



# Mutual Evaluation Report

## Anti-Money Laundering and Combating the Financing of Terrorism

September 2011

Kingdom of Lesotho

The Kingdom of Lesotho is a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). This evaluation was conducted by the ESAAMLG and was approved as a 1<sup>st</sup> mutual evaluation by its Council of Ministers on 08 September 2011.

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## ACRONYMS

ACH	AUTOMATED CLEARING HOUSE
AG	ATTORNEY GENERAL
AML	ANTI-MONEY LAUNDERING
AML/CFT	ANTI MONEY LAUNDERING/COMBATING THE FINANCING OF TERRORISM
CBL	CENTRAL BANK OF LESOTHO
CDD	CUSTOMER DUE DILIGENCE
CFT	COMBATING THE FINANCING OF TERRORISM
CMA	COMMON MONETARY AREA
CP&E ACT	CRIMINAL PROCEDURE AND EVIDENCE ACT
DCEO	DIRECTORATE ON CORRUPTION AND ECONOMIC OFFENCES
DNFBP	DESIGNATED NON FINANCIAL BUSINESS PROFESSIONS
DPP	DIRECTOR OF PUBLIC PROSECUTIONS
ESAAMLG	EASTERN AND SOUTHERN AFRICA ANTI-MONEY LAUNDERING GROUP
FATF	FINANCIAL ACTION TASK FORCE
FIU	FINANCIAL INTELLIGENCE UNIT
FT	FINANCING OF TERRORISM
LMPS	LESOTHO MOUNTED POLICE SERVICE
LRA	LESOTHO REVENUE AUTHORITY
M	MALOTI
ML	MONEY LAUNDERING
MLPCA	MONEY LAUNDERING AND PROCEEDS OF CRIME ACT
MOU	MEMORANDUM OF UNDERSTANDING
NPO	NON-PROFIT ORGANISATION



NPS	NATIONAL PAYMENTS SYSTEM
PALERMO CONVENTION	UN CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME, 2000
PEP	POLITICALLY EXPOSED PERSON
SA	SOUTH AFRICA
SACCOS	SAVINGS AND CREDIT COOPERATIVES
SACU	SOUTHERN AFRICA CUSTOMS UNION
SADC	SOUTHERN AFRICA DEVELOPMENT COMMUNITY
STR	SUSPICIOUS TRANSACTION REPORT
SARPCCO	SOUTHERN AFRICAN REGIONAL POLICE CHIEFS CO-OPERATION ORGANISATION
TEBA	THE EMPLOYMENT BUREAU AGENCY
TF	TERRORIST FINANCING
UN	UNITED NATIONS
UNSCR	UNITED NATIONS SECURITY COUNCIL RESOLUTION
VIENNA CONVENTION	UN CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC

**PREFACE**  
**Information and Methodology Used**  
**For The Evaluation of the Kingdom of Lesotho**

The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of the Kingdom of Lesotho was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004<sup>1</sup>. The evaluation was based on the laws, regulations and other materials supplied by the Kingdom of Lesotho, and information obtained by the evaluation team during its on-site visit to the Kingdom of Lesotho from 29 November 2010 to 10 December 2010, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant Lesotho government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

The evaluation was conducted by an assessment team, which consisted of members of the ESAAMLG Secretariat and ESAAMLG experts in criminal law, law enforcement and regulatory issues: Mr. Joseph Jagada and Mr. Phineas Moloto from the ESAAMLG Secretariat, Mr. Fitzgerald Graham, FIU, Swaziland-Financial Intelligence Unit Expert, Ms. Leonie Dunn, Director, FIU, Namibia-Financial Expert, Tom Malikebu, Acting Director, FIU, Malawi- Financial Expert, Andrew Nkunika, Senior State Counsel, Ministry Of Justice, Zambia-Legal Expert and Mr. Richard Ogetti, State Counsel, Attorney General's Office, Kenya-Law Enforcement Expert. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in the Kingdom of Lesotho as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out the Kingdom of Lesotho's levels of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

The ESAAMLG Secretariat and the evaluation team would like to express their gratitude to the authorities in the Kingdom of Lesotho for their cooperation and hospitality throughout the evaluation mission.

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<sup>1</sup> As updated in February 2009

## Executive Summary

### **Background Information**

1. This report gives a summary of the anti-money laundering (AML) and combating financing of terrorism (CFT) measures in place in the Kingdom of Lesotho as of the time of the on-site visit from the 29<sup>th</sup> of November 2010 to the 10<sup>th</sup> of December 2010 and shortly thereafter. The report describes and analyses those measures and provides recommendations on how certain aspects can be strengthened. It also sets out the Kingdom of Lesotho's levels of compliance with the Financial Action Task Force (FATF) 40 + 9 Recommendations (see the attached table on the Ratings of Compliance with the FATF Recommendations).
2. The Kingdom of Lesotho is a low-income developing country which is completely landlocked surrounded by its only neighbour, the Republic of South Africa. The country is part of a Common Monetary Area comprising Namibia, the Kingdom of Swaziland and South Africa. Within the Area the South African Rand (the Rand) freely circulates on par as part of medium of exchange with these countries' national currencies.
3. The economy of the Kingdom of Lesotho is closely linked to and dependent on the South African economy, with more than 85 percent of imports from and exports to the South African market. In addition, the country's economy is tied to the Southern African Customs Union, which includes the CMA members plus Botswana. Further, the Kingdom of Lesotho is a member of the regional economic bloc, Southern African Development Community together with other 14 nations.
4. The country has a small financial sector which is dominated by subsidiaries of South African financial institutions. Of the four commercial banks operating in the country, three are owned by South African banks. In addition, the insurance sector is dominated by a South African-owned insurance company which accounts for more than 80 percent of the market. In terms of value, the financial sector contributes about 6 percent to the GDP of the country. The financial sector is increasingly modernizing, spurred on by technological developments which have allowed financial institutions especially banks to offer a variety of financial products which would have been difficult to offer given the mountainous topography of the country.
5. The geographical location of the country provides strategic position for both illicit and licit trading activities. The following have been identified by the authorities as crimes generating proceeds: trafficking in drugs (mainly cannabis – locally known as dagga), fire arms and human beings; counterfeit and smuggling of tobacco/cigarettes and garments; smuggling of diamonds; robbery including cash-in-transit; corruption (especially government procurement), fraud and forgery, and stock theft. Luxury vehicles, purchasing of high value household goods and construction of residential estates are the main sectors in which the proceeds are being laundered. Given the cross-border and organized nature of the criminal activities generating the proceeds, there is increased cooperation and coordination of countermeasures between the law enforcement and intelligence agencies of the two countries.

6. Despite the law criminalizing money laundering and terrorist financing and setting out AML/CFT obligations being in force since 2008, the Kingdom of Lesotho is still at embryonic stages with the authorities still setting up and capacitating relevant institutions such as the Financial Intelligence Unit to effectively implement the provisions of the Act. The Kingdom of Lesotho is taking significant steps to implement effective AML/CFT programmes to protect its financial systems in a manner consistent with national development objectives and international standards.

### **Legal systems and Related Institutional Measures**

7. The Criminal Justice system of the Kingdom of Lesotho combines both common law and statutory offences. This presents a major challenge to the sentencing patterns relating to predicate offences to money laundering as some are provided by statute and others are left to the discretion of the courts under the common law practice. The offence of money laundering is criminalized under the Money Laundering and Proceeds of Crime Act (MLPCA) which came into operation on 1 April 2009. The main acts criminalized under the offence of money laundering in the MLPCA are largely consistent with the 1988 UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) and the 2000 UN Convention against Transnational Organised Crime (Palermo Convention).
8. The predicate offences to money laundering are defined in terms of a serious offence and a serious offence is defined in the MLPCA as an offence with a maximum term of imprisonment of not less than 24 months. The predicate offences are however criminalized under both statute and common law. The threshold created of a term of imprisonment of not less than 24 months creates difficulties in determining whether offences created under common law are predicate offences to money laundering as sentencing for such offences is in practice solely within the discretion of the courts. Although a wide range of predicate offences in the 20 designated categories of offences by the FATF are covered, not all predicate offences are covered. The fact that common law offences are not codified and do not have prescribed sentencing provisions creates uncertainty in determining what constitutes a predicate offence to money laundering. A wide range of ancillary offences is criminalized. The offence of money laundering has extra-territorial jurisdiction. Further, the offence of money laundering can be committed by both a natural and a legal person. Objective factual circumstances can be used to prove knowledge of the commission of the offence. The penalty of a term of imprisonment of not less than 10 years or a maximum fine of not less than M50,000 (USD7,576) or both and for a body corporate, a fine of not less than M500,000 is dissuasive and proportionate. However, it was difficult to determine the effectiveness of the AML/CFT regime in the Kingdom of Lesotho as no comprehensive data is kept by the authorities on such cases and that the law was only commenced in 2009.
9. The offence of terrorist financing is criminalized in the Kingdom of Lesotho under Part IV of the MLPCA. The Kingdom is a party to the UN Convention for the Suppression of the Financing of Terrorism, 1999 having ratified the convention in November 2001. The MLPCA criminalizes the acts of providing or collecting funds or attempting to do so with the intention or knowledge that such funds are to be used for the commission of a terrorist act or by a terrorist group. The Act does not cover provision of the funds to an individual

terrorist, which is a serious deficiency. It is not a requirement under the MLPCA that the terrorist act described in the Act should have occurred or that the funds are actually used to commit such an act for the offence of financing of terrorism to have been committed.

10. Terrorist financing is a predicate offence for money laundering although the offence of terrorism in the broader sense is not a predicate offence for money laundering. Ancillary offences applicable to money laundering also apply to the offence of terrorist financing. The offence of financing of terrorism, also apply to legal persons. The penalty upon conviction for the offence of financing of terrorism is a fine of not less than M10,000 or imprisonment for a term of not less than 2 years and for a body corporate, it is a fine of not less 10 times the amount involved. The penalty provisions to this offence are not dissuasive enough when compared to other jurisdictions within the Region. Effectiveness of the TF measures under the MLPCA could not be determined as there have been no prosecutions for the offence in terms of the Act.
11. The MLPCA provides comprehensive procedures enabling both criminal (which is conviction based) and civil (not dependent on a criminal conviction) forfeiture to take place. The definition of property which can be forfeited under the MLPCA also includes gifts made by the accused person to a third party. The scope of application of the forfeiture provisions of the MLPCA is only limited by the none criminalization of all predicate offences and also the lack of clarity in offences which are predicate offences for money laundering due to the common law practice. Although freezing and forfeiture relating to predicate offences for money laundering are being used in the Kingdom of Lesotho, it was difficult to determine the effectiveness of the use of these provisions as no comprehensive statistics is kept by the responsible authorities.
12. The MLPCA provides general provisions (s62) which empowers the Anti-Money Laundering Authority (i.e. Directorate on Corruption and Economic Offences) to seize cash, funds, or property belonging to, or held in trust for, a proscribed organization among others. Pursuant to section 66 of the MLPCA, the Commissioner (the Central Bank of Lesotho) can issue a directive to an accountable institution requiring it to restrain or freeze any account or property held by it on behalf of a person or group involved in terrorist activities. These requirements are of a general nature and are not sufficient to fully comply with the international standards. The MLPCA does not create an obligation for the accountable institutions to report for purposes of freezing property related to terrorist activities nor does it provide for mechanisms to examine and give effect to notices or actions issued under the UN Security Council Special Resolutions including S/RES/1267 and S/RES/1373, in compliance with the various requirements of Special Recommendation III.
13. The MLPCA establishes the FIU Lesotho and also designates the Directorate on Corruption and Economic Offences (referred to as the "Authority" under the Act) as two centres to receive, analyse and disseminate STR information. However, FIU Lesotho is not yet operational as the provision in the MLPCA establishing it is not yet in force and the Authority lacks capacity to execute its core functions under the Act. The Commercial Crimes Unit of the LMPS and the CBL receive suspicious transactions reported by the banks under the AML Guidelines issued by the CBL. If the provision of the MLPCA becomes operational in the current form, there is potential that there will be confusion in the reporting of STRs

and the intended purpose of reporting such STRs. It is essential that the authorities in the Kingdom of Lesotho take immediate steps to amend the MLPCA to ensure that FIU Lesotho is the only national centre and has adequate capacity to undertake its core functions in a manner consistent with the Egmont Group of FIUs requirements.

14. The provisions under Part II of the MLPCA, which are not yet in operation, establish the Anti-Money Laundering Authority as the main agency responsible for the investigation of money laundering and financing of terrorism offences. With the consent of the Director of Public Prosecutions, the Authority is also mandated in terms of the MLPCA to prosecute money laundering and financing of terrorism offences. The LMPS uses its general powers to investigate money laundering and financing of terrorism offences. The LMPS is supplemented by the Directorate of Corruption and Economic Offence in investigating corruption and other economic crime matters. Both institutions are not adequately resourced both in terms of human and financial resources. The two institutions have sufficient investigative powers to investigate money laundering, terrorist financing offences and other related predicate offences but it could not be sufficiently demonstrated that they have complimented these investigative powers by special investigative techniques. The absence of comprehensive statistics on cases where special investigative techniques have been used made it difficult to determine the effectiveness of these measures.
15. Special Recommendation IX is implemented by the authorities through provisions of both the Customs and Excise Act and under the Exchange Control Regulations. Declaration of goods is required when entering and exiting the Kingdom. Whilst the requirements of the Exchange Control Regulations are quite clear on the requirement to declare upon request by an authorized designated officer any currency or bearer negotiable instruments on exiting or entering the Kingdom of Lesotho as well as setting a threshold of the amount above which has to be declared when brought in or taken out of the country, the provisions requiring declaration in terms of the Customs and Excise Act do not specifically require declaration of bearer negotiable instruments but the authorities were of the view that this would be covered under the definition of a thing which is provided for under the definition of goods. Under the MLPCA the Commissioner, who is the Governor of the Central Bank of Lesotho is empowered to come up with a threshold for reporting any currency brought in and out of the Kingdom of Lesotho. The provisions of these laws were however not being effectively enforced at the entry and exit points, particularly at the main airport.

#### **Preventative Measures – Financial Institutions**

16. The primary legislation creating preventative measures for financial institutions (referred to as “Accountable Institutions”) is the MLPCA, 2008. The measures apply to all financial institutions providing financial services in the country, with the exception of bureau de change. The MLPCA covers a large number of the preventative measures such as identification and verification of customers, reporting and monitoring of suspicious transactions, correspondent banking and relationships, internal controls. It also provides for supervisory and enforcement powers to the DCEO and the FIU Lesotho for non-compliance by accountable institutions with the provisions of the Act. It is important to note that the MLPCA had not yet been implemented by the accountable institutions at the time of the onsite even though the Act itself has been in force since 2008. It was therefore not possible to

determine the effectiveness of the AML/CFT systems in the Kingdom of Lesotho. Instead, the accountable institutions regulated by the Central Bank of Lesotho have been implementing the AML Guidelines and the KYC Guidelines issued under the Financial Institutions Act by the Commissioner of the Central Bank. The two Guidelines however fell short of the requirements under the FATF Methodology to be considered as “Other Enforceable Means” for purposes of compliance with the criteria of the applicable FATF Recommendations.

17. The laws regulating financial sector such as the Central Bank Act, Financial Institutions Act and the Insurance Act in the Kingdom of Lesotho provides for preservation of confidentiality of information held by them. Under the MLPCA, there is a specific provision that overrides any confidentiality or secrecy provisions in any law to allow for access to information for the effective implementation of AML/CFT measures.
18. The Act does not contain any specific provision requiring accountable institutions to undertake customer due diligence measures when establishing business relationships or conducting occasional transactions which is a wire transfer or above the required prescribed threshold for compliance with the standards. Specifically, accountable institutions are not required to obtain information on the identity of customers when establishing a business relationship but only when they conduct a transaction. In practice however, accountable institutions undertake customer due diligence measures on customers establishing business relationship or conducting a single transaction. It is essential that the authorities address these deficiencies through a law or regulation in order for accountable institutions to comply with the requirements to undertake customer due diligence in accordance with the FATF standards.
19. Accountable institutions are required to take reasonable measures to identify and verify politically exposed persons including the source of wealth and funds and performing enhanced monitoring of business relationships. It is worth noting that the measures apply equally to both the local and foreign politically exposed persons. However, the Act does not contain any specific requirement for accountable institutions to obtain senior management approval where it has been established that an existing customer or beneficial owner has since become a politically exposed person. The authorities should take steps to remedy this deficiency.
20. Only the foreign subsidiaries of commercial banks enter into correspondent banking and relationship arrangements and these are being managed from their respective head offices in the country of origin. The Kingdom of Lesotho has put in place measures requiring accountable institutions to take the required measures when dealing with correspondent banking and relationships to ensure that this kind of business arrangements do not expose accountable institutions in the country to ML and TF activities.
21. Accountable institutions are not required under the MLPCA to pay special attention to any ML threats that may arise from new or developing technologies that might favour anonymity and also to take countermeasures against the risk, including having policies and procedures in place to address any specific risks associated with non-face-to-face business relationships or transactions. Given the increasing penetration of financial products/services

provided by commercial banks via mobile or internet platforms, it is important that the Kingdom of Lesotho take appropriate steps to require accountable institutions to put in place specific measures dealing with ML threats emanating from new or developing technologies.

22. Although the MLPCA requires accountable institutions to take measures regarding introduced business or third party business relationships/transactions, this does not extend to accountable institutions from countries considered not to adequately implement the FATF standards. It is essential that accountable institutions should be required to give special attention to business relationships and transactions with persons, including companies and financial institutions, from countries which do not implement or sufficiently apply the FATF Recommendations. The authorities should take immediate steps to address these deficiencies.
23. Recordkeeping and maintenance are set out in the MLPCA. However, the requirements are only limited to information relating to suspicious transactions and identity verification and thus exclude the information from account files and business correspondences. Additionally, there is no law or regulation requiring accountable institutions to make available on timely basis the records to competent authorities upon appropriate request. The authorities should take immediate steps to amend the MLPCA to remedy the record keeping inadequacies in a manner consistent with the FATF standards.
24. Accountable institutions are specifically required to pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. There are however no enforceable requirements for accountable institutions to check as far as possible the background and purpose of the transaction and keep such findings in writing for at least five years and make them available to competent authorities and auditors when required. It is important that the authorities take the necessary steps to address this deficiency. Accountable institutions should be required to give special attention to business relationships and transactions with persons, including companies and financial institutions, from countries which do not implement or sufficiently apply the FATF Recommendations.
25. Although the MLPCA requires accountable institutions to report a suspicious transaction when there is reasonable ground that the transaction involves funds from proceeds of a criminal activity or constitutes financing of terrorism, the obligation is not yet in force. Only financial institutions licensed under the Financial Institutions Act are reporting STRs under the AML Guidelines to the Police and the CBL for investigation and record keeping respectively. In practice, the STRs are being reported only by banks and for money laundering.
26. While tipping off on STR information is prohibited, its effectiveness would be affected by the provision under the MLPCA creating a legal defence for offenders if they can prove that they did not know that disclosing STR information would prejudice any investigation of an offence or possible offence of money laundering. In addition, since reporting obligations under the MLPCA are not yet in force, in practice it means that the tipping off prohibition provision cannot apply. It is extremely important that the authorities take immediate



appropriate steps to operationalise the FIU, the reporting obligations provisions and ensure that the current prohibition against tipping off provision is strengthened.

