NBFIs apply the mitigating measures to a limited extent as the application of RBA methodology has not been established yet, and the understanding of the AML/CFT regime is very limited. Life insurance firms take reasonable measures to establish the true identity of beneficiaries or UBOs of the policy especially at the time of pay-out. In addition, not all insurance firms conduct risk assessment of their customers and for those that do so it is not done regularly. The securities firms and microfinance sectors mainly rely on CDD, and do not conduct risk assessment and targeted financial sanctions screening of customers.

VASPS

286. The AT could not determine application of mitigating measures by VASPs as there were no known VASPs operating in the country.

DNFBPs

287. Casinos apply transaction thresholds to all customers and enhanced measures such as declaration of source of income and regular transaction monitoring are applied when transaction threshold of each customer is gradually upgraded on the basis of amount of money being spent. The casinos also have transaction monitoring systems to help them identify any suspicious transactions. The ML vulnerability identified by casinos, which is the usage of the one-day card which posed the risk of usage of proceeds of crimes being introduced in the sector, was subsequently mitigated by ceasing the issuance of these cards by the sector. Implementation of this measure demonstrated an emerging understanding of ML risks and AML/CFT obligations by the casinos. The rest of the DNFBPs apply basic mitigating measures. While the NRA indicates that there is high use of cash for purchase of real estate property, the sector requires customers with cash to deposit such money with banks. Dealers in precious stones indicated that

they can sell rough diamonds to individuals within the country by cash without providing for proof of purchase to the buyer. It was the view of the AT that lack of proper understanding of ML/TF risks and AML/CFT obligations also contributed to lack of or limited application of mitigating measures among the DNFBPs.

Application of CDD and record-keeping requirements

Financial Institutions

288. CDD and record keeping measures are applied to a greater extent by all the banks and NBFIs. The banks maintain all CDD and transaction records obtained at on-boarding and during the entire life-cycle of the client. The CDD information captured by the banks is in both automated and manual formats and is checked against automated transaction monitoring systems which have built-in rules to raise red flags during the on-boarding process or on an ongoing basis. The process of checking against customer profiles also helps those banks in flagging possible suspicious transactions. When suspicion is formed on CDD information provided by customers at the on-boarding stage, the banks request further information from the customers. If the additional information does not clear the suspicions on accuracy of CDD information, the banks file STRs with the FIU. If a customer presents incomplete CDD information, account opening is not done and a business relationship is not established. In addition, where business is refused and there is risk of ML/TF, the foreign-owned banks also file reports with the FIU and apply EDD measures such as escalation to senior management or High-Risk Client Committees for direction.

289. The foreign-owned banks use their own procedures and systems to obtain BO information since the ROC does not keep adequate BO information. The measures taken to identify and verify beneficial owners were considered by the AT as reasonable. Despite systems put in place by FIs, onsite inspections by CBL conducted between 2019 and 2022 indicate that there are some deficiencies on application of CDD measures in relation to identification and verification of some customers including PEPs. During interviews with the AT, the FIs indicated that they had addressed most of the deficiencies (i.e. 80%) contained in the onsite inspection reports.

290. FIs maintain and keep all CDD and transaction records obtained at on-boarding and during the entire period of the relationship with the customer. The FIs indicated that records are kept in both manual and automated format and such records are retrievable immediately or within two (2) working days upon request by CBL or competent authorities.

VASPS

291. The AT could not determine application of CDD and record-keeping measures by VASPs as there were no known VASPs operating in the country.

DNFBPs

292. DNFBPs implement CDD and record keeping requirements variedly with casinos doing so to some extent. The casinos capture the customer identification documents and keep the records both manually and electronically. They require customers with higher transaction thresholds to declare source of income. The casinos' customer profile systems allow for maintaining and keeping of transaction records of the customers. The CDD records are kept for 5 years or more after termination of business relationship with customer or from date of occasional transaction. The other DNFBPs like real estate agents and lawyers apply basic CDD

and require identification documents (mainly National ID) from the customers but do not verify the IDs and do not request for source of income when they are involved in transactions for a client concerning the buying and selling of real estate. The lawyers and real estate agents keep records on IDs and title deeds but did not demonstrate proper understanding of the requirement for the period of keeping the records.

Application of EDD measures

293. Application of EDD measures is varied and dependent on the size and ownership of the FIs. The foreign-owned banks and cross-border MVTs providers apply EDD measures to a large extent. The DNFBPs apply EDD measures to a limited extent due to their inadequate or lack of understanding of ML/TF risks and AML/CFT obligations. The assessors could not determine application of EDD measures by VASPs based on the information provided by the authorities.

(a) Politically Exposed Persons

294. EDD measures for PEPs are applied to a greater extent. Both FIs and DNFBPs regard PEPs as high-risk but apply EDD and on-going monitoring of the transactions and business relationships with PEPs variedly. Foreign-owned banks apply EDD measures on PEPs to a large extent and extend the EDD measures to close associates and relatives of the PEPs.

295. Foreign-owned banks develop their own PEP lists and apply measures that include filling of High-Risk Approval Forms which require customer declaration of source of income and source of wealth and the information is verified through means such as confirmation from employer, provision of bank statement, sub-lease agreements with tenants, financial statement, and inheritance confirmation with District Office or High Court, among others. They also carry out independent searches of PEP status of customers through subscribed online databases. They establish business relationship with PEPs through approval by senior management and High-Risk Committees. In addition, the banks also seek senior management approval prior to conduct once-off transactions by PEPs. They monitor Government Gazette Notices of MPs and other public officials, analyse daily screening system alerts to check if existing customers have become PEPs and ensure that PEP associates and family members are included in the EDD measures. Further, adverse media reports are monitored for purposes of ensuring that additional measures are applied on customers commensurate with the risks they pose. After taking into account CDD and other information as well as the risk appetite, they decide on whether or not to process the transaction, on-board the customer or terminate the relationship. During interviews, the banks indicated that PEP lists they develop do not include many domestic PEPs especially associates and family members of PEPs. The locally-owned bank identifies PEPs by their occupation (especially MPs, Permanent Secretaries) and PEP list is updated when there is a new government. The customers fill EDD form and the information is re-verified every year for high-income earners. However, the bank did not demonstrate that EDD is extended to close associates and family members but indicated that it has not dealt with foreign PEPs and PEPs in international organisations.

296. Cross-border MVTs providers also apply EDD measures on PEPs extensively and seek senior management approval for relationships with PEPs and require declaration of sources of income and wealth. Insurance firms require source of wealth and source of income for new customers that are PEPs or PEPs identified in the course of the business relationship or at the time of pay-out. Securities firms detect PEPs through the list embedded in their systems or

provided by public sources and require PEPs to declare source of wealth and source of income but the information provided is not verified. The other FIs are in the process of developing and enhancing their EDD measures on PEPs.

297. DNFBPs apply similar CDD measures for all types of customers regardless of their status including PEPs. This could be attributed to lack of understanding of the risk that comes with having a client categorised as PEP.

(b) Targeted Financial Functions (TFS)

298. FIs implement TFS measures to a greater extent. Foreign-owned banks and cross-border MVTS providers screen customers and transactions against TFS lists. They have automated sanctions screening systems which are applied to customers at on-boarding and on an on-going basis. Where a payment to a sanctioned entity, individual or country is identified, the automated system of the banks stops the transaction and the compliance department conduct their internal investigations. The foreign-owned banks indicated that in case of a positive match, the system would stop the transaction and the compliance department would file a report to the FIU and the CBL accordingly, while internally management will also be informed of the positive match. The banks informed that there has not been any positive match based on the sanctions lists, however, there were about 400 false positives by one foreign-owned bank, but after further checks through the system, it was only picking up the first names of the individual and once the system was reading the full name there were no positive matches. Other NBFIs (life insurance firms, securities firms, foreign exchange bureaus) apply TFS measures to a greater extent owing to their automated systems managed at group level. They screen customers against TFS lists. DNFBPs, on the other hand, do not implement TFS requirements.

(c) Wire Transfers

299. Banks apply adequate automated transactions processing and monitoring systems which has enabled them to obtain full information of both the beneficiary and the sender. Foreign-owned banks consider electronic funds transfers within the Common Monetary Area (CMA) as cross-border with no Foreign Exchange controls based on the multilateral agreement on promotion of free flow of funds within South Africa, Namibia, Lesotho and Eswatini. To a greater extent, foreign-owned banks conduct EDD on wire transfers in respect of high-risk business relationships. The foreign-owned banks have implemented approval systems to ensure that each message contains mandatory full information of both the remitter and the beneficiary or incoming and outgoing wire transfers. Where exceptions are identified, these are escalated with the initiator of the transaction and where the exceptions are not addressed the payment is not accepted. The banks also screen all outgoing and incoming cross-border payments through automated systems for sanctions screening in real-time with the exception of the local bank which uses a manual transactions screening methods while it is in the process of deploying an automated system.

300. Cross-border MVTS providers act as agents for internationally recognised money transfer businesses. They require originator and beneficiary information, and keep a record of that information in accordance with requirements under the MLPCA and its Regulations. It is the view of the AT that adequate information is obtained by the banks and MVTS providers to accompany cross-border wire transfers in order to establish accuracy of the transaction conducted.

(d) High Risk Countries

301. The measures applied by most FIs are adequate and commensurate with the risk and context of Lesotho. Foreign-owned banks and cross-border MVTS providers have developed automated systems that allow for monitoring of transactions to and from high-risk countries. The systems raise alerts which are investigated by the banks to establish the purpose of the transaction. The automated transaction monitoring systems have lists of countries which are updated automatically whenever a country is added to the list of high-risk countries. Some FIs (foreign-owned banks and cross-border MVTS) classify jurisdictions with strategic AML/CFT weaknesses as higher risk based on their own risk assessments. Customers from high-risk countries as well as transactions to and from such countries are subjected to enhanced screening. The transactions are stopped for thorough assessment to be conducted such as determining purpose of the transaction. The transaction is only processed when it is allowed following results of the internal investigation.

302. DNFBPs implement EDD measures for high-risk countries to some extent in terms of customers and transactions. For instance, casinos identify foreign customers using passports and those from high-risk countries would be subjected to enhanced measures such as sanctions screening. As at the time of the onsite visit, the casinos reported that they had not conducted business with customers from high-risk countries. The real estate agents mainly transact with local people and foreign nationals are only allowed to buy land or related real estate if they are doing so as a business investment in which case, they do it jointly with local people as partners.

(e) Correspondent Banking

303. The banks adequately apply EDD measures on correspondent banking. Two foreign-owned banks provide Correspondent Banking Relationships (CBRs) in Lesotho, and they are both intermediary and beneficiary institutions. The banks have adequate EDD measures to manage risks associated with correspondent banking relationships and transactions. The banks have procedures and processes in place to manage ML/TF risk exposure and these include: seeking approval from the High-Risk Committees for establishment of business relationships, cross-checking information provided by the other bank with the supervisory authority of that country, conducting adverse media searches to understand if there is any negative information about the bank, requesting relevant KYC information and validation on SWIFT registry, among others. The gathering of sufficient information is aimed at understanding fully the nature and purpose of the business relationship of the bank, determining the adequacy of the AML/CFT measures in place before going into a relationship with the respondent bank. Once the relationship is established, the CBRs are monitored and reviewed on an on-going basis whenever there are changes that may impact on the robustness of the measures applied on the relationship.

304. The banks have policies that enables them not to establish correspondent banking relationships with shell banks based on the strength of the due diligence conducted. For instance, their policies prohibit entering into correspondent relationships with banks not considered to be appropriately controlled in terms of ML/TF and sanctions lists based on assessments. The banks do not enter into correspondent relationships with banks that do not comply with customer due diligence standards in line with requirements in Lesotho; or banks with a beneficial owner, senior manager or director on UNSC list or having 25% or more effective shareholding where the entity is sanctioned.

(f) New Technologies

305. The FIs, particularly banks, adequately apply EDD measures for new products and new business practices including new delivery mechanisms and the use of new or developing technologies for both new and pre-existing products. The banks conduct ML/TF risk assessments of new products prior to their launch to evaluate the inherent and residual risk presented by the new solution or technology and the results of the assessments are presented to CBL. The banks develop and implement risk control measures taking into account the magnitude of the risks posed by the products. In addition, the banks require approvals from different governance committees of the banks which involves conducting ML/TF product risk assessments and setting aside relevant resources to manage the risks depending on their magnitude.

Reporting obligations and tipping off

306. In Lesotho, the STRs are mainly filed by banks, with no reports from DNFBPs. The banks file most STRs (97%), distantly followed by cooperatives (1.24%). The filing of STRs from the rest of the FIs is negligible or zero (refer to Table 1 below). The low reporting by some FIs and lack of reporting by DNFBPs is a concern as STRs that could come from those accountable institutions leave a gap regarding suspected proceeds of crime particularly for high-risk entities.

Table 5.2 – STRs filed by Accountable Institutions

Sector	Number of STRs submitted to FIU					Total
	2017	2018	2019	2020	2021	
Banks	224	217	138	338	332	1,249
Asset Management	0	1	1	1	0	3
Cooperatives	0	3	2	0	11	16
Credit only institutions	0	0	1	1	0	2
Insurance	4	1	0	0	0	5
Mobile Money	0	0	0	2	1	3
MT Services	3	0	1	0	0	4
Total	231	222	143	342	344	1,282

307. FIs identified and reported a rising number of STRs in 2020 which were related to misappropriation of funds meant for COVID-19 government programmes. The low reporting by the other FIs and the lack of reporting by the DNFBPs could be attributed to inadequate or lack of AML/CFT supervision and systems by the sectors to monitor and detect reportable transactions. Some FIs file with the FIU any alerts generated from their automated systems as suspicious transactions without properly analysing them to determine if the identified transactions are suspicious.

308. The banks have indicated that most STRs relate to tax crimes (63%), ML with no predicate offence identified (30.6%), fraud (4%), corruption (2,2%) and TF (0.2%).

309. The requirement of prohibition of tipping-off is understood and applied to a large extent by the FIs owing to training and the requirements. Where a transaction is deemed to be suspicious, the relevant staff reports the matter directly to the Head of Compliance as per their international

processes. There were no cases of non-compliance with the tipping off provisions among the FIs as at the time of the onsite.

310. At the time of the onsite mission, the DNFBPs had not filed STRs with the FIU. In addition, they did not demonstrate an understanding of requirements on tipping-off. This could be as a result of inadequate AML/CFT awareness and supervision.

5.2.6 Internal controls and legal/regulatory requirements impeding implementation

311. Internal controls are implemented by the FIs to a greater extent. FIs have in place an AML/CFT compliance function headed by a Compliance Officer/AML Control Officer who holds a senior management position. The compliance function spearheads the compliance with AML/CFT policies and procedures which set out application of internal control measures by business units. The FIs differ in the sizes of their compliance functions due to a number of factors such as size, ownership or control structure, nature and complexity of the business, and level of understanding of ML/TF risks facing the accountable institution.

312. Foreign-owned FIs have demonstrated application of internal controls to a large extent with establishment of a compliance function which gets support and oversight from relevant management committee and the Board. The banks have appointed compliance officers to lead in the implementation of AML/CFT programs. They have over the past few years, with some as recent as 2021, developed a number of frameworks to help in mitigating ML/TF risks and these includes AML/CFT policies and procedures, financial sanctions and counter terrorist financing policies, client risk assessment methodology and customer acceptance policy. In general, the policies and procedures developed are meant to cover requirements such as CDD, EDD, record-keeping, risk assessment, employee training, employee screening, high-risk customers such as PEPs, high-risk countries, transaction monitoring and reporting of suspicious transactions, and measures for introduced business from regulated entities.

313. The foreign-owned banks, cross-border MVTs providers and some foreign-owned securities firms have put in place independent audit systems for testing compliance with internal AML/CFT procedures. In addition, these FIs conduct regular training of their employees unlike the other FIs.

314. Small FIs have put in place internal controls that are less sophisticated and not robust. They apply internal controls to some extent as shown by lower staffing numbers and manual customer profiling systems. This has led to the entities not been able to review their controls and training staff sufficiently.

315. Screening of employees is adequately carried out by both FIs and DNFBPs in form of past employment references and police clearance while few others also include open-source searches.

316. Except casinos, DNFBPs have not developed reasonable internal controls. The casinos just started putting in place AML/CFT Programs with appointment of compliance officers. They apply KYC on the punters upon entry into the casino and such records are kept by the casinos. In addition, the casinos encourage punters to purchase chips and receive winnings through mobile money as a way of controlling use of cash. Further, the casinos do not have documented AML/CFT policies and procedures.

Overall Conclusion on IO.4

317. In terms of materiality, more importance has been given to the banks based on their asset size and contribution to GDP, exposure to ML/TF risks, and implementation of preventive measures. FIs, especially foreign-owned banks and cross-border MVTS service providers understand ML risks and AML/CFT obligations to a large extent and apply mitigating measures commensurate with identified risks. Among others, they conduct annual risk assessments, risk profile their customers, and apply RBA to management of ML risks. They have average understanding of TF risks. Medium and small NBFIs such as MFIs, securities and insurance firms have demonstrated a fair understanding of the ML risk and AML/CFT obligations applicable to them, with inadequate implementation of mitigating measures and average TF risk understanding. CDD and record-keeping obligations are understood and applied to a large extent by most FIs except with requirement on verification of BO and PEPs while DNFBBPs generally apply basic measures. Application of EDD requirements for high-risk situations is applied by FIs (particularly foreign-owned banks and cross-border MVTS providers) to a large extent especially with regard to high risk countries, wire transfers, CBR, and new technologies. Reporting obligations and internal controls are implemented to a large extent by banks and cross-border MVTS providers unlike the case with other FIs.

318. There are major improvements needed with regard to implementation of PEPs, BO and TFS requirements by both FIs and DNFBBPs. In addition, the DNFBBPs (except casinos) have demonstrated little understanding of ML risks and AML/CFT obligations. The DNFBBPs also demonstrated low TF risk understanding. STRs are mainly filed by banks while DNFBBPs have not filed any STRs with the FIU. The non-designation of insurance brokers and agents is a not a fundamental shortcoming, given the risk and context of the sector.

319. Lesotho is rated as having a Moderate Level of effectiveness for IO.4.

CHAPTER 6. SUPERVISION

Key Findings and Recommended Action

Key Findings

- a) Financial sector regulators implement fit and proper requirements, albeit, the scope of implementation varies, with the CBL-BSD applying satisfactory measures than the rest of the regulators. Financial sector regulators do not apply BO requirements on market participants.
- b) LSL and LIA subject prospective members to licensing/registration requirements which includes criminal background checks as part of professional requirements. The Commissioner of Mines also applies satisfactory market entry control measures while the Casino Board does not conduct criminal background checks. There are no specific measures in place in relation to the real estate sector and TCSP sector outside lawyers and accountants.
- c) The CBL-BSD has a good understanding of ML risks of its sectors based on the results of the NRA, sectorial risk assessment and offsite monitoring relative to the other financial sector and DNFBPs supervisors All supervisors have little TF risk understanding of their respective sectors.
- d) While the CBL-BSD applies risk-based supervision to some extent, the rest of the financial sector supervisors have recently commenced with supervision but not on a risk-sensitive basis. The DNFBPs supervisors have not commenced AML/CFT supervision. The underlying reason for the inadequate level of AML/CFT supervision is the lack of resources across the supervisors.
- e) All Supervisors have not imposed effective, proportionate and dissuasive sanctions. They have not applied remedial actions except for the CBL, which has taken them to a certain extent.
- f) Lesotho has not established the existence of VAs and VASPs, and there is no legal/regulatory framework applicable to the sector.

Recommended Actions

- a) Supervisors for other FIs under CBL and DNFBPs should develop and maintain an ML/FT risk understanding of entities under their purview and regularly review entity ML/TF risk profiles and apply risk-based AML/CFT supervision.
- b) Authorities should provide supervisors with adequate resources (i.e., financial, human and technical) to supervise effectively particularly recruitment and training of inspectors. Except for CBL-BSD, supervisors should implement measures to monitor changes in compliance levels of the entities.
- c) Regulators of the financial sector and the DNFBPs should apply robust market entry requirements including on beneficial owners of entities.
- d) Supervisors should apply appropriate remedial actions and /or sanctions for AML/CFT breaches and monitor changes in compliance behaviour.
- e) Supervisors should conduct outreach and issue guidance on ML and TF risk understanding and AML/CFT requirements, in particular to promote compliance by the entities. Further, DNFBPs should be upskilled on AML/CFT knowledge prior to conducting outreach.
- f) Lesotho should carry out a study to establish the existence of VAs/ VASPs and assess ML/TF risks associated with their activities. Furthermore, the authorities should consider introducing enabling regulatory regime and developing supervisory frameworks for monitoring compliance of VASPs with AML/CFT requirements.

320. The relevant Immediate Outcome considered and assessed in this chapter is IO.3⁸. The Recommendations relevant for the assessment of effectiveness under this section are R.14, R. 26-28, R.34, and R.35.

Immediate Outcome 3 (Supervision)

321. CBL registers, licenses and supervises the financial sector through three Departments: CBL-Banking Supervision and Financial Stability Department:-banks, large financial cooperatives and cross border MVTs; the CBL-Other Financial Institutions Department (OFIs):- insurance companies, capital market players, micro-finance companies, pension funds and pension funds service providers; and the CBL Payments and Settlements Department (PSD):-issuers of payments instruments and domestic MVTs providers. The Department of Cooperatives supervises financial cooperatives, amongst others. The DNFBP supervisors are as follows: Casino Board (casinos), Commissioner of Mines (Dealers in Precious Metals and Precious Stones), Law Society of Lesotho (lawyers and Notaries), Lesotho Institute of Accountants (Accountants). There is no restriction on the type of entities that can provide trust and company services outside of lawyers and accountants who are already regulated. The TCSPs are not subject to market entry processes. At the time of the onsite visit, the authorities confirmed that one legal entity was providing trust and company services outside of lawyers and accountants). The AT met the DNFBP supervisors, including the Ministry of Local Government, Chieftainship, Home Affairs and Police which is expected to take over the supervision of real estate agents from the Ministry of Trade.

322. The effectiveness of supervision was determined by considering the importance of each of the sectors based on risk and/or asset size. The AT assigned the highest importance to the banking, and high importance to the real estate and lawyers. The areas of lower focus include Insurance, Pensions and Securities, Precious Metals and Stones, and MFIs.

323. The conclusions in IO.3 are based on statistics and examples of supervisory activities provided by Lesotho; MLPCA, MLPCRs, Guidelines issued by CBL and the FIU; interviews with CBL, the Department of Cooperatives and the DNFBPs supervisors.

Licensing, registration and controls preventing criminals and associates from entering the market

324. The market entry controls exist governing acquisition of ownership and holding management positions in FIs and DNFBPs. However, their robustness, implementation and effectiveness vary according to the maturity of the sector. The fitness and probity test does not extend to BOs across all sectors except for dealers in precious metals and stones and lawyers whose licenses are granted to individuals. CBL monitors ongoing fitness and propriety of shareholders and directors. Breach of market entry controls in the financial sector are identified through intelligence received from the Internal Office of Intelligence under the Security Division, social media, open source and complaints in relation to unauthorised activities in the market, offsite and onsite inspections.

Central Bank of Lesotho

325. The CBL has detailed information-gathering fit & proper requirements that are applied to applicant companies, shareholders, directors and senior management of the regulated institutions. Except for the banking sector, all other departments at the CBL have put in place internal procedure documents to guide the fitness and probity assessment. The CBL-BSD and CBL-

⁸ When assessing effectiveness under Immediate Outcome 3, assessors should take into consideration the risk, context and materiality of the country being assessed. Assessors should clearly explain these factors in Chapter One of the mutual evaluation report under the heading of Financial Institutions and DNFBPs, as required by page 131 of the Methodology.

Financial Surveillance identify the principal shareholders owning 10% or more shares. The CBL-BSD has newly introduced the process of identification of BO in November 2022, but the AT could not determine its effectiveness as it has not been applied. The CBL-OFI Department identifies the principal shareholders with significant interest of 5% shareholding with the exception of the MFI sector. The fit and proper vetting process is applied at market entry, every year through annual returns or within 15 days from the occurrence of material changes in all the CBL departments.

326. During the licensing process, the CBL requests and reviews several documents such as the personal declaration sheet, police clearance, and company registration documents, amongst other documents. The fitness and probity process includes the evaluation of personal information, criminal background, in addition to checking for the financial integrity of the principal shareholders, directors and senior management. The CBL-BSD identifies the source of initial capital to be invested through audited accounts and bank statements. This information is used to determine if the applicants are suitable for participating in the sectors and that the capital is from legitimate sources. The CBL-OFIs, CBL-PSD and CBL- Financial Surveillance and Integrity Division require applicants to submit proof of existence of capital but the source is neither declared nor verified.

327. The CBL-BSD verifies the company basic information with independent reliable sources such as the Ministry of Trade and Industry through the OBFC system that gives access to company information to check the existence of a domestic applicant. The CBL -BSD verifies the identification of a natural person (proposed individual shareholders, directors and senior management) with the Ministry of Home Affairs. To validate information on foreign-based shareholders, directors and senior management, the CBL requests the home country regulator for a letter of good standing. The CBL-BSD conducts sanctions screening against the UNSCR list on financing of terrorism and proliferation financing for the principal shareholders, directors and senior management. The identification of BOs and sanction screening are not conducted under the CBL-OFI sectors. The shareholders and directors are only required to declare institutions in which they are BOs.

328. In relation to ongoing review of the fitness and propriety of existing shareholders and directors, FIs are required to report any changes to CBL-BSD. Flowing from this process, the CBL-BSD has declined the appointment of 2 board members and a senior management officer due to conflict of interest while a board director was declined for lack of requisite qualification and experience in the past 5 years. In addition, except for banks, all the other regulated entities are required to apply for renewal of their licenses annually. The applications are supported by documents to facilitate assessment of their fitness and propriety CBL detects breaches of the market entry requirements in relation to banks and other FIs through intelligence from the Internal Office of Intelligence under Security division within the CBL surveillance on social media, open sources, complaints from the public regarding unauthorised activities in the market, offsite reports and during onsite inspections. The CBL-PSD maintains quarterly updates institutional profiles that identify shareholders and directors. However, sample onsite reports provided to the AT do not include the current list of directors and shareholders. The CBL-OFI requires the regulated entities to file notice of a key employee that vacate office as well as prior to the appointment of the new personnel for approval. In 2022, one umbrella fund was issued with a directive by the CBL-OFI Department for failure to notify the regulator of the resignation of a Principal Officer within 14 days of vacating office.

329. The Commissioner of Cooperatives has fair processes for the licensing of small cooperatives. Applicants are required to submit a completed application form with three copies of by-laws signed by 3 persons elected in the provisional management committee, addresses, identity numbers and occupations of persons elected to the management committee of the proposed society as well as a list of all members endorsed by the chief (to confirm proof of residence). The Commissioner requires cooperatives to maintain an up-to-date list of members that is submitted annually together with audited financial statements.

330. The Commissioner detects breaches to market entry requirements mainly through complaints and the development officers that are stationed in the different districts to support the cooperatives. Upon detection, the Commissioner issues a warning or reports the matter to the police for investigation. The Commissioner has issued several warnings on cooperatives that were taking subscriptions from members who have not been admitted into the scheme and ordered a refund of the members.

DNFBPs

331. The Casino Board obtains the names of partners or directors and chief executive officer for licensing casinos. This does not extend to beneficial owners and there is also no requirement for disclosure of BOs. There is no requirement to provide documents relating to integrity and previous criminal record of the individuals. However, during the interviews the representatives of the Board indicated that they check the criminal record and submit the list to private vetting agencies. The effectiveness of this process could not be determined as evidence of same was not provided to the AT. The regulator does not have mechanisms in place to detect unlicensed casinos. This process is not adequate to prevent criminals and their associates from holding or being a beneficial owner of a significant interest or holding a management function in a casino.

332. Precious stones and metals dealers may operate as companies, however, the Commissioner of Mines under the Ministry of Natural Resources grants the license to an individual. This enhances the application of controls to prevent criminals and their associates from holding or being a beneficial owner of a significant interest in the sector. Applicants are required to provide the name, address and nationality of all directors, officers and holders of 5% or more of the equity in the companies that will be operating. The Commissioner of Mines evaluates the application which is supported by police clearance certificate, tax clearance and bank statement indicating that the applicant has M100 000 as capital. The license to operate is renewed annually, resulting in the ongoing review of fitness and probity.

333. The Law Society of Lesotho (LSL) registers lawyers and advocates to practice in Lesotho. To be an advocate, the lawyer must be above 21 years, holder a law degree from the National University of Lesotho or a foreign university. In addition to these requirements, an attorney is required to serve articles and pass the bar exams. On meeting of the registration requirements, the applicant petition the High Court and serve the Law Society a notice of 6 weeks. The court will admit the applicant on meeting all requirements. Foreign admitted attorneys and advocates petition the court for automatic admission. The Law Society applies adequate fitness and probity procedures at market entry by checking whether the applicant does not have a criminal record and is in a good mental state. LSL publishes an annual notice of members who are in good standing and those not in good standing.

334. The Institute of Accountants registers individual professionals and licenses accounting and auditing firms. Individuals are registered under four categories; Chartered Accountants, general accountants, certified technicians and student members. The Institute of Accountants receives and assesses the qualifications of the applicant, the reference from the employer and the physical address. Auditing and accounting firms will be licensed upon satisfying the Institute that there is a partner who is a chartered accountant with 3 years' experience in a firm, there is evidence of the qualification and proof of physical address. The criminal record of the applicants is not assessed, and the documents submitted are not verified.

335. The registration of real estate agents follows the registration of a business discussed under IO5. There are no specific license requirements for the provision of real estate agent services and hence, there are no measures in place to prevent criminals and their associates from entering the market.

336. Lawyers and accountants provide company and trust services. However, the company services are simplified in Lesotho and can be provided by anyone. Individuals or entities other than lawyers and accountants who provide these services are not subject to entry controls. Therefore, Lesotho does not apply measures to prevent criminals or their close associates from holding or being a beneficial owner of a significant interest in an entity providing company and trust services if the service provider is not regulated either by the LSL or LIA.

337. The main deficiencies in the market entry processes of DNFBPs are the lack of vetting processes for the Casino Board, LIA, Real Estate and the TCSP, lack of TFS screening and lack of processes to detect informal or illegal participants to prevent criminals and their associates from holding or being a beneficial owner of a significant interest.

338. The Kingdom of Lesotho has not implemented any measures for the licensing and registration of VASPs.

Supervisors' understanding and identification of ML/TF risks

339. CBL-BSD demonstrated a good ML risk understanding largely as a result of the NRA and SRA findings. The CBL-BSD has rated three banks as posing high risk for ML while one bank has been rated medium risk. The CBL-BSD considered information on structural risk, business risk, customer risk, product & services risks, delivery channel risk and geographic areas in determining the nature and risk levels of the banks. CBL_BSD has a good understanding of TF vulnerabilities on banks but has demonstrated an underdeveloped understanding of TF threats.

340. CBL-FS: - Regarding cross-border MVTS providers, (ADLAs) the understanding of the ML/TF risks is relatively fair. Initially, CBL- FS considered the vulnerability for the ADLAs to be not high due to the limits introduced in July 2022, however after conducting inspections of 2 ADLAs, they concluded that the vulnerability was high. The following ML risks were considered: country risk, customer risk, product & services risks. The emerging ML risk identified is the proceeds of illegal mining. No specific consideration is given to the TF threats and associated vulnerabilities.

341. CBL: PS and CBL- Other FIs Department: the understanding of ML/TF risks is relatively low with the exception of the Pensions & Securities, where the ML risk understanding is relatively fair. The ML threats emanate from counterfeit money notes, identity theft, scams, corruption, tax evasion and fraud & bribery. They do not risk-rate their institutions as they are yet to develop the

tools. The authorities rely on the findings of the NRA which indicated the ML risk rating as follows: the insurance sector (medium high), securities sector (low), bureaux de change (low) and ADLAs (low). There is no understanding of TF risks by the sectors.

DNFBPs

342. The DNFBPs' Supervisory authorities understand the ML risks facing their respective sectors based on the NRA findings. The NRA did not assess TF threats and associated vulnerabilities at the DNFBP sectoral level. As a result, the supervisors do not have a TF risk understanding within their respective sectors. In addition, supervisors have not conducted sectoral or institutional risk assessments after the NRA to enhance or update their ML risk understanding of the DNFBPs under their supervision. During the onsite, the supervisors indicated that they did not consider that the risks had evolved since the NRA.

Risk-based supervision of compliance with AML/CFT requirements

343. The CBL-BSD has developed a risk-based supervisory framework for the banking sector. However, due to resource constraints, the supervisory framework has been implemented to a limited extent to guide the offsite analysis and onsite examination of banks. The supervisors of the NBFIs are in the process of developing their RBS frameworks. All DNFBP supervisors have not started AML/CFT risk based supervisory monitoring of their sectors.

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344. The CBL- BSD moved to risk-based supervisory approach for the banking sector in 2019 and the framework was later refined in August 2022 with a corresponding enhancement of the RBS Supervisory Manual in the same year. The RBS approach was anchored on institutional risk assessments which CBL-BSD conducted in 2019. Although the AT noted that the risk matrix tool did not consider all relevant risk factors in order to come up with residue risks and risk profile of an entity, the outcome still provided a reasonable basis for the RBS framework to guide supervisory plans. The RBS Manual outlines the nature and frequency of offsite surveillance and onsite inspections. The outcome of offsite analysis and other factors are used to update the risk profiles of the banks.

345. However, the nature and frequency of the supervisory activities have not been fully based on risk. For instance, based on the outcome of the initial risks assessments, CBL-BSD determined that 3 banks were of high risk to ML while one bank was of medium ML risk. The RBS Manual states that CBL-BSD must inspect at least once a year banks which are of high risk. This means that on average, CBL-BSD should at least conduct 3 onsite inspections every year. Table 6.1 below provides the number of onsite inspections which CBL-BSD has conducted over the period 2018-2022 which shows that the supervisory activities have not been consistent with the RBS approach as set out in the RBS Manual. The authorities explained that this has been due to resource constraints. The Department has 4 inspectors. In addition, the AT note that scope and intensity of onsite examinations of each individual bank have generally been the same and not tailor-made for that specific bank based on risks identified for that particular bank.

346. During AML/CFT inspections, the supervisors examine bank's policies, procedures, systems and controls for combating ML/TF, which entail governance matters, CDD, EDD, risk assessments, recordkeeping suspicious transactions reporting, correspondent relationships and

UNSCR sanctions screening. The supervisors strive to test all facets of the policies, procedures, systems and controls on a random or targeted sample basis.