27. The Financial Intelligence Unit is the designated supervisor of accountable institutions for compliance with the relevant provisions of the Act. Together with the DCEO, the FIU is also responsible to enforce the provisions of the Act.
28. There is no enforceable requirement for accountable institutions to develop programmes containing internal policies, procedures and controls which also includes staff training, screening to ensure integrity and establishing audit functions to perform tests on the programmes. In order for accountable institutions to effectively combat money laundering and counter terrorist financing threats, accountable institutions should be required to develop and effectively implement internal control measures.
29. The FIU is the supervisory authority to ensure compliance by accountable institutions with the provisions of the MLPCA. Since the FIU is not yet operational, there is no supervision of accountable institutions for compliance with the AML/CFT obligations under the Act. Furthermore, although both the FIU and the DCEO have powers to enforce compliance with the MLPCA, they do not have the capacity to exercise these powers. Additionally, while the MLPCA sets out the process which the DCEO should take to deal with non-compliance, there is no similar process for the Financial Intelligence Unit. It is important that the authorities take the necessary steps to ensure that these institutions have adequate capacity such as financial, human and technical resources to supervise and enforce the relevant obligations under the MLPCA.
30. In terms of implementation, only the commercial banks demonstrated understanding and application of the AML/CFT obligations under the Act. The rest of the accountable institutions are not aware of the existence of the MLPCA and the obligations it places on them. The authorities should urgently implement AML/CFT awareness raising programmes to ensure that all accountable institutions implement effective AML/CFT control measures. Consequently, no overall assessment of the effectiveness of the AML/CFT systems in the Kingdom of Lesotho could be determined.

#### **Preventative Measures - Designated Non-Financial Businesses and Professions**

31. The AML/CFT obligations for DNFBPs (referred to as “Accountable Institutions”) are set out in Part III (Money Laundering) of the MLPCA. The Act covers all DNFBPs as required by the FATF: legal professionals, accountants, estate agents, casino and lottery, gambling house, precious stones and metals and company service providers. The DNFBPs have not implemented AML/CFT control measures as they are not aware of their obligations. No supervision of DNFBPs for compliance with the Act has taken place since the FIU as the institution responsible is not yet operational.

#### **Legal Persons and Arrangements & Non-Profit Organisations**

32. Legal persons operating in the Kingdom of Swaziland are required to be registered with the Registrar General’s Office. Different Acts provide for the registration of the different legal

persons depending on the activity to be done by the legal person. Companies are registered under the Companies Act whilst societies and other associations of ten or more persons are registered under the Societies Act, whilst friendly societies and trusts are registered under the Friendly Societies Act and Partnerships Proclamations Act.

33. The Registrar General's Office deals with the registration of the legal persons and not their licensing which is done by different ministries again depending on the activity the entity wants to engage in. The Registrar General's Office at the time of registration of the legal persons does not verify the details of the beneficiary ownership and those who are in control of the legal persons being registered. The accuracy and adequacy therefore of the information kept by the Office is limited. Under the requirements of the Companies Act, a company is required to keep a register of its shareholders (members) which has to meet certain specifications set out in the Act on each shareholder. Shareholders can be legal or natural persons. Where the shareholder is a legal person there is no requirement to establish the beneficiary owner(s) behind the legal person or to verify the information provided on the beneficiary owner.
34. The companies doing business in the Kingdom of Lesotho in addition to being registered are also required in terms of the Companies Act to maintain at their registered office, a register of the directors and secretaries. In the event of change of ownership or control of the company a specific form is supposed to be submitted to the Registrar of Companies indicating the changes but not all companies do it. Although the information kept by the Registrar General's Office is easily accessible, the information available given that companies not at all times inform the Registrar's Office of the change in ownership or control and also failure to capture accurate and current information about the beneficiary ownership and control of the companies which is verified, might not always be adequate and accurate. It is also not clear whether the appointment of nominee shareholders is allowed under the laws of the Kingdom of Lesotho.
35. To prevent legal arrangements from being used for illicit purposes, trusts are registered with the Deeds Registry Office. There is no single body which regulates or supervises trusts or partnerships in the Kingdom of Lesotho, the Registry of Deeds only does the registration and record keeping after registration. Lawyers prepare the documents for registration of the trust which should include the trust deed indicating the beneficiaries and what is being donated. The Registrar of Deeds upon the information being lodged with his office for registration of the trust or partnership does not verify the information contained in the trust deed particularly on the trustees, settlers or beneficiary owners regardless of whether such information is publicly available or not. Although the Deeds Registry's Office does carry out a verification process on information provided by the lawyers upon change of control of trusts by comparing the new information with the old information maintained by the Office, there is no obligation on the owners of trusts or beneficiaries to report the changes to the Registrar of Deeds. This compromises the quality of the information kept by the Deeds Registrar as there is no assurance that it is accurate and adequate. The information kept by the Registrar of Deeds on legal arrangements is easily accessible to law enforcement agencies but the public has limited access to the information.

36. Although NPOs are required to register and obtain a license to operate, there is no regulation and supervision of the sector to protect it against abuse from terrorist financiers. The authorities should take necessary measures to ensure that the NPO sector in the Kingdom of Lesotho implement effective counter-financing of terrorism programmes in a manner consistent with international standards.

### **National and International Co-operation**

37. The authorities in the Kingdom of Lesotho have set up structures to enable cooperation in combating ML and TF. The Steering Committee on Counter-Terrorism which is a multi-ministerial committee is responsible for advising Government on matters relating to countering terrorism including signing and ratification of international agreements connected to terrorism in the Kingdom of Lesotho. The Task Team on Anti-Money Laundering meets monthly to discuss matters of policy pertaining to AML/CFT. The heads of Border Agencies also meet monthly to exchange information, discuss problems and management of border posts. The LMPS, Lesotho Revenue Authority and the Directorate on Corruption and Economic Crimes entered into an MOU which provides for exchange of information and cooperation in combating crime.
38. The Kingdom of Lesotho ratified the Palermo Convention on the 24<sup>th</sup> of September 2003, the Vienna Convention on the 28<sup>th</sup> of March 1995 and the UN Convention for the Suppression of the Financing of Terrorism on the 12<sup>th</sup> of November 2001. Most of the provisions of the Conventions have been domesticated in the Kingdom of Lesotho's legislation. However, the Kingdom of Lesotho still need to ratify the outstanding conventions and protocols which are annexes to the Suppression of the Financing of Terrorism Convention and also have mechanisms to implement UNSC/S/RES/1267 and its successor resolutions including the S/RES/1373.
39. The Kingdom of Lesotho is party to various international and regional instruments which provide for international cooperation. The Kingdom of Lesotho does not have a specific legislation on mutual legal assistance but relies on the provisions of the international treaties and other arrangements which it is party to on exchange of information. The MLPCA provides for mutual legal assistance to foreign offences which are domestically recognized under that Act. Mostly, the provisions provide for assistance in enforcing foreign orders relating to property connected to an offence located in the Kingdom of Lesotho. The MLPCA and the practice in general as explained by the authorities during the on-site visit, require dual criminality for mutual legal assistance to be offered. Where the requirements of dual criminality are met there are no impediments in the required assistance being provided. It was not possible to determine whether the principle of dual criminality was applied in a strict manner as there were no specific examples of requests attended to given by the authorities. There are no restrictions imposed against requests which involve fiscal matters.
40. The provisions of mutual legal assistance in the MLPCA provide for enforcement of foreign search and seizure warrants (once they have been domesticated) for documents required to locate tainted property and property suspected to be tainted. The provisions relating to

enforcement of foreign orders under the MLPCA, also equally apply to confiscation of property of corresponding value and sharing of confiscated assets with foreign jurisdictions.

41. The Fugitive Offenders Act provides for extradition. In terms of the Act, for an extradition request to be acceded to, it also has to meet the requirements of dual criminality. Again the application of this reciprocal requirement could not be determined due to absence of case examples. The offences of money laundering and financing of terrorism are specifically provided for under the MLPCA as extraditable offences for purposes of that Act and any other legislation dealing with extradition in the Kingdom of Lesotho. The Kingdom of Lesotho does not have any laws precluding the extradition of its own nationals.
42. Law enforcement agencies and the supervisor (CBL) in the Kingdom of Lesotho have entered into various MOUs to enable them to offer international co-operation to their foreign counterparts. The MOUs have also facilitated quick, constructive and effective exchange of information with their other foreign counterparts. The exchange of information is not restricted only to criminal conduct. The lack of comprehensive statistics kept by the authorities made it difficult to verify the effectiveness of the co-operation.

#### **Resources and Statistics**

43. The MLPCA has not been effectively implemented due to lack of adequate resources including skilled personnel in the area of ML and TF institutions. Furthermore, there is generally lack of awareness of the existence of the MLPCA and the obligations it places on the state institutions and other accountable institutions subject to it. The authorities should provide adequate resources (financial, human, technical and otherwise) to the institutions (e.g. the FIU, DCEO, DPP's Office and the judiciary) assigned with the responsibility to implement the provisions of the MLPCA and undertake effective awareness raising programmes. Further, there should be appropriate systems to collect and collate information and statistics to enable the authorities to undertake assessment of the effectiveness of the AML/CFT systems in the Kingdom of Lesotho.

## MUTUAL EVALUATION REPORT

### 1. GENERAL

#### 1.1. General information on the Kingdom of Lesotho

1. The Kingdom of Lesotho, which is situated in Southern Africa, has a unique geographical location. It is landlocked and completely surrounded by the Republic of South Africa. Specifically, it is situated within the three provinces of South Africa, namely; Free State, KwaZulu-Natal and Eastern Cape. The country is divided into ten administrative districts, namely: Maseru, Berea, Leribe, Buthe Buthe, Mokhotlong, Mafeteng, Maseru's Hoek, Quthing, Quthing's Nek and Thaba Tseka. The administrative districts are headed by District Administrators. Maseru is the political and business capital city of the country.
2. The Kingdom of Lesotho has a total land area 30 355 square kilometres, with a population of around 1.9 million people (2006 estimates). About 70 percent of the population live in rural areas. The official spoken languages are Sesotho and English. Lesotho nationals are called Basotho (Mosotho in singular). In terms of religion, there is high presence of Christian values followed by indigenous beliefs.

#### *Economy*

3. The Kingdom of Lesotho is a low-income developing economy. The GDP was estimated at USD 1.8 billion in 2010. In 2009, percentage contribution by sector indicates dominance of industry (49.4 %), closely followed by services at 43.3. Agriculture contributed less at around 7 percent during the same period. Financial sector contribution to GDP was 6.3 percent in 2008.
4. The economy of the Kingdom of Lesotho is closely linked to that of its only neighbour, the Republic of South Africa and, to a lesser extent, to other economies of the Southern African Development Community<sup>2</sup> (SADC). South Africa accounts for about 85% of local imports, including consumer and petroleum products. The main export products are mohair, wool and limited diamonds. Manufactured exports are dominated by textiles and clothing, which are mainly destined for the United States of America's market under the Africa Growth Opportunities Act. In 2006 enterprise ownership showed dominance of Basotho (69.4 %), distantly followed by Asians (16.4 %), South Africans (5.9 %).
5. Traditionally, the Republic of South Africa is the major destination country for about 99.7 percent of all Basotho emigrants (mainly men aged 20-49 years). They leave the country in search of better employment opportunities mainly in the mining industry. Their earnings have brought large inflows of remittances into the country. However, this has been drying up due to dwindling employment opportunities in the mining industry in South Africa. Unemployment is estimated at about 50 percent of the economically active population. The Government is the largest employer followed by the textile industry.

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<sup>2</sup> SADC consists of Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

6. The currency of the Kingdom of Lesotho is the Loti<sup>3</sup> and is fixed on par with the South African Rand. The Kingdom of Lesotho is a member of the Common Monetary Area (CMA), with South Africa, the Kingdom of Swaziland and Namibia. Under the terms of the CMA agreement, the South African Rand freely circulates on equal value with these countries' national currencies. In addition, the Kingdom of Lesotho is a member of the Southern Africa Customs Union (SACU), comprising the CMA members plus Botswana.

#### *System of Government*

7. The Kingdom of Lesotho gained independence from British Protectorate on 4 October 1966. The King is the Head of State. 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. Before an Act of Parliament can be promulgated, the King must assent to it.
8. Ever since the return of democratic government in 1993, the Kingdom of Lesotho holds elections every five years to elect members of parliament by direct universal suffrage. The Parliament comprises the National Assembly and the Senate. The former comprise 120 members, 80 of which are elected by constituencies and 40 is proportional representation. The Senate comprises 33 members, 22 principal chiefs and 11 members nominated by the King acting on the advice of the Council of State.

#### *Legal and judiciary systems and hierarchy of laws*

9. The legal system of Lesotho is based on Roman Dutch Common law. The judicial system comprise the Court of Appeal, which is the highest court on the land, 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 magistrate, second and first class magistrate courts
10. The court of appeal and high court are constitutional creatures while subordinate courts are statutory creatures.
11. Appointment of President of Court of Appeal and of the Chief Justice of the High Court is made by the King acting on the advice of the Prime Minister.
12. Justices of Court of Appeal and the puisne judges of the High court are appointed by the King acting in accordance with the advice of the Judicial Service Commission.

#### *Transparency, good governance, ethics and measures against corruption*

13. Lesotho is a party to international and regional conventions against corruption. Parliament enacted the Prevention of Corruption and Economic Offences Act in 1999. The Act seeks to

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<sup>3</sup> The exchange rate averaged M7.5 to the United States Dollar at the time of the onsite. The plural of Loti is Maloti, denoted "M".

prevent corruption in Lesotho and empowers the Directorate on Corruption and Economic Offences to investigate suspected cases of corruption and economic crimes. The Office has been in operation since 2003.

## 1.2 General Situation of Money Laundering and Financing of Terrorism

14. The geographical position of the Kingdom of Lesotho is attractive to criminal activities intending to enter into South Africa. Conversely, being surrounded by South Africa makes the country a safe haven for criminals avoiding detection in South Africa. Criminal activities in the country has organised crime tendencies when involving cross-border crimes. By and large, crimes committed by locals involve 'opportunity crimes' such pick-pocketing and housebreakings, although participation in cross-border crimes such as stock theft and cash-in-transit heists are prevalent.
15. There is a general consensus amongst the law enforcement and prosecution authorities that the following are the main predicate offences generating proceeds for laundering: trafficking in drugs (mainly cannabis – locally known as dagga), fire arms and human beings; counterfeit and smuggling of tobacco/cigarettes and garments; smuggling of diamonds; robbery including cash-in-transit; corruption (especially government procurement), fraud and forgery, and stock theft. A large number of these crimes have cross-border and organised crime typologies involving individuals from within the region, Asia and West Africa, with limited participation by Basotho.

## 1.3 Overview of the Financial Sector and DNFBP

### a) Financial sector

16. The Kingdom of Lesotho has a small and concentrated financial sector offering limited financial services. The financial sector is closely linked to that of South Africa. Further, it is dominated by South African financial institutions.

**Table 1: Structure of the financial sector, as of February 2011**

Types of financial institutions	Number of Institutions (entities)	Total Assets
Commercial banks	4	-
Insurance	7	2,430,278,000
Pension	102(funds)	2,300,000,000
Money Lenders(Companies)	38	-
Money Lenders(Individuals)	30	-
Money Lenders(Branches)	22	-
CIS	2	-
Money Transfers	1	-
Forex Bureaux de change	1	-

17. The Central Bank of Lesotho (CBL) is the regulator and supervisor of financial institutions licensed under the Financial Institutions Act (1999), Insurance Act (1976), Money Lenders Act (1989) and Building Finance Institutions Act (1976). Every financial institution wishing to carry on business in the country must be licensed or registered as required under s6(e) of the Central Bank of Lesotho Act.

**Banks:**

18. The banking sector is dominated by three commercial banks of subsidiaries of South African banks. Lesotho PostBank is the fourth commercial bank which was recently licensed as a fully-fledged bank in 2009 from being just a deposit-taking bank. Its financial services are for now limited to deposits/withdrawals of cash and personal loans.

**Table 2:Ownership of banks, as of February 2011**

Ownership	Number Owned	Percentage
Foreign	2	100
<b>Local</b> (state-owned)	1	100
Jointly owned by State & foreign persons(s)	1	-

19. The table below illustrates the market share between the foreign banks and the local bank by total assets. It clearly depicts dominance of commercial banks by subsidiaries of South African banks.

**Table 3: Market share by bank, as of February 2011**

Bank	Total Assets	Total Liabilities	Total Capital
Standard Lesotho Bank	M4,31 billion	M3,94 billion	M367 million
Nedbank Lesotho	M2,37 billion	M2,14 billion	M226 million
First National bank of Lesotho	M711 million	M667 million	M44 million
Lesotho Postbank	M227 million	M208 million	M19 million

**Insurance sector:**

*Insurers:*

20. Insurance sector is regulated and supervised by the CBL. Every insurer, broker and agent must be licensed by the CBL under the Insurance Act. This sector is dominated by subsidiaries of South African insurance companies. There is one local insurer. The local insurer operates in both life and general insurance businesses. The local insurer's market share is as shown below:

**Table 4: Insurance Sector market share structure**

	Gross Premium	Total Assets
General	34.86%	29.76%
Life	8.43%	5.00%



**Table 5: Structure of Insurance Sector**

Licensed entities	Number
Insurers	5
Brokers	11
Agents	199

21. Of the five insurance companies, four offer life insurance products; two are in general insurance business and one offers both life insurance and general insurance products. The total assets of the sector in 2009 were valued at USD 250, 71 million, which is broken down as follows:
- Life insurance – gross premium was USD 46, 88 million.
  - General insurance – gross premium was USD 28, 19 million.
  - The capital requirement for insurance business is M65, 000 = USD7.738

***Collective investment schemes:***

22. There are two fund managers who offer collective investment schemes to the members of the public in the form of acquiring shares and unit trusts. The investors share the risk and the returns in proportion to their participation interest. Asset managers of African Alliance are fully administered from Mauritius while STANLIB is 50% owned by Standard Bank SA and the other 50% is owned by Liberty Life SA. They also manage funds from private companies (Letseng diamond mine is one of the clients) and government pension fund. The two are being supervised only for prudential requirements by the CBL.

***Money Remitters:***

23. Money remittance service providers are licensed or registered by the CBL. These services are offered by commercial banks, Postal Office and TEBA. The CBL does not license stand-alone money remitters such as Money Gram or Western Union. It only licenses commercial banks to operate this service. In turn, the banks enter into business arrangement with independent money remitters to use the platform to provide remittance service as part of the business operations of the bank.
24. Telegraphic transfers are more common than postal orders for remittances done at Post Office. The main destinations are Botswana, India, South Africa and the Kingdom of Swaziland. Most of the transactions are in small values averaging M2000, 00 (around USD 300, 00) per transaction.
25. For all cross-border remittance transactions, funds must comply with the country's exchange control requirements. It is worth noting that the exchange controls do not apply to CMA transactions.

***Bureau de Change:***

26. Money or currency exchange houses are licensed by the CBL under the FIA and provide their services pursuant to the Exchange Control Order and its Regulations. Commercial banks and bureaux de change sell and buy foreign currency. There is only one independent bureau de change which is allowed to buy from the CBL and sell to the public foreign currency. Daily purchases and sales of currency are reported to the CBL by close of business day. The forex exchange bureau is allowed to keep foreign currency to the maximum amount of USD 50, 000.00. Any amount in excess of this, the bureau de change must sell to the CBL.