347. In relation to offsite surveillance, CBL-BSD monitors all banks through quarterly returns which contain the characteristics of the ML/TF risks such as customers, products/services, delivery channels and geographic location. The monitoring assists the supervisors to identify whether or not there have been any major events or developments in the management and operations of the bank which would warrant a change in bank's risk profile.

348. Between 2018-2022, the CBL conducted onsite inspections on 4 banks, 2 securities, 2 MVTS and 4 money remitters.

Table 6.1: Onsite Inspections 2018-2022

Type of Institution	Total number of entities	Number of AML/CFT Onsite Examinations				
		2018	2019	2020	2021	2022
Banks	4	2	1	0	1	1
Securities	12	0	0	0	2	0
Life Insurance companies	6	0	0	0	0	0
Pensions	0	0	0	0	0	0
Large Deposit Taking Cooperatives	0	0	0	0	0	0
Cross border MVTS (ADLAs)	4	0	0	0	2	0
Issuers of Electronic Payments (Mobile money Issuers)	4	2	0	1	0	1
Micro Finance	131	0	0	0	0	0

349. Supervisory authorities for the rest of the FIs have not yet started applying AML/CFT RBS approach for their respective sectors. In the absence of a risk-based framework, these supervisors could not demonstrate how they supervise and monitor their respective entities on a risk-sensitive basis. As at the time of the onsite, these departments were in the process of finalising manuals, procedures, and processes for AML/CFT supervision. On the other hand, CBL-FS conducted a rule-based onsite inspections on 2 ADLAs.

DNFBPS

350. All other DNFBPs sector supervisors have not developed or implemented any AML/CFT supervisory processes. Based on the onsite interviews, the supervisory authorities do not have financial and human resource capacity to develop and implement their supervisory responsibilities.

351. The supervision of VASPs for AML/CFT compliance is not in place and has not commenced.

Remedial actions and effective, proportionate, and dissuasive sanctions

352. Supervisors have a wide range of remedial measures and sanctions available to them to enforce compliance with AML/CFT obligations in their sectors. The CBL-BSD has applied the remedial measures to a limited extent while the DNFBPs sector supervisors have not applied any sanctions.

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353. CBL-BSD has a broad range of remedial actions and sanctions which include the power to issue warnings, dismiss board members, restrict business, withdraw a licence and impose fines. Even though there have been several incidences of non-compliance identified during inspections whose gravity would ordinarily attract appropriate sanctions in the period under review, the CBL-BSD has issued directives that require accountable institutions to take specific actions to address the findings of an inspection within six to 12 months. The implementation of the corrective measures is monitored on a quarterly basis through submission of off-site progress reports. There were 6 directives that were issued to banks for non-compliance with AML/CFT requirements. Over the past 5 years, 2 remedial directives were issued in 2018 while one directive was issued annually from 2019 to 2022. The CBL-BSD has not applied any sanctions over the period under review.

354. Overall, the AT are of the view that financial sector supervisors have not demonstrated effective and consistent application of sanctions and remedial measures. The remedial measures have not been commensurate with the seriousness of the contraventions. Hence, the remedial actions have only been effective, proportionate and dissuasive to a limited extent. All supervisors have not applied sanctions and therefore there is no basis for assessing whether or not they have been effective or dissuasive.

DNFBPs

355. All DNFBPs sector supervisors have not commenced supervision for AML/CFT purposes and they have not detected any non-compliance which could have been the basis of sanctions or remedial actions.

Impact of supervisory actions on compliance

356. CBL has observed an impact arising from its supervisory actions on FIs' compliance with AML/CFT obligations although to a limited extent. As noted under 6.2.3 the CBL has conducted very few onsite inspections with few remedial actions. In relation to the DNFBP sector, there have not been any AML/CFT supervisory activities and therefore it was not possible to determine any impact.

357. Upon review of the inspection reports, one bank showed positive progress in addressing the findings of an inspection during a remedial period. For instance, in 2018, the CBL conducted an inspection and issued remedial directives on one institution for non-compliance

with obligations relating to training of the board, CDD, EDD of higher risk clients and record keeping. In the 2021 inspection of the same institution, the findings related to different obligations.

358. However, this positive impact is limited as the CBL made findings of deficiencies identified in previous inspections with the other three banks. In another instance, CBL inspected one bank in 2018 followed by another inspection in 2022. In 2018, the CBL issued remedial directives for the deficiencies that were identified. It occurred that in 2022, the CBL identified the same deficiencies as those in 2018 relating to lack of board training, inadequate CDD measures, failure to perform EDD on higher risk clients and inadequate STRs filed with the FIU. The bank did not illustrate an improvement in its compliance with the obligations. On the basis of these examples and the fact that there were few supervisory actions during the period under review, it is difficult to draw any concrete conclusions.
359. The DNFBP supervisors have not commenced supervisory processes; and therefore, it was not possible to establish the impact of supervisory actions on compliance by accountable institutions under their purview. However, it is likely that non-implementation of supervisory activities has contributed to STRs not being filed by the DNFBPs and their limited understanding of obligations as well as ML/TF risks (see IO.4). Equally, VASPs have not been registered or supervised for AML/CFT compliance.

Promoting a clear understanding of AML/CFT obligations and ML/TF risks

360. Generally, the CBL and FIU have undertaken a range of outreach initiatives and activities with(in) the accountable institutions to promote a clear understanding of AML/CFT obligations and ML/TF risks. These include general awareness-raising initiatives and trainings across the industry and issuance of guidance notes.

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361. The CBL has issued guidance notes to different FIs under its purview. In August 2020, the CBL issued the Risk Management Guidelines for banks to promote a clear understanding of the AML/CFT obligations and Insurance Guidelines in November 2022 to promote a clear understanding of the insurance sector obligations on AML/CFT compliance.

362. The CBL provided 4 trainings for its regulated entities since 2018. In 2018, the CBL trained banks on use of the AML/CFT tool and on the NRA findings in 2021. The CBL has also collaborated with the FIU to conduct two awareness workshops in July and August 2022 that were attended by 24 NBFIs and 29 NBFIs respectively. The CBL and FIU also further collaborated to conduct a workshop on the implementation of AML/CFT obligations that was attended by around 60 accountable institutions representing both financial and DNFBPs sectors. In addition, they conducted four joint workshops for FIs and DNFBPs in preparation for the mutual evaluation.

363. The CBL further engages in bilateral and engagement meetings to discuss areas of supervisory concern or challenges faced by FIs. Two engagement meetings were held with the banking industry to discuss recent trends and typologies identified by the supervisor and the banks. The CBL further engaged the banks executives in two forums, the bilateral meetings of Director Banking Supervision and Financial Stability and Chief Executives/Managing Directors to discuss amongst others top five risks of the banks, prudential, consumer protection and AML/CFT matters as well as quarterly meetings between the Governor and the Bankers Association.

364. In relation to other FIs, there has not been any AML/CFT training received nor provided.

DNFBPs

367. Casino Board and FIU conducted 1 awareness workshop for casinos and second awareness workshop focused on all DNFBPs in July and August 2022. Except for this, the rest of the DNFBP supervisors have not undertaken any AML/CFT training awareness in order to promote understanding of DNFBPs' obligations and ML/TF risks. Based on the interviews with the supervisors it was evident that there is actually need for them to build AML/CFT capacity in order to gain knowledge and expertise before they engage their institutions.

Overall Conclusion on IO.3

365. CBL-BSD has an understanding of risks in the banking sector and has adopted RBS approach. However, it has not been able to fully implement the framework during the period under review due to lack of resources. The rest of the CBL Departments responsible for insurance, pension and securities, domestic and cross border MVTs sectors have a less developed understanding and are yet to implement RBS. In addition, most of the DNFBP supervisors have limited understanding of ML/TF risks and their obligations. They have not commenced undertaking their supervisory responsibilities, including onsite inspections, due to lack of resources and requisite skills. The application of fit and proper requirements varies based on the maturity of the supervisor. CBL has measures to prevent criminals from entering the financial sectors while most of the DNFBPs supervisors apply less robust fit and proper tests. Identification of BO is not applied across all sectors except for dealers in precious metals and stones and lawyers whose licenses are granted to individuals. Only the CBL has applied remedial actions for non-compliance and their effectiveness was not pronounced. CBL and the FIU have taken efforts to promote understanding of AML/CFT obligations and ML/TF risks. However, the impact of the supervisory activities has been mixed. In view of the materiality of the banking and taking into account supervisory activities of CBL, Lesotho has achieved this Immediate Outcome to some extent.

366. Lesotho is rated as having a moderate level of effectiveness for IO.3.

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

- a) Information on the creation and types of legal persons is available publicly on the ROC website, while there is limited information on the creation of legal arrangements.
- b) Lesotho has not carried out ML/TF risk assessments on all types of legal persons.
- c) The ROC only keeps adequate, accurate and current basic information on legal persons but does not keep BO information.
- d) Lesotho does not identify and verify basic and BO information on Legal arrangements.
- e) Though the ROC has imposed sanctions for late submissions of annual reports and changes in the shareholding and directorship, the sanctions are only administrative and not considered to be effective, proportionate or dissuasive.

Recommended Actions

- a) Lesotho should ensure that there is an oversight of legal arrangements, e.g., by empowering competent authorities with the legal/institutional mandate in order to be able to supervise legal arrangements registered in Lesotho for ML/TF purposes and be capacitated to carry out that function. Moreover, information on the creation and types of legal arrangements should be made public.
- b) The authorities should conduct a comprehensive assessment of the ML/TF risks posed by all types of legal persons and arrangements in order to identify, assess and understand the risks and vulnerabilities including the extent to which they can be used or are being misused for ML/TF purposes.
- c) The relevant authorities should introduce requirements/mechanisms for obtaining and maintaining BO information on legal persons and legal arrangements. These mechanisms should require that BO information maintained within Lesotho is adequate, accurate and up to date and accessible to competent authorities in a timely manner.
- d) Enhance the legal framework including existing sanctions regime under the legislative framework for both legal persons and legal arrangements in order to ensure that sanctions applied are effective, proportionate and dissuasive.

368. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The Recommendations relevant for the assessment of effectiveness under this section are R.24-25.⁹

Immediate Outcome 5 (Legal Persons and Arrangements)

Public availability of information on the creation and types of legal persons and arrangements

369. The Office of the Registrar of Companies (ROC) is located within the Ministry of Trade & Industry. It is established as the centre for the registration of companies in Lesotho. Information on how to register a legal person is easily accessible on the Ministry of Trade &

⁹ The availability of accurate and up-to-date basic and beneficial ownership information is also assessed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the FATF and Global Forum's respective methodologies, objectives and scope of the standards.

Industry website¹⁰ which provides details of the registration of the different types of legal persons that can be created and registered. This information is available online together with registration forms which can be downloaded and submitted online or physically.

370. The information on the creation of legal persons for compliance is available in the Companies Act, which is available at the Government Printing, and is accessible by members of the public at the ROC offices or online. The ROC has also developed awareness programmes to provide information on the creation of companies through communication materials and information (pamphlets), workshops and road shows. The programmes are aimed at promoting public awareness on the processes and procedures for the creation of all types of legal persons.

371. Lesotho has to some extent put in place measures and obligations for legal entities, aimed to promote corporate transparency and prevention of the misuse of legal persons. Legal entities are required under the Companies Act to file names, good standing of directors/shareholders and when there are changes to those as well. Any person can conduct an official search on the Register of Companies ROC website which operates an Open register where you can access basic information which includes: the company name, registration number, date of incorporation, registered place of business, names of directors and shareholders of the company.

Legal arrangements

372. The Registrar of Deeds (ROD) is the body responsible for the registration of legal arrangements within Lesotho. Information on the creation and types of legal arrangements which can be created is not publicly available as it is established under common law. There is little to no public information available on the creation of trusts and partnerships, although it is a legal requirement for trusts created to be registered (S.5 of the Deeds Registry Act 1967). As a result, the creation of trust is facilitated by lawyers who draft the trust deed and submit the deed for registration at the ROD. The ROD relies on the information provided by the lawyers for listing all the participants in the trust and once the Registrar is satisfied that all the participants are listed in the trust deed the trust is registered.

Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

373. Lesotho has not assessed ML/TF risks associated with legal persons created in Lesotho or foreign companies incorporated in Lesotho. The authorities did not demonstrate that they identify, assess and understand vulnerabilities emanating from legal persons existing in Lesotho and the legal person can be misused for ML/TF purposes. Although the ROC provided some of the vulnerabilities associated with legal persons existing in Lesotho, the understanding was considered to be limited. Although the ROC was part of the NRA in 2018 which provided the vulnerabilities associated with legal persons, there is limited understanding of the concept of beneficial ownership which is mostly construed as the majority legal ownership. Therefore, if the limited understanding of BO during the on-site is considered, not all factors relevant in assessing the vulnerabilities of legal persons could have been taken into account during the NRA.

374. The authorities indicated that they are aware that some legal entities are being abused for ML/TF, and that is based on the findings of the NRA, however, since the NRA was finalised in 2018, the assessment team could not determine that the findings were still current at the time of

¹⁰ <https://www.companies.org.ls/>

the on-site. The authorities also indicated that some NPOs carry a high risk due to the fact that there has been instances of fraud and other activities which could be associated with TF risks. The Authorities indicated that a comprehensive ML/TF vulnerability assessment of legal persons created in Lesotho is yet to be conducted through which they would be able to identify those NPOs that are more susceptible to ML/TF risks

375. Legal entities, mostly private companies limited by shares, carry the highest risk since most of the fraudulent activities are linked to public officials. Methods used are transfer of funds emanating from corruption cases through the use of multiple legal entities for siphoning public funds. ML cases in Lesotho show that companies are abused for ML purposes (See IO.7). The '50 million case' also suggest that companies could be abused to facilitate defrauding government entities and the subsequent laundering of the proceeds. The extent to which companies and trusts are abused for TF are unknown, consequently, there is no information on the implementation of the measures to prevent such abuse.

376. The ROC did not also adequately demonstrate that they assist in the identification, assessment and understanding of the ML/TF risks posed by the use of legal entities being registered in Lesotho. When a company is being registered that includes foreign shareholders, the ROC places much reliance on the information provided and there is no verification on the information provided on the shareholders. This results in the ROC failure to identify the risks coming from those entities or whether the shareholders are also from high risk or jurisdictions with AML/CFT deficiencies in order to undertake the necessary mitigating measures or verification prior to accepting and registering those legal entities. Although the risks emanating from legal persons have not been assessed, the ROC indicated that the highest risks comes from private companies limited by shares since they are easy to register and at times facilitated by lawyers and accountants.

377. Although, the ROC indicated that the Companies Act requires disclosure of BO information (s. 59 of the CA 01), the information captured at the time of registration mostly refers to the majority shareholder, as such there is no adequate, accurate and current BO information at the time of registration.

Mitigating measures to prevent the misuse of legal persons and arrangements

378. Although Lesotho carried out a NRA in 2018 and came up with an Action Plan in 2019, the measures taken are not comprehensive enough due to lack of proper assessment of the ML/TF vulnerabilities. The processes implemented to prevent the misuse of legal persons and arrangements for ML/TF purposes still leave companies and trusts vulnerable to ML/TF abuse.

379. However, Lesotho has to some extent put in place measures and obligations for legal entities and reporting entities, aimed at preventing the misuse of legal persons. Legal entities are required under the Companies Act to file names, good standing of directors/shareholders and notify the Registrar of any changes in a specified notice and submit the information within 30 working days of the change. Any failure by the legal entities to notify the ROC, attracts payment of late filing fees in the form of monetary penalties. Any person can conduct an official search on the ROC website which operates an Open register where you can access basic information.

380. Further, the reporting entities met during the onsite indicated that based on their understanding the natural person holding 25% or more shareholding within the company is construed as the BO of the company (see IO 4). The reporting entities mostly rely on the client

to provide the BO information and from the interaction with the banks, this process in some cases is not exhaustive in terms of ensuring that the reporting entity obtains reliable BO information in such circumstances. Again, some of the financial institutions met indicated that in some cases, the BO information provided by the client is taken at face value and is not verified, particularly where complex structures of ownership of the company/trust are concerned. In cases where BO information is then required by competent authorities, there is no assurance that this information is reliable and accurate since the ROC does not maintain this information resulting at most times that competent authorities are only provided with information on the legal person directors and shareholders.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

381. LEAs and Prosecutors can access basic information through the Open registry directly from the Registrar's office. However, where information is required for use in an investigation or prosecution a written request is required by the Registrar's office in the form of an affidavit in order to verify or affirm the information that could be used for furthering the investigative or prosecutorial purposes. The authorities indicated that the ROC usually provides the information on an average five working days of lodging a written request depending on the nature of the request. LMPS, FIU and RSL request information through a formal letter. The ROC has signed MOUs with the FIU and CBL. The Authorities indicated that in instances where a formal request is made, it is made by way of a formal letter to which a written response is provided. In addition, the ROC indicated that information can be obtained from their website. The ROC indicated that information on shareholders is recorded and updated when there are changes but it does not obtain and capture information on beneficial ownership when registering a legal entity.

382. For the period under review the ROC received a total of 254 requests from competent authorities namely the LMPS, FIU, DCEO and RSL. The requests mainly related to enquiries on the registration of shareholders, information on directors, share capital of the company, registered office addresses. The table below shows the number of requests from competent authorities to ROC for the period under review.

Table 7.2: Number of requests from Competent authorities to ROC

YEAR	Competent Authorities	No. of requests granted	No of request not granted and reasons	Nature of Requests
2018	LMPS	32	N/A	Basic Information of Companies, directors and shareholder's information
	FIU	18		
	DCEO	35		
	RSL	3		
2019	LMPS	10	N/A	Basic Information of Companies, directors and shareholder's information
	FIU	37		
	DCEO	10		
2020	FIU	39	N/A	Basic Information of Companies, directors and shareholder's information
	RSL	1		

2021	LMPS	3		Basic Information of Companies, directors and shareholder's information
	FIU	26		
	DCEO	1		
	RSL	3		
2022	LMPS	20	N/A	Basic Information of Companies, directors and shareholder's information
	DCEO	15		
	TSL	1		
Total		254		

383. The concept of BO and BO information is not well understood by competent authorities since they mistook it with legal ownership (being someone holding 25% of shares or more) resulting in inadequate BO information being required and obtained at registration and or incorporation. This is compounded by the fact that measures are not taken to ensure compliance with the requirements to update and ensure accuracy of BO information by reporting entities. Due to the low understanding of the concept of BO and BO information, FIs and DNFBPs are neither collecting nor verifying the appropriate information to determine the beneficial owner. (see also IO.4 on the application of the BO concept).

384. The reporting entities met during the on-site, particularly some of the banks, indicated to the AT that they were not clear when exactly the LEAs require information on either basic or BO on legal persons from them as the authorities only request for account opening documents relating to the legal person. The FIs further stated that the competent authorities once they have received the information, do not communicate on the purpose or nature of the information that was requested or even on the quality of the information shared. The FIs indicated that on average such information is provided to competent authorities within 5 working days (refer to IO.4).

Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements

385. Trusts are registered with the ROD under the Deeds Registry Act 1967. The ROD is responsible for registering and keeping records of trusts in Lesotho. However, the ROD only register trusts and there is no requirement for the Registrar to keep adequate, accurate and current information on the settlors, trustees, beneficiaries or other participants to the trusts. Unlike in the case for legal persons, there is no requirement for trusts to declare/disclose the ultimate beneficial owners or those in control of the trust at the time of registration or any time thereafter. Moreover, most of the information is kept in physical files and information on the settlors, trustees, beneficiaries or other persons exercising ultimate control over the trust are not accessible to the public.

386. As a matter of practice lawyers are used as intermediaries for registration of trusts given that they facilitate the drafting of the trust deeds and see to it that the trust deed meets the legal obligations to be registered. The ROD office does not have the competence to verify the information due to resources challenges. Also, the Deeds Registry Act does not empower the Registrar to seek the information provided. Therefore, the information provided by the ROC on any trust might not always be accurate or up-to-date when it is requested, or provided to competent authorities. The assessment team requested the ROD for the number of requests received and entertained by the ROD office but this information was not made available to the AT.

387. During the onsite, the lawyers who facilitate the registration of trust informed the assessment team that they are bound by lawyer-client privilege and as such some of the information is protected

and cannot be disclosed when a request is made. However, the ROD indicated that LEAs can access information on legal arrangements without the need for formal request and there has been one incidence when the LMPS after requesting for the basic information informally, returned with an affidavit to seek information formally. The AT were further informed that the sharing of information to competent authorities takes time given that the ROD which is composed of only two officers including the Registrar of Deeds are then required to look for the physical file prior to providing that information.

388. The ROD informed that the responsibility of updating the information on the participants of a trust rests on the lawyers and there are no timelines for submitting or updating the information.

389. During the onsite, the AT determined that though the competent authorities may have access to information available on the trust deed, that information does not necessarily indicate that the information is adequate, accurate and current basic and BO information and that information cannot be used for prosecution since there are no formal channels for requesting that information. Moreover, there is no obligation for trustees to file annual returns and lawyers may not necessarily obtain information on BO or on control of trusts, or the place of residence of the trustees.

Table 7.3: Number of requests from Competent authorities to Registrar of Deeds

YEAR	Competent Authorities	No. of requests granted	No of request not granted and reasons	Nature of Requests
2018	-	-	-	-
2019	-	-	-	-
2020	DCEO	2	-	Enquiry on registration of 2 joint ventures
2021	NSS	1	-	Enquiry on the beneficial ownership of a legal arrangement
2022	DCEO	2	-	Enquiry on registration of 2 joint ventures
Total		5		

Effectiveness, proportionality and dissuasiveness of sanctions

390. The ROC has administrative and criminal sanctions at its disposal for violations of the provisions of the Companies Act. They indicated that during the period under the review, 1330 companies were struck off from the company registry for non-compliance with the Companies Act 2001 (non-filing of AFS) and there were 10 rejected applications for registration. The ROC has powers to reject an application in terms of Section 87 (2) of the Companies Act. Where an application has been returned for revision and the query has not been addressed by the applicant for three times, the Registrar will reject the application and provide reasons for rejection. The number of companies rejected between 2017 and 2022 is fifty.

391. The offences range from failure to update information to failure to file annual reports. Apart from imposing monetary penalties on companies for failure to update company records and submitting annual returns the ROC has not taken serious disciplinary actions for non-compliance with the information requirements.

392. In addition, the AT noted that even though other types of sanctions are provided for under the Companies Act 2001 the ROC has only used administrative sanctions in form of monetary penalties. There was one instance where a legal entity had been sanctioned USD 133 (M 2,555) for not notifying the Registrar's office of a change in a director (Form 9). Under Regulation 18 of the Companies Regulations, any change of directors should be filed with the Registrar within 30 days of the change, the Companies Regulations have a penalty of USD 0.26 (M 5) per day for late filing of documents. This indicates that the company had not been compliant for more than 15 months. The ROC has issued sanctions for late filing of: (a) annual financial statements (34); (b) notification of change of directors (7); (c) notification of shareholders (2) for the period under review. The penalties provided for the late filing for change of directors range from USD 10 - 33 (M 210 – 630), while those for late notification of change of shareholders range from USD 3 - 8 (M 60 – 150). The most evident non-compliance is the late filing of the AFS whereby the ROC has issued 34 sanctions ranging from USD 16 - 390 (M 300 – 7,500). In view of the above, the assessment teams' view is that the administrative sanctions provided for non-filing of documents with the ROC might not be proportionate and dissuasive and the officials were also in agreement with this observation and informed that changes were being proposed in the amendments to the Companies Act which were being currently considered. The ROD have limited powers for issuing sanctions for non-compliance under the Trust Registry Act 1967. The Registrar mostly relies on the lawyers to update the trust instruments, whenever there are changes to the trust. Due to the limited powers under the Deeds Registry Act, the ROD has not issued any sanctions for the period under review. The Assessment team was informed that the authorities are revising the laws to fill in the gaps that are existing in the current legal framework. In view of the above, Lesotho has not demonstrated that it has implemented effective, proportionate and dissuasive sanctions against legal arrangements that fail to comply with information requirements.

Overall Conclusions on IO.5

393. Lesotho has not identified and assessed ML/TF risks associated with legal persons, resulting with the fact that the risks associated with them are unknown. Information on the creation and types of legal persons is publicly available since the ROC operates an Open registry system. There is limited information on the creation of legal arrangements at the ROD. Some of the competent authorities have an appreciation of how legal persons can be misused for ML/TF purposes which is based on the findings of the NRA and the corruption cases involving the use of legal entities. While LEAs can access basic information directly from the website of the ROC and accountable institutions, information on beneficial ownership is not available both at the ROC and the ROD. BO information is construed as legal ownership by the authorities with legal ownership being accepted in the place of actual BO information, this creates gaps where BO information is being requested by competent authorities. Although the ROC has applied sanctions against non-compliant entities for late filing of annual reports and appointment of directors, the sanctions available and applied were not deemed to be effective, proportionate and dissuasive while the ROD have limited powers to issue sanctions resulting in no sanctions issued for the period under review.

394. Lesotho has achieved a Low Level of Effectiveness for IO.5.

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key Findings

- a) Lesotho has enabling legal and institutional frameworks and mechanisms to provide and seek MLA, extradition and other forms of international cooperation.
- b) Lesotho does not provide MLA and Extradition in a timely and constructive manner. All the requests received since 2017 had not been handled as at the time of the on-site visit.
- c) Lesotho does not proactively seek MLA and extradition in line with the ML risk profile of the jurisdiction. There were instances for which the authorities would have requested for international cooperation, but the requests were not made.
- d) The DPP as the main body in executing and seeking MLA and extradition requests does not have a comprehensive case management system to monitor the requests in a constructive manner. It does not prioritize the requests consistent with the risk profile of the jurisdiction. The FIU has to some extent provided and sought international cooperation with counterparts on ML. However, the other competent authorities have not used other forms of international cooperation for AML/CFT purposes.

Recommended Actions

- a) Lesotho should establish clear processes for the timely prioritisation and execution of MLA and extradition requests. Such processes should give consideration to high proceeds generating crimes;
- b) Competent authorities in Lesotho should provide MLA and Extradition in a timely and constructive manner, and prioritize requests based on risk.
- c) Competent authorities in Lesotho should proactively seek MLA and extradition in line with the ML risk profile of the jurisdiction.
- d) Competent authorities should utilize the arrangements they have in place for purposes of providing and proactively seeking other forms of international cooperation
- e) Lesotho should commence implementing an effective case management system for incoming and outgoing MLA and extradition requests. The system should maintain comprehensive statistics on incoming and outgoing requests, actions taken, responsible officers, status and nature of requests;
- f) The Competent authorities in Lesotho should spontaneously exchange information with their foreign counter parts for AML/CFT purposes commensurate to the risks where such information is available for sharing;
- g) Lesotho should encourage competent authorities to use direct cooperation with counterpart judicial authorities to obtain admissible evidence on all ML/TF cases with an international component.

395. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The Recommendations relevant for the assessment of effectiveness under this section are R.36-40.

Immediate Outcome 2 (International Cooperation)

Background and Context

396. Lesotho has, to some extent, enabling legal and institutional frameworks to support provision and seeking of international cooperation. The Mutual Legal Assistance Act, 2018 and the Fugitive Offenders

Act, 1967¹¹ provides for MLA and Extradition respectively. There are also other arrangements through signed MoUs, bilateral agreements and multilateral arrangements with other jurisdictions. Though the Attorney General is the legally designated central authority for facilitating MLA requests on ML/TF and associated predicate offenses, it has delegated such power to the DPP. The Minister responsible for foreign affairs is responsible for transmitting incoming and outgoing MLA and extradition requests.

397. Given the geographical location of Lesotho, international cooperation on ML and predicate offences is highly connected with South Africa.

8.2.1 Providing constructive and timely MLA and extradition

398. Lesotho has to a limited extent provided constructive and timely MLA and extradition for predicate offences.

Mutual Legal Assistance

399. Mutual legal assistance in criminal matters is provided under the Mutual Legal Assistance in Criminal Matters Act 2018 (as amended in 2020) (MLA). Even though the law mandates the Attorney General's office as the central authority for facilitating and implementation of MLA, the AG has delegated these powers to the DPP through internal arrangement. The internal arrangements were established on account of insufficient resources in the office of the AG to handle the requests. The DPP's office is composed of 3 Crown Attorneys who are responsible for facilitating incoming and outgoing MLA requests and who have also received some training in that regard. The AG's office has one officer who attends to MLA requests. It was noted that the resources available were not adequate for purposes of timely and constructive attendance to the facilitation of MLA requests.

Incoming MLA

400. The process for incoming MLA is briefly as follows: the request is received by the Ministry of Foreign Affairs and International Relations through the office of the Principal Secretary. The request is recorded as an incoming mail and then immediately taken to the Directorate of Legal Affairs (DLA) for action. Upon the receipt, DLA drafts a covering savingram of the request to the Office of the DPP which handles the request.

401. The request from the Ministry of Foreign Affairs is received by the Crown Attorney in the office of the DPP where it is conveyed to relevant authority, for handling the request. The DPP also notifies the AG of the request received for information purposes only. On conclusion of the matter by the relevant authority, the response is delivered to the DPP which in turn transmits it to the Ministry of Foreign Affairs for onward transmission to the requesting country.

402. The Ministry responsible for Foreign Affairs' office maintains a General Register for incoming and outgoing mail. However, there is no file number allocated to each request, there is no indication of the officer handling the request, there is no column to indicate in the event of refusal to attend to the request and there is no column to indicate the status of the request. Though the AG's office has developed an electronic Case Management Systems to handle both incoming and outgoing requests, it has not started utilizing the System since it is not executing the requests. The DPP's office does not have a Case Management System. The authorities are therefore unable to provide timely and constructive responses to requesting countries. They also do not have a prioritization mechanism.

¹¹ As amended in 2020

403. The authorities reported that since 2018 to date, Lesotho received an average of two requests per year and they were all processed. However, from the records provided by the authorities, there were only 2 recorded incoming MLA requests received in 2018 relating to investigation of illegal possession of fire arms and ammunition. Though the authorities indicated that there was another incoming request on investigations in 2019, the nature of the crime was unknown due to poor records. Both requests were pending and therefore, the requests were not handled in a timely manner. Since the cases were pending, it was not possible to determine the quality of the assistance provided. Lesotho does not further provide feedback on incoming MLAs.

404. Lesotho did not have any incoming MLA relating to asset recovery. Further, there was no information provided on assistance related to asset dissipation or the enforcement of foreign restraint and confiscation orders.

Extradition

405. The process for attending to incoming extradition requests is similar to the process for attending to incoming MLA requests.

406. Requests received in 2018 were still pending and even in cases where a Court Order had been granted, the Authorities could not demonstrate whether court orders given by the competent courts to extradite had in fact been effected. No ML and TF requests were received during the period under review as the requests received related to predicate offences. Further, there is no prioritisation of requests received.

8.2.2 Seeking timely legal assistance to pursue domestic ML, associated predicates and TF cases with transnational elements

Outgoing MLA

407. The Mutual Legal Assistance in Criminal Matters Act 2018 as amended in 2020 (MLACMA) also makes provisions for outgoing MLA. The process is similar to the one for incoming MLA except that it is in reverse order. The request originates and is compiled by LEAs, (ordinarily LMPS and DCEO). It is forwarded to the DPP, and then to the AG. The AG, upon being satisfied that the requests comply with MLACMA, the relevant bilateral or multilateral treaty and the domestic law of the requested State, forwards the request to the Ministry of Foreign Affairs for onward transmission to the requested state.

408. As depicted in Table 8.3, Lesotho has made 4 outgoing requests for MLA to which it had not received any responses and no follow ups were made. During on-site, the authorities stated that they had financial intelligence from the Lesotho FIU which indicated that proceeds of crime had been moved from Lesotho to other jurisdictions, mostly South Africa and China. Lesotho has not pursued possible ML cases where financial intelligence indicated outflow of proceeds of crime to foreign jurisdictions. The number and nature of the ML requests made is inconsistent with the risk profile of the country.

Table 8.3 Outgoing MLA

Date of Receipt	Requesting country	Nature of request	Status
2/10/2018	South Africa	Money laundering, illegal diamond dealing	No information provided
26/01/2020	South Africa	Fraud allegations against the government of Lesotho related to public procurement	Pending
12/10/2021	South Africa	Fraud, theft and ML against CBL	Pending
13/02/22	Undisclosed	Fraud, theft and ML	Pending

Outgoing Extradition

409. The Investigating Officer initiates the process for outgoing extradition following determination of a suspect being from a foreign jurisdiction. The docket is sent to the DPP for consideration. The DPP will in turn peruse the docket to establish whether there is a prima facie case that connects the suspect with the crime. The DPP will then file for a warrant of apprehension with an extradition application.

410. Lesotho has made one extradition request to South Africa. The extradition request involved a person convicted of murder in Lesotho who escaped to South Africa. He was convicted on two counts of murder in 2012 and escaped to South Africa. The extradition request was made in the same year. He is remanded in custody in Lesotho awaiting sentencing.

411. It is noteworthy that the authorities have focused on pursuing predicate offences, and have not utilized extradition in cases where suspects have fled to, or are resident, in foreign countries. In addition, the authorities had not conducted investigations which could indicate whether a suspect had fled to another country. The issues raised on Case Management System and prioritization mechanisms on incoming requests are also the same in the case of outgoing requests.

8.2.3 Seeking and providing other forms of international cooperation for AML/CFT purposes

412. The competent authorities in Lesotho have enabling provisions to provide and seek international cooperation with their counterparts (see Rec 40). They also have bilateral and informal arrangements with several jurisdictions on the exchange of information and rendering assistance to each other in matters of mutual interest. However, competent authorities in Lesotho have, to some extent, sought other forms of international cooperation to exchange financial intelligence, supervisory, law enforcement and other information with their foreign counterparts for AML/CFT purposes.

FIU

413. The FIU also has 12 MOUs with FIUs in the ESAAMLG Region including South Africa, Botswana, Malawi, Uganda, Tanzania, Zambia, Angola, Eswatini, Mozambique, and Kenya. Most requests are made to South Africa due to the interconnectedness of the two countries. The authorities indicated that requests are received and made through secure channels. Incoming requests were attended to within 18 to 56 days depending on the nature of the requests. Most requests related to citizens of Lesotho and assets belonging to such persons. Lesotho did not follow up to confirm whether information provided was helpful to the requesting country. The Table below shows the Statistics on international requests received by the FIU from 2017 to date.