***Savings and credit cooperative:***

27. Cooperatives are registered at the Department of Cooperatives under the Ministry of Trade and Commerce. The Department is headed by a Commissioner appointed and with powers under the Cooperative Societies Act and its Regulations. It is for locals only who harness their savings together for their own benefit. By December 2010, there were approximately 1407 from 1299 in 2008. The smallest ones have about 10 members. These are mostly cash. As of December 2010, the largest and successful cooperative had close to 20 000 members, with assets worth around M60 million.

***Money Lenders:***

28. Traditionally, money lenders only lend money to the public in expectation of repayments at agreed interest cost and time. They do not take deposits. There were 63 money lenders as at August 2010, consisting of 32 individuals and 31 companies.
29. There is a Money Lenders Association which was created to coordinate activities of money lenders. It enters into agreements with selected companies and organisations (such as government institutions) to lend money to their employees. Repayments are directly debited from the employee's salary on monthly basis. Few still use bank debit orders or deposit at banks for repayments. The Association is a popular alternative to lending services provided by banks which are perceived to have strict risk-profiling models, leaving a large number of people needing credit unattended to. It is registered and regulated by the CBL as required under the Money Lenders Order and Central Bank of Lesotho Act.

**Table 6: Financial Activity by Types Financial Institution and AML/CFT Scope**

<b>Financial Activity by Type of Financial Institution</b>			
<b>Type of Financial institutions (see the glossary of the FATF 40 Recommendations)</b>	<b>Type of Financial Institution that performs this activity</b>	<b>AML/CFT Requirement</b>	<b>AML/CFT Supervisor/Regulator</b>
<b>Acceptance of deposits and other repayable funds from the public</b>	Commercial banks Collective Investment Schemes SACCOs	MLPCA	FIU
<b>Lending</b>	Commercial Banks Money Lenders Insurance companies		

<b>Financial leasing</b>	N/A		
<b>Transfer of money or value</b>	Commercial Banks Post Office		
<b>Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)</b>	Commercial Banks Post Office		
<b>Financial guarantees and commitments</b>	Commercial Banks		
<b>Trading in Money market instruments (cheques, bills, CDs, derivatives etc.)</b>	Commercial Banks Collective Investment Schemes SACCOs		
<b>Trading in Foreign exchange</b>	Commercial Banks		
<b>Trading in Exchange, interest rate and index instruments</b>	N/A		
<b>Trading in Transferable securities</b>	N/A		
<b>Trading in Commodities</b>	N/A		
<b>Participation in securities issues and the provision of financial services related to such issues</b>	N/A		
<b>Individual and collective portfolio management</b>	Collective Investment Schemes		
<b>Safekeeping and administration of cash or liquid securities on behalf of other persons</b>	Commercial Banks		
<b>Otherwise investing, administering or managing funds or money on behalf of other persons</b>	Collective Investment Schemes		
<b>Underwriting and placement of life insurance and other investment related insurance</b>	Insurance brokers Insurance Companies		
<b>Money and currency changing</b>	Commercial banks	Not covered	None
	Foreign Exchange		

	Bureaux		
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**b) DNFBPs**

30. This sector consists of accountants, casinos, dealers in precious stones and lawyers as operators in the country. Although required under the MLPCA to implement AML/CFT measures, real estate agents, dealers in precious metals and trust and company service providers do not operate in the country. In terms of scale, the Kingdom of Lesotho has a small DNFBP sector which is mainly monitored for compliance with licensing/registration requirements under their respective legislations.
31. The following table illustrates the types and extent of DNFBPs operating in the Kingdom of Lesotho, the scope of AML/CFT obligations and the oversight body for each type of DNFBP.

**Table 7: Type, Size and AML/CFT Oversight of DNFBPs**

Sector	Type of DNFBP	Size of DNFBP	AML/CFT requirements	Licensing/registration Oversight body
Casinos	Jointly-owned	1	Yes	Casino Board
Dealers in precious stones (diamonds)	5	-	Yes	Mines and Geology Department
Legal professionals	Attorneys (30), advocates (200), notaries (5) and conveyancers (15)		Yes	Law Society of Lesotho
Accountants	Chartered Accountants (38), General Accountants (7) and Technician Accountant (18)		Yes	Institute of Accountants

**Accountants:**

32. The Institute of Accountants is a statutory body responsible for regulation and supervision of accountancy profession in the country. All types of accountants must be licensed and registered with the Institute.

**Casinos:**

33. This industry has a monopoly structure in that the South African-owned Sun International Group jointly with the Government of Lesotho owns the only casino in the country operating from Lesotho Sun Hotel. Casino Control Board is the regulator and supervisor for prudential or licensing requirements.

**Law Society of Lesotho:**

34. It is a statutory body responsible for administration of the legal profession under the Legal Practitioners Act. Attorneys, advocates, notaries and conveyancers are members. They offer

the following services: company and trust (few) registration, real estate and conveyance, litigation and general legal services.

### *Dealers in precious dealers*

35. All mining business operations fall under the purview of the Mining and Geology Department under the Mining Act. The only precious stone mined in the country is diamonds. In the recent past, Lesotho has produced some of the largest diamond stones recorded in history.

## **1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements**

36. The formation of companies is regulated under the Companies Act. Under the Act, two or more people may come together to form a company. The company can be with or without limited liability and formed to perform legitimate activities. Companies may be either public or private depending on the shareholding and can be limited by shares. When registering the company the legal representative must lodge with the Registrar of Companies, a Form A for reservation of name, Power of Attorney, Form F which describes the company's postal and physical address, a declaration that all the requirements of the Companies Act have been met, Memorandum and Articles of Association. If satisfied with the particulars filed, the Registrar then issues the company with a certificate of incorporation and a prescribed fee is required before registration can be done.
37. Company registers can be searched by the public upon payment of prescribed fees. The Registrar is obliged in terms of the Companies Act to keep all registers and other documents pertaining to companies. Records are still kept manually and only company names can be reserved on computer systems.

### *Legal Arrangements*

38. Trusts are registered under the Friendly Societies Act but there is no specific body that supervises or regulates their activities. The Registrar of Deeds only registers the trusts but does not regulate their activities. The procedures for registering a trust are not in any way different from those of registering a company. A legal representative will have to lodge the relevant documents including a trust deed for registration with the Registrar of Deeds and after registration if the trust is going to engage in activities which require licensing then it will have to apply for the licence to the Ministry in charge of that particular activity.
39. NPOs are registered and licensed by the Registrar-General's Office in terms of the Societies Act and its Rules. The authorities do not have the capacity to obtain and maintain the information relating to the sector to the extent that they could determine the size and nature of activities performed. To this end, the authorities are unable to determine the vulnerabilities facing the sector for purposes of identifying which NPOs are at risk of being misused for terrorist financing activities

## **1.5 Overview of strategy to prevent money laundering and terrorist financing**

### *a. AML/CFT Strategies and Priorities*

40. The Kingdom of Lesotho joined the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) in 2003, which is a regional organisation committed to implementing the standards of the FATF and other international organisations to combat money laundering and terrorist financing as expressed in the ESAAMLG Memorandum of Understanding.
41. The country established the Anti-Money Laundering Task Team in 2001. The Task Team was established with the initiative of Central Bank of Lesotho and co-chaired by the Ministry of Finance and Development Planning. The mandate of the Task Team was to develop legislation that would combat money laundering and terrorist financing. In 2006, coordination of Anti-Money laundering activities shifted from the Central Bank to the Ministry of Finance and Development Planning.
42. The Ministry facilitated the enactment of the Money Laundering and Proceeds of Crime Act, 2008. The Act is the primary legislation that criminalises money laundering and terrorist financing. It establishes institutions and assigns roles to government institutions and self-regulatory organisations whose members are subject to the provisions of the Act. To coordinate implementation and optimise resources, the authorities established the Lesotho National Task Force on Money Laundering and Terrorist Financing which is a multi-disciplinary forum where stakeholders meet regularly to implement domestic AML/CFT programmes. It also acts as a contact point on any AML/CFT related issues. The Task Force is under the Ministry of Finance and Development Planning.

*b. The institutional framework for combating money laundering and terrorist financing*

**Ministries**

43. Ministry of Finance: Is responsible for AML/CFT policy formulation, including supervision of agencies carrying out AML/CFT implementation programmes.
44. Ministry of Justice, Human Rights and Rehabilitation: The Ministry provides administrative and logistical support to the line divisions such as the Judiciary, Correctional Services and Human Rights issues.
45. Ministry of Law and Constitutional Affairs: It is the custodian of the laws of the Kingdom of Lesotho. It is responsible for the offices of Attorney General, Director of Public Prosecutions, Master of the High Court and Registrar-General.
46. Ministry of Home Affairs and Public Safety: The Ministry is responsible for public safety, immigration, and passport services and aliens control. It coordinates human trafficking issues and anti-terrorism measures. The LMPS falls under the same Ministry.
47. Ministry of Tourism, Environment and Culture: It is responsible for administering the Casino Act. The Ministry chairs and provides secretariat services to the Casino Board.

48. Ministry of Defence and National Security Services: The Ministry is responsible for the Lesotho Defence Forces and for national security.
49. Ministry of Foreign Affairs and International Relations: The Ministry facilitates international cooperation and relations.
50. **Lesotho National Task Force on AML/CFT:** It is responsible for coordination of inter-agency cooperation on AML/CFT matters by law enforcement agencies, regulators/supervisors of accountable institutions including self-regulatory organisation (SROs).

#### **Criminal justice and operational agencies**

51. **The Financial Intelligence Unit** which will be established in terms of section 14 of the MLPCA will function (as set out in section 15 of the same Act) as the central agency responsible for receiving, analysing and disseminating information relating to STRs to law enforcement agencies for investigations, issuing guidelines to accountable institutions and conducting training on AML/CFT.
52. **The Director** of Public Prosecutions' Office is established in terms of the Constitution of the Kingdom of Lesotho. The DPP is responsible for prosecution of all criminal cases and to provide assistance to the police with their investigations where appropriate.
53. Lesotho Mounted Police Service is responsible for preserving peace and maintaining law and order. It prevents and detects crime and carries out investigations on all crimes committed under the laws of the Kingdom of Lesotho.
54. Lesotho Revenue Authority is responsible for customs and excise services and taxation matters.
55. National AML/CFT Coordinating Committee is a forum that discusses policy issues on AML/CFT. It is also responsible for the coordination of AML/CFT activities in the Kingdom of Lesotho.
56. National Security Services is responsible for the protection of State against threats of espionage, terrorism, or sabotage which may infringe on the national security.

#### **Financial sector bodies**

57. **Central** Bank of Lesotho is responsible for regulation and supervision of all accountable institutions licensed under the FIA, the Money Lenders Act, the Building Finance Institutions and the Insurance Act and foreign exchange dealers and licensed institutions.
58. Lesotho Bankers Association actively liaises with CBL on issues affecting the integrity of the banking sector including regular consultation on implementation of MLPCA. It represents the three (3) commercial banks which are subsidiaries of South African banks and one local bank, Lesotho PostBank.

59. *Department of Trade and Commerce:* It hosts the Commissioner of Cooperatives who is responsible for licensing and registration of savings and credit cooperatives.

**Designated Non-Financial Businesses and Professions and other matters**

60. Casino Board of Control regulates and supervises the gaming sector's compliance with licensing requirements under the Casino Order. It is also expected to play a significant supervisory role for compliance with AML/CFT requirements by the entities under the Casino Order.
61. Mines and Geology Department is responsible for licensing and supervising mining activities including dealers in precious stones.

**Self-Regulatory Organisations (SRO) for professionals such as Lawyers and Accountants**

62. Lesotho Law Society is statutory body set up to regulate the legal profession in the country. It is expected that it will play an important role in the supervision of its members to comply with AML/CFT requirements.
63. Lesotho Institute of Accountants is a statutory body responsible for the accountancy profession in the Kingdom of Lesotho. It is also expected to play a significant role in ensuring compliance with AML/CFT requirements by its members.

**Legal Persons and arrangements and Non-Profit Organisations**

64. *Registrar-General's Office* is a statutory office established under the Deeds Registry Act. It performs different functions under different Acts including registering of companies, partnerships, friendly societies, societies and trusts intending to operate in the Kingdom of Lesotho.

*c. Approach concerning risk*

65. The Kingdom of Lesotho has not undertaken AML/CFT risk assessment.

*d. Progress since the last mutual evaluation*

66. This is the first comprehensive assessment of AML/CFT systems of the Kingdom of Lesotho.



## 2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

### Laws and Regulations

#### 2.1 Criminalisation of Money Laundering (R.1 & 2)

##### 2.1.1 Description and Analysis

##### Recommendation 1

##### *Legal framework*

67. The criminal law of the Kingdom of Lesotho is based on a combination of the common law and statutory offences. Substantive and procedural criminal laws are administered through written enactments and judicial precedent. This situation places Lesotho in a unique position in terms of general criminalisation of money laundering and predicate offences to money laundering since most offences are not codified and the gravity attached to offences is left to the discretion of judicial officers.
68. The MLPCA, No. 4 of 2008 is the main law which criminalises ML. The Authorities however indicated that the provisions of the Act have not been tested in court. There are several pieces of legislation in the Kingdom of Lesotho that compliment and are relevant to the offence of ML as set out in the MLPCA. These may be summarised as follows:
- The Prevention of Corruption and Economic Offences Act no. 50 of 1999;
  - The Criminal Procedure and Evidence Act no. 9 of 1981;
  - The Fugitive Offenders Act no. 37 of 1967;
  - Anti-Trafficking in Persons Act, 2011;
  - The Interpretation Act no 19 of 1977;
  - The Dangerous Drugs of Abuse Act no. 5 of 2008; and
  - The Sexual Offences Act no. 29 of 2003.

##### *Criminalisation of Money laundering (c.1.1)*

69. The Kingdom of Lesotho ratified the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention) on 28 March 1995 and the United Nations Convention Against Transnational Organised Crime, 2000, (the Palermo Convention) on 24 September 2003.
70. Section 2 of the MLPCA defines ML as “conduct which constitutes an offence as described under section 25”. ML is criminalised under section 25 of the MLPCA which provides as follows:-

*“A person commits the offence of money-laundering if the person-*

- (a) acquires, possesses or uses property; or*
- (b) converts or transfers property with the aim of concealing or disguising the illicit*

*origin of that property or of aiding any person involved in the commission of an offence to evade the legal consequences thereof; or*

- (c) *conceals or disguises the true nature, origin, location, disposition, movement or ownership of property,*

*knowing or having reason to believe that such property is derived directly or indirectly from acts or omissions-*

- (i) *in Lesotho which constitute an offence against this Part, or another law of Lesotho punishable by imprisonment for not less than 24 months;*
- (ii) *outside Lesotho which, had they occurred in Lesotho, would have constituted an offence under Lesotho law, punishable by imprisonment for not less than 24 months."*

71. Under section 2 of the MLPCA the term property is defined as follows:

*' "property" means currency and any asset of every kind, whether corporeal or incorporeal, moveable or immoveable, 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, travellers 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".*

72. The MLPCA was commenced on the 1<sup>st</sup> of April 2009 by Legal Notice No. 51 of 2009. However, sections 14, 15 and 18 of the Act, relating to the establishment of the Financial Intelligence Unit, functions of the Financial Intelligence Unit and suspicious transaction reporting respectively, had not yet become operational at the time of the onsite visit.

73. Articles 3(1) (b) and (c) of the Vienna Convention and 6(1) of the Palermo Convention require countries to criminalise the following intentional acts or material elements namely:-

- (a) The conversion or transfer of proceeds;
- (b) The concealment or disguise of the true nature, source location, disposition, movement or ownership of or rights with respect to proceeds; and
- (c) Subject to the fundamental or constitutional principles and basic concepts of the country's legal system (Art.2 paragraph 1 of the Vienna Convention and Art. 6 paragraph 1 of the Palermo Convention), the acquisition, possession or use of proceeds (Art. 3 paragraph 1(b)(i)-(ii) of the Vienna Convention and Art. 6 paragraph 1(a)(i)-(ii) of the Palermo Convention) as well as the participation in, association with or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating and counselling the commission of any of the foregoing (Art. 6(1)(b)(iii) of the Palermo Convention).

74. The provisions of section 25 of the MLPCA are largely consistent with the requirements of Articles 3(1)(b)(i),(ii), 3(1)(c)(i),(ii),(iii) of the Vienna Convention and 6(1)(a)(i),(ii), 6(1)(b)(i) of the Palermo Convention in that the provisions criminalise the acquiring, possession or use of property or the conversion or transfer of such property by a person with the aim of concealing or disguising the illicit origin of that property or with the intention of aiding the person involved in the commission of the offence to avoid the legal liabilities thereof or a person concealing or disguising the true nature, origin, location, disposition, movement or ownership of such property with the knowledge or having reasonable belief that such property is derived directly or indirectly from an offence. The section however does not entirely comply with the physical and material elements of the ML offence under Articles 3(1)(b)(ii) of the Vienna Convention as it does not explicitly cover rights acquired from proceeds of crime and 3(1)(c)(iv) of the Vienna Convention and 6(1)(a)(iv) of the Palermo Convention relating to ancillary offences to the crime of ML.
75. The Assessors noted that the aspect of the Vienna and the Palermo Conventions which criminalises “rights” generated from proceeds of crime is not directly provided for in section 25 of the MLPCA but can be inferred from the “right in property” mentioned in the definition of “property” in section 2. The definition of property states in part that property includes a “legal or equitable interest” in property. Section 2 further defines “interest” as including a “right, power or privilege, in connection with the property.” The authorities consider revisiting the issue of rights relating to property which is proceeds of crime so that it is explicit and not fragmented in different parts of the Act.
76. The Act does not criminalise the commission of the full range of ancillary offences to money laundering such as abetting, facilitating and counselling the commission of any of the offences set out under Articles 3(1)(b) and (c) of the Vienna Convention and 6(1) of the Palermo Convention. Although Section 183 of the Criminal Procedure and Evidence Act No. 9 of 1981 criminalises the attempt, conspiracy to commit, aiding, inciting, instigating, commanding and procuring the commission of an offence as ancillary offences, it does not criminalise abetting and counselling the commission of an offence as ancillary offences.
77. In addition to the deficiencies identified, the Authorities indicated that the MLPCA had not yet been tested in the courts of law.

***Property (c. 1.2) and conviction for predicate offence (c 1.2.1)***

78. In addition to the definition of property given in c.1.1 above, section 2 of the MLPCA defines proceeds of crime as follows:  
  
*“ “proceeds of crime” means any property derived or realised directly or indirectly from a serious offence and includes, on a proportional basis, property into which any property derived or realised directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realised from such property at any time since the offence;”*
79. Section 6 of the MLPCA defines value of property in relation to the Act as being the market value of property or an interest in property or the amount required to discharge any encumbrance (other than a charging order) on that property.

80. The MLPCA does not prescribe any threshold for the value of property which is subject to the provisions of the Act nor does it provide any qualifications to the definition of property based on value. The offence of ML covers all property which is proceeds of crime regardless of value.
81. Section 25(1) of the MLPCA does not require conviction of a predicate offence in order for the offence of money laundering to be proved (see the essential elements to the offence of ML provided in c.1.1 above).
82. The focus of section 25(1) under the MLPCA is manifestly the criminalisation of laundering of proceeds of crime regardless of where the act was committed, without the requirement for the conviction of a predicate offence as a pre-requisite to proving that the property is proceeds of crime.