TABLE 8.4-INCOMING REQUESTS					
2017	2018	2019	2020	2021	2022
1	1	0	0	0	1

414. For the outgoing requests, they normally obtain responses within 40 – 85 days of making the request. The Table below shows the Statistics on international requests made by the FIU from 2017 to date. Most outgoing requests were relating to funds that had been moved to other jurisdictions and which were suspected to be proceeds of crime.

TABLE 8.5-OUTGOING REQUESTS					
2017	2018	2019	2020	2021	2022
5	4	3	1	9	5

415. The authorities indicated that such international cooperation, especially with South Africa has yielded some positive results as per the cases below;

Case One

In 2021, there was a case in Lesotho involving payments that were made to various business entities in Lesotho and South Africa which did not provide any services to the Government of Lesotho but made a misrepresentation as if they had provided services by using legitimate voucher numbers which belonged to other legitimate claims with the assistance of government officials in the Treasury Department within the Ministry of Finance. The FIU sought and received financial intel from FIC SA which assisted LEAs to pursue the investigations of entities in Lesotho and SA which had defrauded the government of Lesotho M57million (USD 3, 354, 914. 66) of which M18 Million (USD 1, 059, 446.73) has been repatriated to Lesotho.

Case Two

In 2016, the FIU received an STR involving the sum of R20 000.00 from Bank X. The analysis linked the funds to a former Minister and the funds originated from South Africa. The FIU requested some information from FIC SA on behalf of the DCEO, which was the investigation authority. The response received from FIC SA enabled the DCEO to draft MLA and request evidence to be used in court. Ultimately DCEO was able to take perpetrators to court. Further, SA initiated investigations on foreign bribery owing to that request.

416. The FIU recently commenced providing feedback to requested jurisdictions in relation to the usefulness of the information provided. Due to the recent nature of the feedback being provided, it was difficult to determine their usefulness.

CBL

417. The CBL has also entered into an MOU with South African Reserve Bank (SARB) on exchange of information and cooperation regarding supervision and regulation of financial institutions and groups under their authority. To this end, CBL has requested assistance from SARB in relation to an exporting company which has presence in South Africa and was conducting banking activities with a bank with presence in both countries. Transactions carried out by the company in the named bank were not verified and thus susceptible to money laundering. Thus, CBL requested assistance from SARB on information related to the transactions in question. CBL also conducted an AML/CFT joint inspection with SARB on one bank in 2017.

418. Furthermore, although there is no MOU in place, the CBL requested for assistance from the Reserve Bank of Malawi (RBM) and the Central Bank of Eswatini (CBE) in relation to a named product, which was licensed by both Central Banks. Specifically, CBL requested the counterparts to share what considerations they made in approving the product. The request was made in terms of sharing of information in line with the Basel Core Principles. The feedback from both Central Banks helped the CBL in making a determination on the licensing of the product.

LMPS

419. The LMPS uses different channels of cooperation to exchange information. For instance, Interpol, SARPCCO, MOUs with Rwanda National Police. The MOU with Rwanda National Police is meant to promote collaborative interaction to cooperate in combatting crimes, including terrorism, drug trafficking and organised and transnational crimes.

420. The LMPS is also able to directly receive requests from other countries. Such requests are directed to the Commissioner of Police, who directs it to Deputy Commissioner responsible for CID and then Head of CCCU. The responses to requests follow the same procedure in reverse order. Ordinarily the information is provided upon request. This is usually done with South Africa with whom they normally have joint investigations for stock theft, car robberies and other serious crimes.

421. Even though LMPS has arrangements in place for exchange of information with their counterparts from other jurisdictions, this is not used for ML/TF investigation purposes. For instance, the joint investigations with South Africa are limited mostly to stock theft, without giving due consideration for potential ML elements (See IO 7).

DCEO

422. The DCEO normally has cases with cross-border implications usually involving South Africa and China. The DCEO also uses the FIU for help in international cooperation. They write letters and, in some situations, informal. FIU can be asked to request for intelligence information from their counterparts.

423. Even though the DCEO has arrangements in place for exchange of information with their counterparts from other jurisdictions, these arrangements have not been used effectively for purposes of pursuing ML cases in Lesotho. Further, even though they have identified other countries to which proceeds from predicate offences are moved to, they have not requested for

MLA or other forms of international cooperation to aid investigations following identification of such cases relating to cross-border crimes.

RSL

424. The RSL has MOUs and Treaties with various jurisdictions regionally and internationally. It has Double Taxation Agreements (DTA) with various countries; Eswatini effective 02 October 2020, Botswana effective 30 January 2020, Mauritius effective 07 June 2021, South Africa on 27 May 2016, and United Kingdom on 18 September 2018 which are used for information sharing as well as pursuit of tax matters involving the two jurisdictions. For cases of a transborder nature, the South Africa Revenue Services is the counterparty where most requests for cooperation have been sent as shown in the case below:

Case involving SARS

For purposes of facilitating the importation of its goods bought from South Africa, company A made use of fraudulent invoices and paid lesser amount of import VAT than the one it was supposed to have paid had it used the correct invoices.

The RSL conducted investigation and through the assistance of SARS, sought and obtained legitimate invoices that were issued to company A by the supplier.

The Government of Lesotho was defrauded US\$60 000 by company A through the use of fraudulent invoices.

The charges have been drawn and awaiting the DPP to give consent in term of the law.

425. Even though RSL has arrangements in place for exchange of information with their counterparts from other jurisdictions, this is used mainly for enforcing tax obligations, and not used for pursuit of investigations and prosecution of ML, tax and custom related offences which are transboundary in nature. Further, the cases handled by RSL were having inordinate delays in the process of investigation as well as prosecution of the cases.

8.2.4 International exchange of basic and beneficial ownership information of legal persons and arrangements

426. Lesotho obtains and keeps basic information but there are no requirements to obtain and keep beneficial ownership information. Lesotho has also neither received nor made any request for basic or BO information from other countries. Since Lesotho does not keep BO information, it was difficult to assess the extent to which they are providing or seeking BO information.

427. Although the Authorities indicated that there is an Open Registry which could be easily accessed, the AT was of the view that the registry contains basic information only and also that the registry was not sufficient for evidentiary purposes.

Overall Conclusion on IO.2

428. The competent authorities in Lesotho have legal and institutional arrangements for the exchange of information with other countries. However, the MLA and extradition regime of Lesotho is not very effective mostly on account of the time it takes to attend to the requests by the relevant competent authorities and the lack of implementation of an effective Case Management System. The absence of a robust and comprehensive Case Management for facilitating MLA and extradition requests also leads to inordinate delays in attending to requests as well as prioritising the same. With regards to outgoing MLA and extradition, the authorities had not followed up on their requests to other jurisdictions. In addition, the MLA and extradition requests are not in line with the risk profile of the jurisdiction and are mostly focused on the underlying predicate offence.

429. Further, even though competent authorities have arrangements for seeking and providing other forms of international cooperation, only the FIU has proactively used these channels for purposes of obtaining information from their counterparts to assist LEAs in pursuing domestic ML/TF investigations and prosecutions. The authorities do not usually give feedback to the requested authority regarding the usefulness of the information received.

430. In addition, Lesotho does not maintain any BO information and has neither requested nor shared any basic or BO information with another jurisdiction for AML/CTF purposes.

431. Lesotho has achieved a Low Level of Effectiveness for IO.2.

TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerical order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 2011. This report is available from <https://www.esaamlg.org/reports/Deatiled-MER-for-the-Kingdom-of-Lesotho.pdf>.

Recommendation 1 – Assessing risks and applying a risk-based approach

This is a new Recommendation which came into force in 2012 after completion of the First Round of MEs and therefore Lesotho was not assessed on this in the 2011 MER.

Criterion 1.1-(Met)-Lesotho identified and assessed its ML/TF risks through a 2018 national risk assessment which focused on national threats and vulnerabilities using the World Bank NRA Tool.

Criterion 1.2 -(Met)-The FIU was designated by the Ministry of Finance as the coordinator of the NRA which comprised multiple agencies in supervision, regulation, law enforcement and private sector.

Criterion 1.3 – (Partly Met)-Lesotho completed the risk assessment exercise in 2018. It has carried out one sectoral (banking) risk assessment to keep the risk analysis up to date. However, there is no specific commitment or requirement to keep the risk assessment up to date. Furthermore, since its completion, the country has not updated the risk assessment.

Criterion 1.4 - (Met)-Lesotho has used various mechanisms to share the results of the risk assessment. The FIU sent the report to some government agencies, supervisory authorities and accountable institutions via emails and hardcopy delivery. It also shared the results by holding meetings with various stakeholders.

Criterion 1.5 – (Partly Met)-Lesotho has not demonstrated that it allocates resources across the AML/CFT authorities based on the identified risks and has not applied risk-based approach to implementing measures to prevent or mitigate risks. For instance, it has not introduced enhanced CDD measures in relation to sectors which were identified as being highly vulnerable to ML/TF risks such as the real estate sector and motor vehicles dealers. In relation to the highest proceeds generating offences such as corruption, DCEO has not demonstrated that it had allocated resources to intensify corruption investigations. The cases prosecuted also do not demonstrate that DCEO and DPP has prioritised or allocated resources to prosecute corruption cases. RSL has intensified measures aimed at fighting tax evasion and some agencies such as CBL have developed risk-based supervisory frameworks, although this is being applied to a limited extent (see c.26.5). However, ML/TF risks do not inform the frequency and intensity of supervision in the Banks and ADLAs (MVTs) while there is no ML/FT risks supervision in the insurance and securities sectors

and supervision of DNFBP sectors, most of which were identified as being vulnerable to ML/TF risks. No adequate measures have been put in place to curb false/ undeclared cross-border currency and BNI.

Criterion 1.6. - (Not Met)-Insurance brokers, insurance agents, VASPs and persons or institutions which carry out the following activities are not subject to AML/CFT obligations in terms of the MLPCA and MLPC Regulations:

- a) Issuing and managing means of payment (e.g. credit and debit cards, traveler's cheques, money orders and bankers' drafts, electronic money) [item 5 of FATF definition],
- b) Safekeeping and administration of cash or liquid securities on behalf of other persons that are not pension funds, banks, stockbrokers, lawyers and accountants [item 10 of FATF definition], the exclusions are not based on proven low ML/TF risks.

Criterion 1.7 - (Partly Met)-Lesotho does not satisfactorily meet requirements of this criterion as outlined below:

- (a) Whereas the NRA findings identified real estate, lawyers and motor vehicle dealers as being highly vulnerable to ML/TF, Lesotho has not directed FIs and DNFBPs to apply enhanced measures to mitigate the risks in their business relationship with these sectors.
- (b) Paragraph 3.2.f of the CBL AML/CFT Risk Management Guidelines provides that *a bank must fully consider the outcome of the NRA or any other equivalent risk assessments by relevant authorities*. In particular, a bank is required to take into account (i) sectors identified as highly vulnerable to ML/TF risks, (ii) crimes identified as high risk or susceptible to money laundering; and (iii) TF and/or PF risks. However, the requirement applies to banks only.

Criterion 1.8- (Partly Met)-Under Regs. 5(4) and 22 of the MLPCR 2019, Lesotho allows FIs and DNFBPs to apply simplified due diligence measures when they have identified a low-risk relationship or transaction. However, there is no requirement that this can only be applicable if results of risk assessments undertaken by FIs or DNFBPs are consistent with the country's risk assessment. In addition, some FIs are not subject to these requirements (see c.1.6).

Criterion 1.9 - (Mostly Met)-S. 18A (2) of MLPCA (as amended) 2016 requires supervisors to supervise and enforce compliance of Accountable Institutions with this Act or any instruction, directive, guideline or rule made pursuant to the Act, including implementing their obligations under R.1. However, some FIs are not covered and there are limitations in relation to risk-based supervision (see analysis of R. 26 and R. 28 for more information).

Criterion 1.10 (Partly Met)- Regs. 5 (3) and 22 require FIs and DNFBPs to have in place processes to identify, assess, monitor, manage and mitigate ML/TF risks (for customers, countries or geographic areas; and products, services, transactions or delivery channels). The process implies the obligation for the FIs and DNFBPs to (a) document the outcome of the risk assessment exercise; (b) consider all relevant factors to determine the level of overall risk. However, there are no specific obligations to: (c) keep the risk assessments up-to-date and (d) have appropriate mechanisms to provide the risk assessment to competent authorities.

Criterion 1.11- (Partly Met)- FIs and DNFBPs are required to:

- (a) implement policies to prevent misuse of technological developments in ML and TF schemes, and address specific risks associated with non-face-to-face business relationship or transactions (S. 20(2)(a) of MLPCA (as amended) 2016. Furthermore, S.20(2)(b) obliges FIs and DNFBPs to establish internal control policies, procedures and controls for fighting ML and TF. These sections are limited in scope as they apply to specific areas and not all aspects of ML/TF. In addition, there is no requirement that the policies, controls and procedures be approved by senior management.
- (b) There is no requirement to monitor the implementation of those controls and to enhance them if necessary.
- (c) Reg 5(4) of MLPCR 2019 requires FIs to take enhanced measures to manage and mitigate the risks where higher risks have been identified.

Criterion 1.12 - (Partly Met)-Lesotho permits FI and DNFBPs to take simplified measures to manage and mitigate risks for lower-risk business relationships or transactions (see c.1.8). Reg 5 (5) of MLPCR 2019 and prohibits financial institution or financial service provider from applying simplified measures whenever there is a suspicion of money laundering or terrorist financing. However, criteria 1.9 to 1.11 are not fully met as there are limitations in relation to risk-based supervision, risk assessments and AML/CFT policies.

Weighting and Conclusion

Lesotho completed its first NRA in 2018, which involved most of the government stakeholders and a representative from one bank and another from Lesotho Institute of Accountants. However, the country has not yet updated the risk assessment since then. There is no tangible evidence that Lesotho allocates resources and implements AML/CFT measures on a risk-sensitive basis. This deficiency is weighted the most heavily due to its possible impact on the country's AML/CFT situation. Other deficiencies include: some FIs and VASPs are not covered; Lesotho does not require FIs and DNFBPs to update their risk assessments and have AML/CFT policies which are approved by senior management.

Lesotho is Partially Compliant with R.1

Recommendation 2 - National Cooperation and Coordination

In its 1st Round MER, Lesotho was rated PC on National Cooperation and Coordination (formerly R31). The main technical deficiencies were that the FIU which should assist with the coordination of information was not established. Moreover, the section which mandated the FIU to provide guidelines did not specifically require it to do so in consultation with the other stakeholders for their input. In addition, It was difficult to determine the effectiveness of the coordination of the AML/CFT information as some of the agencies were not aware of the existence of the MLPCA and what was expected of them. The new requirements relate to cooperation in the context of proliferation financing and compatibility of AML/CFT requirements and data protection and private rules.

Criterion 2.1 – Met-Lesotho has a national AML/CFT/CPF strategy (2022-2027), based on the findings of the 2018 National Risk Assessment. The strategy was approved on the 9th of November 2022. Prior to this current strategy, the country developed a strategy for the period 2010 to 2012 and the second was for 2013 to 2015.

Criterion 2.2 – Met-There is AML/CFT National Coordinating Committee (NCC) that was designated as an authority that is responsible for national AML/CFT policies. The NCC was established administratively through cabinet approval on the 26th of July 2011. Composition of the NCC includes all key stakeholders as well as some representatives of private sector associations.

Criterion 2.3 – Met-Policy level mechanisms are handled by the NCC, whilst domestic coordination and information exchange at the operational level takes place through the NCC’s National Task Force. The FIU and law enforcement authorities have established mechanisms to co-operate, co-ordinate and exchange information domestically related AML/CFT policies and activities. There are various MOUs that have been signed by the FIU with competent authorities and supervisors and other bodies. LMPS has also signed various MOU.

Criterion 2.4 –Met-Lesotho has cooperation mechanisms, including co-ordination to combat the weapons of mass destruction. Policy level co-operation is provided through the AML/CFT/CPF National Coordinating Committee and Operational level co-ordination is available through the NCC Task Team.

Criterion 2.5 – Met-The Data Protection Act 2011 provides for Data Protection Rules. Section 8(1)(k) of the Data Protection Act provides for cooperation between competent authorities responsible for data protection rules and other bodies that deal with AML/CFT issues. Section 35 and 17(1)(i) of the Data Protection Act provides for exemption for law enforcement agencies to access personal data in support of investigations. Section 32 of the MLPCA overrides all secrecy provisions that may be contained in other laws, thereby giving the FIU access to information from the data authority. The Ministry of Home Affairs has also entered into MOUs with the various law enforcement agencies to facilitate access to data.

Weighting and Conclusion

The Kingdom of Lesotho designated the NCC to be responsible for national AML/CFT/CPF policies. The country developed a national AML/CFT Strategy in 2022 based on the NRA findings of 2018. At the policy and operational level, there are various mechanisms of inter-agency cooperation.

Lesotho is rated Compliant with Recommendation 2.

Recommendation 3 - Money laundering offence

In the 1st Round of MEs, Lesotho was rated NC (formerly R.1) and Partially Compliant (formerly R.2). The main technical deficiencies were that: the legal framework did not criminalise the full range of predicate offences for the purposes of ML; The threshold for determining what constitutes a serious offence for the purposes of a ML offence was too high and should be reduced to the internationally acceptable standard of 12 months; Most offences in the Kingdom of Lesotho are common law offences and do not have prescribed sentences; Effectiveness could not be determined as no cases had been taken to court under the MLPCA. Further, that the possibility of suspension or postponement of a sentence under section 314 of the CP&E Act for money laundering offences negates the proportionality and dissuasiveness of sanctions for money laundering offences; there was no provisions for the imposition of administrative sanctions for money laundering; the provisions of the MLPCA have not been applied to specific cases to demonstrate the implementation of the law and that due to the lack of statistics, the AT could not determine that sanctions are applied effectively to natural or legal persons.

Criterion 3.1 – Met-Lesotho has criminalized ML in accordance with the Vienna and Palermo conventions art 3 (1) (b) & (c) and art 6 respectively (s25 of MLPCA, 2008 (as amended)).

Criterion 3.2 - Partly Met-Lesotho follows a threshold approach. The predicate offences for ML cover most serious offences. Serious offence has been defined under s.2 of the MLPCA as amended in 2016 to mean offences under any law of Lesotho for which maximum penalty is death or life imprisonment or other deprivation of liberty for a period not less than 12 months. Although the ML Regulations have listed the Serious Offences under the schedule, this is in contravention with section 2 of the MLPCA which has set a threshold for the definition of serious offences. Crimes such as Illicit Trafficking in Narcotic Drugs & Psychotropic Substances, Corruption, Bribery, Fraud, Forgery and tax crimes do not meet the threshold for minimum penalty and therefore are not considered to be predicate offences for ML. See Annexure X for List of Predicate Offences.

Criterion 3.3- Met-Lesotho applies a threshold approach and the minimum penalty for predicate offences is 12 months. C.3.3 (a) & (b) are non-applicable.

Criterion 3.4- Met-S. 2 of the MLPCA as amended defines property widely as currency and any asset of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form ,including electronic or digital, evidencing title to, or interest in, such assets, including but not limited to banks credits, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit, whether situated in Lesotho or elsewhere and includes any legal or equitable interest in any such property. The definition is wide enough to cover any type of property, directly or indirectly that represents proceeds of crime regardless of value and includes VA.

Criterion 3.5- Met-S. 98 (4) of the MLPCA, 2008(as amended) states that ‘the validity of an order under subsection (1) is not affected by the outcome of the proceedings, or of an investigation with a view to institute such proceedings, in respect of an offence with which the property concerned is in some way associated’. This is also supported by the case of Mahelena Lephoto V DCEO & Others, Constitutional case No. 11 of 2017- where the applicant had attempted to challenge the constitutionality of section 98 (4) of the MLPCA, 2008. The court in upholding the constitutionality of section 98(4) of the MLPCA, 2008 restated the purpose of the Act which was to ‘enable the unlawful proceeds of all serious crimes to be identified, traced and to require accountable institutions to take prudential measures to help combat money laundering’.

Criterion 3.6 – Met-Predicate offences for money laundering extend to conduct that occurred in another country, which constitutes an offence in that country, and which would have constituted a predicate offence had it occurred in Lesotho. S.2 of the MLPCA and S. 25 (1) (c) (ii) and (iii) as amended 2016.

Criterion 3.7- Met-The offence of ML applies to persons who commit the predicate offence. S.25 has no restrictions. It can apply on the person who committed the predicate offence or other parties. The case of Rex vs Moferefere Lejone CRI/T/0010/19 is on point. The accused committed the predicate offence of fraud and the subsequent ML and was convicted on both charges. **Rex vs Majara CRI/T/MSU/0429/2020.**

Criterion 3.8- Met-It is possible for the intent and knowledge required to prove the ML offence to be inferred from objective factual circumstances in Lesotho. S.25 (1) of the MLPCA as

amended in 2016 provides that “having a reason to suspect that such property is derived directly or indirectly from acts or omissions. The case of *Rex vs Moferefere* applies.

Criterion 3.9- Met-S. 25 (4) of the MLPCA provides that a person who contravenes this section commits an offence and shall on conviction be liable to imprisonment for a period not exceeding 25 years or a fine not exceeding M25, 000, 000.00 (USD1,666,667.00) or both, and in the case of a legal person a fine not exceeding M100, 000, 000.00(USD6 666 667.00). The sentences provided appear proportionate and dissuasive.

Criterion 3.10- Partly Met-S. 25 (4) and (5) of MLPCA as amended applies to both natural and legal persons. A legal person can be fined not less than M100M. Further, civil or administrative actions may be instituted against a convicted person. Section 25 (5) provides that ‘Notwithstanding subsection 4, civil or administrative sanctions may be instituted against, and sanctions may be imposed upon a person convicted of an offense under this section. A literal interpretation of subsection 5 would seem to indicate that a conviction is a pre-requisite for the imposition of civil and administrative sanctions.

Criterion 3.11- Met-S25 (2) of MLPCA as amended covers ancillary offences to the ML offence, including: participation in; associate with; conspire or commit; attempt to commit; aid and abet; or facilitate; and counsel the commission of any of the acts described in (a) to (c).

Weighting and Conclusion

Lesotho meets some of the criteria except in respect of criteria 3.2 and 3.10. The scope of coverage of ML offences are limited. However, a number of offences which are high proceeds generating such as tax crimes, drug trafficking and forgery do not have commensurate offences for them to be considered as predicate offences for ML in line with the MLPCA. The outstanding deficiencies are considered major.

Lesotho is rated Partially Compliant with R. 3.

Recommendation 4 - Confiscation and provisional measures

In its 1st Round MER, Lesotho was rated Partially Compliant with Recommendation 4 (formerly Recommendation 3). The main deficiencies included the statutory threshold of a maximum term of imprisonment of not less than 24 months was too high limiting common law offences which could qualify to be predicate offences under the MLPCA depending on the penalties applied by the courts; lack of definition of ‘Instrumentalities and its interchangeable use with “tainted property” created confusion as to what property was liable to confiscation, power to apply for identification and tracing orders were not available to all competent authorities and that no cases had been brought under the MLPCA, hence making it difficult to assess its effectiveness. The other deficiency related to the fact that it was not possible to conclusively determine the applicability of the measures for confiscation of proceeds to predicate offences because most offences in the Kingdom of Lesotho were common law offences

Criterion 4.1 – Met-Lesotho has in place measures, including legislative measures that enable confiscation as follows:

4.1 (a)- (Met) -S. 37 (b) as read with S. 40 of the MLPCA, 2008 provides for the confiscation of laundered property following a conviction.

4.1 (b)-(Met)-S. 37 (1) (a) (b) read with 98(1) of the MLPCA provides for a forfeiture order against property which is an instrumentality of a serious offence or proceeds of unlawful activities. S. 88 (2) of the MLPCA, 2008 allows for Preservation Orders where there are reasonable grounds that the property is an instrumentality of a serious offence or is the proceeds of unlawful activities.

4.1 (c)- (Met)-S. 62(1) of the MLPCA provides for seizure of any cash or funds or property intended to be used for the purpose of terrorism, belongs to or held on trust for a prescribed organization or property obtained through acts of terrorism. S. 62 (2) of the MLPCA provides that the competent authority may seize cash, funds or property even if it reasonably suspects part only of the cash, funds or property to be a terrorist cash, funds or property where it is not reasonably practicable to seize that part only of cash, funds or property. While the Prevention and Suppression of Terrorism Act, 2018 (Part V), makes provisions for seizure and forfeiture of terrorist property in respect of seizure and detention of terrorist cash in terms of s.47 and extending the powers of police commissioner to seized property used in commission of terrorist act in terms of S.48. Moreover, S.49 orders for forfeiture of property on conviction for offences and S.50 orders for seizure and restraint of property and S.51 for forfeiture orders.

4.1 (d)- (Met)-As per S.45 of MLPCA, a property of corresponding value with equal amount to the property subject to confiscation can be forfeited to the state where it is not possible to subject to the actual property to a confiscation order.

Criterion 4.2 – (Partly Met)-Although Lesotho has measures that empower its competent authorities to:

- (a) Identify, trace, and evaluate property that is subject to confiscation.
- (b) Carry out provisional measures such as freezing or seizing to prevent any dealing, transfer or disposal of property subject to confiscation.
- (c) Take steps that will prevent or void actions that prejudice the country's ability to freeze or seize or recover property that is subject to confiscation.
- (d) Take any appropriate investigative measures.

As per S.12 (1) of the MLPCA (amended 2016), the location of the properties subject to the different legislation measures are confined to only in the premises of accountable institutions. Furthermore, the provision is vague as it is not clear whether the inquiry relates to the business or clients of the business nor both. Therefore, the application of this provision and its sub-section (e-i) may be restricted to broaden the scope to cover any information solicited from anywhere using the comprehensive elements.

Criterion 4.3 – Met-Lesotho has laws in place to protect the rights of bona fide third parties. SS. 40 (4) (a), 43 and 99 of the MLPCA, 2008 provides for the protection of *bonafide* third parties. S.43 provides that a person claiming an interest in property may apply to Court in accordance with the section before confiscation order is made.

Criterion 4.4 – Met-Lesotho has mechanisms for managing and when necessary, disposing of property frozen, seized or confiscated through its Asset Recovery Unit established in 2018 under the auspices of DCEO. SS. 92 and 104 of MLPCA, 2008 provides for the fulfilment of Forfeiture Orders and allows for sale or other disposal methods as ordered by the High Court. S. 92 of the MLPCA, 2008 provides for the appointment of a curator bonis in respect of property which is subject of a preservation order. The Curator is authorized to assume control over, administer and take care of property which is subject to a Preservation Order.

Weighting and Conclusion

Lesotho has in place some measures, including legislative measures that enable confiscation of laundered property, proceeds of crime, instrumentalities and property of corresponding value. It also has laws for the protection of bona fide third parties as well as for the disposal and management of confiscated property. However, there is a significant deficiency in the provision of S.12 (1) (amended, 2016) as the envisaged powers are limited or can only be exercised in the premises of accountable institution as opposed to a broader scope of location to identify, trace and evaluate property, given Lesotho is a cash-based economy and most of the crimes are happening outside the formal economy. Moreover, conviction-based confiscation may not be applicable if proceeds and instrumentalities are having connection with prevailing offences such as Tax Crimes, Fraud, Corruption etc. (see 3.2) based on ML risk profile of Lesotho.

Lesotho is rated Partially Compliant with Recommendation 4.

Recommendation 5 - Terrorist Financing Offence

In its 1st Round MER, Lesotho was rated PC with these requirements (formerly SR II). The deficiencies were: the financing of an individual terrorist was not criminalized; the possibility of suspension or postponement of a sentence for TF offences negates the proportionality and dissuasiveness of the sanctions; no concurrent sentence to both a fine and a term of imprisonment where appropriate; there were no provisions for the imposition of administrative sanctions for TF offences; and the sanctions for TF, when compared to those in the Region were not proportionate and dissuasive enough.

Criterion 5.1 Met-Lesotho has criminalized TF offence on the basis of the Art 2 of the TF Convention (SS. 8&9 Prevention and Suppression of Terrorism Act (PSTA), 2018 and Section 29 of the MLPCA (as amended) 2016).

Criterion 5.2- Met-TF offence extends to any person who by any means, directly or indirectly, provides or collects funds, or attempts to do so, with the intention that they should be used or in the knowledge that they are to be used in whole or in part to carry out a terrorist act, by a terrorist, or terrorist organization, regardless of whether the act takes place or not (SS. 8&9 Prevention and Suppression of Terrorism Act, 2018).

Criteria 5.2bis – Met-The financing of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training is criminalized in terms of section S. 9(1)(b) of PSTA 2018.

Criteria 5.3 – Met-The provisions of S. 9 read together with S. 2 (definition of funds) of the PSTA 2018 extend to any funds whether legitimate or illegitimate.

Criterion 5.4 – Met-S. 9 (2) (a) and (b) of the PSTA 2018 provides that TF offence is committed even where the act of terrorism does not occur; or (b)even if the funds were not actually used to commit or attempt the act of terrorism thereto referred.

Criteria 5.5 – Met-S. 8(1) (c) of PSTA 2018 permits the courts to make an inference from the circumstances of the case where he reasonably known or suspect that they will be used, directly

or indirectly, in whole or in part, to commit or facilitate the commission of a terrorist act, commits an offence.

Criterion 5.6 – Met- S. 9 (4) of the PSTA 2018 provides that a natural person who commits an offence of TF is liable, on conviction, to a term of imprisonment not exceeding 60 years or to a fine not exceeding M100,000,000.00 (USD 6, 666, 667.00) or both.

Criterion 5.7 – Met-S. 9(4) of the PST Act provides for criminal liability and sanctions for both natural and legal persons. The criminal sanctions are without prejudice to the criminal liability of natural persons. A person who contravenes this section is liable to imprisonment for a term not exceeding 60 years or a fine not exceeding M100,000,000 or to both and in the case of a body corporate, a fine 10 times that amount. The sanctions appear proportionate and dissuasive.

Criterion 5.8 – Met- It is an offence to:

- (a) Attempt to commit a TF offence. SS. 8 and 9 of the PSTA 2018 and S. 29 of the MLPCA (as amended) 2016.
- (b) participate as an accomplice in an offence. S. 9(3)(a) of the PSTA 2018.
- (c) organize or direct others to commit a TF or attempted offence. S. 9(3)(b) of the PSTA 2018,
- (d) contribute to the commission of an offence, by a group of persons acting with a common purpose.S. 9(3)(c) of the PSTA 2018.

Criterion 5.9 – Met-TF offences have been designated as ML predicate offence under Schedule 4 of the MLPCR, 2019.

Criterion 5.10 – Met- S. 3 of the PSTA and S. 29 of the MLPCA (as amended) 2016 provide for extra territorial jurisdiction of the Courts in Lesotho over the commission of an offence under this Act regardless of whether the person alleged to have committed the offence is in Lesotho or in any other country as long as the offender is arrested in Lesotho or is a citizen or a resident of Lesotho.

Weighting and Conclusion

Lesotho has criminalised the offence of TF on the basis of the Terrorist Financing Convention,1999. It has met all the requirements of this Recommendation.

Lesotho is rated Compliant with R.5

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

In its 1st Round MER, Lesotho was rated NC with these requirements (formerly SR III). The deficiencies were: there were no laws and procedures to freeze terrorist funds or other assets of persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee in accordance with S/RES/1267(1999) without delay and prior notice to the designated persons involved; there were no effective laws and procedures to freeze terrorist funds or other assets of persons designated in the context of S/RES/1373(2001) without delay and without prior notice to the designated persons involved; and there were no effective laws and procedures to examine and

give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions.

Criterion 6.1 – Mostly Met-In relation to designations pursuant to United Nations Security Council 1267/1989 (Al Qaida) and 1988 sanctions regimes Lesotho has:

(a) **(Met)** appointed the Minister responsible for Finance to propose names or entities to the 1267/1989 Committee for designation; and for proposing persons or entities to the 1988 Committee for designation on the recommendation of the Anti-Terrorist Committee (the Committee) established under Reg. 26 of the Money Laundering and Proceeds of Crime Regulations (MLPCR) 2019 (See Reg. 27(5) of MLPCR 2019).

(b) **(Met)** Pursuant to Reg. 27(5) as read with 27 (6) of the MLPCR 2019, Lesotho has mechanisms for identifying targets for designation, based on the designation criteria set out in the relevant United Security Council Resolution (UNSCR). The ATC is responsible for recommending to the Minister persons or entities for designation pursuant to various UNSCR Resolutions based on specific findings, supporting evidence and other criteria under section 27 (6) of the MLPCR. Regulation 27 (6) empowers the ATC to collect supporting information, collect evidence and collaborate with law enforcement agencies for purposes of making recommendations for purposes of making recommendations to the Minister for designation.

(c) **(Met)** Lesotho applies an evidentiary standard of proof ‘reasonable grounds’ or ‘reasonable basis’ when deciding whether or not to make a proposal for designation. The proposals for designation are not conditional upon the existence of criminal proceedings. Reg. 27 (5) provides that ‘The Committee shall, on reasonable grounds, determine whether a person or entity has been identified as a person or entity engaged in activities specified in sub-regulation (4) (b), (c), (d) or (e) and recommend to the Minister to propose designation or listing of such person or entity to the relevant United Nations Sanctions Committee. Reg. 27 (11) of MLPCR 2019 provides that “a criminal charge or conviction of a person or entity shall not be a prerequisite for a submission of a proposal for designation or listing. \

(d) **(Met)** Reg. 27 (7) of the MLPCR 2019 introduced the Standard Form for listing in Schedule 8 as adopted by the relevant committee (the 1267/1989 Committee or 1988 Committee).

(e) **(Mostly Met)** Reg 27 (6) & (9) of MLPCR give enough provision for providing as much relevant information as possible on the proposed name for designation including a statement of case which contains as much detail as possible on the basis for the listing. However, the law is silent on regarding whether the status of Lesotho as a designating state may be made known.

Criterion 6.2 – Met

(a) **(Met) Lesotho** passed the Money Laundering and Proceeds of Crime Regulations in 2019 which among other things provided for the implementation of UNSC Resolutions. The Regulations identify the Minister responsible for Finance as the competent authority for designating persons or entities that meet the criteria for domestic designation and designation based on a third-party request as set forth in UNSCR 1373 based on recommendations from the Anti-Terrorism Committee.

(b) **(Met)** Lesotho has mechanisms for identifying targets for designation based on the designation criteria of UNSCR 1373. To this end, Regulation 26 of the MLPCR, 2019 has established the Anti- Terrorism Committee whose functions include recommending to the

Minister responsible for Finance proposals for designating or listing persons or entities under the Regulations. Reg. 27 (8) provides for the mechanism for identification of targets for designation.

(c) **(Met)** Regulation 27 (12) and (8) of the MLPCR, 2019 provides for provision for attending to requests for designation made by other countries for designation pursuant to UNSCR 1373 based on reasonable grounds.

(d) **(Met)** Lesotho applies an evidentiary standard of proof of reasonable grounds when deciding whether or not to make designations. Such designations are not conditional on the existence of criminal proceeding. Regulation 27 (8) provides that ‘The Committee shall on reasonable grounds determine whether a person or entity has been identified as a person or entity engaged in activities specified under sub-regulation (4) (c) and recommend to the Minister to designate and publish a Sanction List in the Gazette the name of such person or entity. Reg. 27 (11) of MLPCR 2019 provides that “a criminal charge or conviction of a person or entity shall not be a prerequisite for a submission of a proposal for designation or listing.

(e) **(Met)** Regulation 27 (12) (b) and 28 (2) (c) MLPCR provides for requests by Lesotho to other countries to designate and freeze assets or other funds in accordance with domestic laws and states that ‘Where a freezing order has been issued in accordance with Regulation 28 (1) the Minister shall, through the Minister responsible for foreign affairs and international relations, request another country to freeze funds or other assets in accordance with its domestic laws’.

Criterion 6.3 –Partly Met-Regulation 26 (2) (b) as read 27 (5), 27(6), 27 (8) and 27 (9) provide for use of material facts and supporting information to identify persons and entities meet the criteria for designation and to enable coordinating the implementation of the Resolutions.

However, there is no legal basis for the competent authority to collect or solicit information, to identify persons and entities that meet the criteria for designation. However, the authorities do not have power to operate ex-parte against a person or entity who has been identified and is being considered for designation.

Criterion 6.4 – Partly Met-Lesotho has provisions for the implementation of targeted financial sanctions. Regulation 27(1) and (2) provide for the transmission of UN Sanctions List which are first received by the Minister responsible for foreign affairs who then transmits to the Minister responsible for finance. The Minister responsible for finance then disseminates to the accountable institutions. information. Regulation 28 (1) provides that ‘where a person or entity has been designated and listed in accordance with Regulation 27, the Minister shall issue out a freezing order directing a person or entity, including an accountable institution, to freeze without delay and without prior notice funds or other assets of the designated person or entity.’ The definition of without delay is ‘immediately or within 24 hours. However, the whole process may take 4 days at a minimum, and therefore, no TFS without delay.

Criterion 6.5 – Met-Reg. 28 (1) of the MLPCR 2019 gives the Minister powers where a person or entity has been designated and listed in accordance with Reg. 27, to issue out a freezing order, directing a person or entity, including an accountable institution, to freeze without delay and without prior notice funds or other assets of the designated person or entity.

(a) **(Met)** Reg. 28 (1) of MLPCR, 2019 provides that ‘where a person or entity has been designated and listed **in accordance with Regulation 27**, the Minister shall issue out a freezing order, directing a person or entity, including an accountable institution, to freeze without delay and without prior notice funds or other assets of the designated person or entity’. S 2 of the MLPCA 2008 defines a person to include a natural or a legal person.

(b) **(Met)** The obligation to freeze extends to all funds; (i) Reg. 31 (1) (b) of MLPCR 2019 provides that it is not necessary that the funds or other assets are linked or tied to a particular terrorist act, plot or threat; ii) Under Reg. 31 (1) (a) of MLPCR 2019, the obligation to freeze extends to funds or assets in the custody or control, of any person or entity, including an accountable institution which shall, act upon a freezing order and freeze without delay and without prior notice, funds or assets of persons or entities identified pursuant to regulation 27 to the extent that the funds or assets are wholly or jointly owned or controlled, directly or indirectly, by those persons or entities; (iii) Reg. 31 (1) (c) of MLPCR 2019 covers the funds or other assets derived or are generated from funds or other assets owned and controlled, directly or indirectly by those persons or entities; iv) Reg. 31 (1) (d) of the MLPCR 2019 cover funds or other assets are the funds or other assets of persons or entities acting on behalf of, or at the direction of those persons or entities.

(c) **(Met)** Reg. 30 (1) of MLPCR 2019 provides that ‘no person or entity, including an accountable institution shall make funds or other assets, economic resources or financial or other related services available, directly or indirectly, wholly or jointly, for the benefit of designated persons and entities identified under reg. 27 and any person and entity acting on behalf of, or at the direction of such persons or entities unless authorized or notified in writing by a sector supervisory authority, the unit, or any competent authority, exercising its powers under these regulations or any laws in Lesotho’.

(d) **(Met)** There are mechanisms under Regs. 27 (2) and 28 (1) and (2) of the MLPCR 2019 for communicating designations to the financial sector and the DNFBPs immediately upon taking such action, providing clear guidance to financial institutions and other persons or entities, including DNFBPs, that may be holding targeted funds or other assets, on their obligations in taking action under freezing mechanism.

(e) **(Met)** Reg. 31 (2) of MLPCR 2019 requires that any person or entity, including an accountable institution shall, immediately upon freezing of the funds and other assets pursuant to sub-reg (1) report to a sector supervisory authority, the Unit or Committee as the case may be that funds or assets have been duly frozen. Guideline 22 of Money Laundering (Financial Sanction Related to Terrorist Financing and Financing of Proliferation) Guidelines 2022 extends the obligation to attempted transactions.

(f) **(Met)** Reg. 29 (2) and 30 (2) of the MLPCR 2019 protects the rights of bona fide third parties acting in good faith when implementing the obligations under Recommendation 6.

Criterion 6.6 – Partly Met-Lesotho generally has publicly known procedures for de-listing and unfreezing assets but not procedures for submitting de-listing requests to the relevant UN sanctions Committee in the case of persons and entities designated pursuant to the UN Sanctions Regimes;

(a) **(Not Met)** Lesotho does not have procedures of rules for the submission of de-listing requests to the relevant UN sanctions Committee in the case of persons and entities designated pursuant to the UN Sanctions Regimes.

(b) **(Met)** Lesotho has legal authority to de-list and unfreeze funds of other assets of persons and entities designated pursuant to UNSCR 1373. Reg. 33 of the MLPCR, 2019 provides that ‘Where the Minister upon reasonable grounds believes that a person or an entity in the Sanctions List is no longer subject to Regulation 27 (4) (c), the Minister shall remove the person or entity from the Sanctions List and in doing so the Minister shall revoke the freezing order in respect of that person or entity.’

(c) **(Met)** Lesotho has legal provisions relating to de-listing for persons or entities designated pursuant to UNSCR 1373 under Regulation 33 (2) of the MLPCR, 2019. Refer to Reg, 33 (2) of MLPCR, 2019. Regulation 33 (2) provides that ‘Requests or recommendations to remove a person or entity from the Sanctions List shall:

(a) state why the person or entity is no longer associated or connected with activities under regulation 27;

(b) state the person’s or entity’s current activities, including occupation where relevant and information of possession, control or ownership of assets, and

(c) submit any documentation supporting the request for delisting with an explanation of its relevance.

(d) **(Not Met)** Despite Reg 33 (5), Lesotho does not have comprehensive procedures to facilitate review by the 1988 Committee in accordance with any applicable guidelines or procedures adopted by the 1988 Committee, including those of the Focal Point mechanism established under UNSCR 1730;

(e) **(Not Met)** Despite Reg 33 (5), Lesotho does not have comprehensive procedures for informing designated persons and entities of the availability of the United Nations Office of the Ombudsperson, pursuant to UNSCRs 1904, 1989, and 2083 to accept de-listing petitions.

(f) **(Met)** Lesotho has legal provisions Reg. 33 (4) of the MLPCR 2019 provides that ‘where upon verification that the person or entity appearing in the sanctions list is not a person or entity identified and designated or listed, there are clear indications that a person or entity, with a similar name as a person or entity identified pursuant to reg. 27, has been inadvertently affected by any action exercised pursuant to the provisions of Part V, the Committee shall recommend to the Minister to revoke the designation published in the Gazette and revoke a freezing order’.

(g) **(Partly Met)** There are legal provisions for de-listings and unfreezings. Reg.33 (3) of the MLPCR, 2019, provides that ‘where a person or entity has been dealt with in accordance with sub regulation (1), the person or entity, including an accountable institution, shall unfreeze funds or other assets of such a person or entity. However, there are no mechanisms for communicating such de-listing to the financial sector and DNFBPs as required by the Standards.

Criterion 6.7 – Met- Lesotho authorizes access to frozen funds or other assets which have been determined to be necessary for basic expenses, for the payment of certain types of fees, expenses and service charges, or for extraordinary expenses, in accordance with the procedures set out in relevant Security Council Resolutions (See Reg. 32 (1) of the MLPCR 2019).

Weighting and Conclusion

Lesotho meets some of the criteria in relation to Recommendation 6. However, from the legal provisions provided by the authorities, the TFS cannot be implemented without delay on account of the layers for transmission of the Sanctions List. In addition, Lesotho does not have comprehensive procedures to facilitate review by the 1988 Committee in accordance with any applicable guidelines or procedures adopted by the 1988 Committee, including those of the Focal Point mechanism established under UNSCR 1730, 1904, 1989 and 2083. There is also no

provision for enabling the ATC to request or solicit information to identify persons and entities that meet the criteria for designation and there is no power to proceed ex parte. The outstanding deficiencies are considered moderate.

Lesotho is rated Partially Compliant with R. 6.

Recommendation 7 – Targeted financial sanctions related to proliferation

This is a new Recommendation that was not assessed in Lesotho's 1st Round MER.

Criteria 7.1-7.5 – Not Met-Lesotho does not have in place a framework for the implementation of targeted financial sanctions relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing without delay to comply with UNSCRs.

Weighting and Conclusion

Lesotho has no legal framework to implement UNSCRs on TFS relating to PF

Lesotho is rated Non-Compliant with R. 7.

Recommendation 8 – Non-profit organisations

In its 1st Round MER, Lesotho was rated NC with these requirements (formerly SR VIII). The deficiencies were: no risk assessment was conducted to review domestic laws and regulations in relation to protection of the societies sector against terrorist financing activities in a manner consistent with SR.VIII; no outreach programmes (including awareness raising and promotion of transparency, accountability, integrity and public confidence in the administration and management of societies) conducted to the societies sector with a view to protecting the sector from terrorist abuse; there was no effective supervision or monitoring of those societies which account for a large share of the financial resources and international activities; there was no adequate system at the Societies Register to generate information on the purpose and objectives, the identity of those who own or control or direct their activities, including senior officers, board members and trustees is kept up to date by the Registrar-General's Office.

Criterion 8.1 – (Not Met)-(a-b) Lesotho has not adequately reviewed its NPO sector, including a mapping of its size, features and activities with a view to identify features and types of NPOs which by virtue of their activities or characteristics, are likely to be at the risk of terrorist financing abuse. In addition, the authorities have not identified any threats of NPO abuse emanating from terrorist entities or the manner in which such abuse is done(c-d) Lesotho has not carried out any review to determine adequacy of measures, including laws and regulations targeting a subset of NPOs that may be abused for terrorist financing to guide application of appropriate risk-based measures. Furthermore, the country does not have any framework in place or capacity to obtain timely information on the activities of the NPOs, their size and other relevant features which would help in identifying characteristics which would potentially make them vulnerable to TF risks.

Criterion 8.2 – (Partly Met)

(a) **(Met)**- Sections 10(1) and 14(1)(d) of Societies Act 1966 and Regulation 24 of the MLPCR of 2019 prescribe duties and requirements as well as procedures in relation to use of funds,

preparation and retention of financial records, audit and filing of annual returns by associations. These promote accountability and integrity in the management and administration of NPOs.

(b) **(Not Met)**- There is a requirement on NPOs to conduct outreach activities in terms of Regulation 24(5) (b) of the MLPCR. However, no measures are in place by Lesotho itself to implement sustained outreach and educational programmes concerning TF issues and there has not been any engagement of the NPO sector and their donors.

(c) **(Not Met)**- The relevant authorities have not worked with NPOs to develop and refine best practices to address terrorist financing risk and vulnerabilities and thus protect them from terrorist financing abuse;

(d) **(Met)**- Reg. 24 (5)(c) of the MLPCR, 2019 encourages NPOs to conduct transactions through regulated financial institutions.

Criterion 8.3 – (Not Met)-Lesotho has not developed any risk-based measures for oversight and monitoring the NPOs which may be at risk of being abused for terrorist financing purposes.

Criterion 8.4 – Partly Met

(a) **(Partly met)**- The Registrar General is mandated to monitor and supervise the NPOs for compliance with AML/CFT laws. Section 16 of the Societies Act also empowers it to search the registers and records of the societies’ registry and supply information and certified copies of entries in those registers and records to persons applying to him upon payment of the fees prescribed in the schedule. However, due to the infancy of the CFT supervisory regime, the authorities have not commenced monitoring the compliance of NPOs with the requirements of Recommendation 8.

(b) **(Met)** The FIU and the Registrar General, in terms of Section 18B (1) of the MLPC Amendment Act 2016 and Regulation 24 (4&9) of the MLPC Regulations, 2019 have legal authority to apply effective, proportionate and dissuasive sanctions for AML/CFT violations by NPOs or persons acting on behalf of these NPOs. The provision includes having sufficient powers for them to impose civil, criminal or administrative penalties for breaches other than powers to decline registration or suspend the registration of an NPO which is found to be engaged in wrongdoing or failed to submit annual returns.

Criterion 8.5 – Partly Met

(a) **(Not Met)** Lesotho has no policies in place to ensure effective co-operation, co-ordination and information-sharing amongst appropriate authorities holding relevant information on NPOs. There is no indication of how the relevant authorities cooperate, coordinate, or share information on NPOs.

(b) **(Not Met)** There is no investigative capability and expertise to examine those NPOs suspected of either being exploited by, or actively supporting, terrorist activity or terrorist organisations.

(c) **(Met)** Rule 11 of the Societies Rules provides power for the Registrar General, with the consent of the minister, to investigate the affairs or any part of the affairs of a registered society, to an extent that is not inconsistent with the constitution of Lesotho and the Act, or appoint an inspector to hold such an investigation and to report the result of his investigation to the Registrar General. Section 16 of the Societies Act also empowers the Registrar General to search the

registers and records of the societies' registry and supply information and certified copies of entries in those registers and records to persons applying to him.

(d) (Met) The NPOs attract the full scope of the AML/CFT reporting obligation as accountable institutions under Schedule I of MLPC Act. As such, where there is suspicion, the NPO is obliged to report to the FIU pursuant to Regs. 19 and 20 of the MLPCR 2019. FIU is therefore able to share this information promptly with competent authorities, in order to take preventive or investigative action by virtue of Section 15 of the MLPC Act. Regulation 24(6)(e) also requires the NPOs to avail, without delay, any kept information to the FIU and other competent authorities upon appropriate request.

Criterion 8.6 – (Not Met)-Lesotho has not yet identified points of contact, nor are their procedures in place to respond to international requests for information on NPOs suspected of TF or involvement in other forms of terrorist support.

Weighting and Conclusion

Lesotho does not meet most of the important requirements of this Recommendation. All the measures regulating the activities of NPOs in Lesotho under the laws are not for purposes of dealing with the possible exposure of the NPO sector to abuse for TF activities. Lesotho has not identified which subset of organizations fall within the FATF definition of NPO, and uses all relevant sources of information in order to identify the features and types of NPOs which, by virtue of their activities or characteristics, are likely to be at risk of terrorist financing abuse. Authorities have not undertaken a comprehensive review of the NPO sector to appropriately understand TF risks and have not taken steps to promote targeted risk-based supervision or monitoring of NPOs.

Lesotho is rated Non-Compliant with R. 8.

Recommendation 9 – Financial institution secrecy laws

In its 1st Round MER, Lesotho was rated C with these requirements (formerly R.4).

Criterion 9.1 –Mostly Met

S.32 (1) of the MLPCA of 2008 has an effect notwithstanding any obligations as to secrecy or other restriction on disclosure of information imposed by law or otherwise.

(a) Access to information – Competent authorities in Lesotho can access information they require to properly perform their functions in combating ML/TF. However, insurance brokers and agents are not designated as accountable institutions.

(b) Sharing of information between competent authorities – Competent authorities in Lesotho may cooperate and exchange information with any other competent authority in the performance of their functions either domestically or internationally as provided for under S.11(2) (e) of the MLPCA.

(c) Sharing of information between FIs – There are no restrictions in other legislation preventing FIs from sharing information with other FIs where this is required by Recommendations 13, 16 or 17. However, this could be affected by the fact that insurance brokers and agents are not designated as accountable institutions.

Weighting and Conclusion

There are no financial institution secrecy laws that inhibit the implementation of the FATF Recommendations in Lesotho. However, the insurance brokers and agents in Lesotho are not designated as accountable institutions. Therefore, application of AML/CFT measures could, to some extent, be affected by this deficiency although the ML vulnerability for the sector is considered to be medium high.

Lesotho is rated Largely Compliant with R.9.

Recommendation 10 – Customer due diligence

In its 1st Round MER, Lesotho was rated NC with these requirements (formerly R.5). The main deficiencies were: there was no law or regulation that directly required accountable institutions to undertake CDD measures when: i) entering into business relationships, ii) conducting occasional transactions above a designated threshold and, iii) conducting an occasional wire transfer consistent with SR.VII; there was no law or regulation which required accountable institutions to verify that any person purporting to act on behalf of the customer is so authorised, and identify and verify that person when entering into a relationship; there was no requirement in law or regulation for accountable institutions to identify and verify the beneficial owner; there was no requirement in law or regulation for accountable institutions to determine whether the customer was acting on behalf of another person and take reasonable measures to obtain adequate identification data to verify the identity of that other person.

When CDD is Required

Criterion 10.1 – (Met)-S.26(1) of the MLPCA, as read with Reg. 7 of the MLPCR 2019, prohibits FIs from keeping anonymous accounts or opening an account using a false name.

Criterion 10.2 – (Met)-S.16(1) of the MLPCA (as amended) 2016, Reg. 3 of the MLPC Regulations 2019, and Guideline 11 of the Money Laundering (Accountable Institutions) Guidelines of 2013 provide for performance of customer due diligence by accountable institutions under the following circumstances:

- (a) (Met) – When entering into a business relationship (S.16).
- (b) (Met) – When carrying out occasional transactions above the designated threshold, S. 16 (1)(a)(ii) (aa)(iii) of the MLPCA (as amended) 2016 and Money Laundering (Accountable Institutions) Guidelines of 2013 Guideline 11 require a deposit-taking accountable institution to obtain and verify the particulars of the identity of the customer or client at the time the transaction occurs, unless the deposit to, or by, the customer or client is less than M20,000.00 (approx. USD1,185). Guideline 12 (3) stipulates that where one or more once-off transactions are linked and the deposits together exceed the limit of M20,000.00, a deposit taking accountable institution shall obtain and verify the particulars of the identity of the customer or client.
- (c) (Met) when carrying out an electronic funds transfer. Reg. 3(1)(c) of the MLPC Regulations 2019 requires a financial institution or financial service provider to identify a client or customer when carrying out an occasional transaction which is a cross-border or domestic wire transfer, including serial payment and cover payments. In this regard, every wire transfer is subject to the required CDD measures.
- (d) (Met) when there is suspicion of ML offence or the financing of terrorism (S.6(2)(b); Reg. 3(1)(d) of the MLPC Regulations 2019.
- (e) (Met) when there is doubt about the veracity or adequacy of the customer identification and verification documentation or information it had previously obtained S.6 (b) and (1)(d) of the MLFTP 2011). (s16(2)(c) of the MLPCA (as amended) 2016 and Reg 3(1)(e) of the MLPC Regulations 2019).

Required CDD Measures for all Customers

Criterion 10.3 – Met

S. 16(1)(a) (b)(c) MLPCA (as amended) 2016 as read with Reg. 3(2-4) of the MLPC Regulations, 2019, require accountable institutions to identify and verify the client or customer using reliable, independent source documents, data or information (Reg. 3(2-4) of the MLPC Regulations, 2019; S. 16(1)(a) (b)(c) MLPCA (as amended) 2016. These provisions cover both occasional and permanent customers and are applicable to a customer who is a natural person, legal person or legal arrangement.

Criterion 10.4 – Met

S.16(1)(b) of the MLPCA (as amended) 2016 requires an accountable institution to identify and verify the identity of the person purporting to be acting on behalf of the customer or client by obtaining sufficient identification data to verify the identity of that other person and to verify that any person purporting to act on behalf of the customer is so authorized.

Criterion 10.5 – Met

S.16(1) of the MLPCA (as amended) in 2016 and Reg. 3(3) of the MLPC Regulations 2019 require an accountable institution to identify and verify beneficial owners using reliable and relevant information or data obtained from reliable independent sources to its satisfaction, such that it knows who the beneficial owner is, or understands the ownership and control structure of the client or customer where the beneficial owner is a legal person or arrangement.

Criterion 10.6 – Met

S.16 (1)(a) of the MLPCA 2008 and Reg 4(a) of the MLPC Regulations 2019 require an accountable institution to obtain information on the purpose and intended nature of the business relationship. The ML Guidelines 2013 (Para 7) requires accountable institutions to obtain information and have a sound knowledge of purpose and intended nature for which the customer is seeking to establish a business relationship. The Guidelines are enforceable as non-compliance with them attracts a sanction.

Criterion 10.7 – Met

(a) ***(Met)*** – S.16(1) of the MLPCA (as amended) 2016 and Reg 4(b) of the MLPC Regulations 2019 require an accountable institution to conduct on-going customer due diligence on the business relationship which shall include the scrutiny of the transactions undertaken throughout the course of the relationship to ensure that the transactions conducted are consistent with the accountable institution’s knowledge of the customer, the business and risk profile, and, where necessary, the customer’s source of funds.

(b) ***(Met)*** – S.17(1) of the MLPCA (as amended) require an accountable institution to ensure that documents, data, information collected under the customer due diligence process is kept up-to-date and relevant by undertaking reviews of existing records, particularly of higher risk categories or business relationships.

Specific CDD Measures Required for Legal Persons and Legal Arrangements

Criterion 10.8 – Met

S.16(1)(a) & (c) of the MLPCA (as amended) 2016 and Reg 3(3) of the MLPC Regulations 2019 require accountable institutions to obtain information on the purpose and nature of the business relationship and the structure of the legal entity, and to identify the beneficial owner and ensure that the accountable institution knows who the beneficial owner is, or understands the ownership and control structure of the client or customer where the beneficial owner is a legal person or arrangement.

Criterion 10.9 – Met

For customers that are legal persons or legal arrangements, accountable institutions are required to identify the customers as follows:

- (a) *(Met)* – name, legal form and proof of existence (S.16(1)(c) (i) of the MLPCA, 2008 as amended in 2016 and Regulation 3 (4)(a) of the MLPC Regulations 2019).
- (b) *(Met)* – powers that regulate and bind the legal person or arrangement, as well as the names of relevant persons having a senior management position in the legal person or arrangement (Regulation 3 (4) of the MLPC Regulations 2019).
- (c) *(Met)* – the address of the registered office and, if different, a principal place of business (S.16(1)(c) of the MLPCA, 2008 as amended in 2016 and Regulation 3 (4)(c) of the MLPC Regulations 2019).

Criterion 10.10 – Met

For customers that are legal persons, accountable institutions are required to identify and take reasonable measures to verify the identity of the beneficial owner as follows:

- (a) *(Met)* – adequately identify and verify a customer who is a legal person regarding the nature of legal existence and structure by obtaining adequate and reliable documents, including information relating to the principal owners and beneficiaries and control structure and identifying the natural person who ultimately has a controlling ownership interest in a legal person (s.16 (1)(c)(ii) MLPCA and Regulation 6(6)(a) of the MLPC Regulations 2019)
- (b) *(Met)* – to the extent that there is doubt under paragraph (a) above or where no natural person exerts control through ownership interest, identity of the natural person or persons exercising control over the legal person or through other means (Regulation 6(6)(b) of the MLPC Regulations 2019), and
- (c) *(Met)* – where no natural person is identified under paragraphs (a) or (b), the identity of relevant natural person or persons holding the position of senior management (Regulation 6(6)(c) of the MLPC Regulations 2019).

Criterion 10.11 – (Met)- Accountable institutions are required to identify and take reasonable measures to verify the identity of beneficial owners through the following information:

- (a) *(Met)* – in case of trusts, accountable institutions are required in terms of Reg. 6(5) of the MLPC Regulations 2019 to take reasonable measures to verify the identity of the settlor, the trustee or trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other

natural person exercising ultimate effective control over the trust, including through a chain of control or ownership

(b) *(Met)* – for other types of legal arrangements, the identity of persons in equivalent or similar positions, in terms of Reg. 6(5) of the MLPC Regulations 2019.

CDD for beneficiaries of Life Insurance Policies

Criterion 10.12 – (Not Met)-

(a) There is no specific requirement in law for accountable institutions to identify and verify the customer or beneficial owner of life insurance and other related investment insurance policies in a manner set out in the criteria. Further, insurance brokers and agents are not designated as accountable institutions in Lesotho.

(b) There is no specific requirement in law for accountable institutions to identify and verify the customer or beneficial owner of life insurance and other related investment insurance policies in a manner set out in the criteria.

(c) There is no specific requirement in law for accountable institutions to identify and verify the customer or beneficial owner of life insurance and other related investment insurance policies in a manner set out in the criteria.

Criterion 10.13 – (Not Met)- There is no legal provision requiring FIs to consider the beneficiary of a life insurance policy as a relevant risk factor in determining whether or not to apply enhanced CDD measures. Therefore, there is no requirement to take enhanced measures, including reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary, at the time of payout if it is determined that a beneficiary who is a legal person or a legal arrangement presents a higher risk.

Timing of verification

Criterion 10.14 – Mostly Met

FIs are required to verify the identity of the customer and beneficial owner before establishing a business relationship or conducting transactions for occasional customers in terms of S.16(1) (a-c) of the MLPCA 2016 (as amended). In addition, FIs are required to complete verification of an identity of a customer and beneficial owner after establishment of the business relationship provided that:

(a) *(Met)* Regulation 6(4) of the MLPC Regulations 2019 requires that an accountable institution may complete verification of the identity of a client or customer and the beneficial owner as soon as practicable after establishing the business relationship.

(b) *(Met)* Regulation 6(4) of the MLPC Regulations 2019 requires that in order not to disturb or interrupt the normal conduct or process of business, an accountable institution may complete verification of the identity of a client or customer and the beneficial owner after establishment of the business relationship.

(c) *(Not Met)* There is no legal requirement for accountable institutions to complete customer identity verification after the establishment of the business relationship provided that the ML/TF risks are effectively managed.

Criterion 10.15 – (Met)- Regulation 6(4) of the MLPC Regulations 2019 provides for an option where accountable institutions may complete verification of the identity of a client or customer and the beneficial owner as soon as practicable after establishing the business relationship (Refer to c10.14(b)). Accountable institutions undertaking this option are required under Regulation 5 to adopt a risk-based approach which

includes putting in place processes to identify, assess, monitor, manage and mitigate ML and TF risks. Further, accountable institutions are required to apply simplified measures where risks identified are lower and enhanced measures where the identified risks are higher (Refer to c10.17 & c10.18). In addition, CBL issued AML/CFT Risk Management Guidelines 2022 to help banks effectively implement these requirements, which is a significant step in the risk and context of Lesotho. **Existing customers**

Criterion 10.16 – (Partly Met)-S.16(1A) (b) of MLPCA as amended and Regulation 5(3) MLPCR require accountable institutions to conduct ongoing customer due diligence taking into account customer risk profile and where necessary the customer’s source of funds. However, there is no legal requirement to conduct due diligence on such existing relationships at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained.

Risk-Based Approach

Criterion 10.17 – (Met)-Reg. 5(4) of the MLPC Regulations of 2019 requires an accountable institution to apply enhanced measures to mitigate risks where higher risks are identified.

Criterion 10.18 – (Met)-Reg 5(4) of the MLPC Regulations of 2019 requires an accountable institution to apply simplified measures where lower risks are identified. Regulation 5(4) of the MLPC prohibits an accountable institution from applying simplified measures whenever there is a suspicion of money laundering or terrorist financing.

Failure to satisfactorily complete CDD

Criterion 10.19 – (Met)- Where an accountable institution is unable to comply with relevant CDD measures,

(a) **(Met)** – S.16 (7) of the MLPCA, as read with Regulation 7(1-2) of the MLPC Regulations of 2019, requires an accountable institution not open an account, or establish a business relationship or perform the transaction, and for existing business relationship, they are required to terminate the business relationship.

(b) **(Met)** S.16 (7A) (b) of the MLPCA as amended requires an accountable institution to fill and submit a suspicious transaction report where the requisite identification information or data cannot be verified by an appropriate source.

CDD and tipping-off

Criterion 10.20 – (Not Met)-There is no legal provision permitting accountable institutions not to perform CDD process but instead file an STR in cases where they form a suspicion of money laundering or terrorist financing, and they reasonably believe that performing the CDD process will tip-off the customer.

Weighting and Conclusion

Lesotho has legal provisions which cover requirements on CDD to some extent which include identification and verification of information for all types of customers including on natural persons, legal persons and legal arrangements. The laws also adequately cover requirements for

timing of verification and risk-based approach to implementation of CDD measures and mostly meet the specific CDD measures required for legal persons and legal arrangements. However, there are no CDD requirements for beneficiaries of life insurance policies, and CDD and tipping-off. In addition, insurance brokers and agents are not designated as accountable institutions in the MLPCA but the impact of this under this Recommendation is negligible in the context of Lesotho.

Recommendation 10 is rated Largely Compliant.

Recommendation 11 – Record-keeping

In its MER under the First Round of MEs, Lesotho was rated NC with R. 11 (formerly R. 10). The main deficiency was lack of provision for requirements on record keeping and that the deficiencies under CDD requirements had an effect on record-keeping obligations. The country has since amended the MLPC of 2008, issued MLP Regulations 2019 and ML Guidelines 2013 to address the deficiencies.

R. 11 criteria has a scoping deficiency due to non-designation of insurance brokers and agents under the MLPCA.

Criterion 11.1 – (Met)-S.17(4) of the MLPCA of 2016 (as amended) and Reg. 11(1) and (4) of the MLPC Regulations of 2019 require accountable institutions to keep records of all domestic and international transactions for a period of at least five years or longer if requested by a competent authority in specific cases and upon appropriate request from the date a business relationship is terminated or after the date of the business relationship or occasional transaction.

Criterion 11.2 – (Met)-Reg. 11(3) and (4) of the MLPC Regulation 2019 requires accountable institutions to maintain records and information obtained through measures adopted in Regulations 3 to 10 (which are on CDD measures), account files, business correspondence, and results of any analysis undertaken as well as pursuant to compliance with the requirements of these Regulations.

Criterion 11.3 – (Not Met)-There is no legal provision specifically requiring accountable institutions to maintain records that permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity.

Criterion 11.4 – (Met)-Reg 11(2) of the MLPC Regulation of 2019 requires an accountable institution to maintain records in such a manner that enables it to comply swiftly with information requests from competent authorities, a sector supervisory authority or the FIU.

Weighting and Conclusion

Most of the elements in this criterion have been met. There are deficiencies relating to requirements on maintaining records that permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. Non-designation of insurance brokers and agents affects their record keeping obligations. However, the context of ML/TF risk for insurance sector in Lesotho is low. Further, requirements for record-keeping are applicable to all accountable institutions such that principal insurance firms maintain and keep the required records thereby covering the gap for insurance brokers.

Lesotho is rated Largely Compliant with R.11

Recommendation 12 – Politically Exposed Persons

In its 1st Round MER, Lesotho was rated PC with these requirements (formerly R.6). The main deficiencies were: beneficial owners who were foreign PEPs were not subject to PEPs requirements; no requirements regarding an existing customer or a beneficial owner who was subsequently found to be or becomes a PEP; not all accountable institutions, including bureau de change, providing financial services effectively implemented foreign PEPs requirements.

Criterion 12.1 – (Met)

- (a) **(Met)** S.16(3)(b) of the MLPCA (as amended) 2016 requires accountable institutions to have appropriate risk management systems to determine whether the customer or a beneficial owner is a politically exposed person.
- (b) **(Met)** S.16 (1) of the MLPCA (as amended), as read with Guideline 4(2)(b) of the Money Laundering (Politically Exposed Persons) Guidelines 2015, obliges accountable institutions to obtain senior management approval for establishing a business relationship with a customer who is politically exposed, or for continuing a business relationship with existing customer who is politically exposed.
- (c) **(Met)** –S.16(3)(c) of MLPCA (as amended) 2016, as read with Guideline 20 of the Money Laundering (Politically Exposed Persons) Guidelines 2015, requires accountable institutions to take reasonable measures to establish the source of wealth and source of funds for a customer who is a PEP.
- (d) **(Met)**-S.16(3)(d) of MLPCA (as amended) 2016 requires accountable institutions to conduct enhanced ongoing monitoring of the business relationship where the customer is a PEP.

Criterion 12.2 – (Met)

- (a) **(Met)** –S.16(3A) of MLPCA (as amended) 2016 requires an accountable institution to take reasonable measures to determine whether a customer or beneficial owner is a domestic politically exposed person or a person who has been entrusted with a prominent function by an international organization.
- (b) **(Met)** – in cases when there is higher risk business relationship with such a person, S.16(3B)(b) and 3(E) of MLPCA (as amended) 2016 requires financial institutions to adopt the measures in C.12.1 (b) to (d).

Criterion 12.3 – (Met)-S.16 (3D) of MLPCA (as amended) requires accountable institutions to apply the relevant requirements of criteria 12.1 and 12.2 to family members or close associates of all types of PEP. Money Laundering (Politically Exposed Persons) Guideline 2015 defines close associates as individuals who are closely connected to a PEP either social or professionally.

Criterion 12.4 – (Not Met)-There is no provision for requirements relating to life insurance policies.

Weighting and Conclusion

Lesotho has in place legal provisions that meet most requirements for PEPs. There are, however, no requirements on PEPs relating to life insurance policies.

Lesotho is rated Largely Compliant with R.12

Recommendation 13 – Correspondent banking

In its 1st Round MER, Lesotho was rated compliant with these requirements (formerly R.7).