***Scope of Predicate offences (c. 1.3)***

83. The legal system of the Kingdom of Lesotho consists of a combination of statute law and common law. Therefore not all serious offences are codified.
84. The predicate offences for ML offences are all offences that are defined as serious offences under the MLPCA No. 8 of 2008. Section 2 of the Act defines a serious offence as follows:-

*“serious offence” means an offence against a provision of-*

- (a) *any law in Lesotho, for which the maximum penalty is death or imprisonment for life or other deprivation of liberty for a period of not less than 24 months and includes money laundering;*
- (b) *a law of a foreign State, in relation to acts or omissions, which had they occurred in Lesotho, would have constituted an offence for which the maximum penalty is death, or imprisonment for life or other deprivation of liberty for a period of not less than 24 months;’*

85. The predicate offences for ML are contained both in statutes and in common law. In terms of the MLPCA, a serious offence is applicable to any criminal conduct, which is punishable by imprisonment for a term of not less than 24 months. The reference to a period of imprisonment of not less than 24 months creates difficulties when determining whether the offences provided at common law are predicate offences for the purposes of money laundering since the sentences for such offences are solely within the discretion of the courts. The totality of the laws of the Kingdom of Lesotho does not cover all the designated categories of offences under the Glossary of the FATF 40 +9 Recommendations. A summary of the designated categories of offences covered by the laws of the Kingdom of Lesotho may be summarized as follows:

**Table 8: Predicate Offences**

<b>Predicate Offence under Designated Categories of offences</b>	<b>Offences under the laws of the Kingdom of Lesotho</b>
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Participation in an organized criminal group and racketeering	Not criminalised.
Terrorism, including terrorism financing	<p>There is no terrorism offence under the laws of the Kingdom of Lesotho and consequently Terrorism is not a predicate offence for ML.</p> <p>The Kingdom of Lesotho does however criminalise the financing of terrorism under section 65(1) of the MLPCA. Section 65 does not however extend to the funding of an individual terrorist, contrary to the requirement under the Convention on the Suppression of Terrorism.</p>
Counterfeiting and piracy of products	Not criminalised.
Sexual exploitation, including sexual exploitation of children	The Sexual Offences Act no. 3 of 2003.
Illicit trafficking in narcotic drugs and psychotropic substances	Section 43 Drugs of Abuse Act no. 5 of 2008
Illicit arms trafficking	Not a criminalised ( the offence created under section 45(3) of the Internal Security Act does not meet the minimum threshold of 24months term of imprisonment)
Illicit trafficking in stolen and other goods	Lesotho provides common law offences of receiving stolen property and being in possession of property suspected to be stolen. In addition sections 343 and 344 of the CP&E Act, criminalises receiving stolen goods.
Corruption and bribery	Part IV (sections 20-34) of the Prevention of Corruption and Economic Crimes Act, criminalises corruption and bribery in various situations such as corrupt transactions by or with public officials (section 21), promise or acceptance of bribes (sections 23 and 24).
Fraud	The Kingdom of Lesotho provides a common law offence of Fraud. <sup>4</sup>
Counterfeiting Currency	Counterfeit Currency Proclamation 32 of 1937
Trafficking in human beings and migrant smuggling	Anti-Trafficking in Persons Act 2011 <sup>5</sup>

<sup>4</sup> Listed in the First Schedule to the Fugitive Offenders Act no. 38 of 1967

<sup>5</sup> The Anti-Trafficking in Persons Act 211 was enacted after the on-site visit and became operational on the 11<sup>th</sup> of January 2011. The Act also criminalises migrant smuggling

Environmental crime	Act no. 103 of 2001
Murder, grievous bodily injury	The Kingdom of Lesotho provides for common law offences of Murder and grievous bodily injury. <sup>6</sup>
Kidnapping, illegal restraining and hostage-taking	The Kingdom of Lesotho provides for common law offences of kidnapping, abduction of false imprisonment and dealing in slaves. <sup>7</sup>
Robbery or theft	The Kingdom of Lesotho provides for common law offences of robbery and theft. <sup>8</sup>
Smuggling	Sections 11 and 12 of the Customs and Excise Act no. 10 of 1982 prohibit smuggling.
Extortion	The Kingdom of Lesotho provides a common law offence of extortion. <sup>9</sup>
Forgery	The Kingdom of Lesotho provides a common law offence of Forgery.
Piracy	The Kingdom of Lesotho provides a common law offence of Piracy. <sup>10</sup>
Insider trading and market manipulation	Not criminalised.

86. The financing of an individual terrorist is not part of the offences criminalised under section 65 of the MLPCA. This creates a gap in the financing of terrorism offences criminalised in the Kingdom of Lesotho and it is not in line with the requirements of the UN Convention on the Suppression of Terrorism.

*Threshold approach for predicate offences (c 1.4)*

87. The Kingdom of Lesotho applies a threshold approach when determining predicate offences to ML under the MLPCA. The definition of a serious offence under the MLPCA is based on a maximum penalty of death, imprisonment for life or imprisonment for not less than 24 months. The maximum penalty of a term of imprisonment of not less than 24 months is high when compared to the maximum penalty of 12 months set out in the FATF standards.
88. A predicate offence of ML is defined in relation to a serious offence. The criminalisation of serious offences uses a threshold approach. The MLPCA define a serious offence as an offence which is punishable by imprisonment of not less than 24 months. Not all offences under the laws of Lesotho are covered under the threshold as some are based on the common law and have neither definitive categorisation nor defined sentences. The effective

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<sup>6</sup> Listed in the First Schedule to the Fugitive Offenders Act no. 38 of 1967

<sup>7</sup> Listed in the First Schedule to the Fugitive Offenders Act no. 38 of 1967

<sup>8</sup> Listed in the First Schedule to the Fugitive Offenders Act no. 38 of 1967

<sup>9</sup> Listed in the First Schedule to the Fugitive Offenders Act no. 38 of 1967

<sup>10</sup> in the First Schedule to the Fugitive Offenders Act no. 38 of 1967

application of the MLPCA is constrained since the understanding of the offences as predicate offences to ML is based on a maximum penalty which is a term of imprisonment of not less than 24 months. The uncertainty created by the law in the Kingdom of Lesotho made it impossible for the assessors to determine the full range of predicate offences for ML.

#### *Extraterritorially committed predicate offences (c 1.5)*

89. Extraterritorial jurisdiction for the authorities in the Kingdom of Lesotho to deal with predicate offences is created under section 25 of the MLPCA which provides that the offence of ML may be committed in respect of an act or omission outside Lesotho which, had it occurred in Lesotho, would constitute an offence for which the maximum penalty is death, or imprisonment for life or other deprivation of liberty for a period of not less than 24 months.

#### *Self laundering (c. 1.6)*

90. Section 25 of the MLPCA makes it an offence to engage in ML without the requirement of a conviction for a predicate offence as a pre requisite. Section 25 is specific in providing that the mental element of the offence is fulfilled where a person deals with property "Knowing or having reason to believe that such property is derived directly or indirectly from acts or omissions" which constitute an offence. The provision does not provide a distinction between the perpetrator of the predicate offence and the person who later launders the proceeds from that offence. In terms of section 25, it is therefore possible for the perpetrator to be charged with both the predicate offence and also the laundering of the proceeds generated from the predicate offence.

#### *Ancillary offences (c. 1.7)*

91. Section 25(1) (b) of the MLPCA provides for the ancillary offence of aiding in the commission of a money laundering offence. The Act does not provide for other ancillary offences. As noted in c.1.1 above, the Act does not criminalise the commission of ancillary offences to ML such as abetting, association with, conspiracy to commit, attempts to commit, facilitating and counselling the commission of any of the offences in terms of Articles 3(1)(c) and (d) of the Vienna Convention and 6(1) of the Palermo Convention. Although section 183 of Criminal Procedure and Evidence Act No. 9 of 1981 provides for ancillary offences, it does not criminalise all the ancillary offences (see c.1.1 above).

#### *Additional elements (c.1.8)*

92. The laws of the Kingdom of Lesotho do not apply to conduct that occurred in a foreign country which is not an offence in that foreign country. The Kingdom of Lesotho would however, in terms of section 25(1)(ii) of the MLPCA prosecute any offence involving proceeds of crime that occurred in a foreign country which, if it had occurred in Lesotho, would have constituted an offence under the Kingdom's laws punishable by imprisonment for not less than 24 months.

### **Recommendation 2**

#### *Liability of natural persons (c. 2.1)*

93. The offence of ML under the laws of the Kingdom of Lesotho applies to natural persons who knowingly engage in money laundering activities. Section 2 of the MLPCA defines a person in the following terms:  
“person” means a natural or legal person’;
94. Section 25(1) of the MLPCA requires knowledge on the part of the person engaged in the money laundering activity.

*The mental element of the ML offence (c.2.2)*

95. Section 25(1) of the MLPCA allows an inference to be drawn from the objective factual circumstances of the case as the section requires a reasonable belief on the part of an accused person engaged in a money laundering activity that he or she is dealing with property that constitutes proceeds of crime. The section requires knowledge or reasonable belief on the part of the person engaged in an activity that it constitutes an offence. A person can therefore be convicted for the commission of a ML offence in circumstances where the person intentionally committed the offence or negligently participated in the commission of the offence with factual circumstantial evidence being used to prove the latter.

*Liability of legal person (c.2.3)*

96. The offence of ML under the laws of the Kingdom of Lesotho applies to legal persons who knowingly engage in a money laundering activity. Section 2 of the MLPCA defines a person in the following terms:  
““person,” means a natural or legal person;
97. The Interpretation and General Provisions Act, No. 19 of 1977 further defines a person as including “any company or association or body of persons, corporate or unincorporated.” The definition means that the list of entities that may be defined as persons for the purposes of the law is potentially limitless.

*Liability of Legal Person should not preclude possible parallel criminal, civil or administrative proceedings (c.2.4)*

98. The MLPCA does not preclude the possibility of parallel civil proceedings. Part V of the Act provides for civil recovery of property. Further, the Authorities indicated that common law provides that the criminal proceeding should not preclude recourse to civil liability. The Act does not however provide for any recourse to parallel administrative sanctions.

*Sanctions for ML (c.2.5)*

99. The penalty for contravention of section 25 of the MLPCA is imprisonment for a period not less than 10 years or a maximum fine of not less than M50, 000 or both and in the case of a body corporate a fine of not less than M500, 000. The term of imprisonment is proportionate and dissuasive. The provision for civil forfeiture under Part V of the Act is also dissuasive and proportionate. There is however no provision for administrative sanction under the MLPCA. The discretion of the courts with regard to sentencing (as described in c.1.4 above) made it difficult for the assessors to determine with certainty the effectiveness of the



sanctions for ML. Although the Act was enacted in 2008, at the time of the on-site it had not yet been tested in court which again made it difficult for the assessors to determine its effectiveness.

100. Under section 314(1) and (2) of the Criminal Procedure and Evidence Act, a person convicted of an offence other than ones listed in the Third Schedule to that Act (i.e. Murder, robbery and conspiracy, incitement or attempt to commit murder or robbery) may receive a suspended sentence as long as the duration of the suspension does not exceed 3 years. This undermines the dissuasiveness and proportionality of the sanctions for ML. The subsections provide as follows:

*' 314 (1) Whenever a person, is convicted before the High Court or any subordinate court of any offence other than an offence specified in Schedule III, the court may postpone for a period not exceeding 3 years the passing of sentence and release that person on one or more conditions (whether as to compensation to be made by that person for damage or pecuniary loss, good conduct or otherwise) as the court may order to be inserted in recognizances to appear at the expiration of that period and if at the end of that period that person has observed all the conditions of the recognizances, the court may discharge him without passing any sentence.*

*(2) Whenever a person, is convicted before the High Court or any subordinate court of any offence other than an offence specified in Schedule III, the court may pass sentence, but order the whole or any part thereof be suspended for a period not exceeding 3 years, which period of suspension, in the absence of any order to the contrary, shall be computed in accordance with sub-sections (3) and (4) respectively, and the order shall be subject to such conditions (whether as to compensation to be made by that person for damage or pecuniary loss, good conduct or otherwise) as the court may specify therein.'*

#### **Statistics (applying recommendation 32)**

101. The MLPCA has not yet been tested in court and consequently no statistical data exists.

#### **2.1.2 Recommendations and Comments**

102. In order to comply fully with Recommendations 1 and 2, the Kingdom of Lesotho should:
  - codify common law offences in order to have certainty in the offences that may be predicate offences to money laundering;
  - revise the threshold for the consideration of an offence as a serious offence from a maximum term of imprisonment of not less than 24 months to the FATF standard of not less than 12 months;
  - Although the CP&E Act provides for liability for managers and servants of legal persons for offences committed by the legal persons, the authorities should consider creating a substantive offence in the MLPCA in order to make the implementation of the law more clearer;
  - remove the possibility of suspension or postponement of a sentence for money laundering offences created under section 314 of the CP&E Act;

- provide for the minimum range of ancillary offences covered under the FATF standards;
- create predicate offenses for money laundering for the following categories of offences:
  - participation in an organised criminal group and racketeering;
  - terrorism; and
  - insider trading and market manipulation .
- amend the MLPCA in order to provide for administrative sanctions for ML offences;
- law enforcement officers should be encouraged to investigate and prosecute ML offences in addition to prosecution of predicate offences; and
- maintain statistics on ML cases.

### 2.1.3 Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating <sup>11</sup>
R.1	NC	<ul style="list-style-type: none"> <li>• The legal framework does not criminalise the full range of predicate offences for the purposes of ML.</li> <li>• The threshold for determining what constitutes a serious offence for the purposes of a ML offence is too high and should be reduced to the internationally acceptable standard of 12 months.</li> <li>• Most offences in the Kingdom of Lesotho are common law offences and do not have a prescribed sentence.</li> <li>• Effectiveness could not be determined as no cases have been taken to court under the MLPCA.</li> </ul>
R.2	PC	<ul style="list-style-type: none"> <li>• The possibility of suspension or postponement of a sentence under section 314 of the CP&amp;E Act for money laundering offences negates the proportionality and dissuasiveness of sanctions for money laundering offences.</li> <li>• There are no provisions for the imposition of administrative sanctions for money laundering.</li> <li>• The provisions of the MLPCA have not been applied to specific cases to demonstrate the implementation of the law.</li> <li>• Due to the lack of statistics, assessors could not determine that sanctions are applied effectively to natural or legal persons.</li> </ul>

<sup>12</sup>These factors are only required to be set out when the rating is less than Compliant.

## 2.2 Criminalisation of Terrorist Financing (SR.II)

### 2.2.1 Description and Analysis

#### *Legal framework*

103. Terrorist financing is criminalised in the Kingdom of Lesotho under Part IV of the MLPCA.
104. The Kingdom of Lesotho signed the United Nations Convention for the Suppression of the Financing of Terrorism, 1999 on the 6th of September, 2000 and ratified it on the 12th of November, 2001.

#### *Criminalisation of financing of terrorism (c.II.1)*

105. Section 63 of the MLPCA provides for the offence of funding of terrorism. The section provides as follows:

*“A person who-*

- (a) solicits, receives, provides or possesses funds or other property;*
- (b) enters into, or becomes concerned in, an arrangement as a result of which money or other property is made available or is to be made available, for the purposes of terrorism, or for a proscribed organisation, commits an offence and is liable on conviction to a fine not less than M100,000 or to imprisonment for a term not less than 10 years.”*

106. In addition, section 65 of the MLPCA provides for the offence of financing of terrorism. The section provides that:

*“65. (1) A person commits an offence of terrorist financing if he or she by any means, directly or indirectly, wilfully, 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-*

- (a) to carry out a terrorist act;*
- (b) by a terrorist organisation.*

*(2) The offence is committed irrespective of an occurrence of a terrorist act referred to in paragraph (1), or whether the funds have actually been used to commit such an act.*

*(3) It shall be an offence-*

- (a) to participate as an accomplice in an offence within the meaning of subsection (1);*
- (b) to organise or direct others to commit an offence within the meaning of subsection (1).*

*(4) A person who contravenes this section commits an offence and shall be liable on conviction to a fine of not less than M10, 000 or imprisonment for a term of not less than 2 years and in case of a body corporate a fine not less than 10 times that amount.”*

107. Terrorism is defined under section 2 of the MLPCA as the “commission of a terrorist act”. A terrorist act is also defined in section 2 as “an act or omission in or outside Lesotho which

constitutes an offence within the scope of Counter Terrorism Conventions listed in the Second Schedule. The Second Schedule lists seven international conventions namely-

- Convention on Offences and certain Other Acts Committed on Board Aircraft(1963)
- Convention for the Suppression of Unlawful Seizure of Aircraft (1970)
- Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (1971)
- International Convention against the Taking of Hostages (1979)
- International Convention for the Suppression of Terrorist Bombings (1997)
- International Convention for the Suppression of the Financing of Terrorism (1999)
- International Convention for the Suppression of Acts of Nuclear Terrorism (2005)

108. The Kingdom of Lesotho has ratified/acceded to the following conventions/protocols which are annexes to the International Convention on the Suppression of the Financing of Terrorism:

- Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (1971), acceded to on 8<sup>th</sup> June 2010;
- Convention for the Suppression of Unlawful Seizure of Aircraft (1970), ratified on the 14<sup>th</sup> of April 1978;
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons (1973), acceded to on the 6<sup>th</sup> of November 1980;
- International Convention against the Taking of Hostages (1979), ratified on the 12<sup>th</sup> of November 1980;
- Convention on the Physical Protection of Nuclear Material (1980), acceded to on the 18<sup>th</sup> of August 2010;
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of the Unlawful Acts against the safety of Civil Aviation (1988), acceded to on the 10<sup>th</sup> of November 2009; and
- International Convention for the Suppression of Terrorist Bombings (1997), acceded to on the 6<sup>th</sup> of September 2000.

109. The Kingdom of Lesotho has not yet ratified/acceded to the:

- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988); and
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988).

110. The Constitution of the Kingdom of Lesotho does not provide for the automatic applicability of international instruments which the Kingdom ratifies. Acts of terrorism are not substantively criminalised under the laws of the Kingdom of Lesotho.

111. Article 2 of the Terrorist Financing Convention requires countries to criminalise conduct by any person who wilfully provides or collects funds by any means, directly or indirectly,

with the unlawful intention that they should be used or in the knowledge that they are to be used, in full or in part-

- (a) to carry out a terrorist act;
- (b) by a terrorist organisation; or
- (c) by an individual terrorist.

112. The definition of “funds” under section 2 of the MLPCA is a substantial reproduction of the definition of funds provided under the Convention. Although the definition of funds does not specifically mention bonds, the definition in the view of the assessors is wide enough to cover such instruments. Section 2 provides the following definition:-

*‘ “funds” means assets of any kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instrument in any form, including electronic or digital, evidencing title in or interest in, such assets, including but not limited to, bank credits, bank cheques, travellers’ cheques, money orders, shares, securities, bank drafts and letters of credit.’*

113. Section 65(1) of the MLPCA does not criminalise the financing of an individual terrorist.

114. Section 65(2) of the MLPCA does not require that the funds were actually used to carry out or attempt a terrorist act or be linked to a specific terrorist act.

115. Section 65(1) of the MLPCA makes it an offence to attempt to commit the offence of TF.

116. Section 65 (3) (b) criminalises organising and directing others to commit an offence of TF.

117. The provisions of section 65 of the MLPCA conforms to the provisions of Article 2 (5) of the Terrorist Financing Convention with the only deficiency being that it does not criminalise financing of individual terrorist.

#### ***Predicate offence for money laundering (c.II.2)***

118. Terrorist financing falls within the definition of a serious offence under the MLPCA and it is punishable by a term of imprisonment not less than twenty-four months, making it a predicate offence for ML.