Criterion 13.1 – (Met)-

- (a) Reg. 8(3)(a) of the MLPC Regulations of 2019 requires that, during the course of establishing a business relationship or during the business relationship, accountable institutions should gather sufficient information about a respondent institution to understand fully the nature of the respondent’s business, and to determine from publicly available information the reputation of the institution and the quality of supervision, including whether it has been subject to an ML/TF investigation or regulatory action.
- (b) Assess the respondent institution’s AML/CFT controls (Reg. 8(3)(b) of the MLPC Regulations 2019).
- (c) Obtain approval from senior management before establishing new correspondent relationships. (Reg. 8(3)(c) of the MLPC Regulations 2019).
- (d) Clearly understand the respective AML/CFT responsibilities of each institution (Reg. 8(3)(d) of the MLPC Regulation 2019).

*Criterion 13.2-(Met)-*With respect to “payable-through accounts”, financial institutions in Lesotho are required to satisfy themselves that the respondent bank:

- (a) Reg 8(3)(e) of the MLPC Regulations 2019 obliges accountable institutions to satisfy themselves that the corresponding respondent institution or services provider has conducted CDD measures on the clients or customers having access to the accounts of the corresponding respondent institution or service provider and that such information is readily available upon request.
- (b) Reg 8(3)(e) of the MLPC Regulations 2019 obliges FIs to ensure that the respondent financial institution is able to provide the relevant CDD information upon request to the correspondent financial institution.

*Criterion 13.3 – (Met)-*Reg. 8(1)&(2) of the MLPC Regulations 2019 obliges a financial institution or financial service provider not to enter into or continue with cross-border correspondent banking relationships or a similar institution or relationship with shell banks and to satisfy itself that cross-border correspondent banking relationships or a similar institution or relationship does not permit its accounts to be used by shell banks

Weighting and Conclusion

Lesotho has the necessary legal provision on requirements for correspondent banking.

Lesotho is rated Compliant with R.13

Recommendation 14 – Money or value transfer services

In its 1st Round MER, Lesotho was rated NC with these requirements (formerly SR.VI). The deficiencies were: it was not clear whether wire transfer requirements under Adhesion Agreement include wire transfers through money transmission orders offered by Post Office; money transmission orders transacted at Post Office not subject to MLPCA provision on wire transfers; There was no requirement that where technical limitations prevent the full originator information accompanying a cross border wire transfer from being transmitted with a related domestic wire transfer, a record must be kept for five years by the receiving intermediary financial institution of all the information received from the ordering financial institutions; there were no requirements for banks or Post Office dealing with wire transfers lacking full originator information to determine if the transaction is suspicious and report to the FIU or competent authority; there were no measures in place to effectively monitor the compliance of financial institutions with available rules and regulations implementing domestic SR.VII requirements.

Criterion 14.1- (Met)-Financial institutions or natural persons that provide MVTS (MVTS providers) are required to be licensed (S.13 of the Financial Institutions Act; Reg. 3 of the Exchange Control Regulations 1989; Reg.4(1), 4(2) and 5(1) of the Financial Institutions (Money Transfer) Regulations 2014; S.10 (1) of the Payment Systems Act 2014; and Reg 5 of the Payment Systems (Issuers of Electronic Payments Instruments) Regulations 2017.

Criterion 14.2- (Met)-S.13(3) of the FI Act contains penalties for persons (natural or legal) that operate MVTS business without being licensed. A fine of up to M250,000.00 (approx. 14,000 USD) and 5 years imprisonment for a natural person or director, officer or person responsible for carrying out the unlicensed business (in case of a legal person) may be considered dissuasive. There are no natural or legal persons that carry out MVTS without a licence or registration in Lesotho, as such no sanctions have been applied.

Criterion 14.3- (Met)-MVTS operators are subject to monitoring for AML/CFT compliance in terms of S.18A(2) of MLPCA (as amended) 2016.

Criterion 14.4- (Met)-Reg. 6(2) of the Financial Institutions (Agent Banking) Regulations, 2016 requires an agent of the bank, before engaging in such capacity, to apply jointly with the bank in question to the Commissioner for a license. In addition, Reg. 5 of the Payment Systems (Issuers of Electronic Payments Instruments) Regulations 2017 requires a company that intends to conduct the business of issuer of electronic payment instruments to be licensed. This Regulation further stipulates that an issuer of electronic instruments may appoint an agent to undertake on its behalf, agency services or cash payment services and that in appointing such, the issuer should exercise due diligence and carry out suitability assessment of the agent.

Criterion 14.5- (Not Met)- MVTS providers in Lesotho use agents in providing their services. However, there is no legal provision requiring MVTS providers that use agents to include them in their AML/CFT programmes and monitor them for compliance with the programmes.

Weighting and Conclusion

MVTS operators in Lesotho are required to be licenced and there are penalties in place in case of any natural or legal person that violates the legal provisions. In addition, the MVTS operators are

subject to monitoring for AML/CFT compliance. However, there is no requirement for agents to be included in AML/CFT programmes of the MVTs operators.

Lesotho is rated Largely Compliant with R.14.

Recommendation 15 – New Technologies

In its 1st Round MER, Lesotho was rated NC with these requirements (formerly R.8). The deficiencies were: there was no requirement for accountable institutions to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes; there was no direct obligation for accountable institutions to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions. The new R.15 focuses on assessing risks related to the use of new technologies, in general, and imposes a comprehensive set of requirements in relation to virtual asset service providers (VASPs).

Criterion 15.1 – (Not Met)-Lesotho has not identified and assessed ML/TF risks that may arise in relation to the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products.

Criterion 15.2 – (Not Met)-

(a) **Not Met** -There is no legal provision for accountable institutions to undertake the risk assessments prior to the launch or use of such products, practices and technologies;

(b) **Partly Met** -Reg. 8(1)(a) of the Financial Institutions (AML-CFT) Regulations 2015 requires a bank to put in place management information systems policies and processes to identify, assess, monitor and manage technology risks to prevent money laundering and terrorist financing. However, this only relates to the banking sector and there is no requirement for risk assessment for circumstances stated under c15.2(a).

Criterion 15.3 – (Not Met)-In accordance with Recommendation 1, Lesotho has not identified and assessed the ML/TF risks emerging from virtual asset activities and the activities or operations of VASPs; applied a risk-based approach to ensure that measures to prevent or mitigate ML/TF are commensurate with the risks identified; require VASPs to take appropriate steps to identify, assess, manage and mitigate their ML/TF risks.

Criterion 15.4 – (Not Met)-There is no legal provision requiring licensing or registration of VASPs, and that competent authorities should take necessary legal or regulatory measures to prevent criminals or their associates from holding, or being the beneficial owner of, a significant or controlling interest, or holding a management function in, a VASP.

Criterion 15.5 – (Not Met)-Lesotho has not taken action to identify natural or legal persons that carry out VASP activities without the requisite license or registration, and apply appropriate sanctions to them.

Criterion 15.6 – (Not Met)-VASPs are not subject to any regulation and risk-based supervision or monitoring by a competent authority. Although S.35 of the MLFTP Act 2011 empowers the FIU or Supervisory Authority to enforce AML/CFT compliance by accountable institutions, VASPs do not fall under the supervisory requirements mentioned under this criterion.

Criterion 15.7 – (Not Met)-Competent authorities and supervisors in Lesotho have not established guidelines, and provided feedback, to assist VASPs in applying national measures to ML/TF, and, in particular, in detecting and reporting suspicious transactions.

Criterion 15.8 – (Not Met)-Lesotho does not have in place a range of proportionate and dissuasive sanctions, whether criminal, civil or administrative, available to deal with VASPs that fail to comply with AML/CFT requirements; and ensure that sanctions are applicable not only to VASPs, but also to their directors and senior management.

Criterion 15.9 – (Not Met)-In Lesotho, VASPs are not required to comply with the requirements set out in Recommendations 10 to 21, subject to the qualifications outlined in this criterion.

Criterion 15.10 – (Not Met)-With respect to targeted financial sanctions, the communication mechanisms, reporting obligations and monitoring referred to in Recs 6 and 7 do not apply to VASPs.

Criterion 15.11 – (Not Met)-Lesotho does not rapidly provide the widest possible range of international cooperation in relation to money laundering, predicate offences, and terrorist financing relating to virtual assets, on the basis set out in Recommendations 37 to 40, and the supervisors of VASPs do not have a legal basis for exchanging information with their foreign counterparts.

Weighting and Conclusion

The requirements of the Recommendation, regarding both new technologies and VAs and VASPs, are not satisfied.

Lesotho is rated Non-Compliant with R.15

Recommendation 16 – Wire transfers

In its 1st Round MER, Lesotho was rated NC with these requirements (formerly SR.VII). The deficiencies were: it was not clear whether wire transfer requirements under Adhesion Agreement include wire transfers through money transmission orders offered by Post Office; there was no requirement that where technical limitations prevent the full originator information accompanying a cross-border wire transfer from being transmitted with a related domestic wire transfer, a record must be kept for five years by the receiving intermediary financial institution of all the information received from the ordering financial institution; the sanctions regime did not cover administrative measures, and were also not effective, proportionate and dissuasive; significant changes were made to the requirements in this area during the revision of the FATF standards in 2012.

Ordering financial institutions

Criterion 16.1- Met

Criterion 16.1 (a)(i) – (Met) Reg. 20 (1) (a) (i) of the MLPC Regulations 2019 requires an accountable institution to ensure that all cross-border wire transfers are always accompanied by the accurate originator’s information which include name of the originator.

Criterion 16.1 (a)(ii) – (Met) Reg. 20 (1) (a) (ii) of the MLPC Regulations 2019 requires an accountable institution to include the originator account number where such an account is used to process the

transaction or in the absence of an account, a unique transaction reference number which permits traceability of the transaction.

Criterion 16.1 (a)(iii) – (Met) Reg. 20 (1) (a) (iii) of the MLPC Regulations 2019 requires an accountable institution to include the address of the originator, or national identity number, or date and place of birth.

Criterion 16.1 (b)(i) – (Met) Reg. 20 (1) (b) (i) of the MLPC Regulations 2019 requires an accountable institution to include the name of the beneficiary.

Criterion 16.1 (b)(ii) – (Met) Reg. 20 (1) (b) (ii) of the MLPC Regulations 2019 requires an accountable institution to include the account number of the beneficiary where such an account is used to process the transaction or in the absence of an account, a unique transaction reference number which permits traceability of the transaction.

Criterion 16.2- (Met)-Reg 20 (2) of the MLPC Regulations 2019 provides that where several individual cross-border electronic money transfers from a single originator are bundled in a batch file for transmission to beneficiaries, the batch file should contain required and accurate originator information and full beneficiary information that is fully traceable or the beneficiaries' recipient country. The information required include account number of the originator or in absence of the account, a unique transaction reference number which permits traceability of the transaction

Criterion 16.3 (a-b)

(N/A) Lesotho does not apply a *de minimis* threshold for the requirements of criterion 16.1.

Criterion 16.4- (Met)-The requirements on C16.3 are not applicable in Lesotho. However, Regulation 20 (3) of the MLPC Regulations 2019 requires an accountable institution to verify the information pertaining to its customer where there is a suspicion of ML/TF.

Criterion 16.5 – (Not Met)-For domestic wire transfers, there is no legal requirement for the ordering financial institution to ensure that the information accompanying the wire transfer includes originator information as indicated for cross-border wire transfers, unless this information can be made available to the beneficiary financial institution and appropriate authorities by other means.

Criterion 16.6 – (Not Met)-Where the information accompanying the domestic wire transfer can be made available to the beneficiary financial institution and appropriate authorities by other means, there is no requirement for the ordering financial institution to include the account number or a unique transaction reference number, provided that this number or identifier will permit the transaction to be traced back to the originator or the beneficiary. In addition, there is no requirement for the ordering financial institution to make the information available within three business days of receiving the request either from the beneficiary financial institution or from appropriate competent authorities.

Criterion 16.7- (Met)-Reg. 20 (4) MLPC Regulation 2019 requires the ordering financial institution to maintain all originator and beneficiary information collected, in accordance with Recommendation 11.

Criterion 16.8 – (Not Met)-There is no legal provision for the ordering financial institution not to be allowed to execute the wire transfer if it does not comply with the requirements specified above at criteria 16.1-16.7.

Intermediary financial institutions

Criterion 16.9- (Met)-Reg. 20 (4)(a) of the MLPC Regulations 2019 requires an intermediary financial institution to ensure that all information of the originator and beneficiary that accompanies a cross-border wire transfer is retained with it.

Criterion 16.10 – (Met)-Reg. 20 (4) (b) of the MLPC Regulations 2019 provides that, where technical limitations prevent the required originator or beneficiary information accompanying a cross border wire transfer from remaining with a related domestic wire transfer, an intermediary financial institution should keep a record, for a period of five years, of all the information received from the ordering financial institution or another intermediary financial institution.

Criterion 16.11- (Met)-Reg. 20 (4) (c) of the MLPC Regulations 2019 requires an intermediary financial institution to take reasonable measures that are consistent with straight-through processing, to identify cross-border wire transfers which lack the required information for the originator or beneficiary.

Criterion 16.12 (i)- Met

Reg. 20 (4) (d) of the MLPC Regulations 2019 an intermediary financial institution to put in place risk-based policies and procedures for determining when to execute, reject or suspend a cross-border wire transfer lacking the required originator or beneficiary information.

Criterion 16.12 (ii)- Met

Reg. 20 (4) (d) of the MLPC Regulations 2019 an intermediary financial institution to put in place risk-based policies and procedures for determining the appropriate follow-up action.

Beneficiary financial institutions

Criterion 16.13- (Met)-Reg. 20 (5) (a) of the MLPC Regulations 2019 requires a beneficiary financial institution to take reasonable measures, which may include post-event monitoring or real-time monitoring where feasible, to identify cross-border wire transfers that lack the required originator or beneficiary information.

Criterion 16.14-(Met)-Reg. 20 (5) (b) of the MLPC Regulations 2019 requires a beneficiary financial institution to verify the identity of the beneficiary if the identity has not been previously verified and maintain this information in accordance with Rec. 11.

Criterion 16.15(a) -Met

Reg. 20 (5) (c) of the MLPC Regulations 2019 requires a beneficiary financial institution to have risk-based policies and procedures for determining (i) when to execute, reject or suspend a cross-border wire transfer lacking the required originator or beneficiary information

Criterion 16.15(b) -Met

Reg. 20 (5) (c) of the MLPC Regulations 2019 requires a beneficiary financial institution to have risk-based policies and procedures for determining (ii) the appropriate follow-up action.

Money or value transfer service operators

Criterion 16.16 –(Met)-Reg. 20 (6) of the MLPC Regulations 2019 requires MVTS providers to comply with all of the relevant requirements of Recommendation 16, whether they operate directly or through their agents.

Criterion 16.17 (a) – Met

Reg. 20(7)(a) of the MLPC Regulations 2019 provides that where an MVTS controls both the ordering and beneficiary sides in a wire transfer, the MVTS shall take into account all the information from both the ordering and beneficiary sides in order to determine whether a suspicious transaction report has been filed.

Criterion 16.17 (b) – Met

Reg. 20 (7) (b) of the MLPCR 2019 provides that where an MVTS controls both the ordering and beneficiary sides in a wire transfer, the MVTS shall file the suspicious transaction report indicating the country affected by the suspicious wire transfer, and make relevant transaction information available to the FIU.

Implementation of Targeted Financial Sanctions

Criterion 16.18 (Met) –Reg. 20 (8) (b) of the MLPC Regulations 2019 provides that an ordering, intermediary or beneficiary financial institution or financial service provider, including a MVTS shall implement the requirement to take freezing action and comply with prohibitions from conducting transactions with designated persons and entities, as per obligations set out under Part V of these Regulations in the relevant UNSCRs relating to the prevention and suppression of terrorism and terrorist financing, such as UNSCRs 1267 and 1373, and their successor resolutions.

Weighting and Conclusion

The legal framework in Lesotho complies largely with the requirements under this Recommendation. The existing deficiencies relate to domestic wire transfers requiring the ordering financial institution to ensure that the information accompanying the wire transfer includes originator information as indicated for cross-border wire transfers and for domestic electronic transfer to include the account number or unique transaction reference number, provided that this number or identifier will permit the transaction to be traced back to the originator or the beneficiary, make information available within three business days of receiving the request either from the beneficiary financial institution or from appropriate competent authorities, and provide for law enforcement authorities to be able to compel immediate production of such information . In the context of Lesotho, domestic transfers have tiered thresholds aimed at mitigating the risks.

Lesotho is rated Largely Compliant with R.16

Recommendation 17 – Reliance on third parties

In its 1st Round MER, Lesotho was rated NC with these requirements (formerly R.15 and R.22). The deficiencies were: there was no enforceable requirement for accountable institutions to establish and maintain internal control policies, procedures and controls; there is no enforceable requirement for FIs to maintain adequately resourced and independent audit function to test compliance with AML/CFT policies, procedures and controls; there was no requirement for ongoing training to ensure that employees are kept updated on new developments, techniques, trends and methods of ML and TF; and Accountable Institutions were not required to have screening procedures to ensure high standards when hiring employees.

Criterion 17.1- (Partly Met)-S.16(7) of the MLPCA as read with Reg. 9 (3) (a) – (c) of the MLPC Regulations 2019 permits a financial institution to rely on third parties or intermediaries to apply CDD measures on their behalf in a manner that ensures that the accountable institution:

Criterion 17.1 (a) – (Met) Obtains the identification information of the client (s.16(7) (a), Reg. 9(3)(a));

Criterion 17.1 (b) – (Met) Satisfies itself that copies of the identification data and other relevant documentation relating to the client identification requirements will be made available by the third party accountable or accountable institutions without delay, upon request (s.16(7) (c), Reg. 9(3)(b)); and

Criterion 17.1 (c) – (Partly Met) Satisfies itself that the third party accountable institution is regulated and supervised or monitored or has measures in place for compliance with client identification and record keeping requirements (s.16(7) (c), Reg. 9(3)(c)). However, insurance brokers and agents are not designated as accountable institutions hence not technically subject to AML/CFT supervision.

Criterion 17.2 – (Not Met)-There is no legal provision that meets the requirement for FIs that rely on third parties or introduced business to have regard to information available on the level of country risk when determining in which countries the third party that meets the conditions can be based.

Criterion 17.3- (Not Applicable)-There is no any financial institution that is part of the same financial group in Lesotho.

Weighting and Conclusion

DNFBPs in Lesotho that rely on third parties are required to be ultimately responsible for CDD requirements. However, there are no provisions for requirements to consider information available on the level of country risk when determining in which countries the third party that meets the conditions can be based. In addition, insurance brokers and agents are not designated as accountable institutions.

Lesotho is rated Partially Compliant with R.17.

Recommendation 18 – Internal controls and foreign branches and subsidiaries

In its 1st Round MER, Lesotho was rated NC with these requirements (formerly R. 15 and R.22). The deficiencies were: no requirement for FIs to establish procedures, policies and controls covering customer due diligence, the detection of unusual and suspicious transactions and record retention; no requirement for compliance arrangements except for institutions licensed under the Banking Act; no requirement for FIs to communicate their AML/CFT procedures, policies and controls to their employees; no requirement for the compliance officer or other appropriate staff to have timely access to customer identification data and other customer due diligence information, transaction records and other relevant information; no requirement to have independent and adequately resourced internal audit function except for institutions under the Banking Act; no requirement to put in place screening procedures to ensure high standards when hiring employees; no requirements for FIs to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements. R.18 introduced some new requirements for implementing independent audit functions for internal supervision and AML/CFT programmes for financial groups.

Criterion 18.1 – (Met)-Accountable institutions in Lesotho are required to implement programmes against ML/TF, which have regard to the ML/TF risks and the size of the business, and which include the following internal policies, procedures and controls:

Criterion 18.1 (a) (Met) – S.19(1) and 19(2) of the MPLCA, as read with Regulation 13(2), designates compliance officers at managerial level and are mandated to take charge of the application of the internal AML/CFT programmes and procedures.

Criterion 18.1 (b) (Met) - S.20(2)(d) of the MLPCA, as read with Reg. 13 (1) of the MLPC Regulations 2019, requires an accountable institution to screen employees upon recruitment to ensure high standards when hiring employees.

Criterion 18.1 (c) (Met) – S.20(2)c) of the MLPCA, as read with Reg 14 (1) of the MLPC Regulations 2019, provides for ongoing training programme.

Criterion 18.1 (d) (Met) – Reg. 15 (1) of the MLPC Regulations 2019 requires an accountable institution to have an independent audit function to test veracity and adequacy of the internal audit procedures, processes, supervision and systems to fight money laundering and counter terrorist financing.

Criterion 18.2 – (Not Applicable)-Lesotho does not have FIs which have branches or subsidiaries outside of its territory hence requirements under this Criterion are not applicable.

Criterion 18.3 – (Not Applicable)-Lesotho does not have FIs which have branches or subsidiaries outside of its territory hence requirements under this Criterion are not applicable.

Weighting and Conclusion

FIs in Lesotho are required to implement programmes against ML/TF as set out under c.18.1. The financial sector in Lesotho is generally dominated by foreign-owned banks and other FIs. The FIs do not have branches and subsidiaries operating outside Lesotho.

Lesotho is rated -Compliant with R.18**Recommendation 19 – Higher-risk countries**

In its 1st Round MER, Lesotho was rated NC with these requirements (formerly R.21). The deficiencies were: Accountable institutions were not required to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations. In addition, there were no effective measures in place to ensure that accountable institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries; there were no measures to examine the background and purpose of transactions considered not to have apparent economic or visible lawful purpose, and to put in writing such findings and make available to assist competent authorities; there were no measures to ensure that reporting persons are advised of concerns about weaknesses in the AML/CFT systems of other countries.

Criterion 19.1 – (Not Met)-There is no legal provision requiring financial institutions to apply enhanced due diligence, proportionate to the risks, to business relationships and transactions with natural and legal persons (including financial institutions) from countries for which this is called for by the FATF.

Criterion 19.2 (a) – (Not Met) Lesotho does not have any provision and has not demonstrated that counter-measures proportionate to the risk can be applied when called to do so by the FATF.

Criterion 19.2 (b) – (Not Met) Lesotho does not have any provision and has not demonstrated that counter-measures proportionate to the risk can be applied independently of any call by the FATF to do so.

Criterion 19.3 – (Not Met)-Lesotho does not have mechanisms in place to advise financial institutions of concerns about weaknesses in the AML/CFT systems of other jurisdictions.

Weighting and Conclusion

Overall, Lesotho does not have legal provisions and counter-measures for the requirements of this Recommendation

Lesotho is rated Non-Compliant with R.19

Recommendation 20 – Reporting of suspicious transaction

In its 1st Round MER, Lesotho was rated NC with these requirements (formerly R13 & SR.IV). The deficiencies were: reporting obligations were not in force; Bureau de changes were not subject to reporting obligations; effectiveness could not be determined since the reporting obligations under the MLPCA were not implemented.

Criterion 20.1 – (Partly Met)-S. 18 (1) (a) - (c) of the MLPCA (as amended) 2016, provides that whenever an accountable institution has reasonable grounds to suspect that any transaction is related to the commission of serious offence or terrorist financing, it shall, within the prescribe period after forming that suspicion and wherever possible - before the transaction is carried out - take reasonable measures to ascertain the purpose of the transaction, the origin and ultimate destination of the funds involved and the identity and address of any ultimate beneficiary and prepare a report of the transaction and submit it in writing to the FIU. Reg. 19 (1) and (2) of the MLPCR 2019 specifies that the suspicious transaction report should be submitted to the FIU within 7 days of forming the suspicion. However, the period of up to 7 days for reporting of STR to the FIU does not fulfill the ‘promptly or without delay’ requirement. Further, there are deficiencies under C3.2 on predicate offences to ML which affect the reporting requirement by accountable institutions.

Criterion 20.2 – (Met)-S.18 (1) (a) - (c) of the MLPCA (as amended) 2016, and Reg. 19 (4) and (5) of the MLPC Regulations 2019 require accountable institutions to report any suspicious transactions or attempted transactions to the FIU, regardless of the amount of the transaction.

Weighting and Conclusion

Lesotho has legal provisions that meet some requirements of this Recommendation. However, the period of 7 days for filing of STRs does not fulfil the promptly requirement, there are some deficiencies with regard to predicate offences to ML, and insurance brokers and agents are not designated as accountable institutions under the MLPCA.

Lesotho is rated Partially Compliant with R.20.

Recommendation 21 – Tipping-off and confidentiality

In its 1st Round MER, Lesotho was rated LC with these requirements (formerly R14). The main technical deficiencies were: the effectiveness could not be determined as reporting obligations were not yet in force.

Criterion 21.1 – (Met)-S. 34 of the MLPCA and Reg. 19 (13) of the MLPC Regulations 2019 provide for protection of financial institution or financial service provider and its directors, employees or officers from any criminal, civil, disciplinary or administrative proceedings in relation to any reports or information made in good faith.

Criterion 21.2 – (Met)-S.18 (1) (a)- (c) of the MLPCA (as amended) 2016, as read with Reg. 19 (12) of the MLPCR2019, prohibits a person or an institution from disclosing the fact that an STR or related information has been or may be made to the FIU.

Weighting and Conclusion

Lesotho has legal provisions that meet all criteria of this Recommendation. However, insurance brokers and agents are not designated as accountable institutions hence not subject to these requirements.

Lesotho is rated Largely Compliant with R.21

Recommendation 22 – DNFBPs: Customer due diligence

In its 1st Round MER, Lesotho was rated NC with these requirements (formerly R12). The deficiencies were: DNFBPs operating in the country were not implementing AML/CFT measures under the MLPCA.

Criterion 22.1 – (Mostly Met)-All DNFBPs are required to comply with the CDD requirements in terms of S.16 of the MLPCA (as amended) 2016, as read with Reg. 22 of the MLPC Regulations 2019, and are required to implement requirements under Regulations 3,4,5, 6 and 11 of the MLPC 2019 in the following situations:

Criterion 22.1 (a) (Met) - Casinos (including internet casinos): - Casinos are designated as accountable institutions under S.2 (schedule 1) of the MLPCA 2008 and Regulation 22(1) of the MLPC Regulations 2019. The Regulation requires a casino, to conduct CDD requirements when its clients engage in a financial transaction equal or above the threshold of M 25, 000.00 (USD1667.00).

Criterion 22.1 (b) (Met) - Real estate agencies: - real estate agents are designated as accountable institutions under S.2 (schedule 1) of the MLPCA 2008 and Regulation 22(2) of the MLPC Regulations 2019. When they engage in buying and selling of real estates, Reg. 22(2) of the MLPC Regulations 2019 requires the real estate agents to comply with the CDD measures.

Criterion 22.1 (c) (Met) Dealers in precious metals and precious stones: - Dealers in precious metals and stones are designated as accountable institutions under S.2 (schedule 1) of the MLPCA 2008 and Regulation 22(3) of the MLPC Regulations 2019. Reg. 22(3) of the MLPC Regulations 2019 requires dealers in precious stones and metals when they engage in any cash transactions with a client or customer equal to or above applicable M100 000.00 (approx. USD 6,667.00).

Criterion 22.1 (d) (Met) Lawyers, Notaries, & other legal professionals and accountants who are sole practitioners: - Lawyers, notaries and other independent legal professionals and accountants are designated as accountable institutions under S.2 (Schedule 1) of the MLPCA 2008 and Regulation 22(4) of the MLPC Regulations 2019. They are therefore required to comply with

the CDD requirements set out in R.10 in terms of S.16(1) of the MLPCA (as amended) 2016, and Guideline 11 of the Money Laundering (Accountable Institutions) Guidelines of 2013

Criterion 22.1 (e) (Met) Trust and company service providers are designated as accountable institutions under S.2 (schedule 1) of the MLPCA 2008 and Regulation 22(5) of the MLPC Regulations 2019. They are therefore required to comply with the CDD requirements set out in R.10 in terms of S.16(1) of the MLPCA (as amended) 2016, and Guideline 11 of the Money Laundering (Accountable Institutions) Guidelines of 2013.

The CDD requirements for DNFBPs are based on R.16 of the MLPCA. Therefore, the deficiencies identified under R.10 also apply to DNFBPs.

Criterion 22.2 –(Mostly Met)-S.17(4) of the MLPCA, 2008, as read with Reg. 11(1) and (4) of the MLPC Regulations 2019, provides for record-keeping obligations which equally apply to DNFBPs. The deficiencies identified under R.11 also apply to DNFBPs.

Criterion 22.3 –(Met)-S.16 (3) of the MLPCA (as amended) 2016, as read with Regs. 4, 5 and 6 of the Money Laundering (Politically Exposed Persons) Guidelines 2015, provide for PEPs requirements set out in Recommendation 12 which also apply to DNFBPs.

Criterion 22.4 – (Not Met)-Lesotho has not identified and assessed ML/TF risk on new technologies and products being used by DNFBPs, and there are no AML/CFT obligations regarding virtual assets (See R.15 for further details of the deficiencies).

Criterion 22.5 – (Partly Met)-Reg. 9 (3) (a) – (d) of the MLPC Regulations 2019 provide for obligations relating to reliance on third-parties set out in Recommendation 17. See R.17 (reliance on third-parties) for a full analysis of shortcomings which also apply to the DNFBPs.

Weighting and Conclusion

In the context of DNFBPs, Lesotho has adequate legal provisions for PEPs. The deficiencies on new technologies and reliance on third parties as applicable to the DNFBPs have an effect to a lesser extent taking into account the risk and context of the country.

Lesotho is rated Largely Compliant with R.22

Recommendation 23 – DNFBPs: Other measures

In its 1st Round MER, Lesotho was rated NC with these requirements (formerly R16). The main deficiencies were that the accountable obligations under the MLPCA were not yet in force and accountable obligations under the MLPCA do not cover attempted transactions.

Criterion 23.1 – (Partly Met) - the period of 7 days for filing of STRs does not fulfil the promptly requirement and there are some deficiencies with regard to predicate offences to ML as such these affect meeting of requirements under this criterion.

Criterion 23.1 (a) (Met)- S.18 (1) (a) to (c) of the MLPCA (as amended) 2016, as read with Reg. 19 (4) and (5) of the MLPC Regulations 2019, provides for the filing of STR obligations for all accountable institutions and Reg. 23(1) particularly on STR filing by lawyers, notaries, other

independent legal professionals and accountants. Providers of professional legal advice are not required to report suspicious transactions as provided for under S.24 of the MLPCA 2006.

Criterion 23.1 (b) (Met)- Reg. 23 (2) of the MLPC Regulations 2019 provides for requirements for filing suspicious transactions reports set out in R.20 applicable to all dealers in precious metals and stones. The reporting has to be done on any cash transaction with a customer equal to or above the applicable threshold of M100,000.00 (approx. USD 6,667.00).

Criterion 23.1 (c) (Met)- Reg. 23 (2) of the MLPC Regulations 2019 provides for requirements for filing suspicious transactions reports set out in R.20 applicable to trust and company service providers.

Criterion 23.2 – (Met)- See R.18 for a full analysis of internal controls in place for FIs which are also applicable to DNFBPs. In addition, Lesotho does not have DNFBPs with branches and subsidiaries outside the country's territory.

Criterion 23.3 – (Not Met)- See R.19 for a full analysis of the provisions in respect of obligations relating to identified high risk jurisdictions which equally apply to DNFBPs.

Criterion 23.4 – (Met)- See R.21 for a full analysis of the provisions in respect of requirements on tipping-off prohibition and confidentiality obligations which equally apply to DNFBPs.

Weighting and Conclusion

Lesotho has adequate provisions requiring DNFBPs to put in place internal controls, and implement obligations on tipping-off prohibition and confidentiality. However, there are deficiencies regarding filing of STRs and AML/CFT measures for higher risk countries.

Lesotho is rated Partially Compliant with R.23.

Recommendation 24 – Transparency and beneficial ownership of legal persons

In its 1st Round MER, Lesotho was rated NC with these requirements (formerly R33). The deficiencies were: there were no measures in place to ensure that there is verification of the beneficial owners and those in control of the companies at the time of registration; inadequate measures to ensure that information kept at the Registrar of Companies is updated and accurate; poor enforcement of measures (e.g. Companies Act) available to ensure that companies file their returns; manual filing of information may undermine timely access of such information by investigative bodies and supervisory authorities; the law did not provide measures to ensure that where nominee or corporate shareholders are used there are measures in place to prevent the identity of beneficial owners or those in control of the shares being obscured; possibility of bearer shares/ share warrants being used for ML/TF.

Criterion 24.1 – (Partly Met)-Lesotho has mechanisms that identify and describe the different types and basic features of legal persons created and registered in Lesotho under SS. 4 to 7 of the Companies Act (CA) 2011. The documents and information required to be filed with the Ministry of Trade and Industry at the office of the Registrar of companies under S. 5 of the CA 2011 and Reg. 4 of the Companies Regulations 2012. The CA 2011 also provides for the transfer of foreign companies to transfer their registration from a foreign jurisdiction looking to be incorporated in Lesotho under section 11 of the CA 2011. This information is publicly available on the website of the OBFC (<http://www.obfc.org.ls/registry/#Companies>). This information is also publicly available at other websites for example, lesotho.eregulation.org and companies.org.ls However, information available at the OBFC and on its website on the processes of creating legal persons only covers basic information and there is no information on the process to obtain and record BO information.

Criterion 24.2 – (Not Met)-Lesotho has not assessed the ML/TF risks associated with all types of legal person created in the country.

Criterion 24.3 – (Met)-All legal persons created in Lesotho must be registered with the Registrar of companies (ROC) under S. 91 of the CA 2011 as read with Reg. 21(2) of the CR 2012. At the time of incorporation there is a need to disclose the name of the person incorporating the company, the company name, details of the directors and shareholders, including the business activity. The ROC assigns the company a registration number and record the information about the company in its register and issues a registration certificate. All registered companies are required to maintain an office in Lesotho at all times (section 82 of the CA 2011), provide the registered office address to the ROC and notify the latter about any changes of the registered address. The information captured by the OBFC in the companies register is publicly available at the ROC and on its website (<http://www.obfc.org.ls/registry/default.php>). This information is also publicly available at other websites e.g. lesotho.eregulation.org and companies.org.ls

Criterion 24.4 – (Met)-Section 84 of the CA 2011 requires all companies registered to maintain the company's records within Lesotho and notify the ROC of the location where the information is maintained or can be accessed.