#### ***Jurisdiction for Terrorist Financing Offence (c.II.3)***

119. TF offences, in terms of Section 65(1) of the MLPCA are criminalised regardless of whether the person alleged to have committed the offence is in the ***same country or a different country from the one in which*** the terrorist or terrorist organisation is located or the terrorist act occurred or will occur.

120. The definition of “terrorist act” in section 2 of the MLPCA specifically provides that the act can occur within or outside the Kingdom of Lesotho.

### *The mental element of the TF offence (applying c.2.2 in R2)*

121. Section 65(1) of the MLPCA criminalises conduct by a person who “wilfully” 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 for the purposes of terrorism. The Act therefore provides for the intentional element of the offence to be inferred from the objective factual circumstances.

### *Liability of legal persons (applying c.2.3 & c.2.4 in R2)*

122. The offence of ML under the laws of the Kingdom of Lesotho applies to legal persons. Section 2 of the MLPCA defines a person as a “natural or legal person”. In terms of the MLPCA executive officers, managers or persons in charge of legal persons are not liable for knowingly authorising or permitting the commission of ML offences when they are acting in their official capacities.
123. The MLPCA does not preclude the possibility of parallel civil proceedings. Part V of the Act provides for civil recovery of property. The Act does not provide for parallel administrative sanctions as recourse to civil or criminal sanctions.

### *Sanctions for TF (applying c.2.5 in R2)*

124. The penalty for contravention of section 65 of the MLPCA is a fine of not less than M10,000 or imprisonment for a term of not less than 2 years and in the case of a body corporate a fine not less than 10 times that amount.
125. The penalty for TF when examined in light of the penalties for other offences such as ML, which carries a fine of not less than M50, 000 is generally low when compared to the seriousness of the offence.
126. The term of imprisonment when examined in relation to other offences and other jurisdictions is generally not proportionate or dissuasive. The penalty for TF under the laws of various countries shown below provides a clear example:

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#### **TF offences and sanctions by country.**

<b>Country</b>	<b>Punishment under country legislation</b>
<b>Lesotho</b>	Section 65(4) M10,000 fine or <b>not less than</b> 2 years imprisonment
<b>Tanzania</b>	Sections 13 and 14 of POTA <sup>12</sup> - 15 to 20 years imprisonment
<b>South Africa</b>	Section 4 of POCDATARA <sup>13</sup> - ZAR 100 million or imprisonment for a period of 15 years

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<sup>12</sup>The Prevention of Terrorism Act, 2002 (Act No. 21 of 2002)

<sup>13</sup>Protection of Constitutional Democracy against Terrorist and Related Activities Act

<b>Malawi</b>	Sections 36(3) and 76 ML &TF Act <sup>14</sup> - 15 years and a fine of K3, 000,000 (US\$22,000) for a natural person and K15,000,000 (US\$110,000) and loss of business authority for a legal person. A natural person soliciting funds is liable to imprisonment for 15 years and a fine of US\$110,000.
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127. There is a provision for civil forfeiture under Part V of the MLPCA. There is however no provision for administrative sanctions under the same Act.
128. The penalty provision to section 65 only provides for a fine or imprisonment but not both such fine and term of imprisonment where necessary.
129. There have been no TF cases brought to court under the Act, therefore there were no statistics available to determine its effectiveness. The Act has not been tested judicially and therefore there were no statistics available to determine its effectiveness.
130. Under section 314(1) and (2) of the Criminal Procedure and Evidence Act, a person convicted of an offence other than ones listed in the Third Schedule (i.e. murder, robbery and conspiracy, incitement or attempt to commit murder or robbery) may receive a suspended sentence as long as the duration of the suspension does not exceed 3 years. This undermines the dissuasiveness and proportionality of the sanctions for ML set out under the MLPCA.

### 2.2.2 Recommendations and Comments

131. In order to comply fully with SRIL, the Kingdom of Lesotho should:
  - Ratify and fully implement all the international conventions and protocols listed in the Annex to the Convention on Terrorist Financing;
  - Amend the MLPCA in order to criminalise the financing of an individual terrorist;
  - Revise the threshold for the consideration of an offence as a serious offence from a maximum term of imprisonment of not less than 24 months to the acceptable international standard of not less than 12 months;
  - Remove the possibility of suspension or postponement of a sentence in terms of section 314 of the CP&E Act for TF offences as this undermines the proportionality and dissuasiveness of sanctions for TF offences ;
  - Enhance the penalties for terrorist financing in order to make them proportionate and dissuasive.
  - Should incorporate a sanction of a concurrent fine and term of imprisonment where appropriate as part of the penalties under the TF offences;
  - Consider amending the MLPCA to provide for administrative sanctions for TF offences; and

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<sup>14</sup>Money Laundering Proceeds of Serious Crime and Terrorist Financing Act, 2006

- Maintain statistics to enable effectiveness on terrorist financing cases to be determined.

### 2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	PC	<ul style="list-style-type: none"> <li>• The financing of an individual terrorist is not criminalised;</li> <li>• The possibility of suspension or postponement of a sentence for TF offences negates the proportionality and dissuasiveness of the sanctions;</li> <li>• No concurrent sentence to both a fine and a term of imprisonment where appropriate;</li> <li>• There are no provisions for the imposition of administrative sanctions for TF offences;</li> <li>• The sanctions for TF, when compared to those in the Region are not proportionate and dissuasive enough; and</li> <li>• No cases have been brought to court under the provisions of the MLPCA to determine the effectiveness of the Act and sanctions.</li> </ul>

## 2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

### 2.3.1 Description and Analysis

#### *Legal framework*

132. The Kingdom of Lesotho has legal provisions in place that provide for the confiscation, freezing and seizing of proceeds of crime. The jurisdiction applies both conviction based and civil forfeiture. The main pieces of legislation that contain provisions relating to confiscation, freezing and seizing of proceeds of crime are-

- The Money Laundering and Proceeds of Crime Act;
- The Prevention of Corruption and Economic Offences Act; and
- The Criminal Procedure and Evidence Act.

133. Section 2 of the MLPCA defines “property” and “proceeds of crime”. The definitions of both terms are given in c.1.2 above. The section also defines “property of or in the possession or control of any person” as including any gift made by that person to a third party.

*Confiscation of property related to ML, TF or other predicate offences including property of corresponding value (c.3.1 (a), (b) & (c))*



134. Confiscation of property related to ML, TF and other predicate offences is done through both civil and criminal proceedings. Confiscation however does not apply to all the designated categories of predicate offences as some of the predicate offences are not criminalised.
135. The provisions for confiscation are of general application and extend to proceeds and instrumentalities for TF offences.
136. Section 40 of the MLPCA provides for the confiscation of proceeds of crime or any other tainted property on conviction. Whilst there is no doubt by implication that proceeds of crime are covered under the definition of tainted property provided for under section 2 of the Act and that the definition of proceeds of crime under the same section vice versa includes tainted property, there is no direct cross-referencing of the two terms in the definition section. Section 40(1) provides for the forfeiture of only tainted property which in terms of section 2 of the Act is defined to include property derived, obtained or realised from the commission of a serious offence.
137. Section 40(1) provides that *“where, upon an application by the Authority, the Court is satisfied that property is tainted property in respect of a serious offence of which a person has been convicted, the Court may order that specified property be confiscated.”*
138. Tainted property is defined as follows:
- “tainted property” means property-*
- (a) *used in or intended for use in connection with the commission of a serious offence;*
  - (b) *derived, obtained or realised as a result of or in connection with the commission of a serious offence.’*
139. Although there is no direct mention of instrumentalities in the MLPCA, it is clear that the provisions of section 40(1) as read with the definition of tainted property provided for in section 2 of the Act provides for forfeiture of instrumentalities used in or intended to be used in the commission of ML, TF or any other predicate offences. The meaning of tainted property includes property used in or intended to be used in the commission of a serious offence.
140. The MLPCA in section 39 also provides for the confiscation of tainted property in instances where an accused person absconds or dies.
141. The definition of proceeds of crime under section 2 of the MLPCA did not satisfy the assessors that it included property of corresponding value as provided for under section 45 of the MLPCA. Section 2 of the Act defines proceeds of crime in the following terms:
- “proceeds of crime” means any property derived or realised directly or indirectly from a serious offence and includes, on a proportional basis, property into which any property derived or realised directly from the offence was later successively converted, transformed or intermingled, as well as*

*income, capital or other economic gains derived or realised from such property at any time since the offence.'*

142. Section 45 of the MLPCA provides for the confiscation of property of corresponding value where the original proceeds of crime cannot be recovered. The section states as follows:-

*"Where a Court is satisfied that a confiscation order should be made in respect of property of a person convicted of a serious offence but that the property or any part thereof or interest therein cannot be made subject to such an order and, in particular-*

- (a) cannot, on the exercise of due diligence, be located;*
- (b) has been transferred to a third party in circumstances which do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding the confiscation of the property;*
- (c) is located outside Lesotho;*
- (d) has been substantially diminished in value or rendered worthless; or*
- (e) has been commingled with other property that cannot be divided without difficulty,*

*the Court may, instead of ordering the property or part thereof or interest therein to be confiscated, order the person to pay to the government of the Kingdom of Lesotho an amount equal to the value of the property, part or interest.*

143. Section 57 of the Criminal Procedure and Evidence Act provides for forfeiture of instrumentalities used in the commission of an offence after conviction of the accused person. The section does not cover forfeiture of instrumentalities intended to be used in the commission of crime.

144. The Prevention of Corruption and Economic Offences Act, under section 24 provides where a person has been convicted of corruption, in addition to the sentence imposed, upon application by the prosecution the court may order forfeiture to the State of all assets accrued to the convict or held on his/her behalf. The assessors were of the view that the words used '*forfeiture to the State of all assets accrued*' would be wide enough to cover the forfeiture of all unlawful proceeds acquired by the accused person including benefits generated from such proceeds. However, it was not clear to the assessors in the absence of case law whether the words would be wide enough to cover forfeiture of instrumentalities used or intended to be used in the commission of corrupt activities.

145. In terms of section 5 of the MLPCA a conviction shall be taken to be quashed if the conviction is quashed or set aside and where the King grants a pardon in respect of a person's conviction for an offence upon the advice of the Pardons Committee.

146. Section 35 of the MLPCA further provides for restitution of restrained property where a person is not convicted of an offence to which the property relates. However, this section without being qualified might limit restraining of property under the civil forfeiture process provided for under the same Act as upon being acquitted the accused person might

simultaneously apply to the same court for the restitution of the restrained property which might be subject to civil forfeiture proceedings where reliance had been placed on the already existing restraining order issued under the criminal proceedings.

147. Section 332 (4) of the Criminal Procedure and Evidence Act provides that a free or unconditional pardon by the King shall have the effect of discharging the convicted person from the consequence of that conviction.
148. Sections 5 and 35 of the MLPCA as read with section 332 (4) of the Criminal Procedure and Evidence Act have the effect of entitling a person who has been previously convicted but is consequently pardoned unconditionally by the King, to restitution of tainted property since the unconditional pardon has the effect of nullifying the consequences of a conviction.

***Confiscation of property derived from proceeds of crime (c.3.1.1 applying c.3.1)***

149. The definition of proceeds of crime in section 2 of the MLPCA (see c.3.1 above) includes property derived directly or indirectly from proceeds of crime including income, profits or other benefits derived from such proceeds. However, section 40 of the Act which provides for forfeiture only makes reference to confiscation of tainted property and does not explicitly provide for the confiscation of property derived from proceeds of crime therefore, confiscation of such proceeds in terms of this section can only be implied as there is no cross-referencing of the two terms in the definition section of the Act.

***Provisional measures to prevent dealing in property subject to confiscation (c.3.2)***

150. Section 56 of the MLPCA provides for the seizure of tainted property by a police officer or an authorised officer, upon reasonable suspicion of the commission of an offence.
151. The MLPCA provides for seizure of suspicious imports or exports of currency under section 28 where the currency exceeds a prescribed threshold or is suspected to be the proceeds of crime.
152. The MLPCA provides for seizure and detention of terrorist cash under section 62.
153. Sections 67 and 68 of the MLPCA make provision where a person has been convicted of a serious offence or where there are reasonable grounds that the person committed the offence but has not been convicted of the offence for which he has been charged or is about to be charged, for a restraining order to prevent dealing with, transfer or disposal of property subject to confiscation, in such a manner as may be specified in the order.
154. Section 88 of the MLPCA makes provision for preservation of property orders where there are reasonable grounds to believe that property concerned is an instrumentality used in the commission of a serious offence or is the proceeds of unlawful activities.

155. Section 91 of the MLPCA further empowers a police officer or an authorised officer to seize property subject to a preservation order where there are reasonable grounds that the property will be disposed or removed contrary to the order.
156. In addition to the MLPCA, the Criminal Procedure and Evidence Act as well as the Prevention of Corruption and Economic Offences Act provide for seizure of property derived from predicate offences.
157. Part VI of the Criminal Procedure and Evidence Act generally deals with search warrants, searches and seizure of property.
158. Sections 46 and 47 of the Criminal Procedure and Evidence Act empower police officers with and without warrants respectively, to enter, search and effect a seizure on any person, premises, vehicle, receptacle or other place where the officer reasonably suspects that there is present:-
  - (a) stolen property or anything with respect to which an offence has been, or is suspected on reasonable grounds to have been committed;
  - (b) anything to which there are reasonable grounds for believing that it will afford evidence to the commission of any offence; or
  - (c) anything to which are reasonable grounds for believing that it is intended to be used for the purpose of any offence.
159. Further, under section 52 of the Criminal Procedure and Evidence Act, a police officer may seize any article which is concerned in or reasonably believed to be connected to the commission of, or suspected commission of an offence, whether within Lesotho or elsewhere or which may afford evidence of the commission or suspected commission of an offence whether within Lesotho or elsewhere which is intended to be used in or is reasonably believed to be intended for use in the commission of an offence.
160. Section 10 of the Prevention of Corruption and Economic Offences Act provides for search and seizure where a person has been arrested under section 38 of the Act.

***Ex-parte application for provisional measures (c.3.3)***

161. The MLPCA makes provision for the application for orders *ex parte* so as to prevent property from being disposed of. Applications for restraining orders and production orders and preservation of property orders may be made *ex parte* in terms of sections 67, 78 and 88 of the Act, respectively.
162. Pursuant to section 67 of the MLPCA, the Anti-Money Laundering Authority is empowered to apply *ex parte* for a restraining order against any realisable property in possession of an accused person or held by any other person other than the accused.
163. In terms of section 78 of the MLPCA, upon a person being charged with or convicted of a *serious* offence, a police officer or an authorised person can make an *ex parte* application for the production of documents relevant to the identification, location or quantification of

property belonging to the person or of tainted property relating to the offence, or to identify or locate documents necessary for the transfer of the person's property or tainted property related to the offence.

164. Section 88 of the MLPCA allows the Anti-Money Laundering Authority to make an *application* without notice for a preservation of property order. The order subject to conditions and exceptions specified in it, prohibit a person dealing with the property specified in the order.

***Identification and tracing of property subject to confiscation (c.3.4)***

165. The Prevention of Corruption Act, the Criminal Procedure and Evidence Act and the MLPCA provide for the identification and tracing of property subject to confiscation.
166. Section 30 of the MLPCA empowers the Anti-Money Laundering Authority to obtain an order from the courts for the production of any document relevant to identifying, locating or quantifying any property or identifying or locating any document necessary for the transfer of any such property.
167. Section 78 of the MLPCA provides for the obtaining of production orders for documents which are relevant to indentifying, locating or quantifying property of the person or to identifying or locating a document necessary for the transfer of property to such a person. The section also provides for obtaining production orders in respect of tainted property.
168. Further, section 81 of the MLPCA provides in part that "where a foreign State requests assistance to locate or seize property suspected to be tainted in respect of an offence within its jurisdiction" a police officer or authorised officer may enter any premises and seize any document under section 82 which is reasonably believed to be relevant in relation to a serious offence.
169. Apart from the use of production orders relating to documents, section 85 of the MLPCA provides for monitoring orders. These orders require accountable institutions to disclose information about transactions conducted through an account held with the institution. Monitoring orders are only valid for 3 months.
170. The ability to get a production order is restricted to documents that may be in the possession of an accused person and does not extend to third parties.
171. In terms of section 36(6) of the Prevention of Corruption Act, the Director-General of the Directorate on Corruption and Economic Offences may summon any person believed to be in possession or in control of any book, document, or other information relevant to an inquiry to appear before the Director-General for questioning or to produce the book, document or any other object.
172. Pursuant to section 37 of the Prevention of Corruption and Economic Crimes Act, the Director-General upon obtaining a court order through the Attorney General may seize or

freeze bank accounts or assets of any person the Director- General suspects on reasonable grounds to have committed an offence.

173. In terms of section 38 of the Prevention of Corruption Act, the Director-General or any person authorised by him in terms of that section, is empowered for purposes of an inquiry to enter any premises and among other things examine any object found on or in the premises which is relevant to the inquiry and question and request for information regarding the objects, make copies of or take extracts of documents found on or in the premises which have a bearing on the inquiry.
174. Sections 56–67 of the MLPCA provide the powers that the police have in terms of the Criminal Procedure and Evidence Act to search and seize tainted property on any person, under any person's immediate control, upon land or in any premises.

#### ***Protection of bona fide third parties (c.3.5)***

175. Section 43 of the MLPCA provides for the protection of third parties where an application for confiscation is made against property and the third party claims an interest in the property. Under this section the court determines whether on a balance of probabilities, the person making a claim has a genuine interest in the property as well as the nature and extent of the interest.
176. Section 99 of the MLPCA requires the giving of notice to third parties who may claim an interest in the property that is the subject of a forfeiture application.
177. In terms of section 100 of the MLPCA the High Court is empowered to make an order excluding certain interest in property which is subject to forfeiture. The person applying for such an order has to show the court on a balance of probabilities that he/she had acquired the interest concerned legally, and that he/she was not aware or had reasonable grounds to suspect that the property in which the interest is held was an instrumentality of ML or TF or that the property was proceeds of unlawful activities.
178. The Criminal Procedure and Evidence Act in section 57 has a proviso which provides for the protection of the rights of third parties where the third part can prove to the court that he/she did not know that the article to be forfeited was being used or was to be used for the purpose of or in connection with the commission of an offence or for the conveyance or removal of the stolen property or that he/she could not prevent such use and that he/she may lawfully possess the article intended to be forfeited.

#### ***Power to void actions (c.3.6)***

179. Section 42 of the MLPCA empowers the court to void transfers that would prejudice the authorities' ability to recover property subject to confiscation. The Section provides:

*"The Court may-*

- (a) *before making a confiscation order; and*
- (b) *in the case of property in respect of which a restraining order was made; where the order was served in accordance with section 68,*

*set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the restraining order unless the conveyance or transfer was made for value to a person acting in good faith and without notice."*

180. Section 42 is restrictive in that it is dependent on the issuance of a restraining order in respect of the property transferred. In the absence of a subsisting restraining order, the provision for voiding the transaction or conveyance is not applicable.

#### ***Additional elements (c.3.7)***

181. The MLPCA does not provide for confiscation of property of organisations that are found to be primarily criminal in nature.
182. Section 98 of the MLPCA provides for the making of a forfeiture order in civil proceedings where the Court finds on a balance of probabilities that the property concerned is an instrumentality of an offence or is the proceeds of unlawful activities.
183. The section however does not provide for forfeiture of intended instrumentalities of crime.
184. Section 40 of the MLPCA provides that where the Court is making a determination as to whether property is tainted or not, the property is presumed to be tainted property, unless evidence is adduced to the contrary. The onus in this instance is therefore on an offender to demonstrate the lawful origin of the property.