Criterion 24.5 – (Mostly Met)-There exist some mechanisms that requires companies registered in Lesotho to keep information accurate and up-to-date. Companies are required to notify the Registrar for any change in director within 30 days pursuant to SS. 74(1) and 20(3) of the CA

2011; with regards to shareholders the company is required to submit any change in shareholders within 15 days to the Registrar under section 20(3) of the CA 2011; any change in the articles of incorporation of an external company should be notified to the Registrar within 20 working days (form 5 and 9 and accompanied with the approval of the board) under section 12(2) of the CA 2011; where a company is carrying out a change of name through special resolution same has to be notified to the Registrar under S. 16(2) of the CA 2011; any change of registered office has to be notified to the Registrar under S. 82(3) of the CA 2011. Companies are under an obligation to file annual returns at the Registrar under S. 104 of the CA 2011 while S. 105 provides for the information to be submitted in the annual report. Regulation 19(1) of Companies Regulations 2012 provides that a company shall inform the Registrar of the change of registered office address within 21 working days of the change and notify the public. However, there is no obligation for the Registrar to verify the accuracy of the information submitted.

Criterion 24.6 – (Not Met)-Under Lesotho legislative framework, section 59(6) of the Companies Act 2011 provides that the definition of BO to be set out in the MLPCA Act or regulations. Under Regulations 2 of the MLPC Regulations BO is adequately defined. However,

(a) **(Not Met)** Lesotho does not have mechanisms to ensure that BO information is obtained and kept up to date.

(b) **(Not Met)** Lesotho does not have mechanisms that requires companies to take reasonable measures to obtain and hold up to date information on the companies' BO.

(c) **(Not Met)** Lesotho does not have mechanisms to use existing information by FIs and or DNFBP in accordance with Rec 10 and 22 given that there is no obligation for the disclosure of BO information of a company.

Criterion 24.7 – (Not Met)-Lesotho does not have a comprehensive mechanism to ensure that all legal persons keep accurate and up to date information on BO, including the ROC. Other mechanisms, like keeping accurate and updated BO information through a BO register are also not available.

Criterion 24.8 – Not Met

(a) **(Not Met)** –Although Lesotho operates an Open Registry system, there are no requirements within Lesotho for companies to have at least one person to be authorised by the company, and be accountable to competent authorities, for providing beneficial ownership information.

(b) **(Not Met)** Although Lesotho operates an Open Registry system, Lesotho has no requirements requiring DNFBPs to be authorized by the company, and accountable to competent authorities, for availing beneficial ownership information and giving further assistance to the authorities.

(c) **(Not Met)** There are no other comparable measures that have been identified by the authorities.

Criterion 24.9 – (Not Met)-There are no other requirements obliging either the Registrar of Companies or the companies to maintain records of a company for any period after it has been dissolved. While companies are obliged to keep records for at least ten completed financial years (section 84(1)(j) of the CA 2011), the timeline does not apply to the period after the company was dissolved or otherwise ceased to exist.

Criterion 24.10 – (Partly Met)-The ROC operates an Open registry system providing basic information on legal persons that are accessible free of charge to everyone. However, the ROC does not maintain information on beneficial ownership information. The Registrar and companies do not obtain and hold information on BO hence it would be difficult for the competent authorities to have access to that information.

Criterion 24.11 – (N/A)-This is not applicable since bearer shares or bearer warrants are not recognized in Lesotho.

Criterion 24.12 – (Not Met)-

(a) **(Not Met)** Lesotho allows the use of nominee shareholders under section 2(4) of the CA 2011 and nominee directors under 68(4) of the CA 2011 by legal persons.

(b) **(Not Met)** there is no mechanism to prevent the misuse of legal persons by requiring the nominee shareholders and directors to disclose their identities or to be licensed for their nominee status to be included in the company registry.

(c) **(Not Met)** There is no provision or mechanisms in Lesotho to prevent misuse of legal persons that allow nominee shares and nominee directors

Criterion 24.13 – (Partly Met)-The Companies' Act does not provide any legal liability or sanctions for non-compliance by natural or legal person with the requirements of the Act.

Criterion 24.14 (Mostly Met)-Generally, the Mutual Legal Assistance in Criminal Matters Act, 2018 provides powers on mutual legal assistance which might include any MLA on information relating to basic and beneficial ownership information. However, the following applies:

(a) The Registrar of Companies operate an open registry where basic information is accessible to the public including foreign competent authorities.

(b) Competent authorities are able to provide cooperation under SS. 11 (2) (d) and 15 (2) (d) of the MLPCA (as amended) 2016 as well as information sharing by competent authorities.

(c) The MLAA provides for a clear process for the timely execution of MLA requests. Competent authorities can share information on a bilateral basis including information on shareholders. However, there is no monitoring of the assistance received from foreign countries and BO information is also not available for sharing.

Criterion 24.15 – (Not Met)-There are no existing frameworks for Lesotho authorities to monitor the quality of assistance they receive from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad. Although the AG monitors the exchange of information in compliance with its own internal procedures and bilateral agreements, such monitoring of exchange does not extend to the quality of assistance received. The deficiencies with regards to access to BO remains.

Weighting and Conclusion

Lesotho has not carried out an ML/TF risk assessment on all types of legal persons created in the country. Within Lesotho beneficial ownership information is understood to be legal ownership and hence there is no requirements to keep actual BO information within the jurisdiction. Hence there is no requirements to keep BO information accurate and up to date. There are some general measures to ensure that companies fully cooperate with competent authorities in providing basic information, however, the deficiency on BO information remains. The competent authority has no mechanism to monitor the quality of assistance received from other countries on BO information.

Lesotho is rated Partially Compliant with Recommendation 24

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

In its 1st Round MER, Lesotho was rated NC with these requirements (formerly R34). The deficiencies were: no legislation regulating the registration of trusts in terms of the required FATF standards; information kept by the Deeds Registry Office on trusts and other legal arrangements was not accurate and adequate; there was no verification of the identity of trustees, settlers and beneficiary owners of trusts upon registration of the trusts by both lawyers and the Deeds Registry Office.

Criterion 25.1 – 25.8- (Not Met)-Lesotho does not have a law setting out obligations for trustees to comply with transparency and beneficial ownership of legal arrangements measures as required by R.25 of the FATF Recommendations. Although, basic information on legal arrangements is kept at the level of the Registrar of Deeds, which is accessible to competent authorities, there has not been any exchange of information by competent authorities to their international counterparts.

Weighting and Conclusion

There is no requirement within Lesotho to implement transparency and beneficial ownership of legal arrangements as set out in R. 25.

Lesotho is rated Non-Compliant with Recommendation 25

Recommendation 26 – Regulation and supervision of financial institutions

In its 1st Round MER, Lesotho was rated NC with these requirements (formerly R23). The deficiencies were: foreign exchange bureaus were not subject to AML/CFT obligations; there was no supervision and regulation of accountable institutions for compliance with AML/CFT obligations under the MLPCA since the FIU which is a supervisor under the Act was not yet operational; authorities did not take necessary measures to prevent criminals or their associates from holding or being a beneficial owner of controlling interest in financial institutions; not all money or value transfer service providers were subject to licensing and supervision.

Criterion 26.1 – (Mostly Met)-Lesotho has designated the following as competent authorities responsible for the regulation and supervision of compliance with AML/CFT requirements [Section 18A (3) of MLPCA and Regulation 2 MLPCR]:

- CBL -Banking Supervision Department: - banks, foreign currency bureaus, cross border MVTS providers and large cooperatives (whose assets or total deposits are equal to or more than M5 000 000.00).

- The CBL- NBFIs Department: -Insurance Division: - insurance companies.

- The CBL-NBFIs Department- Pensions and Securities Division: pension funds, pension fund administrators, pension fund intermediaries, investment advisors, brokers, dealers, broker-dealers, asset managers, collective investment schemes, safekeeping and administration of cash or liquid securities on behalf of pension funds.

- The CBL-NBFI Payment & Settlements Department: - payment systems, issuers of electronic payment instruments including domestic MVTS providers.

-Ministry of Small Business Development, Cooperatives and Marketing (through the Department of Cooperatives)- cooperatives with deposits of less than **M5 000 000.00**).

The legal framework does not cover insurance brokers/ agents and natural or legal persons who offer safe keeping and administration of cash or liquid securities services on behalf of other persons that are not pension funds, banks, stockbrokers, lawyers and accountants.

Market Entry

Criterion 26.2 - Met

All FIs subject to the Core Principles require a licence issued by the CBL to carry out their activities [S. 5(1) of the Financial Institutions Act, s.8(1) of the Insurance Act, Regs. 4 and 5 of the Central Bank (Collective Investment Schemes) Regulations, Regs. 14, 25 and 26 of Central Bank (Capital Markets) Regulations].

In addition, persons wishing to provide money or currency changing services require the authorisation of the CBL (Regulation 3(1) of the Exchange Control Regulations, 1989). Cross border money value transfer service providers are authorised to provide the service by the CBL under the Currency and Exchanges Manual, 2021. The CBL further requires providers of domestic money value transfer services to be licensed (S. 10 (1) of the Payment Systems Act 2014). Issuers of electronic payments are also required to be licensed under Reg 5 of the Payment Systems (Issuers of Electronic Payments Instruments) Regulations 2017). The prudential authority of the CBL further extends to the licensing of micro finance institutions and financial leasing institutions under S. 5(1) of the Financial Institutions Act. Large Financial Cooperatives whose deposits are equal to or more than M5 million are licensed by the CBL (Regulation 5(1) of the Financial Institution (Large Cooperative Regulations, 2016) while small cooperatives with 10 or more members are registered by the Commissioner of Co-operative Development (Section 3 (2)(a) of the Cooperatives Societies Act 2000 (as amended in 2014). Pension funds are licensed by the CBL in terms of S. 8(1) of the Pension Funds Act, 2019. Moreover, there are measures to detect a shell bank since CBL requires that it inspects premises before a bank can start operations.

Criterion 26.3 - Partly Met

The legal framework has several provisions that have been designed to prevent criminals from obtaining shareholding or management positions in FIs except for provisions relating to small cooperatives.

The fitness and probity processes of the CBL are anchored by the Financial Institutions Act that provides the legal basis for the licensing of banking and NBFIs. When applying for a licence, domestic institutions submit a statement of address of its head office, the name, nationality, qualifications, experience and address of its chairman, director and of every officer [S.6 (1)(b) FI Act). Foreign financial institutions submit a statement from the supervisory authority of the home country that its principal shareholders, chairman, directors, principal officers, and management as a whole are fit and proper. Once licensed, an institution is required to notify the Commissioner of its intention to make any appointment of its directors, officer and managers of its branches for the determination of the fitness and probity of the person to be appointed in accordance with regulation made under the Act (S. 48 (1) of the Financial Institutions Act, 2012). The supervisory authorities within the CBL have further issued fit and proper regulations or guidelines to supplement the provisions of the FI Act.

Banks

Principal shareholders, directors and officers complete the Personal Declaration Sheet in Schedule 3 of the Financial Institutions (Licensing) Regulations. This form is submitted with supporting documentation that include certified statement of assets and liabilities, latest tax compliance certificate or certified true copy of income tax returns, two letters of character reference, two letters from financial institutions with whom the applicant had dealings in the last two years, and a police clearance certificate. The CBL reviews the documents and considers whether the applicant has failed to discharge his or her responsibilities as a shareholder, director or officer with competence, diligence, sound judgement, honesty and integrity; has been subject to disciplinary action, civil or criminal proceedings (other than minor traffic offences) or enforcement sanctions (Schedule 4).

Securities

In the securities sector, an applicant for an asset manager license submits the fit and proper test questionnaire on the company's significant owners, directors, ultimate controller, principal officer, manager and fund manager as determined by the Registrar from time to time (Reg. 4(e) of the Central Bank (Collective Investment Schemes). Collective investment scheme agents submit fit and proper test questionnaires for individuals, agents, directors, the Chief Executive Officer and the manager, if the agent is a company (Reg. 6 (c) and (d). However, the questionnaire does not include the requirement to declare any criminal background. [Capital Markets and Insurance Licensing (Approval) Requirements, December 2017]. Further, the fit and proper questionnaires of the asset managers and collective scheme agents limit the requirement to provide a police clearance certificate to the principal officer and the key employees.

The CBL will not grant or renew the license of a broker dealer, stockbroker, dealer or investment advisor if the applicant has been convicted of fraud or dishonesty in the past 10 years (Reg. 30(3)(a)(iii) of Central Bank (Capital Market) Regulations). However, since an applicant seeking

the license is a legal entity, this Regulation does not apply to its shareholders, senior management and beneficial owners.

Insurance

Insurers are prohibited from appointing a key employee without the prior approval of the Commissioner (S. 40 (1) of the Insurance Act, 2014). Key employees include a managing director, chief executive officer, chairman of the board of directors, director, president, principal officer, chief financial officer or treasurer and their deputies or equivalents and any other person who occupies the same level of management or holds a position of decision making. (S. 2 of the Insurance Act). This definition does not extend to the shareholders or ultimate beneficial owners of the insurers. In addition, insurers are prohibited from employing or appointing insurance intermediaries that have not been licensed by the CBL. Insurance intermediaries (brokers and agents) apply to the CBL and are granted 5-year licenses [s.6 of the Insurance (Licensing of Insurance Intermediaries) Regulations, 2016].

The key employees submit an application letter together with the Fit and Proper questionnaire as well as the CVs (showing addresses) and certified qualifications, tax clearance, certified statement of all assets and liabilities, certified passport/ID copy of the key employee, letters from financial institutions that the applicant has been dealing with in the past two years and a police clearance (The CBL: Capital Markets and Insurance Licensing (Approval) Requirements/ Guidelines: August 2017 read together with the Fit and Proper Guidelines, 2018).

Pensions

In the Pensions sector, the members of the Board of Trustees (S. 16 A (2), Pensions Fund Act 2019), the Principal Officer (S. 21 (1) (b), Pensions Fund Act, 2019) as well as the pension fund administrator or intermediary (S. 59(1), Pensions Fund Act, 2019) are required to satisfy the fitness and probity tests of the Regulator prior to assuming office. The Board of Trustees, principal officer and the key personnel of the intermediaries are complete the fit and proper form contained in schedule 3 of the Regulations.

Money Value Transfer Service Providers

Any person who is a significant owner, an ultimate controller, a director or a manager of a Money Transfer Business (Reg. 11 of the Financial Institutions (Money Transfer) Regulations, 2014) or a Foreign Exchange Bureau (Reg. 11 of the Financial Institutions (Foreign Exchange Bureau) Regulations, 2014) shall apply to the CBL for a determination to be made on whether they are fit and proper to hold the position. Applicants in the cross-border money transfer business complete the Personal Declaration Sheet in Schedule III of the Financial Institutions (Foreign Exchange Bureau) Regulations, 2014). This form collects personal information, professional qualification, record of previous investigation and supporting documents include, certified statement of assets and liabilities, latest tax compliance certificate, two letters of character reference of persons known personally for at least 10 years, two letter from financial institutions on performance of past and present account and a police clearance.

Issuers of Electronic Payment Instruments

An applicant for a licence to issue electronic payment instruments shall satisfy the CBL that its principal shareholders are fit, and proper persons and the key management officials are fit and

proper and possess appropriate knowledge and experience to issue e-money and provide electronic payment services. (S. 7 (1) (c) of the Payment Systems (Issuers of Electronic Payments Instruments) Regulations 2017).

Micro-Finance Institutions

The fit and proper requirements for micro finance institutions taking deposits and credit only apply to persons who have a principal interest, a director or a manager in the business (Reg. 31 (2) of the Micro Finance Institutions (Deposit Taking and Credit only) Regulations 2014) and should satisfy the fit and proper assessment guidelines for directors and senior officials in the financial sector issued by the Commissioner. Principal interest means shareholding of a person which represents 10% or more of its capital or voting rights which makes it possible to exercise a significant influence over such person.

Financial Leasing Companies

For financial leasing companies, only a director or an officer are subject to the requirements (Reg. 28(6)(b) of Financial Lease Regulations, 2013 as specified in section 44 of the financial Institutions Act, 2012. S. 44(2) of the Act states that in determining whether the director or officer is fit, regard shall be had to his probity, competence and soundness of judgement. There is no reference to criminal background. However, the CBL officials consider whether the major shareholder, director or senior official has been found liable for fraud, misfeasance or other misconduct during the assessment. (S9.3(i) of Guidelines on Fit and Proper Assessments for Directors and Senior Officials in the Non-Bank Financial Sector)

Risk Based Approach to supervision and monitoring

Criterion 26.4 – (Partly Met)

a) ***Core Principles Institutions (Mostly Met)***- All FIs are subject to regulation and supervision (s 18 of MLPC Act). Lesotho underwent FSAP in 2022 and the technical requirements for regulation and supervision of FIs were determined to be largely in line with the Core Principles. Notable levels of compliance were corporate governance, risk-based supervision, policies, ML/TF risk management (Risks for banks (Financial Institutions (AML/CFT) Regulations, 2015). However, FIs are not subject to consolidated supervision for AML/CFT purposes.

b) All other FIs (Partly Met):

All other FIs, including MVTS providers and foreign exchange bureaus, are regulated and supervised for AML/CFT compliance (see 26.1). The supervision of these institutions is, however, without regard to the ML/TF risks.

Criterion 26.5 – (Partly Met)-SS. 18 A and 18B of the MLPCA (as amended) 2016 provides for the regulation and supervision of FIs, including the power to conduct inspections. In relation to the banking and insurance sectors, in determining the frequency and intensity of onsite and offsite AML/CFT supervision, CBL-BSD takes into account:

(a) The ML/TF risks and the policies, internal controls and procedures associated with the entity. However, it does not include the group. The application for Financial Institutions

(Consolidated Supervision) Regulations 2016 is limited to prudential supervision of banks and does not extend to AML/CFT Supervision.

- (b) ML/TF risks as contained in the NRA report and the banking sector risk assessment; and findings and ML risks present in Lesotho.
- (c) the characteristics of the FI in determining the frequency and intensity of inspection.

This is set out in the AML/CFT Risk Based Supervisory Framework of CBL-BSD issued in August 2022 and the Insurance Risk Based Approach Manual issued in November 2022. The Pensions and Securities Division issued an AML/CFT Supervisory Manual issued in September 2022 but it does not consider above listed factors in determining the frequency and intensity of onsite and offsite inspections. There are no similar frameworks/ manuals for the supervision of the MFIs, issuers of electronic payment instruments and cooperatives.

Criterion 26.6 - Partly Met

The CBL-BSD reviews the ML/TF risk profile of banks on a quarterly basis. However, this is not done whenever there are major events or developments in the management and operations of the banks. Also, supervisors for the rest of the FIs do not review the risk profile of the entities.

Weighting and Conclusion

Lesotho has designated the CBL as the supervisory authority for FIs while Commissioner of Co-operative Development is responsible for small co-operatives. CBL-BSD has adopted risk-based supervision while supervisors for the rest of the FIs are yet to do so. es. All FIs are required to be licensed or registered. The market entry controls exist to prevent criminals or their associates from holding a significant or controlling interest, or holding a management function, in a financial institution. However, there are no requirements in relation to BOs. With the exception of banks, the other supervisors do not review the assessment of individual risk profile of the FIs under their purview.

Lesotho is rated Partially Compliant with Recommendation 26

Recommendation 27 – Powers of supervisors

In its 1st Round MER, Lesotho was rated NC with these requirements (formerly R29). The deficiencies were: the DCEO and the FIU do not have adequate powers to monitor and ensure compliance with the obligations under the MLPCA; further, the powers of the FIU to monitor and ensure compliance with the Act were unclear; the DCEO had no authority to conduct inspections of financial institutions to ensure compliance as its authority was limited to investigations under the Act. The inspection powers of the FIU were limited to suspicious transaction reports. Further, the FIU was not operational. There were no powers to compel production of or access to information for purposes of monitoring compliance. These powers were limited to investigation of an offence or STR. The DCEO did not have adequate powers of enforcement and sanctions as it has to go to court for every violation. There were no direct sanction provisions against directors and senior management other than the general provisions in the C.P & E Act. Effectiveness in relation to application of enforcement powers under the MLPCA could not be assessed as the Act had not been implemented by the authorities.

Criterion 27.1 – Met

CBL and Ministry of Small Business Development, Cooperatives and Marketing (the Department of Cooperatives) are provided with powers to supervise and ensure compliance by FIs with AML/CFT

requirements set out in the MLPCA, or any instructions, directive, guidelines or rules made in terms of this Act (s.18A of the MLPCA, 2016).

Criterion 27.2 – Met

Supervisors are provided with the authority to conduct inspections of accountable institutions under s. 18B. (1) (a) of the MLPCA, 2016 and Regulation 16 (1) of the MLPCR, 2019. They also have the authority to examine the records and inquire into the business and affairs of any accountable person/institution for the purpose of ensuring compliance with AML/CFT obligations in terms of s. 16(2) of the MLPCR, 2019.

Criterion 27.3 – Met

Supervisors have broad powers to request for and/or compel production of any documents or information relevant to monitoring compliance with AML/CFT requirements (18B.(1)(b) of the MLPCA and Regulation 16 (1) of the MLPCR, 2019).

Criterion 27.4 – Met

Supervisors have the powers to impose sanctions for failure to comply with the obligations of the Act or prescribe appropriate administrative sanctions to enforce compliance with the obligations (s.18B (1) (d)-(e). Regulation 18 (2) of the MLPCR provide for a wide range of administrative sanctions that may be prescribed by supervisors of the FIU including suspension of a license for a period not more than 12 months, revocation of a license or permit, issue additional conditions on a license or permit, issue a public statement to the effect that an accountable institution is not compliant with the Act, directive obliging relevant financial institutions to perform a specific of refrain from performing a specific act and forfeiture of certain right and privileges.

The administrative sanctions may be imposed against an accountable institution, its servants or agents and may include a financial penalty not exceeding M100,000.00 in respect of natural person and M1,000,000.00 in respect of a juristic person. (Sections 18 D (1) & (2) of the MLPCA, 2016.)

In addition, CBL may revoke the license of any licensed institution if the holder fails to comply with the conditions of the license or any measure required by the Commissioner in accordance with section 54. (Section 16 (10) (c) of the FIA, 2012.

Weighting and Conclusion

Lesotho meets all the criteria under this Recommendation 27 and is therefore rated compliant.

Recommendation 28 – Regulation and supervision of DNFBPs

In its 1st Round MER, Lesotho was rated NC with these requirements (formerly R.24). The deficiency was: there was no regulation and supervision of casino industry for compliance with domestic AML/CFT requirements.

Casinos

Criterion 28.1 – (Mostly Met)

All accountable institutions including casinos are subject to AML/CFT regulation and supervision ((s 18 of MLPC Act).

- (a) **(Met)**- Casinos are required to be licensed by the Casino Board under s.30(1) of the Casino Order, 1989.
- (b) **(Not Met)** The jurisdiction does not take necessary measures to prevent criminals or their associates from holding or (being a beneficial owner of) a significant or controlling interest, or holding a management function or being an operator of a casino.
- (c) **(Met)**- In terms s 18A (2) and (2) of the MLPCA, 2016) read together with Reg. 2 of the MLPCR, 2019 and Schedule 3,) the Casino Board is designated as the sector supervisory authority responsible for supervising or monitoring casinos for compliance with AML/CFT requirements.

DNFBPs other than Casinos

Criterion 28.2- (Partly Met)-In line with S.18. A (2) and S.18(3) of the MLPCA, 2016, Reg. 2 of the MLPCR, 2019 and Schedule 3 thereof, the following designated authorities and/or self-regulatory organizations are responsible for monitoring and ensuring compliance with AML/CFT obligations by DNFBPs:

- the Law Society of Lesotho is designated as the AML/CFT supervisory authority for lawyers, Advocate, Notaries and Conveyancer;
- the Mining Board for dealers in precious stones and minerals;
- Lesotho Institute of Accountants for accountants and auditors;
- Ministry of Trade & Industry for the Real Estate Sector.

Lesotho has not designated any competent authority as AML/CFT supervisor for TCSPs providers which are not lawyers or accountants.

Criterion 28.3- (Not Met)-Designated supervisors to have not put in place systems or mechanisms for monitoring DNFBPs with AML/CFT requirements.

Criterion 28.4- (Partly Met)

- (a) **(Met)**- The designated supervisory authorities and self-regulatory bodies have the necessary powers to carry out their functions, including monitoring of AML/CFT compliance (18A of MLPCA). Supervisors are also provided with the authority to conduct inspections of accountable institutions under s. 18B. (1) (a) of the MLPCA, 2016 and Reg. 16 (1) and (2) of the MLPCR, 2019.
- (b) **(Not Met)** There is no indication that the DNFBP supervisors take the necessary measures to prevent criminals or their associates from being professionally accredited or holding (or being the owner of) a significant or controlling interest or holding a management function in a DNFBP. Fit and proper requirements are not in place in the licensing/registration of DNFBPs.
- (c) **(Met)**Supervisors and the FIU have the powers to impose sanctions for failure to comply with the obligations of the Act or prescribe appropriate administrative sanctions to enforce compliance with the obligations (s.18B (1) (d)-(e)). Regulation 18 (2) of the MLPCR provide for a wide range of administrative sanctions that may be prescribed by supervisors of the FIU including suspension of a license for a period not more than 12 months, revocation of a license or permit, issue additional conditions on a license or permit, issue a public statement to the effect that an accountable institution is not compliant with the Act, directive obliging relevant financial institutions to perform a specific of refrain from performing a specific act and forfeiture of certain right and privileges.

Criterion 28.5- (Not Met)-There is no legal requirement or frameworks in place to ensure that supervision of DNFBPs is performed using a risk-based approach or on a risk sensitive basis. In particular,

- (a) The frequency and intensity of on-site and off-site supervision is not determined on the basis of their understanding of the ML/TF risks, taking into consideration the characteristics of the DNFBPs, in particular, the diversity and number.
- (b) Supervisors do not take into account the ML/TF risk profiles of those DNFBPs, and the degree of discretion allowed to them under the RBA, when assessing the adequacy of the AML/CFT internal controls, policies and procedures of DNFBPs.

Weighting and Conclusion

Although Lesotho's legal framework has designated various supervisory authorities to perform AML/CFT supervision for DNFBPs, compliance monitoring has not yet started in the DNFBP sectors. In addition, there is no clear AML/CFT supervisor for TCSPs which are not lawyers or accountants. There are limited measures to prevent criminals or their associates from holding (or being beneficial owners of) significant interest or management positions in the DNFBP sectors. In addition, application of a risk-based approach in the entire DNFBP sector has not yet started.

Lesotho is rated Partially Compliant with Recommendation 28.

Recommendation 29 - Financial intelligence units

In its 1st Round MER, Lesotho was rated NC with these requirements (formerly R26). The main deficiency was that the authorities had not implemented the requirements under the FATF Recommendation R.26.

Criterion 29.1 – (Met)- The Kingdom of Lesotho established the FIU, in terms of Section 14(1) of the MLPCA as amended by Section 8 of the MLPCA 2016, as a body corporate and central agency for receipt, requesting and analysing suspicious transactions reports (STRs) and other information relevant to ML, TF and associated predicate crimes, and dissemination, to investigatory authorities, of analysed reports containing financial intelligence and other relevant information. Section 15F of the MLPCA further provides that the FIU shall refer any matter or information derived from a report or information it so receives to the appropriate competent authority if on the basis of its analysis and assessment, it has reasonable grounds to suspect that the transaction would be relevant to the investigation or prosecution of ML offence, TF or serious offence. The definition of serious offence also includes TF. Section 15(2)(d) of the MLPCA 2016 empowers the FIU to exchange intelligence with foreign counterparts and disseminate information to competent authorities and sector supervisory authorities.

Criterion 29.2 – Mostly Met

The FIU serves as the central agency for the receipt of disclosures filed by accountable institutions. The FIU receives:

- (a) suspicious transaction reports submitted by accountable institutions as required under Section 18(1)(a), (b), (c) of MLPCA and Regulation 19 of the MLPCR 2019.
- (b) Threshold transaction reports (TTRs) of values in excess of M100,000 (USD 5,580) or any amount as may be prescribed by the minister in terms of section 15A (c) of the MLPCA and cross-border currency reports in terms of s 28(1) of MLPCA as read together with Regulations 3 and 11 of the MLPC (Currency and BNI) Regulations, 2015.

However, insurance brokers, insurance agents, and natural or legal persons which provide safe keeping and administration of cash services, other than banks, brokers, lawyers and accountants are not designated as reporting entities (see R.10 and R. 22 on the scope of accountable institutions).

Criterion 29.3 – (Met)-

The FIU:

- (a) powers to request additional information from an institution which has filed a suspicious transaction report in relation to the transaction (Section 18(3) of MLPCA). Additionally, Section 15A(d) of MLPCA 2016 allows the FIU to request any other accountable institutions to provide any information to enable the FIU to perform its analysis properly.
- (b) has access to financial, administrative, and law enforcement information from public and private bodies that it may need to enhance its analysis (Section 15A (d) of the MLPCA, as amended). This includes communication call data from relevant service providers (Section 15A (e) of the MLPCA, as amended). Additionally, Section 15(A)(c) of the MLPCA gives the FIU powers to request and receive currency, bearer negotiable instrument declarations, foreign exchange and cross-border transaction reports from relevant competent authorities

Criterion 29.4 – (Met)

- (a) Section 15(1) of the MLPCA empowers the FIU to carry out operational analysis. The FIU acts as the central agency for the receipt, analysis and dissemination of financial intelligence to investigatory agencies.
- (b) Section 15(2)(e) of the MLPCA empowers the FIU to carry out strategic analysis and produces reports which set out the results of its strategic analysis and presents typological cases indicating risks identified. During analysis of STRs, a certain pattern, modus operandi of a specific magnitude and a deficiency giving rise to commission of certain acts are established. Based on these typology/strategic reports are produced with the aim of raising awareness on trends of crime and to influence formulation of new policies and framework to address the identified deficiencies. So far they have carried out strategic analysis and disseminated reports to the Central Bank on trends noted relating to various transactions.

Criterion 29.5 – (Met)-Section 15(d) of the MLPCA 2008 and Section 15 F of the MLPCA 2016 requires the FIU to disseminate, spontaneously, or upon request, results of its analysis to the relevant investigatory authorities and competent authorities for investigation of cases of money laundering, terrorism financing and associated predicate offences. According to Article 5 of the Analyst Standard Operating Procedure, the dissemination process is done through hand delivery or encrypted email to the intended Authority.

Criterion 29.6 – (Met)-The FIU has rules in place governing the security and confidentiality of information as well as procedures for handling, storage, dissemination, and protection of, and access to information. These rules are encapsulated in the following policies and procedures; Standard Operating Procedure, Password Policy, Acceptable Use Policy, Data Back-Up Strategy, User Management Procedure, Records Management Policy, Document Classification Policy, Outgoing Communication Policy and the Human Resources Policy. The Human Resources Policy requires, amongst other issues, that all FIU employees are bound by an oath of secrecy that they are required to sign at time of employment. Sections 2.1 and 2.2 of the Password Policy gives

guidance on the construction of strong password to protect information being disseminated to ensure information security.

(a) Section 5(b) (iii) (C) of the FIU Record Management Policy provides for an information protection system with an appropriate security structure to enable only officers with appropriate level of security clearance access to the information by using measures such as key card access restrictions and locked cabinets.

(b) Physical entry to the FIU premises is controlled by security personnel and biometrics devices are used to authorize entry into the FIU offices. Over and above that, both the server room and entry into the offices of analysts is restricted by authorization through biometric devices and monitored by surveillance cameras. While all workstations and servers are protected by up-to-date endpoint security software, the entire FIU network is protected from cyber threats by an all-in-one security appliance with up-to-date software.

Criterion 29.7 – (Met)

(a) The FIU is established through Section 14 (3) of the MLPCA as amended, which provides that the Unit is responsible to the Minister and it is independent in the exercise and execution of its functions. Section 15(2) (c) of the MLPCA provides that the FIU has autonomy to inform, advise and cooperate with investigatory and supervisory authorities, in the execution of its mandate. Section 15F of the MLPCA allows the FIU to disseminate intelligence to appropriate competent authority. Section 14 (1) of the MLPCA as amended further provides that the FIU is a body corporate with perpetual succession and capable of suing and being sued in its own name. Section 14B of the MLPCA as amended provides for checks and balance on the removal of the Director General of the FIU. Section 15(2)(d) of the MLPCA 2016 provides that the FIU can exchange information with foreign counterparts, competent authorities and supervisory authorities.

(b) Section 15(2) (c) of the MLPCA provides that the FIU has autonomy to inform, advise and cooperate with investigatory and supervisory authorities, in the execution of its mandate. Furthermore, section 15 (2) (d) of the MLPCA, as amended, provides that the FIU may exchange information, spontaneously or upon request, with its foreign states counterparts, competent authorities and sector supervisory authorities. The FIU has also entered into a number of MOUs with other national stakeholders and other FIUs in the ESAAMLG region.

(c) The Lesotho FIU is established as a stand-alone institution responsible to the Minister responsible for Finance.

(d) Section 14 (2) of the MLPCA as amended provides that the FIU shall be capable of acquiring, holding and disposing of movable and immovable property in its corporate name. **Section 14A of the MLPCA**, as amended, provides that the Director shall be the Chief Accounting Officer of the Unit and shall be responsible for the management and administration of the Unit, including the appointment, control, maintenance of discipline and dismissal of staff of the Unit.

Criterion 29.8 – (Met)-Lesotho started the Egmont application process in 2018 and there was a first onsite visit, which was disrupted by the covid-19 pandemic. The EGMONT readiness questionnaire has also been submitted with responses to reviewers' comments awaiting guidance from the Sponsors on the way forward as the FIU is expecting the on-site visit anytime soon.

Weighting and Conclusion

Lesotho has established an FIU which is national centre for the receipt and analysis of STRs and other information relevant to ML, associated predicate offences and TF. The framework under which the FIU operates meets most of the requirements. It is also in the course of becoming a member of Egmont Group of FIUs. However, insurance brokers, insurance agents, and businesses (other than banks, brokers, lawyers and accountants) that deal in the safe keeping liquid securities and administration of cash are not under obligation to file STRs to the FIU. This deficiency is considered to be minor in the context of Lesotho.

Lesotho is rated Largely Compliant with Recommendation 29.

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

In its 1st Round MER, Lesotho was rated PC with these requirements (formerly R.27). The deficiencies were: the DCEO had not applied measures used to waive or postpone arrests of persons for the purposes of identifying persons involved in ML/TF cases; no comprehensive statistics maintained on cases where special investigative techniques were used on both predicate and ML offences; the absence of analysis of STRs due to the non-operation of the FIU to determine which of the reports deserve to be investigated by the Authority has affected the investigation of ML/TF offences by the LMPS as currently it has to investigate all the STRs it receives regardless of their quality; effectiveness could not be determined as no cases had been reported and investigated under the MLPCA at the time of the on-site visit.