#### ***Statistics (applying recommendation 32)***

185. At the time of the on site visit no cases had been brought to court under the MLPCA and consequently, there were no statistics.

#### **2.3.2 Recommendations and Comments**

186. In order to fully implement the recommendation, the Kingdom of Lesotho should:
- amend the MLPCA so as to extend the coverage of confiscation measures to the full range of predicate offences;
  - amend the provisions relating to pardons by the King in order to ensure that there is no reversal of the consequences of a conviction which would result in the restitution of tainted property to a person who has been pardoned;
  - define what is meant by "instrumentalities" of crime in the Act in order to avoid confusion as currently the term appears to be used interchangeably with the definition of "tainted property";
  - amend the MLPCA to allow other competent law authorities to make applications for identification and tracing of property subject to confiscation; and
  - amend the MLPCA in order to ensure that the voiding of a transaction is not dependant on the issuance of a restraining order.

### 2.3.3 Compliance with Recommendations 3

	Rating	Summary of factors underlying rating
R.3	PC	<ul style="list-style-type: none"><li>• It is 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 are common law offences;</li><li>• The statutory threshold of a maximum term of imprisonment of not less than 24 months is too high limiting common law offences which can qualify to be predicate offences under the MLPCA depending on the penalties applied by the courts;</li><li>• The lack of definition of the word “instrumentalities” and its interchangeable use with “tainted property” created confusion as to what property is liable to confiscation;</li><li>• The power to apply for identification and tracing orders is not available to all competent authorities; and</li><li>• No cases have been brought to court yet under the MLPCA, making it difficult to determine the effectiveness of its provisions.</li></ul>

## 2.4 Freezing of funds used for terrorist financing (SR.III)

### 2.4.1 Description and Analysis

#### *Legal framework*

187. The freezing of funds used for terrorist financing is generally provided for under the MLPCA. The Act also prohibits the funding of proscribed organisations.

#### *Freezing assets under S/Res/1267 (c.III.1)*

188. In terms of section 62 of the MLPCA, the Authority is empowered to seize cash, funds or property belonging to, or held in trust for a proscribed organisation, or which represents property obtained from acts of terrorism. Pursuant to section 66 of the MLPCA, the Commissioner (the Central Bank of Lesotho) is empowered to issue a directive to an accountable institution requiring it to restrain or freeze any account or property held by it on behalf of a person or group involved in terrorist activities. These requirements are not sufficient to meet the standards providing for the freezing of assets under *S/RES/1267* as a presumption is created that in all such situations the Commissioner will get to know of accountable institutions which will be holding accounts on behalf of persons involved in terrorist activities, which in the view of the assessors is not possible. The obligation to report



such persons should actually be on the accountable institutions themselves upon receipt of the notices issued under the UN Special Resolutions. The Act does not create an obligation for financial institutions to report for purposes of freezing accounts related to terrorist activities nor does it provide mechanisms to comply with *S/RES/1267*.

#### ***Freezing assets under S/Res/1373 (c.III.2)***

189. The observations in c.III.1 also apply to the freezing mechanisms under *S/RES/1373*. The Act does not prescribe specific procedures for the freezing of assets under *S/RES/1373*.

#### ***Freezing actions taken by other countries (c.III.3)***

190. The Kingdom of Lesotho has no specific laws and procedures to examine and give effect to actions initiated under the freezing mechanisms of other jurisdictions relating to *S/RES/1373* for ensuring the prompt determination, according to applicable national legal principles, of whether reasonable grounds or a reasonable basis exists to initiate a freezing action and the subsequent freezing of funds or other assets without delay. Sections 81 and 84 of MLPCA empower authorities to facilitate assistance upon request made by a foreign state to locate or seize property suspected to be tainted property in respect of an offence within their jurisdiction. These provisions are of general application and do not specifically address procedures under *S/RES/1373*.

#### ***Extension of c.III.1-III.3 to funds or assets controlled by designated persons (c.III.4)***

191. The Kingdom of Lesotho has no specific laws and procedures to regulate the seizure or freezing of assets controlled by designated persons relating to *S/RES/1267* and *1373*. Section 62 (1) (b) of the MLPCA empowers the Anti Money Laundering Authority to seize cash, funds or property that belongs to or is held on trust for, a proscribed organisation. The Anti Money Laundering Authority is however not operational. Section 62(1) (c) of the Act additionally empowers the Authority to seize cash, funds or property that is, or represents property obtained through acts of terrorism. These provisions are of general application and do not specifically address procedures under *S/RES/1267* and *1373*.

#### ***Communication to the financial sector (c.III.5)***

192. The Kingdom of Lesotho has no specific or effective systems for communicating actions taken under the freezing mechanisms relating to *S/RES/1267* and *1373* to the financial sector immediately after being taken.

#### ***Guidance to financial institutions (c.III.6)***

193. The Kingdom of Lesotho does not provide clear guidance to financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms relating to *S/RES/1267* and *1373*.

#### ***De-listing requests and unfreezing funds of de-listed persons (c.III.7)***

194. The Kingdom of Lesotho does not have effective and publicly-known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed

persons or entities in a timely manner consistent with international obligations relating to S/RES/1267 and 1373.

***Unfreezing procedures of funds of persons inadvertently affected by freezing mechanism (c.III.8)***

195. The Kingdom of Lesotho does not have effective and publicly-known procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person relating to S/RES/1267 and 1373.

***Access to frozen funds for expenses and other purposes (c.III.9)***

196. The Kingdom of Lesotho does not have any measures in place for appropriate procedures for authorising access to funds or other assets that were frozen pursuant to S/RES/1267 and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses, in accordance with S/RES/1452 of 2002.

***Review of freezing decisions (c.III.10)***

197. The Kingdom of Lesotho does not have any measures for appropriate procedures through which a person or entity whose funds or other assets have been frozen under notices issued in terms of S/RES/1267 and 1373 can challenge that measure with a view to having it reviewed by a court.

***Freezing, seizing and confiscation in other circumstances (applying c.3.1-3.4 and 3.6 in R.3 (c.III.11)***

198. Provisions described in Recommendation 3 above providing for forfeiture, confiscation, freezing, seizing and other provisional measures under the MLPCA also apply to TF offences. The provisions have a general application to all offences.

***Protection of rights of third parties (c.III.12)***

199. Section 43 of the MLPCA provides for the protection of third parties where an application for confiscation is made against property and the third party claims an interest in the property. Under this section the court determines whether on a balance of probabilities, the person making a claim has a genuine interest in the property as well as the nature and extent of the interest. The protection of rights of third parties only applies to instances where an application is made for the confiscation of property and the section does not apply to any other provisional measures against the property.

***Enforcing the obligations under SR III (c.III.13)***

200. The law in the Kingdom of Lesotho does not have specific provisions to enforce the obligations under SRIII. The MLPCA has general provisions under section 13 which create obligations on accountable institutions to comply with the Act but are not specifically directed to comply with SRIII.

**Additional element**

*Implementation of measures in best practices paper for SR III (c.III.14)*

201. The Kingdom of Lesotho has not put in place any mechanisms for the implementation of the measures under the Best Practices Paper for SR III.

*Implementation of procedures to access frozen funds (c.III.15)*

202. The Kingdom of Lesotho has not put in place any procedures for authorising access to funds or other assets that were frozen pursuant to S/RES/1373(2001) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses, in accordance with S/RES/1373(2001) and S/RES/1452(2002).

**2.4.2 Recommendations and Comments**

203. In order to fully implement the recommendation, the Kingdom of Lesotho should:
- put in place effective 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;
  - put in place 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;
  - put in place effective laws and procedures to examine and give effect to, when appropriate, the actions initiated under the freezing mechanisms of other jurisdictions. Such procedures should ensure the prompt determination, according to applicable national legal principles, whether reasonable grounds or a reasonable basis exist to initiate a freezing action and the subsequent freezing of funds or other assets without delay;
  - put in place freezing actions that extend to:
    - (a) funds or other assets wholly or jointly owned or controlled, directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organisations; and
    - (b) funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations;
  - put in place effective systems for communicating actions taken under the freezing mechanisms to financial institutions immediately upon taking such action;
  - put in place clear guidance to financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms;

- put in place effective and publicly-known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner consistent with international obligations;
- put in place effective and publicly-known procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person;
- put in place appropriate procedures for authorising access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses in accordance with S/RES/1452(2002);
- put in place appropriate procedures through which a person or entity whose funds or other assets have been frozen can challenge that measure with a view to having it reviewed by a court; and
- put in place measures to monitor effectively the compliance with the Money Laundering and Proceeds of Crime Act, rules or regulations governing UN Special Resolutions 1267 and 1373 and impose civil, administrative or criminal sanctions for failure to comply.

### 2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	NC	<ul style="list-style-type: none"> <li>• There are 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;</li> <li>• There are 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;</li> <li>• There are no effective laws and procedures to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions.</li> <li>• There are no effective systems for communicating actions taken under the freezing mechanisms to financial institutions immediately upon taking such action;</li> <li>• There is no clear guidance to financial institutions and other persons or entities that may be holding targeted funds or other</li> </ul>

		<p>assets concerning their obligations in taking action under the freezing mechanisms;</p> <ul style="list-style-type: none"> <li>• There are no effective and publicly-known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner consistent with international obligations;</li> <li>• There are no effective and publicly-known procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person;</li> <li>• There are no appropriate procedures for authorising access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses in accordance with S/RES/1452(2002);</li> <li>• There are no appropriate procedures through which a person or entity whose funds or other assets have been frozen can challenge that measure with a view to having it reviewed by a court;</li> <li>• There are no provisions for confiscation of proceeds of crime related to financing of terrorism generally; and</li> <li>• There are no measures to monitor effectively the compliance with the Money Laundering and Proceeds of Crime Act, rules or regulations governing special Resolutions 1267 and 1373 and impose civil, administrative or criminal sanctions for failure to comply.</li> </ul>
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### Authorities

## **2.5 The Financial Intelligence Unit and its functions (R.26)**

### **2.5.1 Description and Analysis**

#### *Legal framework*

204. The Kingdom of Lesotho enacted the MLPCA which provides for establishment of a financial intelligence unit for identification of proceeds of crime, money laundering and terrorist financing. Section 1 of the MLPCA provides that the Minister of Finance must gazette the date for the Act to come into operation. Further, the section provides that

different provisions of the Act may come into force at different periods, with the Minister of Finance required to gazette the date for coming into operation. At the time of the onsite and two months thereafter, sections 14 (establishment of an FIU), section 15 (functions of the FIU) and section 18 (reporting of suspicious transaction reports) have not come into force<sup>15</sup>.

205. The CBL issued Anti-Money Laundering Guidelines which designates the CBL to perform certain functions of an FIU.

***Establishment of FIU as National centre (c.26.1)***

206. There is no operational FIU in the Kingdom of Lesotho. The requirement to establish an FIU to receive, analyse and disseminate STR information is set out in s14 of the MLPCA.
207. In terms of s12(3) and s18(c) of the MLPCA, the Directorate on Corruption and Economic Offences established under the Prevention of Corruption and Economic Offences Act, 1999 (as the Authority referred to under subsection 1 of s11) is also the agency responsible for receiving, analysing and disseminating financial intelligence information. This means that sections 12, 15 and 18 create two statutory bodies to perform core functions of an FIU.
208. In addition, the DCEO has powers to investigate (s12) and prosecute (s11 through the consent of the DPP's Office) money laundering offences under the MLPCA. The MLPCA gives powers to the FIU to perform non-core functions such as issuing guidelines and training materials to accountable institutions to ensure compliance with the provisions of the Act.
209. It is the view of the assessors that this situation has a potential to create a conflict between the DCEO and the FIU, especially in the early stages of AML/CFT development in the country and run the risk of discouraging accountable institutions from disclosing sensitive information through reporting suspicious transactions.
210. The Central Bank of Lesotho, acting in its capacity as Commissioner under the Financial Institutions Act, 1999, issued Anti-Money Laundering Guidelines which designates the CBL and the law enforcement authorities to deal with STRs. In practice however, the Commercial Crime Counter Unit (CCCU) of the Lesotho Mounted Police receive and investigate STR information received from banks

**Suspicious Transaction Reports submitted under the AML Guidelines**

**Table 9: STRs by Sector**

Source of report	Number of STR received			
	2006	2007	2008	2009
Banks	10	5	7	3

211. A Director has been appointed to manage the process of establishing an FIU. The Director is assisted by two senior officials. The FIU Team has an office with essential equipment such as computers within the CBL.

<sup>15</sup> In June 2011 Sections 14 and 15 of the MLPCA became operational as gazetted by the Minister of Finance.

### ***Guidelines to financial institutions on reporting STR (c.26.2)***

- 212. The FIU is required under s15(2)(e) of the MLPCA to issue guidelines to reporting entities as it considers appropriate to combat money laundering and financing of terrorism. As s15 is not yet in force, this provision has not been effected.
- 213. Under Schedule 2 to the Anti-Money Laundering Guidelines, there is an STR form issued by the CBL for suspicious transactions reporting by financial institutions licensed under the FIA. The STR form does not cover TF since the Guidelines are only specific to ML.

### ***Access to information on timely basis by FIU (c.26.3)***

- 214. Since the provision of the MLPCA establishing the FIU is not yet in force and therefore not operational<sup>1</sup>, there can be no access to information on timely basis to undertake analysis. However, the STRs received by the LMPS follow the normal analytical process undertaken to enhance investigation of general criminal cases.
- 215. The authorities indicated that once the FIU becomes operational platforms such as MoUs will be developed to facilitate access to information held by domestic law enforcement and other relevant state agencies to enhance analysis of information received.

### ***Additional information from reporting parties (c.26.4)***

- 216. In terms of s18(3), the DCEO and FIU are authorised to request for additional information from the accountable institution which has reported an STR. The LMPS uses general powers provided under the CP&E Act to obtain additional information on the STRs submitted by financial institutions.

### ***Dissemination of information (c.26.5)***

- 217. In terms of s15(1) and (3), the FIU is authorised to disseminate information to law enforcement agencies (including the DCEO) and supervisory bodies.
- 218. The DCEO is authorised under section 12(3) to disseminate information following examination of STRs and any other information received to domestic law enforcement agencies and supervisory bodies where there is reasonable ground to suspect commission of a serious offence, ML and TF.

### ***Operational independence (c.26.6)***

- 219. While s14 of the MLPCA establishes the FIU as a juristic person responsible to the Minister of Finance, there are no other provisions which clearly provide for the operational independence of the FIU including matters relating to appointment and terms of conditions of management and general staff of the unit. The provision as it stands, albeit that it is not in force, in fact solely leaves the independence or autonomy of the FIU in the hands of the Minister.

### ***Protection of information held by FIU (c.26.7)***

220. Apart from the prohibition against tipping off in section 24, the MPLCA is silent on security of information held by the FIU. It is worth noting that, from a security perspective, the STRs kept by the CBL are simply put in a safe which is locked. At the LMPS the situation is the same, with the exception that the information becomes part of an investigation file. There are no particular legal provisions governing how this information is kept.

***Publication of annual reports (c.26.8& c.26.9)***

221. The authorities have not published any annual report or periodic reports in a manner required under this criterion especially as the FIU is not operational. In terms of s15(2)(h), the FIU may compile statistics and records, disseminate information within Lesotho or elsewhere. The provision is not sufficiently clear on the public release of information on typologies and trends as well as the other activities of the FIU.

***Membership of Egmont Group (c.26.9& c.10)***

222. There is no operational FIU to consider membership of the Egmont Group of FIUs and provides for the Egmont principles of exchange of information.

**Recommendation 30**

***Structure, funding, staffing and other resources (c.30.1)***

223. The MLPCA is silent on the structure, funding and staffing of the FIU. The FIU, which is being set up, is housed in the CBL under an MOU between the CBL and the Ministry of Finance. For the financial year 2010/11, the Ministry of Finance allocated M3 million to set up the FIU.
224. The authorities disclosed that they are receiving technical assistance to draw up terms of reference of the proposed staff of the FIU.

***Integrity and confidentiality standards (c.30.2)***

225. The MLPCA is silent on such issues which govern integrity and confidentiality standards such as vetting of staff, that the staff should be persons of high integrity, the taking of the oath of confidentiality by staff and disclosure of assets by staff. The authorities indicated that as part of the MOU entered into with the CBL, all officers appointed to set up the FIU have been vetted in line with the CBL recruitment procedures.

***Training (c.30.3)***

226. The Team setting up the FIU has exposure on AML/CFT issues as they, among other things, regularly participate in ESAAMLG programmes. One officer is a trained AML/CFT assessor. Further, the FIU Team was in charge of the mutual evaluation process of the country. The authorities have a standalone budget allocated for training and gathering of information through amongst others study tours in countries with operational FIUs as well as for receiving mentoring in this regard.

**Recommendation 32**



### *Statistics and effectiveness*

227. There were no comprehensive statistics provided to the assessors to determine effectiveness.

#### **2.5.2 Recommendations and Comments**

228. It is recommended that the authorities should take immediate steps to amend s18(c) of the MLPCA to ensure that the envisaged FIU is legally the national centre to receive, analyse and disseminate STR information pursuant to s15 in order to meet the minimum requirements for a national FIU as prescribed by the Egmont Group of FIUs. Further, the authorities should do the following to comply with the criteria under the FATF Recommendation 26:-

- Take urgent steps to operationalise the FIU.
- Take immediate measures to ensure sufficient operational independence and autonomy of the FIU so that it is free from undue influence or interference.
- Issue guidance to all accountable institutions, not just to banks, regarding the manner of reporting, including the specifications of reporting forms, and the procedures that should be followed when reporting.
- Implement effective mechanisms to have access on a timely basis to the financial, administrative and law enforcement information that the FIU requires to properly perform its functions, including analysis of suspicious transaction reports.
- The information held by the FIU is securely protected and disseminated in accordance with the provisions of the MLPCA.
- Once operational, the FIU should publicly release periodical reports, and such reports should include statistics, typologies and trends as well as information regarding its activities.
- Consider joining the Egmont Group of FIUs and have regard to its principles for information exchange once fully operational.

229. The authorities should undertake effective awareness raising programmes involving all stakeholders in the financial sector, including other professions and business, and public sector institutions with interest in AML/CFT issues in the country. This should also include the members of the public.

230. Where necessary, the authorities should identify technical assistance needs which can assist in the setting up of FIU Lesotho with the capacity to effectively undertake its primary functions.

#### **2.5.3 Compliance with Recommendation 26**

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	NC	<ul style="list-style-type: none"><li>• The authorities have not implemented the requirements under the FATF Recommendation 26.</li></ul>

## **2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27 & 28)**

### **2.6.1 Description and Analysis**

#### **Recommendation 27**

231. The Police and the Directorate on Corruption and Economic Offences, which are the major law enforcement authorities in the Kingdom of Lesotho, are established in terms of the Constitution of the Kingdom of Lesotho and statute, the Police Service Act and the Prevention of Corruption and Economic Offences Act, respectively. The following Acts are relevant to law enforcement and the other competent authorities in the performance of their duties:
- The MLPCA;
  - The Prevention of Corruption and Economic Offences Act No. 5 of 1999 as amended by Act no. 8 of 2006;
  - The Criminal Procedure and Evidence Act no. 9 of 1981; and
  - The Police Service Act no. 7 of 1998.