Criterion 30.1 – (Met)-There are designated law enforcement agencies that have responsibility of ensuring that money laundering, associated predicate offences and terrorist financing offences are properly investigated, within the framework of national AML/CFT policies. Section 3 of the MLPCA (as amended) 2016 defines competent authority to mean RSL, LMPS and DCEO. S. 11 of the MLPCA (as amended) 2016 empowers these competent authorities to investigate ML/TF and associated predicate offences. Other than LMPS, the other competent authority may only prosecute with DPPs consent. S. 6 of the Prevention of Corruption and Economic Offences (as amended) 2020 provides that the functions of the directorate shall be, among others, to investigate any alleged or suspected acts of ML or commission of any offences provided in the MLPCA, 2008. S.24 (1) (c) of the Police Service Act, 1998 provides for general powers of police to investigate any crime. It provides that it shall be the duty of every person attested as a police officer to serve the person of Lesotho in that office, diligently, impartially and, with due regard to the Constitution to detect offences, apprehend offenders and bring them to justice.

Criterion 30.2 – (Met)-Lesotho law enforcement investigators of predicate offences are authorized to pursue the investigation of any related ML/TF offences during parallel financial investigations of predicate offences or refer them to a mandated authority. Section 6 of the PCEO (as amended) provides that the DCEO has power to investigate any alleged or suspected act of money laundering or commission of any offence provided in the Money Laundering and Proceed of Crime Act 2008.

Section 11 of the MLPCA (Amendment) Act, 2016 provides that competent authorities shall be responsible for the prevention, investigation and with the consent of the Director of Public Prosecutions, save for the Police, to prosecution of money laundering and related predicate

offences, financing of terrorism offences and deal with any matters relating to money laundering and proceeds of crime. Section 11(2) authorises competent authorities to conduct an investigation into serious offence including money laundering and financing of terrorism.

Criterion 30.3 –(Partly Met)-Sec 12 (1) (e) of the MLPCA (as amended) empowers competent authorities to locate, identify, evaluate, seize, freeze or confiscate tainted property. Section 3 defines competent authorities to include the LMPS, DCEO and RSL.

Sec 30 of the MLPCA as amended provides that:

For the purpose of determining whether any property, reasonably suspected to be connected in the commission of an offence under this Act belongs to, or is in possession or under the control of any person, the competent authority may, upon application to the court, obtain an order –

(a) that any document relevant to –

(i) identifying, locating or quantifying any such property; or

(ii) identifying or locating any document necessary for the transfer of any such property, belonging to, or in the possession or control of that person be delivered forthwith to the competent authority;

(b) that the accountable institution produce forthwith to the competent authority all information obtained about any transaction conducted by or for that person during such period before or after the order as the court directs.

The law does not however, give powers to the competent authority to *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. Sec 37 (1) & (2) granting power to the competent authorities to apply for confiscation order against property that is tainted, relates to conviction-based confiscation and come only after the end of the case. This cannot therefore be said to be *expeditious* identification, tracing and initiation of freezing and seizing property that may be subject to confiscation or is suspected of being proceeds of crime. Further, Sec 30(b) imposes the obligation on accountable institutions to produce information obtained by that institution. That assumes that the information can only be resident/in possession of the accountable institution, which is not always the case.

Criterion 30.4 –(Met)-S12 (e) of MLPCA as amended by sec 6 of MLPCA 2016 provides that the competent authority may locate, identify, evaluate, seize, freeze or confiscate tainted property, proceeds of crime or instrumentalities. S.3 defines competent authorities to mean the LMPS, DCEO and RSL.

Criterion 30.5 –(Met)-The DCEO is the competent authority for the investigation of corruption cases. It has powers under S12 (e) of MLPCA (as amended in 2016 to identify, trace and initiate freezing and seizing of assets.

Weighting and Conclusion

Lesotho has met criteria 30.1, 30.2, 30.4 and 30.5 but partially met c30.3. However, the deficiency contained under Sec 30 of the MLPCA to wit, investigative officers of LEAs are not authorized to pursue ML/TF or their predicate offences investigations from persons other than accountable

institutions is a serious injunction to the general powers to investigate and obtain information from any person in possession of information or material necessary for investigation. .

Lesotho is therefore rated partially compliant on R30

Recommendation 31 - Powers of law enforcement and investigative authorities

In its 1st Round MER, Lesotho was rated PC with these requirements (formerly R28). The deficiencies were: officers of the DCEO have not been sensitised on AML/CFT though they are the designated Anti-Money Laundering Authority under the MLPCA; the AML law is not yet fully operational which limits the use of its provisions in gathering evidence by law enforcement; there are no explicit provisions of the law empowering the police to record statements from witnesses; the Authority under the DCEO has got no capacity yet to implement the MLPCA.

Criterion 31.1 – (Partly Met)-Under S.12 of MLPCA (amended) 2016, competent authorities may at any reasonable time enter any premises, in which the authorised person believes on reasonable grounds, that there are records relevant to investigating an offence under the Act. These offences include ML/TF.

- a) Under S.7 of PCEOA (amended) Act, 2006 the Director General of DCEO may compel any person, entity or authority to produce records needed for investigations held by any FI, DNFBP or any other person. It is an offence under S.9 to fail to provide that information.
- b) Competent authorities may enter and search premises and take any evidence and examine data.
- c) take witness statements (S.12 (1) (h) of the MLPCA as amended.
- d) Sec 12 (1) (a) to (d) of the MLPCA empowers competent authorities to enter any premise, access any records relevant to investigations, access computer systems or data processing system, examine any data contained therein, reproduce any record, remove print out or other intelligible output for examination or make copies of any record. S. 10 of PCEOA, 1999 provides for powers to search the premises and seize and detain anything that may be or may contain evidence. S. 38 of the PCEOA provides for the powers of the Director of DCEO or a person authorised by him to enter the premises to inspect, search, examine, make copies or seize anything on or in the premises which may be useful in the investigations.

However, such provisions are limited to the premises of accountable institutions.

Criterion 31.2 – (Partly Met)

- a) Under S.12 of MLPCA (amended), 2016 a competent authority may use undercover operations, including but not limited to, controlled delivery, for purposes of investigating serious offences.
- b) Under S.12 of MLPCA (amended), 2016, a competent authority may intercept, upon obtaining a court order, communication made pursuant to the commission of a serious offence under the Act.
- c) Under section 12 (1)(b) and (c) of the MLPCA, 2008 competent authorities may use or cause to be used a computer or data processing system on the premises to examination any data contained in or available to the system in the course of investigations.

Under S.12 of MLPCA (amended), 2016 a competent authority may use undercover operations, including but not limited to, controlled delivery, for purposes of investigating serious offences.

However, such provisions are limited to the premises of accountable institutions.

Criterion 31.3 – (Partly Met)-

a) Under S.7 of the PCEOA (amended), 2006 Director General may:... *require a person in writing to produce within a specified time, books, records, returns, reports, data stored electronically in a computer or otherwise and any other document relating to the function of the public or private body.* The Director may use this information to determine who holds or controls an account. S.8 (1)(d) of PCEOA provides that the DCEO, in the course of the investigation may request the manager of any bank, in addition to furnishing any information specified in S. 8 (1) (c) above, to furnish any information of the original, or certified copies or the accounts or the statements of account at the bank of any suspected person.

b) S. 12 of MLPCA (amended) 2016 provides that Competent authorities may locate, identify, evaluate, seize, freeze or confiscate tainted property, proceeds of crime or instrumentalities. S. 24 of MLPCA provides that no accountable institution or any director, officer or employer shall disclose to their customer or a third party that information was provided to the FIU or that a report concerning suspected ML or TF will be or have been submitted to the FIU or that ML or TF investigation is being conducted. However, such provisions are limited to the premises of accountable institutions

Criterion 31.4 – (Met)-Pursuant to S.15 (2), (c), (d) & (e) of the MLPCA (amended), 2016, the FIU:

(c) Shall inform, advice and cooperate with investigatory and supervisory authorities, following consideration of reports received, where the Unit has reasonable grounds to suspect that a transaction involves proceeds of crime, terrorist financing or money laundering...

(d) May on such conditions as it deems fit, exchange spontaneously or upon request, information contained in the reports referred to in paragraph (c) or any relevant information with its foreign states counterparts, competent authorities and sector supervisory authorities. This implies that competent authorities may request the information whenever it is required.

Weighting and Conclusion

Though the investigative agencies have enabling provisions to exercise powers based on the requirements under Recommendation 31, such provisions are limited to the premises of accountable institutions.

Lesotho is rated Partially Compliant with R.31.

Recommendation 32 – Cash Couriers

In its 1st Round MER, Lesotho was rated NC with these requirements (formerly SRIX). The deficiencies were: the requirements of SRIX had not been implemented in the Kingdom of Lesotho; the designated authorities were not aware of their responsibilities under the MLPCA and the Exchange Control Regulations, 1989; the provisions on declaration of currency and bearer negotiable instruments above the prescribed threshold were not being enforced; and lack of proper systems to maintain information on records of cross border currency and bearer negotiable instruments transactions reported or recorded.

Criterion 32.1 – (Mostly Met)-Lesotho implements a Declaration System for incoming and outgoing cross-border transportation of currency. S. 28 (1) of the MLPCA (amended), 2016 and Reg. 3 of Money Laundering (Currency and Bearer Negotiable Instruments Declaration) Regulations, 2015 provides for a declaration system for incoming and outgoing cross-border transportation of currency and bearer negotiable instruments (BNIs) for travelers entering or departing Lesotho. Although there is a requirement for declaration for physical cross-border movement of cargo, there is no declaration or disclosure system for physical cross-border transportation through mail.

Criterion 32.2 – (Partly Met)

b. Not applicable Lesotho utilises a written declaration System for purposes of movement of currency or bearer negotiable instruments in and out of Lesotho and which exceeds a threshold prescribed by the Commissioner. S.28 (1) of the MLPCA (amended), 2016 provides for declarations by persons entering or departing Lesotho for currency or BNIs exceeding a sum prescribed by the Commissioner. The Declaration of Currency Notice 34 of 2014 provides that a person on entering or leaving Lesotho out of any port or entry or departure carrying any amount of currency exceeding M25, 000. 00 shall declare such currency to an authorised officer at the port of entry or exit. However, the Declaration Notice does not provide a threshold for BNIs that are moved in and out of Lesotho.

c. Not applicable

Criterion 32.3- (Not Applicable)-Not applicable as Lesotho uses a written Declaration System.

Criterion 32.4 – (Not Met)-In the case of false declarations, the designated competent authorities do not have power to request and obtain further information from the carrier with regard to the origin of the currency or bearer negotiable instruments, and their intended use.

Criterion 32.5 – (Partly Met)- Lesotho criminalises false declarations. Reg. 6 of the MLPC (Currency and BNI) Regulations 2015 provides that: “A person who makes a false currency or BNIs declaration commits an offence and is liable on conviction to a fine of not less than M5,000.00 or to imprisonment for a period not exceeding 2 years. The financial penalty may not be dissuasive in case involving large amounts. The AT are of the view that in addition to this, the funds should be subject to seizure under the provisions of section 28 of the MLPC Act.

Criterion 32.6 – (Met)-Information obtained through the declaration process is made available to the FIU. Reg. 11 of the MLPC (Currency and BNI) Regulations 2015 provides that “An authorized officer shall report, immediately and without delay upon being aware of any suspicious declarations or indications of any activities related to the commission of a serious offence to the FIU and a relevant competent authority. Further, Section 15A d provides that the FIU shall have access to, and receive financial, administrative and law enforcement information that includes data from public and private bodies or individuals.

Criterion 32.7 – (Partly Met)-Lesotho has coordination mechanisms among some competent authorities. There exists a working group comprised of members from various institutions, CBL, LMPS, FIU, Immigration and Customs (RSL) established on the basis of cooperation and coordination. There is co-ordination between the Customs, Immigration and other related authorities especially at the ports of entry/exits. For instance, there is an established Heads of Border Agencies (HOBA). However, the process is not yet adequate with regard to currency declaration. The Heads of Border Agencies (HOBA) Border Management Strategy of 2013 did not indicate which Agencies formed part of HOBA. It also didn’t show what activities were being pursued in relation to cross-border physical movement of currency or BNIs or the roles of each agency in this regard.

Criterion 32.8 – (Partly Met)-Competent Authorities have powers to seize currency or bearer negotiable instruments for a reasonable time in order to ascertain whether an officer suspects that the currency or bearer negotiable instruments may be proceeds of crime or intended for use in the commission of a crime. S. 28 (2) of the MLPCA 2008 allows an authorized officer to seize currency or BNIs where there are reasonable grounds to suspect that it is property derived from a serious offence or that it is intended to for use in a commission. S. 28 (3) provides that the currency or BNIs seized should not be kept for a period exceeding 48 hours. Further, Reg. 5 (3) of the Money Laundering (Currency and Bearer Negotiable Instruments) Regulations, 2015 provides that ‘Where a person fails to make a declaration in terms of these Regulations, an authorised officer may detain the currency or BNIs and take other administrative action relevant to the implementation of these Regulations’. However, it does not provide for detention or seizure of currency or BNs where there is a false declaration.

Criterion 32.9 – (Met)-Lesotho has a declaration system that allows for international cooperation and assistance, and retains records for all declarations that are made pursuant to the Money Laundering (Currency and Bearer Negotiable Instruments) Regulations, 2015. Reg. 10 (1) of the ML (Currency and BNI) Regulations 2015 provides for record keeping and mandates competent authorities to keep a record of the declarations and information obtained. Further, Reg. 10 (2) provides for record keeping and processing of information relating to declarations that pertain to indications of illegal activity associated with movement of currency or BNI. Further, Reg. 12 (3) allows for information sharing with other jurisdictions.

Criterion 32.10 – (Met)-Lesotho has strict safeguards to ensure proper use of information collected through the Declaration System. Reg. 4 of the MLPC (Currency and BNI) Regulations 2015 protects declared information to protect the security of the person carrying the currency or BNI. The law does not restrict trade payments or capital movements.

Criterion 32.11 – (Partly met)

Lesotho has in place measures to ensure that persons who carry out physical transportation of currency or bearer negotiable instruments that are related to ML/TF or predicate offences are subject to sanctions.

(a) The MLPC (Currency and BNI) Regulations 2015 proscribe false declarations and where one is convicted, there is a fine of M5, 000.00 or imprisonment for a maximum of 2 years. However, it is notable that such currency or bearer negotiable instruments are not subject to seizure under S. 28 of the MLPCA 2008. The sanctions are not considered as proportionate or dissuasive, especially where it may involve bulk cash.

(b) S. 28 (2) currency or BNIs can be seized by an authorized officer where the same is being imported into Lesotho and an authorised officer reasonably believes that the currency or BNI are proceeds of crime or intended for commission of an offence. S. 28 (3) II allow for continued seizure of such currency while consideration is given to the institution in Lesotho or elsewhere of criminal proceedings against any person for an offence with which the currency or BNI are connected. The AT was of the view that the sanctions were proportionate and dissuasive.

Weighting and Conclusion

Lesotho has in place a declaration system for persons entering or leaving Lesotho carrying money or BNIs exceeding an amount prescribed by the Commissioner. Lesotho also has a legal framework for the seizure of currency and bearer negotiable instruments where an authorized officer reasonably believes that the currency or bearer negotiable instruments are property derived from the commission of an offence or intended for use in the commission of an offence. However, there is no threshold prescribed for BNIs. In addition, the Currency and Bearer Negotiable Instruments Regulations 2015 do not provide for seizure of currency that is subject of a false declaration, and the penalty for false declarations is not dissuasive and proportionate. Further, the coordination mechanisms in relation to declaration of currency and bearer negotiable instruments at entry points in Lesotho are not adequate, and they are currently not being implemented.

Lesotho is rated Partially Compliant with Recommendation 32.

Recommendation 33 – Statistics

In its 1st Round MER, Lesotho was rated Non-compliant with these requirements (formerly R32). The main technical deficiency was that there were no comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating ML/TF were maintained by the authorities.

Criterion 33.1 – (Partly Met)-

Criterion 33.1(a) – (Partly Met) S.15 (2) (e) of the MLPCA (amended) 2016 Act empowers the FIU to compile statistics and records to undertake studies on trend and methods used to launder money, finance terrorism or commit serious crimes, make recommendations arising out of these studies and disseminate the information within Lesotho or elsewhere. Lesotho maintains statistics of STRs received and disseminated. It provided the statistics on STRs received and disseminated. The STRs are maintained digitally. However, the statistics were not comprehensive and inconsistent.

Criterion 33.1(b) – (Partly Met) – The competent authorities (LMPS, DCEO, RSL) do keep some statistics on ML investigations, prosecutions and conviction. Since there has not been any TF cases or investigation, therefore there is no TF statistics. Also, the ML statistics from the competent authorities are unreliable, inconsistent and not comprehensive enough to determine the effectiveness or efficiency of the AML/CFT systems.

Criterion 33.1(c) – (Not Met)- The competent authorities do not keep statistics on property frozen, seized and confiscated and recovered through forfeiture.

Criterion 33.1(d) – (Partly Met)- The Foreign Affairs and DPP maintains statistics on number of MLA requests made and received. The DCEO, RSL, LMPS and FIU, maintain some statistics on incoming and outgoing requests for international cooperation. However, the AG, although a central authority for MLA does not keep any statistics. Further, the statistics are not comprehensive enough to assist in assessing the effectiveness of the agency in combating ML/TF crimes.

Weighting and Conclusion

Lesotho does maintain some statistics on STRs received and disseminated, ML/FT Investigations, prosecution and convictions. It also maintains some MLA statistics. However, there are no statistics on property frozen, or seized and very little on confiscation. Further the statistics are not comprehensive on matters relevant to effectiveness and efficiency of AML/CFT systems.

Lesotho is rated Partially Compliant with Recommendation 33.

Recommendation 34 – Guidance and feedback

In its 1st Round MER, Lesotho was rated NC with these requirements (formerly R25). The deficiencies were; no adequate and appropriate feedback provided to reporting entities; no guidelines to assist DNFBPs to meet their AML/CFT obligations were issued by the authorities to DNFBPs.

Criterion 34.1 – (Mostly Met)- In line with the supervisory powers to issue guidelines bestowed upon the FIU and the supervisors under S. 18 B. (1) (c) the FIU and the CBL have issued Guidelines to accountable institutions. The FIU issued the Money Laundering (Accountable Institutions) Guideline, 2013 to provide guidance on the implementation of AML/CFT standards. This guideline broadly has principles on the responsibility of accountable institutions to develop policies, procedures and internal controls, appoint a compliance officer, implementation of know your customer requirements, ongoing customer due diligence and enhanced due diligence, record keeping, recognising and reporting of suspicious transactions. The ML (Politically Exposed Persons) Guidelines 2015 gives further guidance on the application of AML/CFT measures on politically exposed persons while the Money Laundering (Financial Sanctions Related to Terrorist Financing and Financing of Proliferation) Guidelines 2022 give guidance on the implementation on controls related to targeted financial sanctions and reporting of suspicious transactions.

In addition, the CBL has issued the Financial Institutions (Anti-Money Laundering and Combatting of Financing of Terrorism) Regulations, 2015 as well as the Anti-Money Laundering/Combating of Financing of Terrorism (AML/CFT) Risk Management Guidelines for Banks in August 2020, the only guidelines that provides for the application of the AML/CFT requirements on a risk sensitive basis in Lesotho. Consequently, there is no risk-based approach guidance that has been issued to accountable institutions either by the FIU or their supervisors, except for banks.

In relation to feedback, The FIU acknowledges receipt of all STRs on quarterly basis and provides feedback after analysis. The feedback is provided by holding joint meetings with the accountable institutions or individual institutions to address specific issues relating to individual institutions.

The Central Bank holds quarterly meetings and bilateral meetings with the banks to provide feedback and guidance on risks in the sector.

Weighting and Conclusion

The FIU has issued guidance to all accountable institutions in the country as the custodian for the AML/CFT legislation. The guidance relates to general application of AML/CFT principles, specific guidance on politically exposed persons and targeted financial sanctions. All the issued guidance adequately provides for the identification of and reporting obligations on suspicious transactions. In addition, the FIU gives quarterly feedback to accountable institutions through meeting. Further the Central Bank of Lesotho has issued specific guidance on the application of a risk-based approach in the implementation of AML/CFT requirement to banks. Apart from banks, all other accountable institutions have not received risk-based approach guidance.

Lesotho is rated Largely Compliant with Recommendation 34.

Recommendation 35 – Sanctions

In its 1st Round MER, Lesotho was rated NC with these requirements (formerly R17). The deficiencies were: sanctions for non-compliance could only be issued by courts; no sanctions available against directors and senior management of accountable institutions for contravention of the Act although note was taken of the general provisions under the C.P&E Act; effectiveness in relation to sanctions under the MLPCA could not be determined as the law has not been implemented.

Criterion 35.1 – (Mostly Met)-The competent authorities can employ a range of proportionate and dissuasive sanctions applicable to FIs and DNFBPs that do not comply with the AML/CFT obligations set out in R.6 and R.8 to R.23. However, there are some shortcomings as set out below.

R.6

Reg. 31(5) of ML Regulations, 2019 provides that the Minister may impose a financial penalty not exceeding M50,000 against a person or entity for failure to freeze funds or other assets without delay. The language of this Regulation is not expressed in mandatory terms. In addition, making funds, other assets or economic resources directly or indirectly available or for the benefit of a designated person/ entity is an offence which, on conviction, attracts a penalty of imprisonment for a period not exceeding 10 years and M 1,000,000 (Regulation 30 (3) of ML Regulations). The sanctions appear to be applicable to natural persons only.

R. 8

Sanctions applicable to NPOs are set out in the Societies Act and ML Regulations. If an NPO does not comply with requirements in relation to identification and verification of ID of beneficiaries, record keeping of ID of significant donors, maintaining records of transactions and having clear policies that promote transparency, integrity and public confidence, it shall be charged a financial penalty not exceeding M50,000 [Regulation 24(8)]. There are no sanctions prescribed for the persons acting on behalf of the NPO. Furthermore, if an NPO fails to supply list of office-bearers, accounts, returns and other information as may be prescribed by the Registrar General, the President or Chairman or responsible committee shall be liable, on

conviction, to a fine of M200,000 (sections 15 and 28 of the Societies Act). There are no sanctions against the NPO itself.

R9-23

(a) In relation to R.9-23 - FIs or DNFBPs which fail to comply with the applicable preventive measures, especially with regard to CDD obligations, record keeping, reporting suspicious transactions, wire transfers, internal control, tipping off are liable to sanctions. The applicable financial penalties, which are criminal in nature, are: (a) for natural persons, imprisonment not exceeding 10 years and fines not exceeding M50,000 and (b) for legal persons, fines not exceeding M250,000 [Section 26(3) of MLPCA]. The sanctions are not considered to be proportionate and may not be dissuasive in all cases since the same sanctions apply to all violations. Depending on the nature of violation and the impact of the violations, M250,000 may not be dissuasive in other cases.

In addition to this, Regulation 18 (2) of the MLPCR provides for a wide range of administrative sanctions that may be prescribed by supervisors of the FIU including suspension of a license for a period not more than 12 months, revocation of a license or permit, issue additional conditions on a license or permit, issue a public statement to the effect that an accountable institution is not compliant with the Act, directive obliging relevant financial institutions to perform a specific of refrain from performing a specific act and forfeiture of certain right and privileges. Section 18 D (1) & (2) of the MLPC Amendment Act, 2016 support application of administrative sanctions by supervisory authorities or the FIU including imposing a financial penalty not exceeding M 100 000.00 (USD 6, 667.00) in respect of a natural persons. The jurisdiction is considered to have a broad range of sanctions.

Criterion 35.2 – (Met)-Section 18 D (1) & (2) of the MLPCA (amended), 2016 provide the Unit or a sector supervisory authority may impose such administrative sanctions as may be appropriate not only against an accountable institution, but also to its servants or agents for non-compliance with measures and obligations under the Act and the administrative sanctions may also be imposed for non-compliance with regulations, instructions, directives, or conditions imposed pursuant to the Act. The Unit or a sector supervisory authority may impose a financial penalty not exceeding M 100 000.00 (USD 6, 667.00) in respect of a natural persons.

Weighting and Conclusion

Generally, Lesotho and the supervisory authorities have powers to apply a broad range of proportionate and dissuasive criminal and administrative sanctions. There are no sanctions, however, against an NPO itself or persons acting on behalf of NPOs. Furthermore, while the Minister may be empowered to impose penalties on an institution that fails to freeze funds or other assets without delay, the exercise of these powers is not mandatory.

Lesotho is rated Largely Compliant with Recommendation 35.

Recommendation 36 – International instruments

In its 1st Round MER, Lesotho was rated PC with these requirements (formerly R35 & SRI). The deficiencies were: the Kingdom of Lesotho had not fully implemented the Palermo, Vienna and Suppression of Terrorism Conventions; there were no comprehensive measures for mutual legal

assistance in place; the Kingdom of Lesotho had not put in place comprehensive measures to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of transnational organized crime; there were no comprehensive measures in place for the protection of witnesses.

Criterion 36.1 –(Met)-Lesotho is a State Party to the Vienna Convention on 19th October 1992; the Palermo Convention on 16th June 2004; signed and ratified the UNCAC on 9th December 2003; signed (4th December 2001) and ratified the UN International Convention for the Suppression of Terrorist Financing (27th July 2003).

Criterion 36.2- (Met)-Lesotho has fully implemented the Vienna Convention, the Palermo Convention, the Merida Convention and the Terrorist Financing Convention. UNCAC is domesticated by PCEO Act and the MLPCA; Vienna Convention is domesticated by the Drugs of Abuse Act 2008 (as amended); Palermo Convention is domesticated by a number of laws including MLPCA, PCEO Act, Mutual Legal Assistance Act, and Fugitive Offender Act 1967 as amended. The Terrorist Finance Convention is implemented within the MLPCA 2008 as amended 2016 and the Suppression of Terrorism Act 2018.

Weighting and Conclusion

Lesotho is rated Complaint as it has met all the requirements of this Recommendation.

Recommendation 37 - Mutual legal assistance

In its 1st Round MER, Lesotho was rated PC and NC with these requirements (formerly R36 & SRV respectively). The deficiencies were: the absence of legislation on mutual legal assistance made it difficult for the AT to determine the extent of mutual legal assistance which could be provided by the authorities; where such assistance could be provided, it was difficult to determine in the absence of clear and efficient processes to execute the requests whether it was offered in a timely, constructive and effective manner; there were no procedures to facilitate the taking of witness statements on behalf of a foreign State; there were no procedures to facilitate the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country.

Criterion 37.1 – (Met)-Lesotho has a legal basis (Mutual Legal Assistance in Criminal Matters Act, 2018 (MLAA)) that allows it to rapidly provide the widest possible range of mutual legal assistance in relation to money laundering, associated predicate offences and terrorist financing investigations, prosecutions and related proceedings.

Criterion 37.2 – (Met)-Under S. 4 of MLAA, the office of the Attorney General is the central authority for the transmission and execution of requests in the Kingdom of Lesotho. The MLAA prescribes a clear process for timely prioritization and execution of mutual legal assistance requests. There is a case management system.

Criterion 37.3 –(Met)-Lesotho has not prohibited or made MLA subject to unreasonable or unduly restrictive conditions.

Criterion 37.4 – (Met)-Lesotho does not refuse a request for mutual legal assistance, but subjects it to conditions under S. 4(2) of the MLAA which include:(a) granting the request in whole or in

part subject to such conditions as deemed fit;(b)refuse the request in whole or in part on the ground that to grant the request would be likely to affect the sovereignty, security or such other public interest of Lesotho;(c) after consulting with the competent authority of the foreign state, postpone the request in whole or in part on the ground that granting the request immediately would be likely to affect the conduct of an investigation or proceedings in Lesotho.

a) Lesotho does not refuse MLA on the sole ground that the offence is also considered to involve fiscal matters.

b) Lesotho does not refuse MLA on the grounds of secrecy or confidentiality requirements on financial institutions or DNFBPs, except where the relevant information that is sought is held in circumstances where legal professional privilege or legal professional secrecy applied under S. 32 of the MLPCA (as amended), 2016

Criterion 37.5 – (Met)-Under S. 17 of the MLAA every person is required to maintain the confidentiality of mutual legal assistance requests that they receive and the information contained in them, unless disclosure is required in the criminal matters specified or has been authorized by the requesting state

Criterion 37.6 – (Met)-Dual criminality is not a precondition for Lesotho to render assistance where mutual legal assistance requests do not involve coercive actions.

Criterion 37.7 – (Met)-S. 2 of the Mutual Legal Assistance in Criminal Matters (Amendment) Act, 2020 amended all provision where “serious offence” appeared and replace it with “offence”. The word offence removed the requirement that the MLA can be provided if it is a serious offence.

Criterion 37.8 – Met

a) Section 12 of MLPCA (amended) 2016, provide that competent authorities can deploy powers and investigative techniques available to them to render assistance as expeditiously and practically as possible. The analysis of R.31 will apply to this recommendation.

b) Analysis of R.31 will apply to the requirements of this sub-criterion.

Weighting and Conclusion

Lesotho has met the requirements of this Recommendation.

Lesotho is rated Complaint with Recommendation 37.

Recommendation 38 – Mutual legal assistance: freezing and confiscation

In its 1st Round MER, Lesotho was rated PC with these requirements (formerly R38). The deficiencies were: lack of specific legislation outlining procedures to facilitate effective and timely response to mutual legal assistance requests by foreign countries relating to identification, freezing, seizure or confiscation or laundered property, proceeds or instrumentalities, definition of serious offence of a maximum term of imprisonment of not less than 24 months compared to the international standard of 12 months and that most offences were common law with no defined terms of sentencing, resulted in the full range of predicate offences for money laundering not being covered which impeded on the ability by the authorities to facilitate effective mutual legal assistance applicable to the identification, freezing, seizure, or confiscation of laundered property from proceeds, instrumentalities used in, or instrumentalities intended for use in, the commission

of any ML/FT or other predicate offences, including property of corresponding value; lack of implementation of the mutual legal assistance provisions set out in the MLPCA; lack of clear arrangements for coordinating seizure and confiscation actions with other countries; no statistics to demonstrate how much time it took to relay the information to the requesting country.

Criterion 38.1 – (Partly Met)-There are very limited provisions to provide MLA on the identification, freezing, seizure and confiscation on a-e as covered in the definition of document. S. 82 of the MLPCA stipulate assistance by the police on the tracing and seizure of document when it receives international request.). Section 13 and 14 MLAA, 2018, in criminal matters (as amended) cover issues on assisting foreign countries requests on the execution of foreign restraining and confiscation orders or securing restraining orders when the property under dispute it is in Lesotho.

Criterion 38.2 – (Met)-S. 14 of the MLAA, 2018 provides for the registration of a foreign restraining or confiscation order. The Act requires that at the time of registration, the Order should be in force in the requesting state and that the person was given notice of the proceedings to defend themselves. The provisions of the MLAA 2018 do not distinguish between conviction-based forfeiture and civil based confiscation.

Criterion 38.3 – (Partly Met)-Though, the coordination on seizure and management of criminal properties connected with a foreign element are covered under sections 13-16 of MLACMA, 2018 (as amended), the measures are limited to restraining orders. The provisions are also applicable on serious offences which may not include some of the prevailing offences such as tax crime, fraud, corruption etc.

Criterion 38.4 – (Met)-Lesotho has legal provisions which allow for sharing of confiscated property with other countries. S. 16 of the MLAA, 2018 empowers the Attorney General to enter into an arrangement with the competent authorities of a foreign state for reciprocal sharing with that state of any property realized.

Weighting and Conclusion

Lesotho has some enabling provisions to provide MLA on asset recovery. However, the law has significant deficiencies in that the location of the property in terms of S.82 of MLPCA (2008) is premised on the existence of a document and all the four elements of tracing the laundered property are not covered in this provision. Further, there are limited mechanisms for the coordination of confiscation or seizure efforts with foreign countries as the provided measures are limited to restraining orders and its association with serious offences may exclude the notable prevailing offences such as tax crimes, fraud and corruption etc identified as generating the most illicit proceeds. Therefore, it has a high weighting on final rating.

Lesotho is rated Partially Compliant with Recommendation 38.

Recommendation 39 – Extradition

In its 1st Round MER, Lesotho was rated PC with these requirements (formerly R39). The deficiencies were: there were no simplified procedures in place relating to extradition in the Kingdom of Lesotho; there were no procedures to ensure that there is no undue delay in the

processing and execution of extradition requests; the effectiveness could not be determined as the legislation had not been applied in court; comprehensive statistics on extradition requests received, granted and time taken to process the requests were not maintained by the authorities.

Criterion 39.1 – (Mostly Met)-

a S. 27 of the MLPCA, 2008 designate ML and TF as extraditable offences. The Fugitive Offenders Act (FOA), 1967 provides for the execution of extradition requests. S. 9 (1) of the FOA provides that ‘A person arrested in pursuance of a warrant under S. 8 of this Act shall (unless previously discharged under sub-section (3) of that section, be brought *as soon as practicable* before a court presided over by a Resident Magistrate (in this Act referred to as the court of comital).

b There is a Case Management System, However, no clear processes for the timely execution of extradition requests including prioritisation where appropriate.

c There are no unreasonable or unduly restrictive conditions on execution of extradition request. S. 6 of the FOA provides for instances in which extradition requests can be refused such as requests where the person is accused of a crime of a political nature, or on account of race, religion, nationality, political opinion, etc.

Criterion 39.2 – (Met)-

a) S. 3 of the FOA, 1967 allows for the extradition of persons, without regard to nationality.

b) Not applicable

Criterion 39.3 – (Partly Met)- S. 5 (1) of the FOA, 1967 provides in part as follows: For the purposes of this Act, an offence of which a person is accused or has been convicted in a designated country is a relevant offence if:

a) It is an offence against the law of a designated country, and however it is described in that law, it falls within any of the descriptions set out in the First Schedule to this Act, and is punishable under that law with imprisonment for a term of twelve months or any greater punishment;

b) in any case, the act or omission constituting the offence, or the equivalent act or omission would constitute an offence against the laws of Lesotho if it took place within Lesotho or, in the case of an extra-territorial offence, in the corresponding circumstance outside Lesotho....

While the law provides for dual criminality, it sets a threshold for extradition in the case of offences committed against the laws of designated countries. This entails that extradition is limited to cases where the minimum sentence is twelve months

Criterion 39.4 – (Met)- S. 15A provides for simplified extradition where the person consents before a magistrate to the same. It provides that if a person, who is subject of an extradition request from another country, consents to an extradition he shall be taken to court to register his consent before a judicial officer, and shall thereafter be extradited to the requesting country without following the proceedings for return prescribed in Part III.

Weighting and Conclusion

Money Laundering and Terrorist Financing are extraditable offences under the MLPCA. Further, restrictions on extradition of persons can only be placed in instances where the Minister or Court that the offence for which the person is accused is political in nature, or that the prosecution is being made on account of race, religion, nationality or political opinion. Lesotho also has legal provisions relating to simplified extradition processes as well as waiver of dual criminality. However, Lesotho has set a threshold for extradition in the case of offences committed against the laws of designated countries. Extradition is only applicable where the offence has a minimum sentence of twelve months.

Lesotho is rated Largely Compliant with the provisions of Recommendation 39.

Recommendation 40 – Other forms of international cooperation

In its 1st Round MER, Lesotho was rated PC with these requirements (formerly R40). The deficiencies were: the FIU were not in operation to enable exchange of information with other FIUs; the powers of the DCEO to enter into agreements of exchange of information with its counterparts were not provided for in the Prevention of Corruption and Economic Offences Act; there were no mechanisms to retain information relating to spontaneous requests; the authorities did not maintain statistics on the requests for information received therefore effectiveness could not be determined.

Criterion 40.1 – (Partly Met)- Lesotho has legal provisions that allow for information sharing and international cooperation in relation to money laundering, associated predicate offences and terrorist financing. S. 2 of the MLPCA, 2008 (as amended) 2016 defines competent authorities to include the DCEO, LMPS and RSL. S. 11 (2) (d) of the MLPCA, (as amended) 2016, provides for provision of legal assistance to foreign jurisdictions for property tracking, monitoring and confiscation orders by a competent authority.

S. 6 of the PCEO, 1999 as amended empowers the DCEO, for the purpose of carrying out its functions under the Act or any other law, to enter into arrangements for the exchange of information or other mutual assistance with institutions or agencies in or outside Lesotho. S. 15 (1) (d) of the MLPCA (as amended) 2016 also empowers the **FIU** to, *on such conditions as it deems fit, exchange spontaneously or upon request, information contained in the reports referred to in paragraph (c) or any relevant information with its foreign states counterparts, competent authorities and sector supervisory authorities.*

S. 72 (2) of the Police Act, 1988 authorises the Police to enter into arrangements to act jointly with some other body or bodies, either within or outside Lesotho to discharge its functions. The section is broad enough to cover exchange of information.

However, S.11 (2) (d) does not extend to information sharing between the competent authorities of Lesotho and competent authorities of other jurisdictions, and merely covers legal assistance for

those covered areas. Further the definition of ‘competent authorities does not include the Companies and Intellectual Property Commission, the Registrar of Companies, the Registrar General and the Supervisory Authorities, etc. The authorities have not provided the MOUs relating to the LMPS to make a determination on the adequacy of the MOUs for facilitating exchange of information. (Authorities are requested to respond to the issue of LMPS and RSL)

Criterion 40.2 – Partly Met

- a. Competent authorities have a lawful basis for providing co-operation. S.11 (2) (d) and 15 (2) (d) of the MLPCA (as amended) 2016 provides for legal assistance as well as information sharing by competent authorities and FIU respectively. S.6 of the PCEOA 1999 as amended empowers the DCEO, to enter into arrangements for the exchange of information or other mutual assistance with institutions or agencies in or outside Lesotho, S. 72 (2) of the Police Act, 1988 authorises the Police to enter into arrangements to act jointly with some other body or bodies, either within or outside Lesotho to discharge its functions.
- b. The FIU is authorised to enter into MOUs with its foreign counterparts which are used as the efficient means for cooperation. Likewise, the DCEO is authorised to enter into arrangements for the effective carrying out of its functions under the PCEOA, 1999. Similarly, S. 72 (2) of the Police Act, 1988 authorises the Police to enter into arrangements to act jointly with some other body or bodies, either within or outside Lesotho to discharge its functions. However, there is no explanation from the authorities of Lesotho on what means the other competent authorities (RSL) use as the efficient means of cooperation.
- c. Lesotho has legal provisions that facilitate and allow for transmission and execution of requests. The FIU has designated a Head of Monitoring and Analysis as the contact person for exchange of information. Exchange of information is done through encrypted emails accompanied with conditions under which the information is being sent. The FIU also has policies and procedures in place for the safeguarding and encryption of information received and in their custody. However, no information was provided by the remaining competent authorities regarding the secure gateways.
- d. The FIU is authorised by law to ‘*on such conditions as it deems fit, exchange spontaneously or upon request, information contained in the reports referred to in paragraph (c) or any relevant information with its foreign states counterparts, competent authorities and sector supervisory authorities.*’ However, there are no requirements for prioritisation of requests by other competent authorities apart from FIU. Further, the other competent authorities do not have provisions regarding spontaneous attendance to requests or prioritisation.
- e. S.17 of MLAA 2018 provides that documents sent to the Attorney General by a foreign state are privileged and should not be disclosed to anyone unless in compliance with the conditions under which the document was sent.

Criterion 40.3 – (Partly Met)-Competent authorities in Lesotho are authorised to enter into arrangements to cooperate. S. 87 of the VAT Act, 2001 provides that the Minister may, on behalf of the Government, enter into an agreement with the Government of another country on a reciprocal basis for the prevention of fiscal evasion or avoidance, the rendering of assistance and cooperation and the establishment of a refund system in respect of general sales tax or value added tax collected in the participating countries.

S. 6 of PCEOA 1999 as amended empowers the DCEO, for the purpose of carrying out its functions under the Act or any other law, to enter into arrangements for the exchange of information or other mutual assistance with institution or agencies in or outside Lesotho.

S. 15 (1) (d) of the MLPCA (as amended) 2016 also empowers the FIU to, *on such conditions as it deems fit, exchange spontaneously or upon request, information contained in the reports referred to in paragraph (c) or any relevant information with its foreign states counterparts, competent authorities and sector supervisory authorities.*

S. 72 (2) of the Police Act, 1988 authorises the Police to enter into arrangements to act jointly with some other body or bodies, either within or outside Lesotho to discharge its functions. The section is broad enough to cover exchange of information.

The authorities have advised that there are MOUs in place for the FIU, the RSL and the Ministry of Trade and Industry. However, no information was provided to show that the said MOUs were negotiated and signed timely. Further, the authorities have not provided any MOUs relating to the DCEO in spite of the critical nature of this institution for AML/ CFT purposes. Also, other than FIU, it is not clear that the other competent authorities have agreements with widest range of foreign counterparts.

Criterion 40.4 – (Not Met)-The competent authorities do not provide timely feedback regarding assistance received and the usefulness of such assistance from foreign counterparties.

Criterion 40.5 – (Met)-Lesotho does not prohibit or place unreasonable restrictions on exchange of information.

- a) There are no restrictions on the basis that the request involves fiscal matter.
- b) S. 32 of the MLPCA 2008 provides for overriding of secrecy laws except where the information relates to lawyer/client privilege.
- c) S. 4 (2) (b) of the MLAA 2018 provides for grounds upon which the AG may refuse cooperation in criminal matters. The AG may refuse a request where the request would be likely to prejudice the sovereignty, security or public interest of Lesotho. The AG may also postpone a request where granting the request would prejudice investigations or proceedings in Lesotho. These are the only grounds where a request for information can be refused by the AG.
- d) Same as in (c) above.

Criterion 40.6 – (Met)-Lesotho has controls and safeguards to ensure information exchanged by competent authorities is used only for the purpose for which it was provided, unless prior authorisation has been obtained. SS. 17 and 18 of the MLAA 2018 provides for privilege for foreign documents as well as restriction on the use of information and evidence obtained through mutual legal assistance. S. 18 provides that 'information, documents, article or other thing obtained from a foreign state pursuant to a request made under this Act shall not be used in any investigations or proceedings other than the investigation or

proceeding disclosed in the request, unless the Attorney General consents after consulting with the foreign state.’

Criterion 40.7 – (Met)-Competent authorities of Lesotho maintain confidentiality for any requests and the information exchanged with its foreign counterparts. S. 17 of the MLAA 2018, provides for the privilege for foreign documents and that they should not be disclosed. S. 17 (3) provides for prohibition of disclosure of the request as well as the contents of any received documents. S. 17 (4) creates an offence for any person breaching the confidentiality requirements and the penalty is 10 years imprisonment or fine of M50, 000.

Criterion 40.8 – (Met)- Competent authorities in Lesotho are able to conduct inquiries on behalf of foreign counterparts. S. 11 (2) (d) of the MLPCA (as amended) 2016 provides for the power of competent authorities to “extend legal assistance to a foreign jurisdiction with respect to property tracking, monitoring and confiscation orders”.

Criterion 40.9 – (Met)- S. 15 (2) (d) of MLPCA provides that the FIU may on such conditions as it deems fit, exchange spontaneously or upon request, information contained in the reports referred to in paragraph (c) or any relevant information with its foreign states counterparts, competent authorities and sector supervisory authorities.

Criterion 40.10 – (Met)-There are no legal provisions for the FIU to give feedback to its foreign counterparts. However, the FIU demonstrated that it provides feedback to foreign counterparts on request

Criterion 40.11 – (Met)

(a) S.15(2)(d) of the MLPCA empowers the FIU to share, with its foreign counterparts, any information that it holds in line with the requirements of Recommendation 29.

(b) S. 15 (2) (d) of MLPCA provides that the FIU may on such conditions as it deems fit, exchange spontaneously or upon request, information with its foreign counterparts.

Exchange of Information between financial supervisors

Criterion 40.12 –(Partly Met)-The CBL does not have the legal basis to provide co-operation with foreign counterparts for AML/CFT in respect of banks. S.13(1) of the FI (Consolidated Supervision) Regulations, 2016 provides for consolidated prudential supervision requirements and not AML/CFT supervision. In relation to supervisors for collective investment schemes, insurance, pension funds and pension funds service providers, they can cooperate in all ways and share information with domestic and foreign supervisors for AML/CFT purposes [Regulation 52 (2) Central Bank (Collective Investment Schemes Regulations) and s. 69(2)(b) Pension Funds Act, 2019] respectively. However, the Regulations are applicable to collective investment schemes, asset managers and collective investment scheme agents only (Regulation 3 of Central Bank (Collective Investment Schemes Regulations). With respect to insurance companies, the Commissioner of Insurance is able to maintain contacts, develop relations and provide regulatory assistance to foreign regulatory authorities in accordance with this Act [s.3(2)(m) and (n) of the Insurance Act, 2014]. S.3(2)(h) of the Act further provides that the *Commissioner’s powers and functions include monitoring compliance by insurers and insurance intermediaries with legislation relating to money laundering and financing of terrorism. Further, the Commissioner of MFIs is empowered to share and cooperate in ways necessary with both domestic and international supervisors for combating money laundering and terrorist financing. [s.69 (2) of the Financial Institutions (Credit Only and Deposit Taking Micro Finance Institutions) Regulations, 2014.*

Criterion 40.13 – (Mostly Met)-All financial sector supervisors have powers to exchange information with their foreign counterparts without limitations (see c,40.12). In the absence of specific restrictions, it is assumed that this exchange includes information held by financial institutions to which supervisors have access. The limited scope (See c40.12) of the Central Bank (Collective Investment Schemes Regulations) is also applicable to this criterion. CBL has entered into an MOU with South African Reserve Bank which prescribes procedures for information sharing including confidentiality provisions.

Criterion 40.14 – (Partly Met)-Financial sector supervisors are able to share information where relevant for AML/CFT purposes with other supervisors. This includes other supervisors that have a shared responsibility for FIs in the same group. However, there are shortcomings in relation to the specific information as outlined below:

a) The Commissioner of Insurance, Registrar of Pension Funds and CBL are able to exchange domestic regulatory system and general information on the financial sector. In relation to CBL, Section 13(3) of the FI (Consolidated Supervision) Regulations, 2016 enables the CBL to exchange information through written agreement in the form of a MOU or other similar document that establishes the rules for cooperation and the exchange of information for institutions that have operations both in Lesotho and elsewhere. The CBL has entered into an MOU with the Reserve Bank of South Africa one of whose objectives is to exchange information and co-operate with each other regarding the supervision and regulation of financial institutions and groups under their authority [Article 5 of the MOU].

b) In relation to insurance companies and banks, CBL is able to provide prudential information including a financial institution's business activities, BO management, and fit and properness. For instance, under the MOU between CBL and SARB, they are able to share information for the effective implementation of Basel Accord and in any other information that may assist in the performance of their functions or improve their efficiency [Article 9.6.4 of the MOU between CBL and SARB]. However, Central Bank (Collective Investment Schemes Regulations) Regulations limits the information sharing to AML/CFT matters only.

c) The provisions of the Pensions Act, Insurance Act and the Central Bank (Collective Investment Schemes Regulations) set out broad powers for sharing of information by supervisors with their foreign counterparts. The AT are of the view that these broad powers enable supervisors to share information in relation to internal AML/CFT policies, CDD, information in customer files and sample of accounts and transaction information. Furthermore, without making specific reference to AML/CFT compliance, article 9.6, to some extent addresses this criterion by permitting the sharing of information regarding the extent and nature of each other's supervision on a consolidated basis of banking entities or groups. Article 10 of the MOU permit close cooperation when supervisors identify suspected financial crime activities in the supervised entities or groups.

Criterion 40.15 – (Not Met)-There are no specific legal provisions which enable supervisors to conduct enquiries on behalf of foreign counterparts or to authorise or facilitate the ability of the foreign supervisors to conduct inquiries themselves in Lesotho.

Criterion 40.16 – (Partly Met)-There are no specific legal requirements for financial supervisors to have prior authorisation of the requested supervisors to share information with third parties. However, in relation to the MOU between CBL and SARB, Article 7.1.7 read together with article 14 limit the use of the

information to the purpose for which it was sought. It cannot be shared with third parties without the written consent of the designated authority. This is limited only to banking sector. The authorities have not provided similar provisions governing MOUs of the other sectors.

Criterion 40.17 – (Mostly Met)-Law enforcement authorities are able to exchange domestically available information with foreign counterparts for investigative purposes relating to money laundering, associated predicate offences identification and tracking of the proceeds and instrumentalities of crime. S. 6 of PCEOA (as amended) 2020 empowers the DCEO to enter into MOUs with counterparts in and outside of Lesotho. S.73 of Police Service Act, 1998 provides that; (1) The Commissioner may, on the application of the chief officer of a police force outside Lesotho, and with the consent of the Police Authority, provide police officers or other assistance for the purpose of enabling that other force to discharge its functions

The LMPS has signed MoUs with the Rwanda National Police and FBI. Lesotho is a member of Southern Africa Regional Police Chiefs Cooperation Organisation (SARPCCO) which focuses on cooperation and coordination on transnational crime in the region.

Although RSL has signed MOUs and Treaties with various jurisdictions regionally and internationally, there is no legislative backing to such powers.

Criterion 40.18 – (Partly Met)-S. 73 of Police Service Act, 1998 (1) provides that the Commissioner may, on the application of the chief officer of a police force outside Lesotho, and with the consent of the Police Authority, provide police officers or other assistance for the purpose of enabling that other force to discharge its functions. They also use the regional law enforcement networks such as ARINSA and INTERPOL. It is not clear where these powers are available to DCEO.

Criterion 40.19-(Met)-Law enforcement authorities, in particular the LMPS, are able to form joint investigations to conduct cooperative investigations S.72 and 73 of the Police Act (Supra). They are able, where necessary to establish bilateral or multilateral arrangements to enable such joint investigations.

Criterion 40.20 – (Met)-Section 15(2)(d) of the MLPCA allows the FIU to exchange information indirectly with non-counterparts. In practice the FIU states the purpose of information requested. This indirect exchange of information is achieved through direct requests to foreign counterparts where the FIU requests the counterpart to obtain information, on its behalf from the foreign non counterpart. There are also no restrictions, legal or otherwise that prohibits exchange of information indirectly with non-counterparts. Registrar of Companies Lesotho has an MoU with CIPC to exchange information and conduct trainings together. The same safeguards under the MLA Act 2018 will also apply to exchange indirectly between non counterparts.

Weighting and Conclusion

Lesotho has met some of the criteria of this Recommendation. There are shortcomings in relation to general principles, exchange of information between FIUs and financial supervisors. Also, there are no specific legal provisions which enable supervisors to conduct enquiries on behalf of foreign counterparts or to authorise or facilitate the ability of the foreign supervisors to conduct enquiries themselves in Lesotho. The shortcomings are considered moderate.

Lesotho is rated Partially Compliant with Recommendation 40.

Summary of Technical Compliance – Key Deficiencies

Annex Table 1. Compliance with FATF Recommendations

Recommendation		Rating	Factor(s) underlying the rating
1		PC	<ul style="list-style-type: none"> • There is no specific commitment or requirement to keep risk assessments up to date and the NRA has not been updated. • No allocation of resources based on the identified risks. • No risk-based approach to implementing measures to prevent or mitigate risks. • FIs and DNFBPs not directed to apply enhanced measures to mitigate the risks in their business relationships with sectors highly vulnerable to ML/TF. • no requirement that simplified EDD can only be applicable if results of risk assessments undertaken by FIs or DNFBPs are consistent with the country's risk assessment.
2	National cooperation and coordination	C	<ul style="list-style-type: none"> • This recommendation is fully met
3	Money laundering offence	PC	<ul style="list-style-type: none"> • Crimes such as Illicit Trafficking in Narcotic Drugs & Psychotropic Substances, Corruption, Bribery, Fraud, Forgery and tax crimes do not meet the threshold for minimum penalty and therefore are not considered to be predicate offences for ML. • Conviction is a prerequisite for application of civil and administrative sanctions
4	Confiscation and provisional measures	PC	<ul style="list-style-type: none"> • Location of property subject to different legislation measures confined only in the premises of accountable institutions, thereby limiting the scope to cover any solicited information from anywhere, including the underground economy.

			<ul style="list-style-type: none"> Application of conviction-based confiscation may be hampered if proceeds and instrumentalities invoke a nexus with prevailing offences such as tax crime, fraud, corruption etc. based on ML risk profile of Lesotho.
5	Terrorist financing offence	C	<ul style="list-style-type: none"> This Recommendation is fully met.
6	Targeted financial sanction related to terrorism and terrorist financing	PC	<ul style="list-style-type: none"> Authorities do not have power to operate ex parte against a person or entity who has been identified and is being considered for designation TFS are not implemented without delay on account of many Authorities involved to transmit i.e Minister of foreign Affairs to Minister of Finance, to sector supervisory authorities, then to accountable institutions. No have comprehensive procedures to facilitate review by the 1988 Committee in accordance with any applicable guidelines or procedures adopted by the 1988 Committee, including those of the Focal Point mechanism established under UNSCR 1730, 1904, 1989 and 2083 No legal basis for the competent authority to collect or solicit information, to identify persons and entities that meet the criteria for designation.
7		NC	<ul style="list-style-type: none"> There is no legal framework for the implementation of targeted financial sanctions relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing without delay to comply with UNSCRs.
8		PC	<ul style="list-style-type: none"> No adequate review of its NPO sector, including mapping of its size, features and activities with a view to identify features and types of NPOs which by virtue of their activities or characteristics, are likely to be at the risk of terrorist financing abuse. No identification of any threats of NPO abuse emanating from terrorist entities or the manner in which such abuse is done.

			<ul style="list-style-type: none"> • no measures are in place to implement sustained outreach and educational programmes concerning TF issues. • No any engagement of the NPO sector and their donors. • Relevant authorities have not worked with NPOs to develop and refine best practices to address terrorist financing risk and vulnerabilities • No risk-based measures for oversight and monitoring the NPOs which may be at risk of being abused for terrorist financing purposes. • No monitoring the compliance of NPOs with the requirements of Recommendation 8.
9	Financial institution secrecy laws	LC	<ul style="list-style-type: none"> • This Recommendation is fully met
10	Customer due diligence	LC	<ul style="list-style-type: none"> • • No requirement for FIs to identify and verify the customer or beneficial owner of life insurance and other related investment insurance policies • No requirement for FIs to consider the beneficiary of a life insurance policy as a relevant risk factor in determining whether or not to apply enhanced CDD measures if they determine that a beneficiary who is a legal person or a legal arrangement presents a higher risk as set out under C10.13 • There is no specific requirement for FIs to complete verification after the establishment of the business relationship provided that the ML/TF risks are effectively managed • • No requirement for FIs to conduct due diligence on such existing relationships at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained. • No legal provision permitting accountable institutions not to perform CDD process but instead file an STR in cases where they form a suspicion of money laundering or terrorist financing

11	Record Keeping	LC	<ul style="list-style-type: none"> • There is no requirement for FIs to maintain records that permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity • Non-designation of insurance brokers affects their record keeping obligations
12	Politically Exposed Persons	LC	<ul style="list-style-type: none"> • No requirements on PEPs relating to life insurance policies
13	Correspondent Banking	C	<ul style="list-style-type: none"> • This Recommendation is fully met
14	Money or Value Transfer Services	LC	<ul style="list-style-type: none"> • No requirement for MVTS providers that use agents to include them in their AML/CFT programmes and monitor them for compliance with the programmes
15	New technologies	NC	<ul style="list-style-type: none"> • All criteria of this Recommendation are not met
16	Wire Transfers	LC	<ul style="list-style-type: none"> • No requirement for the ordering FI to ensure that the information accompanying the wire transfer includes originator information in the manner set out under C16.5 • No requirement for the ordering financial institution to include the account number or a unique transaction reference number, and for the ordering FI to make the information available within three business days of receiving the request either from the beneficiary financial institution or from appropriate competent authorities in the manner set out under C16.6 • No requirement for ordering FI not to be allowed to execute the wire transfer if it does not comply with the requirements in a manner set out under C16.8
17	Reliance on Third Parties	PC	<ul style="list-style-type: none"> • Insurance brokers and agents are not designated as accountable institutions hence not supervised for AML/CFT as required under C17.1(c) • No requirement for FIs that rely on third parties or introduced business to have regard to information available on the level of country risk when determining in which countries the third party that meets the conditions can be based

18	Internal Controls and Foreign Branches and Subsidiaries	C	<ul style="list-style-type: none"> This Recommendation is fully met
19	Higher Risk Countries	NC	<ul style="list-style-type: none"> All criteria of this Recommendation are not met
20	Reporting of Suspicious Transactions	PC	<ul style="list-style-type: none"> The period of up to 7 days for reporting of STR to the FIU does not fulfill the 'promptly or without delay' requirement Deficiencies under C3.2 on predicate offences to ML affect the reporting requirement by FIs
21	Tipping-off and Confidentiality	LC	<ul style="list-style-type: none"> Insurance brokers and agents are not designated as accountable institutions hence not subject to tipping-off and confidentiality requirements
22	DNFBPs: Customer Due Diligence	LC	<ul style="list-style-type: none"> The deficiencies identified under R.11 also apply to DNFBPs. No identification and assessment of ML/TF risk on new technologies and products being used by DNFBPs, and there are no AML/CFT obligations regarding virtual assets
23	DNFBPs: Other measures	PC	<ul style="list-style-type: none"> The period of 7 days for filing of STRs does not fulfil the promptly requirement and there are some deficiencies with regard to predicate offences to ML as such these affect meeting of requirements under C23.1 and R.20 There are no requirement on Higher Risk Countries as indicated under R.19
24	Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> No ML/TF risk assessment of all types of legal persons No requirements to keep BO information accurate and updated Lesotho does not have a mechanism to prevent the misuse nominee shares No mechanisms in place to monitor the quality of assistance received from other countries regarding BO information No requirement within Lesotho to implement transparency and beneficial ownership of legal arrangements.
25	Transparency and beneficial	NC	<ul style="list-style-type: none"> No requirement within Lesotho to implement transparency and beneficial ownership of legal arrangements.

	ownership of legal arrangements		
26	Regulation and supervision of financial institutions	PC	<ul style="list-style-type: none"> • Market entry controls do not extend to the identification of BO. • There is no risk-based approach to supervision and monitoring of compliance with AML/CFT obligations by accountable institutions, except for the banking sector. • The frequency and intensity of onsite and offsite AML/CFT supervision is not determined by the level of ML/TF risks for all institutions. • As result, except for bank, other supervisors do not review the assessment of individual risk profiles.
27	Powers of supervisors	C	<ul style="list-style-type: none"> • This recommendation is fully met.
28	Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> • There are no mechanisms to prevent criminals or their associates from holding (or being beneficial owners of) significant interest or management positions in the DNFBP sectors. • AML/CFT compliance supervision and monitoring has not yet started in the DNFBP sectors. • The application of a risk-based approach in the entire DNFBP sector has not yet started. •
29	Financial Intelligence Unit	LC	<ul style="list-style-type: none"> • insurance brokers, insurance agents, and natural or legal persons which provide safe keeping and administration of cash services, other than banks, brokers, lawyers and accountants are not designated as reporting entities.
30	Responsibilities of law enforcement and investigative authorities	PC	<ul style="list-style-type: none"> • Investigative officers of LEAs are not authorized to pursue ML/TF or their predicate offences investigations from persons other than accountable institutions.
31	Powers of Law Enforcement and Investigative Authorities	PC	<ul style="list-style-type: none"> • Powers of LEAs limited to premises of accountable institutions,

32	Cash courier	PC	<ul style="list-style-type: none"> • Declaration Notice does not provide a threshold for BNIs that are moved in and out of Lesotho • No power to request and obtain information from carrier with regard to origin of currency of BNIs in the case of false declarations. • Sanctions for false declarations are not dissuasive or proportionate. • coordination mechanisms in relation to declaration of currency and bearer negotiable instruments at entry points in Lesotho are not adequate
33		PC	<ul style="list-style-type: none"> • Statistics are not comprehensive and are inconsistent. • The ML statistics from the competent authorities are unreliable, inconsistent and not comprehensive enough to determine the effectiveness or efficiency of the AML/CFT systems. • There are no statistics on property frozen, seized, confiscated or recovered through forfeiture. • The AG, although a central authority for MLA, does not keep any statistics.
34	Guidance and feedback	LC	<ul style="list-style-type: none"> • Except for the banking sector, there is no guidance issued to accountable institutions on the application of a risk-based approach.
35	Sanctions	LC	<ul style="list-style-type: none"> • There are no sanctions against an NPO itself or persons acting on behalf of NPOs. • The power of the Minister to impose penalties on an institution that fails to freeze funds or other assets without delay is not mandatory.
36	International instruments	C	<ul style="list-style-type: none"> • This Recommendation is fully met
37		C	<ul style="list-style-type: none"> • This Recommendation is fully met
38	Mutual Legal Assistance: freezing and confiscation	PC	<ul style="list-style-type: none"> • Limited provisions to provide MLA on the identification, freezing, seizure and confiscation. • Provisions applicable on serious offences may not include some of the prevailing offences such as tax crime, fraud, corruption etc.

39	Extradition	LC	<ul style="list-style-type: none"> • Incoming extraditions are limited to cases where the minimum sentence is twelve months in the requesting country. • No clear processes for the timely execution of extradition requests including prioritisation where appropriate.
40		PC	<ul style="list-style-type: none"> • No clear and secure gateways, mechanisms, or channels to facilitate and allow transmission and execution of requests for competent authorities except for FIU. • Some competent authorities are not authorised to enter into arrangements to cooperate bilaterally or multilaterally in a timely manner. • No provision of timely feedback regarding assistance received and the usefulness of such assistance from foreign counterparties. • no specific legal provisions enabling supervisors to conduct enquiries on behalf of foreign counterparts or to authorise or facilitate the ability of the foreign supervisors to conduct inquiries themselves in Lesotho.

Annex C: Glossary of Acronyms¹²

ACCA (UK)	Association of Chartered Certified Accountants
ADLA	Authorized Dealer in Foreign Exchange with limited authority
AF	Asset Forfeiture
AMATM	Agreement on Mutual Assistance in Tax Matters
AML/CFT	Anti-Money Laundering/Counter Financing of Terrorism
ARU	Asset Recover Unit
ATC	Anti-Terrorism Committee
ARINSA	Asset Recovery Inter-Agency Network Southern Africa
AU	Africa Union
CBL	Central Bank of Lesotho
CBL-BSD	Central Bank of Lesotho-Bank Supervision Department
CCCU	Commercial Crime Counter Unit
CDD	Customer Due Diligence
CMA	Common Monetary Area
DCEO	Directorate of Corruption and Economic Offences
DLA	Directorate of Legal Affairs
DNFBP	Designated non-Financial Businesses and Professions
DTA	Double Taxation Agreement
DPP	Director of Public Prosecutions
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
FATF	Financial Action Task Force
FIA	Financial Institutions Act
FIF	Financial Inclusion Forum
FIRM	Financial Inclusion Product Risk Assessment Module
FIU	Financial Intelligence Unit
FOA	Fugitive Offenders Act
FSDS	Financial Sector Development Strategy
GDP	Gross Domestic Product
IFAC	International Federation of Accountants

¹² Acronyms already defined in the FATF 40 Recommendations are not included into this Glossary.

ISQC	International Standards on Quality Control
CIPC	Intellectual Property Commission
KYC	Know Your Customer
LCS	Lesotho Correctional Service
LEA	Law Enforcement Agencies
LIA	Lesotho Institute of Accountants
LRA	Lesotho Revenue Authority
LMPS	Lesotho Mounted Police Service
MFI	Micro Finance Institution
MTI	Ministry of Trade
MIA	Moshoeshoe I International Airport
MLAA	Mutual Legal Assistance Act
MLACMA	Mutual Legal Assistance in Criminal Matters Act
ML	Money Laundering
MLA	Mutual Legal Assistance
MLPCA	Money Laundering and Proceeds of Crime Act
MLPCR	Money Laundering and Proceeds of Crime Regulations 2019
MNO	Mobile Money Operator
MOU	Memorandum of Understanding
MSM	Maseru Securities Market
MVTS	Money and Value Transfer Services
NCC	National Coordinating Committee
NFISC	National Financial Inclusion Steering Committee
NICR	National Identification and Civic Register
NIFS	National Inclusive Finance Strategy
NIRA	National Identification Register Act
NRA	National Risk Assessment
NSDP	National Strategy Development Plan
NSS	National Security Services
NTT	National Task Team
NVA	National Vulnerability Assessment
OFI	Other Financial Institutions

Palermo Convention	United Nations Convention against Transnational Organised Crime, 2000
PEP	Politically Exposed Person
PSTA	Prevention and Suppression of Terrorism Act
RBA	Risk Based Approach
ROC	Registrar of Companies
RSL	Revenue Services Lesotho
SACU	Southern Africa Customs Union
SADC	Southern African Development Community
SARPCCO	Southern Africa Regional Police Chiefs Cooperation Organisation
SARB	South Africa Reserve Bank
SME	Small and Medium-sized Enterprise
SMME	Small, Medium and Micro-sized Enterprise
SRA	Sectoral Risk assessment
SRB	Self-Regulatory body
STR	Suspicious Transaction Report
SWIFT	Society for Worldwide Interbank Financial Telecommunication Trust and Company Service Provider
TCSP	Trust and Company Service Provider
TF Convention	International Convention for the Suppression of the Financing of Terrorism, 1999
UN	United Nations
UNODC	United Nations Office on Drugs and Crimes
UNSC	United Nations Security Council Resolution
TF	Terrorist Financing
VA	Virtual Assets
VASP	Virtual Asset Service Provider
VIENNA CONVENTION	United Nations Convention against Illicit Traffic in Narcotic
VDP	Voluntary Disclosure Program
WB	World Bank

Annex D- Criminalization of FATF Designated Categories of Offences

NO	DESIGNATED CATEGORIES OF OFFENCES	APPLICABLE STATUTORY PROVISIONS	Applicable penalty Fine US\$ Imprisonment
1	Participation in an organized criminal group and racketeering.	Penal Code Act (S. 24, 25, 26, 27)	Punishment There is no corresponding penalty in Penal Code or Sentencing Guidelines
2	Terrorism, including terrorism financing	MLPCA (S. 63, 65) Penal Code Act (S, 96, 97, 98, 99)	Minimum 10 years
3	Trafficking in human beings	Anti-Trafficking in Persons Act 2011 S. 5	25 years
4	Migrant smuggling	Anti-Trafficking in Persons Act 2011 S. 12	15 years
5	Sexual exploitation, including sexual exploitation of children	Penal Code Act (S. 48, 49, 50, 51, 52) Sexual Offences Act 2003	8 years
6	Illicit Trafficking in Narcotic Drugs & Psychotropic Substances	Drugs of Abuse Act 2008 (S. 43). MER Penal Code Act (S. 91)	No minimum penalty (only maximum penalty of 20 years) Act shared
7	Illicit arms trafficking	Sec 19 and 43 of Internal Security Act 1966	No minimum penalty. Maximum penalty 1 year.
8	Corruption and Bribery	Prevention of Corruption and Economic Offenses Act (Part IV) Penal Code Act (S. 80, 81)	10 years minimum under PCEO Act. Sentencing Guidelines provide for Community Service as minimum sentence
9	Fraud	Penal Code Act (S. 68)	No minimum Maximum Penalty 20 years. No minimum
10	Counterfeiting currency	Counterfeit Currency Act 1937 (s. 3 and s. 14)	No Minimum penalty 2 years maximum.
11	Counterfeiting and piracy of products	Copyright Act 1989 (S. 7, 29 and 37)	5 years

		Industrial Property Act (S. 43)	
12	Environmental Crime	Environment Act 2008 (Part XV)	Maximum penalty 6 months
13	Murder, grievous bodily harm	Penal Code Act (S. 31, 40)	Life Imprisonment
14	Kidnapping, illegal restraint and hostage – taking	Penal Code Act (S. 100) Prevention and Suppression of Terrorism Act 2018 S. 19	No minimum. Maximum 60 years
15	Robbery or theft	Penal Code Act (Part IV) S. 57 and 64	10 and 18 years maximum
16	Smuggling	Customs & Exercise Act (S. 11, 12 and 79)	Minimum is 6 months for offences under the Act
17	Extortion	Penal Code Act (S. 69)	No minimum Maximum 15 years.
18	Forgery	Penal Code Act (S. 70)	No corresponding penalty in schedule
19	Piracy	Copyright Act 1989 (S. 7, 29 and 37)	5 years
20	Insider trading and market manipulation	Penal Code Act (S. 82)	No corresponding penalty in Penal Code Schedule or Sentencing Guidelines
21	Tax offences	Customs & Excise Act 1982 Sec 81 (1), 85, 79 Value Added Tax 2001 Sec 61 (a) & (b), Sec 64 Income Tax Act 1993 Sec 175, 176 & 188	Minimum Penalty 6 months. Customs and Excise Act deficiency in penalties for serious offences under s. 81 (1) n which provides for imprisonment for a period not exceeding 12 months