#### ***Designation of authorities ML/FT Investigations (c.27.1)***

232. The Directorate on Corruption and Economic Offences (DCEO) which is constituted under the Prevention of Corruption and Economic Offences Act has been designated under S.11(2) of the MLPCA to be the Anti-Money Laundering Authority established under S.11(1) of the MLPCA. The initial mandate of the DCEO was to investigate corruption and related economic crimes.
233. The Lesotho Mounted Police Service which is created by the Constitution and governed by the Police Service Act is mandated to combat all crimes in general and currently investigates STRs received from the banking sector. The Lesotho Mounted Police is the main institution that is charged with prevention and investigation of offences generally in the Kingdom of Lesotho, it has various specialized units which include the Commercial Crimes, Diamonds and Drugs and the Criminal Bureau.
234. There is an Inter-Ministerial Committee on Terrorism and Terrorist Financing which meets quarterly and includes representatives from Central Bank of Lesotho, Ministry of Home Affairs, Ministry of Foreign Affairs, National Security Service and the Civil Aviation Authority. The committee deliberates on matters pertaining to terrorism and terrorist financing.
235. The Director of Public Prosecutions' Office which is headed by the Director of Public Prosecutions (DPP) and oversees all criminal prosecutions including assisting the police in an advisory role with their investigations is a department under the Attorney General's Office. The DPP's Office in terms of the laws of the Kingdom of Lesotho is further responsible for issuing consent to the DCEO before it institutes criminal proceedings under the Prevention of Corruption and Economic Offences Act and the MLPCA.

***Ability to postpone/waive arrest of suspects or seizure of property (c.27.2)***

236. Law enforcement authorities have the powers to arrest any person on reasonable suspicion of having committed an offence guided by the general requirements of the law. The investigating officer has the discretion to decide when to make an arrest.
237. The authorities informed the assessors that there were no specific provisions of the law guiding law enforcement authorities on when to arrest, or postpone or waive arrest or seizure of property. The authorities however indicated that law enforcement authorities had administrative powers depending on the nature of the case to decide when to arrest including postponing the arrest or seizure of property to allow further investigations. This understanding would be in line with paragraph 5.1 of the Criminal Investigations Manual which recognises that there are instances during an investigation “*where a decision is made to delay securing evidence, usually for reasons of not prejudicing the other lines of inquiry*”. The Criminal Investigations Manual further requires under the same paragraph that such a decision should be in the Investigation Policy and Management Guide. The authorities informed the assessors that normally they investigate first before arresting the person but in circumstances where the investigating officer would have sufficient reason to believe that the suspect may flee he may arrest the suspect.

***Additional element-Ability to use special investigative techniques (c.27.3-27.4)***

238. Law enforcement authorities in the Kingdom of Lesotho use a wide range of investigative techniques on a number of offences and are not specific to money laundering offences only. These include the use of under-cover operations, controlled deliveries and surveillance. There are neither legislative nor administrative guidelines on when and how the special investigative techniques can be used and this entirely depends on the discretion, training and expertise of the investigator.

***Additional element- Specialised investigation groups and conducting multi-national cooperative investigations (c.27.5)***

239. Joint investigations with foreign law enforcement agencies do take place. The Lesotho Mounted Police indicated that most of its specialised investigations are done jointly with the South African authorities as all of the Kingdom of Lesotho’s borders are surrounded by South Africa. According to the authorities most of the joint investigations done with South Africa have related to cases of fraud. The authorities indicated that such specialised investigation groups were used in joint investigations where the circumstances would be permitting and they cited two cases of diamond trafficking where investigators from the Kingdom of Lesotho and South Africa jointly used the controlled delivery method to identify and arrest the suspects.

***Additional element- review of ML and FT trends by law enforcement authorities (c. 27.6)***

240. ML and TF methods, techniques and trends have not been reviewed by law enforcement authorities in the Kingdom of Lesotho. At the time of the on-site visit, the MLPCA had not been fully implemented and work by the FIU Project Team had just commenced.

## **Recommendation 28**

### ***Ability to compel production of and searches for documents and information (c.28.1)***

241. The general investigative powers of the police to compel production and searches for documents and information are mainly laid down under the Criminal Procedure and Evidence Act. The MLPCA contain specific powers that are applicable when investigating money laundering and related offences. Further, the Prevention of Corruption and Economic Offences Act has provisions which the Directorate of Corruption and Economic Offences (DCEO) applies when investigating corruption and economic related offences.
242. In terms of Section 274(2) of the CP&E Act, a police officer of the rank of lieutenant or above may demand the production of bank ledgers, day-books, cash-books, or account books whether there is a pending criminal proceeding or not. In such cases, a letter written on the official police letter head by a police officer of the appropriate rank is adequate for the production and a court order is not required.
243. Sections 46, 47, 48, 49, 50 and 51 of the CP&E Act give the police a wide range of powers of entry into premises, search and seizure of articles connected to an offence. Such searches and seizures can be conducted on persons, premises, vehicles or any other place. The searches and seizures can be conducted with or without a warrant or order of the court depending on the seriousness and urgency of the case.
244. MLPCA contain provisions to compel production, search and seizure under sections 12, 29, 30, 56, 57, 58, 61, 62, 78, 82 and 83 when investigating money laundering and terrorist financing offences.
245. In terms of the Prevention of Corruption and Economic Offences Act, the Director under section 7(b) may require any person in writing to produce within a specified period all books, records, returns, reports, data stored electronically on computer or otherwise and any other documents in relation to the function of any public or private body. Pursuant to section 8 of the same Act, the Director in order to expedite investigations has the power by notice in writing to obtain information from any person. The officers of the Directorate in terms of section 10 of the Act have the powers to search, seize and detain anything which in the view of the officer would serve as evidence to the charges prescribed under the Act.

### ***Power to take witnesses' statement (c.28.2)***

246. The police are able to take witness statements from any one that they think has information that will assist in any matter under inquiry. There is however, no express provision under the law that empower law enforcement authorities to take witness statements. Section 26 of the Criminal Procedure and Evidence Act only empowers the police to summon anyone they think would be able to give evidence in regards to the commission of an offence but it does not specifically provide for the recording of witness statements. The Criminal Investigations Manual which guides the police in the course of their investigations, under section 4 only provides in a detailed manner the procedures which are supposed to be followed by the police when recording witness statements but does not indicate in terms of which law the Police are empowered to take witness statements.

### Recommendation 30

#### *Structure, funding, staffing and other resources of law enforcement and other AML/CFT investigative and prosecutorial agencies (c.30.1)*

247. The police force in the Kingdom of Lesotho is constitutionally mandated under s.147 of the Constitution to be responsible for law and order in the Kingdom of Lesotho and other functions as may be prescribed by an Act of Parliament. In terms of section 4 of the Police Service Act 1998, the functions of the police force which is referred to as the Lesotho Mounted Police Service include upholding the law, to preserve peace, protect life and property, to detect and prevent crime, to apprehend offenders, bring offenders to justice, and related purposes.
248. The Lesotho Mounted Police Service (LMPS) is headed by a Commissioner of Police and is deputised by two deputy commissioners, one responsible for operations and the other for administration. The LMPS is further divided to provide the following functions, Crime Investigations Services, Strategic Management and Support Services, Special Operations, Training, Operations and Inspectorate, Complaints and Discipline. The Assistant Commissioner of Police-Crime heads the sections which have specialized units which include; crime intelligence, Interpol, forensic, criminal bureau, ballistics, stock theft, diamond and drugs, and commercial crimes. There are three Regional Commissioners who are in charge of the District Commanders. The District Commanders are in charge of 11 districts and are of the rank of Senior Superintendent. The stations are headed by Station Commanders of the rank of Superintendents whilst substations are headed by Senior Inspectors.
249. There are 15 specialized units with a total of approximately 1,000 investigators throughout the Kingdom of Lesotho.

**Table 10: LMPS Units**

<b>Unit</b>	<b>No.</b>	<b>Function</b>
CGPU	108	sexual offences and domestic violence
SCU	309	general detectives on serious crimes
CIB	32	under cover intelligence collection on crime
Legal	7	legal advice
Drugs and Diamond Control unit SIU	7	investigates drugs and diamonds related crimes
Forensic	4	investigates treason, murder, terrorism, sedition
Criminal record bureau	15	analyses cases that hinge on biological or chemical matters keeps record of finger prints on offenders
Vehicle theft detection and counter robbery Unit	7	investigates stolen vehicles and robbery
Fire arms unit	30	issuance of fire arms licences
Statistics	4	compiles crime statistics

Ballistics	4	analyses and examines fire arms used in a crime
INTERPOL Unit	13	coordinates INTERPOL activities locally
Stock theft Unit	246	investigates stock theft cases

250. The authorities indicated that the number of police officers was not enough which had resulted with the period of training of the new recruits being reduced from nine to six months. Funding of the police was also indicated by the authorities not to be adequate. The LMPS was allocated a budget of M361 000 568 in the financial year of 2009/10. The number of the officers in the LMPS at the time of the on-site visit was 4 024. The total staff establishment could not be determined as the authorities informed the assessors that the staff establishment was not determined annually but recruitment was being done to meet a target of 5 000 staff establishment by the year 2015. At the time of the on-site visit the police/population ratio was 1:470.
251. The minimum qualification requirements for recruitment into the Lesotho Mounted Police include a Cambridge Overseas Certificate with four passes including English. The person has to be aged 21 years and not beyond the age of 30 years and has to be physically fit.
252. At the time of the on site visit the LMPS was mandated to receive Suspicious Transaction Reports (STRs) from banks. At the time of the on site visit the assessors were also informed that there were no specific procedures on how STRs should be handled once received by the police.
253. Under section 11 of the MLPCA, the DCEO has been designated as the Anti-Money Laundering Authority responsible for prevention, investigation and prosecution of money laundering offences. In terms of section 6 of the Amendment Act 2006 to the Prevention of Corruption and Economic Offences Act, the DCEO is headed by a Director-General, who is appointed in terms of that section. In addition, according to the organisational structure titled DCEO Organisational Chart given to the assessors at the time of the on-site visit, the DCEO is headed by a Director General, deputised by a Deputy Director General then six Directors with different portfolios. Section 11(2) of the MLPCA also indicates that the DCEO is headed by a Director General who shall also be the head of the Anti-Money Laundering Authority. The assessors were informed by the authorities at the time of the on site visit that the DCEO was still to be sensitised and reorganised to take up its additional mandate of being responsible for ML and TF cases. The DCEO has a staff establishment of 186 but at the time of the on site visit only 52 posts had been filled.
254. Recruitment of staff for the DCEO before the amendment of the Prevention of Corruption and Economic Crimes Act in 2006, used to be done by the Public Service Commission but after the amendment it is now being done by the Board. The Board is also responsible for the conditions of service of staff at the DCEO. The academic requirements for recruitment depend on the post being recruited for, which also determines the experience required.
255. In terms of section 11(4) of the MLPCA, the DCEO can only prosecute offences under the MLPCA with the consent of the DPP. The DPP however informed the assessors that the office of the DPP did not need to necessarily see the request for the consent in writing as the

Office had seconded two Prosecutors to the DCEO's Office to assist with the prosecutions under the MLPCA. Under the DCEO there were only two officers who had been exposed to AML/CFT training.

256. The authorities at the DCEO were of the view that the staffing and funding were not adequate to enable them to discharge their mandate effectively. The DCEO had M3 000 000.00 allocated to it for investigations in the 2009 budget but this was drastically reduced to M90, 000.00 in 2010. The budget for public education on anti-corruption was reduced to nil in 2010. The authorities also indicated that the DCEO did not have enough vehicles to carry out its functions properly and that of the computers it had most of them were now no longer in use due to virus attacks. The assessors were also informed by the DCEO authorities that they had very limited access to the internet that most of their officers had resorted to using internet cafes which was not safe and secure given the nature of their duties.
257. Overall the LMPS and the DCEO did not appear to be adequately resourced to combat money laundering and terrorist financing. Technical and other resources required in the investigation of ML/TF also appeared to be inadequate to enable law enforcement to fully and effectively perform their duties.
258. The DPP's Office is established in terms of section 99 of the Constitution and the DPP is appointed in terms of section 141 of the Constitution. In terms of section 99(2), the DPP has the powers to institute and undertake criminal proceedings against any person alleged to have committed the offence in any court, to take over and continue criminal proceedings commenced under private prosecution and to discontinue any of the criminal proceedings started by him or any other person before any court. The DPP can either prosecute by himself or delegate the powers to any of his subordinates under general or specific instructions. However in terms of section 98(2)(b) of the Constitution, the Attorney General exercises ultimate authority over the DPP. The DPP explained to the assessors that in terms of that provision [section 98(2)(b)], the DPP's Office fell under the Attorney General on administrative matters and it was his duty in certain high profile matters to inform the Attorney General of the pending prosecution so that the AG can also report to the Prime Minister. According to the DPP, the Office of the Attorney General does not interfere with the prosecution of criminal matters neither has the Attorney General ever stopped the prosecution of any criminal matter, and this was because the DPP had to be seen as impartial when it came to prosecution of criminal cases.
259. The DPP's Office is divided into the Head Office, three Regions and ten Districts. The DPP is the Head of Office, followed still at head office by three Crown Attorneys with each one responsible for one of the three Regions (Central, Southern and Northern Regions), three Chief Attorneys (one for each of the Crown Attorneys), six Senior Crown Counsels and nine Crown Counsels. Each of the ten districts is headed by a District Public Prosecutor, who reports directly to one of the Crown Attorneys at Head Office depending with the region the district falls. Under the District Public Prosecutor comes the Senior Public Prosecutor and Public Prosecutors. Each district has got five prosecutors including the District Public Prosecutor bringing them to an average figure of fifty for the ten districts.

260. The DPP's Office does not have specialised units to prosecute specific types of cases.
261. The DPP's Office informed the assessors during the on site visit that it was not adequately resourced. The office needed more prosecutors. The Office relied on pool vehicles from the parent ministry, Ministry of Law and Constitutional Affairs as it did not have any vehicles allocated to it. It did not have a central library nor did it have libraries in the district offices. The computers available to the prosecutors were shared and were all desktop.
262. The authorities indicated that there had been an improvement in retaining staff. This they attributed to job satisfaction as remuneration was still considered to be low. Recruitment for the DPP's Office is done by the Public Service Commission. The qualifications required are a Cambridge Overseas Schools Certificate and an LLB degree. In the past the Office used to recruit lay prosecutors to prosecute only in the magistrates' court but the practice had been phased out with the lay prosecutors being sponsored by the government to enrol for the LLB degree courses.

*Integrity of competent authorities (c.30.2)*

263. In order to ensure integrity of the Police, in terms of section 3 of the Lesotho Mounted Police Service (Administration) Regulations of 2003 as amended by the Lesotho Mounted Police Service (Administration) (Amendment) Regulations of 2004 at the time of appointment to the Police Service a candidate among other things is expected to produce satisfactory references as to character and where possible, if he or she has served in the public service or a disciplined service, proof of his or her good conduct while serving, give such information as may be required as to his or her previous history or employment or any other matter relating to his or her appointment to the police service and not to have a previous conviction of any of the offences under the First Schedule to the Criminal Procedures and Evidence Act.
264. In section 15 of the principal regulations cited above, a member of the Police Service is expected to abstain from conduct which may interfere with the impartial discharge of his/her duties or conduct which may give rise to such an impression to members of the public. The same subsection further prohibits members of the Police Service from taking part in active politics. Members of the Police Service who intend or have business interest under section 16 of the principal regulations are supposed to notify the Commissioner in writing of their business interest. Section 4 of the amended regulations further provides for disciplinary offences and amongst them is a member of the Police Service either performing or failing to perform an act which he/she knows will cause harm to or prejudice the interests of the police service or undermine the policy of the Police Service. The section further makes it a disciplinary offence for any of the members of the Police Service to fail to deal with complaints made by members of the public about the conduct of any of the police members.
265. The other disciplinary offences set out under the section includes consuming of alcohol whilst on duty, taking of unlawful drugs which affects the performance of one's duties, use of unlawful force against any person, failing to look after the interests and welfare of any detained person as a result of negligence, making a false statement on attestation, failing to attend any lawful and reasonable request made by a member of the public, disclosing of



- confidential information and engaging in any other employment or business outside the police duties without proper authority.
266. The Police Complaints Authority established under section 22 of the Police Service Act, 1998 is responsible for investigating and reporting to the Police Authority on any complaint referred to it by the Police Authority or the Commissioner, which is a complaint from a member of the public about the conduct of a member of the Police Service.
267. The LMPS from the year 2007-2010 recorded a total of about 187 cases ranging from misconduct to criminal offences by members of the Police Service. Of the cases recorded 53 involved indiscipline at work and of the serious criminal cases out of the 134 reported cases, 13 involved corrupt related activities. The authorities indicated that cases of indiscipline were dealt with administratively within the police and the criminal cases were referred for prosecution and consequent dismissal of the officers where necessary.
268. The officers of the DCEO are required to maintain a high standard of confidentiality and not to disclose any information that came into their possession while in the course of their duties. The integrity of the DCEO derives from the Public Service Act and Regulations and the supporting Civil Service Code of Conduct and Ethics. At the time of the on site visit the assessors were informed by the authorities that the employees of the DCEO had not been vetted. This the authorities informed the assessors that they were trying to change as the amendments to the Prevention of Corruption and Economic Offences Act now provided for the establishment of a Board, which would then be responsible for among other things the recruitment of staff which at the time was being done by the Public Service Commission. The assessors were also informed that in terms of section 16 of the Amendment Act of 2006, the DECO employees as part of the Public Service are required to declare their assets at the time of being employed and at the time when they left employment or at any other time provided for by the law this was not being done at the time of the on-site visit. The authorities explained that this was because the manner in which the declaration was to be done had not yet been prescribed.

#### *Training for competent authorities (c.30.3)*

269. The members of the Police Service after recruitment are supposed to undergo training at the Police Training College provided by the Police Training Unit for a period of six months. At the time of the on site visit the assessors were informed by the authorities that the period of training used to be nine months but had just been reduced to six months in order to improve on the number of the police officers. The assessors were also informed that after graduation from the six months course the police also offered career development courses in different fields to the police officers. The police officers were also encouraged to take up private studies in line with their chosen fields. The police officers were also provided with continuous training in common law crimes such as stock theft at the Police Training College. Stock theft was described as one of the most common crimes in the Kingdom of Lesotho.
270. The authorities from the LMPS informed the assessors at the time of the on site visit that the offence of money laundering was a new concept to them. Only 16 officers out of the whole Police Service had been trained on AML with the others only attending short courses. In

addition the officers in the Commercial Counter Crime Unit who were in charge of receiving STRs at time of the on site visit were not trained and neither are they skilled to deal with the analysis of STRs. The officers dealing with the STRs were also not adequately trained in AML/CFT matters.

271. The DCEO provides induction courses for the newly recruited officers initially by sending them to the Lesotho Institute of Public Administration and Management to do a two week introduction to the Public Service course which is followed by both general and specialised in house training at the DCEO offices and then the practical training on the job. Almost all the officers in the DCEO have attended short training courses on corruption provided by both local and international experts. At the time of the on site visit three of the officers had attended a four week training course on corruption in Hong Kong. However, only two officers within the DCEO at the time of the on site visit had been trained in AML/CFT matters.
272. According to the authorities most of the DPP staff received on the job training in matters relating to economic crimes. The Office did not have outlined short and long term training programmes for staff. At the time of the on site visit only two of the staff members had been trained on AML/CFT under the ESAAMLG. Public prosecutors were still yet to be sensitized on AML/CFT issues.
273. In general the assessors observed that most law enforcement authorities were not aware of the MLPCA and their roles and responsibilities in terms of the Act.

*Additional element –Special training for judges (c.30.4)*

274. There has been no special training for judges and magistrates on AML/CFT in the Kingdom of Lesotho.

*Statistics (applying R.32)*

275. The authorities indicated at the time of the on site visit that the MLPCA had just come into operation therefore there had not been any ML or TF investigations conducted in terms of the Act.

**2.6.2 Recommendations and comments**

276. In order to ensure that the work of the Anti-Money Laundering Authority in investigating ML/TF is complimented through proper analysis of STRs, it is recommended that the authorities fully operationalise the MLPCA in particular provisions relating to the FIU.
277. The authorities should consider amending the Police Services Act or the CP&E Act to provide specific provisions which empower the police to record statements from witnesses.

278. It is recommended that the authorities decide the powers and functions of the Anti-Money Laundering Authority in a way that will be practical and without duplication or potential conflict with the FIU's functions.
279. It is recommended that the members of LMPS and DCEO who in terms of the MLPCA are supposed to investigate ML and TF be trained in the two areas on an ongoing basis.
280. It is recommended that law enforcement agencies should maintain comprehensive statistics of the investigations and of prosecution of ML/TF offences and also maintain statistics of predicate offences.
281. The authorities are recommended to carry out training on AML/CFT to all the relevant law enforcement authorities and reporting institutions.

### 2.6.3 Compliance with Recommendation 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
<b>R.27</b>	PC	<ul style="list-style-type: none"> <li>• The DCEO has not applied measures used to waive or postpone arrests of persons for the purposes of identifying persons involved in ML/TF cases.</li> <li>• No comprehensive statistics maintained on cases where special investigative techniques were used on both predicate and ML offences.</li> <li>• 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.</li> <li>• Effectiveness could not be determined as no cases had been reported and investigated under the MLPCA at the time of the on-site visit.</li> </ul>
<b>R.28</b>	PC	<ul style="list-style-type: none"> <li>• Officers of the DCEO have not been sensitised on AML/CFT though they are the designated Anti-Money Laundering Authority under the MLPCA.</li> <li>• The AML law is not yet fully operational which limits the use of its provisions in gathering evidence by law enforcement.</li> <li>• There are no explicit provisions of the law empowering the police to record statements from witnesses.</li> <li>• The Authority under the DCEO has got no capacity yet to implement the MLPCA.</li> </ul>

## **2.7 Cross Border Declaration or Disclosure (SR.IX)**

### **2.7.1 Description and Analysis**

#### *Legal Framework*

282. The Kingdom of Lesotho has legal provisions under the Customs and Excise Act and the Exchange Control Regulations. The legal provisions provide for both the declaration and disclosure system.

#### *Mechanisms to monitor cross-border physical transportation of currency (c. IX.1)*

283. The Customs and Excise Act 1982 requires persons entering or leaving the Kingdom of Lesotho to truthfully declare all goods in their possession. The definition of good under the Customs and Excise Act includes currency. Any person entering and leaving the Kingdom of Lesotho is required to declare all goods in his possession to the Customs official. At the airport, there are two lines, a red line for those with goods to declare and a green line for those with nothing to declare. However, there is no guidance as required under the FATF best practice guidelines relating to this Special Recommendation on what ought to be declared or what is exempted. Although the Customs and Excise Act does not specifically provide for the declaration of bearer negotiable instruments, sections 12-14 of the Act require declaration of everything including a thing or matter and the authorities explained bearer negotiable instruments to follow any other matter or thing.
284. In terms of section 4(1) of the Exchange Control Regulations, 1989, no person is allowed among other restrictions to send bank notes and foreign currency out of the Common Monetary Area without the permission of the Minister. The definition of foreign currency given in the regulations includes bearer negotiable instruments. This subsection however only applies to persons going beyond the SACU area and this could pose a challenge in the implementation since the Kingdom of Lesotho is surrounded by the Republic of South Africa as its only neighbour. South Africa is also a SACU member and most travellers have to connect to borders beyond only when they get to South Africa. And for citizens of countries which are members to SACU, under the aforementioned circumstances they can easily move currency across the borders of their countries without declaration of possession of such currency. The authorities explained that this would not be a problem but the assessors were of the view that since this is more of an operational requirement and that the enforcement of the customs form in terms of declaration of cash and bearer negotiable instruments was not being done at the entry and exit point, particularly at the international airport for incoming and outgoing passengers at the time of the on-site visit, there was no adequate implementation of the measures in place by the authorities.
285. The Exchange Control Regulations, 1989 under section 4(3) and (7) respectively, require a person leaving or entering the Kingdom of Lesotho at any of the entry and exit points upon request by any competent authority to declare of any bank notes, gold, securities or foreign currency in his/her possession.
286. The Central Bank of Lesotho which is the custodian of the Exchange Control Regulations has in terms of section 2 of the Exchange Control Regulations, 1989 defined the designated

authorized officers to administer the Exchange Control Regulations. Under the Regulations, a threshold of M5000.00 has been set as the maximum currency which can be spent outside the Common Monetary Area (CMA). However, under section 28 of the MLPCA the Commissioner, who is the Governor of the Central Bank of Lesotho is empowered to come up with a threshold for reporting currency brought into or out of the Kingdom of Lesotho. In addition, the provisions of the Exchange Control Regulations, 1989 are complimented by this section as it provides for the declaration of currency above the prescribed threshold by persons entering or departing from the Kingdom of Lesotho. At the time of the on site visit the designated officers who are the police, customs and immigration officers were not aware of the regulations and their obligations under the same regulations. In addition a form had been developed by the Customs authorities for the purposes of cross-border declaration but the use of the form had not been enforced. This in turn had affected the effective enforcement of the Exchange Control Regulations in regards to cross-border declaration of movement of cash and bearer negotiable instruments.

287. In terms of section 4(5) and (9) respectively, of the Exchange Control Regulations, 1989 a competent authority may examine or search among other things any letters or parcels going out of or coming into the Kingdom of Lesotho to ascertain whether they do not contain any bank notes or foreign currency and may seize such notes or currency if found and there is no proper authority allowing its movement. Both the Post Office employees and the customs officers stationed at the post office to carry out inspection duties at the time of the onsite were not aware of these provisions as they were of the view that there was no law preventing currency or bearer negotiable instruments being sent through the mail. The assessors were informed by the authorities that customers who desired to send large parcels were required to bring the parcels to the Post Office unsealed. Customs officers housed at the post office would then inspect the parcels for tax revenue purposes before the parcels were allowed to be sent out of the Kingdom of Lesotho. Those receiving large parcels were required to be present at the post office before the parcel was opened by the customs officers to determine whether there is any duty to be paid before the parcel is released by the post office. Contrary to the provisions of the Exchange Control Regulations, the customs officers gave assessors the impression that the checking of mail and parcels, both incoming and outgoing done by them did not include checking for bank notes, foreign currency or any other unlawful items including contraband such as drugs sent through the post. The assessors observed that there was no collaboration between the customs officials and the Central Bank of Lesotho on the implementation of the Exchange Control Regulations.
288. Customs officers are empowered to search, seize, place an embargo on goods or move to have goods forfeited in cases of failure to properly declare goods.

*Request for information on origin and intended use of currency (c. IX. 2)*

289. The MLPCA does not provide authority to the designated competent authorities to request and obtain further information from the carrier with regard to the origin or intended use of the currency or bearer negotiable instruments at the time of the discovery of the false declaration or failure to declare the currency or bearer negotiable instrument. Section 28(3)(b)(i) of the Act only provides for carrying out of further investigation into the origins of the currency seized by the designated competent authorities not for them to request and

obtain further information on the origins or intended use of the currency or bearer negotiable instrument at the time of discovery of the transgression.

290. In terms of the Customs and Excise Act, for purposes of administering any matter related to that Act a customs officer is empowered to summon an individual to appear before him/her for questioning in regards to that matter. The authorities indicated that the provision includes requests for additional information by the customs authorities.

***Restraint of currency (c. IX.3)***

291. The MLPCA under section 28(2) empowers an authorised officer to seize any currency which is being brought into or taken out of the Kingdom of Lesotho where the amount is above the prescribed threshold or the officer has reasonable grounds to suspect that the property is derived from a serious offence or is intended by any person to be used in the commission of serious offence. The currency can not be kept for more than 48 hours after its seizure without an order of the court authorising its continued seizure which can be for a period not exceeding three months from the date of seizure. The court in granting the order it has to be satisfied that the continued seizure of the currency is necessary to enable further investigation into the origin of the currency or that consideration is being given to an institution in the Kingdom of Lesotho or elsewhere to commence criminal proceedings against a person connected to the currency. However, if a magistrate is satisfied of the reasons for continued seizure of the currency can order a period of seizure not exceeding 2 years from the date of making the order.

***Retention of information of currency and identification of data by authorities when appropriate (c IX.4)***

292. The designated competent authorities did not retain data on the amounts of currency or bearer negotiable instruments declared or otherwise detected and the identity of the bearer for use by the authorities in cases where a declaration is made exceeding the prescribed threshold, or where a false declaration has been made, or where there is a suspicion of ML/FT. The customs authorities indicated that the information kept would only be for revenue collection purposes and that there was no centralised system used to maintain statistics on such cases.

***Access of information to the FIU (c.IX.5)***

293. The FIU was not yet in existence at the time of the on site visit. Again in the absence of the enforcement and effective implementation of the Exchange Control Regulations and the MLPCA, there was no data on the movement of currency and bearer negotiable instruments from the designated competent authorities that could have been subsequently sent to the Financial Intelligence Unit even if it had been operation.

***Domestic cooperation between customs, immigration and related authorities (c.IX.6)***

294. There exists cooperation mechanism between the customs department of LRA and other government agencies. Customs is part of the Heads of Border Agencies which also consist of the Police, Immigration, National Intelligence Service, Health and Road Fund. The Heads of

Border Agencies meet on a monthly basis to discuss operational issues that arise from time to time. When the situation requires the Heads can also meet on a weekly basis.

295. The LRA has entered into formal domestic cooperation arrangements with other agencies. It has signed Memoranda of Understanding with the Lesotho Mounted Police Service, DCEO, and the Transport and Clearing Agents Association.

***International cooperation between competent authorities relating to cross-border physical transportation of currency (c.IX.7)***

296. The Kingdom of Lesotho's LRA in order to enable international cooperation with other revenue authorities has entered into bilateral agreements with Zimbabwe Revenue Authority and the South Africa Revenue Services.
297. Cooperation also takes place with international bodies such as Interpol, World Customs Organization Regional Intelligence Liaison Officers (RILO) and the Customs Enforcement Network (CEN), to all of which the Kingdom of Lesotho is an active member.

***Sanctions for making false declarations/disclosures (applying 17.1-17.4 in R17-c.IX.8)***

298. A person who violates any of the provisions of the Exchange Control Regulations, 1989 which includes false declarations and/or failure to declare foreign currency upon conviction in terms of section 25(2) of the Regulations can be sentenced to pay a fine not exceeding M250 000 or a sum equal to the value of the foreign currency, whichever will be greater. Section 85 of the Customs and Excise Act provides for sanctions against false declarations but the sanctions are not only restricted to cross-border transportation of cash and bearer negotiable instruments but are of a general nature.

***Sanctions for cross-border physical transportation of currency for purposes of ML/TF (applying 17.1-17.4 in R17-c.IX.9)***

299. The laws in the Kingdom of Lesotho do not provide for sanctions on cross-border physical transportation of currency for purposes of ML/TF. (Authorities to verify)

***Confiscation of currency related ML/TF (applying.3.1-3.6 in R3, c.IX.10)***

300. In terms of Part IV of the MLPCA the provisions of confiscation apply to all property which is tainted which would include currency and bearer negotiable instruments as is they form part of the definition of property under section 2 of the same Act. Therefore, the provisions described in R3 earlier on in this report relating to confiscation also apply to persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments for purposes of ML/TF. In addition, section 28(6) of the MLPCA prohibit the release of currency seized where an application has been made in terms of Part IV of the same Act for the forfeiture or confiscation of the whole or part of the currency or is restrained pending determination of the currency's liability to forfeiture or confiscation.

***Confiscation of currency pursuant to UNSCRs (applying c.III.1-III.10 in SR III-c.IX.11)***

301. The laws providing for confiscation do not extend to cover confiscation under the UNSC Resolutions as the law at the time of the on site visit did not provide for their implementation in the Kingdom of Lesotho or where there laid down procedures or measures in place of administering the UNSC Resolutions.

*Notification of foreign agencies if unusual movement of precious metals and stones (c. IX.12)*

302. The authorities informed the assessors of one case where a person who was about to leave the Kingdom of Lesotho had been found in possession of polished diamonds but could not be prosecuted as the laws of the Kingdom of Lesotho did not criminalise possession of polished diamonds. Although the authorities allowed the person to continue with his journey, they informed the assessors that they did not inform the authorities of the jurisdiction where he was going of his possession of the polished diamonds. The authorities further informed the assessors that the Precious Stones Order of 1970 only criminalized the unlawful possession or dealing in rough and uncut diamonds and that they have to resort to other measures since the Order was out dated and did not criminalise most of the offences relating to diamonds like unlawful possession of polished diamonds. The authorities indicated that the designated competent authorities do not notify other foreign agencies of irregular movement of precious metals and stones.

*Safeguards for proper use of information (c.IX.13)*

303. According to the authorities although the law required declaration of currency above a certain threshold, the designated competent authorities manning the entry and exit points of the Kingdom of Lesotho were not aware of these responsibilities therefore the law was not being enforced and as a result there were no proper systems in place to ensure proper use of the information or data of cross-border transactions reported or recorded.

**Recommendation 30**

*Structure, funding, staffing and resources (Customs authorities)*

304. The Lesotho Revenue Authority's Customs and Excise department is responsible for cross-border declarations. The authorities indicated that the Customs and Excise Department and the LRA as a whole was generally under staffed and under resourced. The officers lack technical resources to be able to effectively and efficiently discharge their functions. None of the officers in the LRA had been trained on AML/CFT and some of its officers were said not be aware of the UNSC Special Resolutions. The LRA did not have scanners to assist it with detecting unlawful entry or exit of items at the ports of entry and exit.
305. The LRA is headed by a Commissioner General who reports to the Board of Directors. The Commissioner General is responsible for 10 divisions and included is the Customs and Excise Division. The Customs and Excise Division is headed by a Commissioner who is deputised by two Assistant Commissioners, one for Technical and the other one for Operations. The LRA has a total establishment of 606 staff and currently 568 posts are filled. The division of Customs and Excise has a total staff establishment of 283 and 258 positions have been filled.



### 2.7.3 Recommendations and comments

306. There is need for the Kingdom of Lesotho to enforce the provisions of the laws on cross-border movement of currency and bearer negotiable instruments.
307. The authorities should put in place possible appropriate mechanisms to monitor cross-border movement of currency and bearer negotiable instruments.
308. The designated competent authorities who administer the provisions of the laws on cross-border movement of currency and bearer negotiable instruments need to be sensitised about their responsibilities.
309. The authorities should put in place proper systems to maintain information on records of cross-border currency and bearer negotiable instruments transactions reported or recorded.
310. The absence of an FIU limits the analysis and profiling of information on cross-border movement of currency and bearer negotiable instruments.

### 2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	NC	<ul style="list-style-type: none"><li>• The requirements of SR. IX have not been implemented in the Kingdom of Lesotho</li><li>• The designated authorities are not aware of their responsibilities under the MLPCA and the Exchange Control Regulations, 1989.</li><li>• The provisions on declaration of currency and bearer negotiable instruments above the prescribed threshold are not being enforced.</li><li>• Lack of proper systems to maintain information on records of cross-border currency and bearer negotiable instruments transactions reported or recorded.</li></ul>

### 3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

*Preamble: Law, regulation and other enforceable means.*

311. The primary legislation setting out AML/CFT preventative measures for implementation by financial institutions in the Kingdom of Lesotho is the Money Laundering and Proceeds of Crime Act (MLPCA). The financial institutions subject to the MLPCA are known as “Accountable Institutions”, and are listed under *Schedule 1* to the MLPCA.
312. Before the MLPCA came into force, financial institutions excluding insurance business and financial co-operatives were subject to provisions of Financial Institutions (Money Laundering Guidelines), 2000 and the Financial Institutions, (Know Your Client) Guidelines, 2007 issued under the Financial Institutions Act (FIA), 2005. Read together, the two Guidelines cover quite extensively measures such as customer identification and verification, correspondent banking and relationships, record keeping and maintenance, transactions monitoring and reporting, and internal control procedures.
313. The FIA, 2005 provides the Central Bank of Lesotho with general powers to regulate and supervise financial institutions licensed under it for compliance with the provisions of the Act, including guidelines issued thereto. The two Guidelines were issued to the applicable financial institutions by the Commissioner of the CBL as empowered to do so under s71 of the FIA “...for giving full effect to the *provisions of this Act*” (emphasis added). In terms of s29(1)(b) of the FIA, the Commissioner has the power to issue fines not exceeding M100.000 (Around USD15, 000) for non-compliance with the Guidelines. However, the Offences and Penalties Schedule pursuant to s28 of the FIA do not include any of the issues covered under both Guidelines. The authorities did not demonstrate by providing information to the assessors that sanctions were issued under the Guidelines.
314. Furthermore, the Act under which both the Guidelines are issued does not contain any specific provision setting out obligations for financial institutions to implement AML and/or CFT preventative measures.
315. In this context, the assessors concluded that there are no sanctions that are proportionate, effective and dissuasive for non-compliance with the two Guidelines in a manner consistent with the FATF Recommendation 17 (sanctions).
316. Based on the above analysis, the assessors concluded that both the Guidelines do not apply to the criteria of the FATF Recommendations which require that the obligations be set out in either law or regulation<sup>16</sup> or Other Enforceable Means<sup>17</sup> within the context of the FATF 2004 Methodology (OEM).

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<sup>16</sup> Law or regulation is defined as primary or secondary legislation, such as laws, decrees, implementing regulations or other similar requirements, issued or authorised by a legislative body, and which impose mandatory requirements with sanctions for non-compliance.

## Customer Due Diligence & Record Keeping

### **3.1 Risk of money laundering or terrorist financing**

317. The AML/CFT regulatory framework under the MLPCA of the Kingdom of Lesotho does not provide for a risk-based approach to money laundering (ML) or terrorist financing (TF). The authorities in the Kingdom of Lesotho have not undertaken comprehensive ML/TF risk assessment to determine the levels of risk and appropriate counter-measures. As a result, accountable institutions are subject to the same obligations under the MLPCA. This means that accountable institutions must apply the preventative measures under the MLPCA wholly and are not allowed to adopt any simplified measures where they deem the financial activity to be of insignificant or low risk.
318. The financial sector in the Kingdom of Lesotho is dominated by subsidiaries of South African financial institutions. All subsidiaries of foreign banks originate from South Africa. There is a new local bank known as Lesotho PostBank which was recently licensed as a fully-fledged bank. At present, Lesotho PostBank only offers standard banking services of deposits and withdraws of cash by its customers. It has a very small market share. PostBank has not implemented any of the AML/CFT measures when providing financial services to its customers.
319. The insurance sector is also dominated by subsidiaries of South African insurance institutions. Banking and insurance businesses account for the largest share of the financial sector in the country. The subsidiaries of South African banks apply preventative measures derived from their respective AML/CFT Group Policy consistent with the South African AML/CFT framework. Although the subsidiaries of foreign financial institutions try as far as possible to implement the obligations under the MLPCA and the two financial institutions guidelines on KYC and anti-money laundering, they indicated that their AML/CFT procedures are predominantly determined from the country of origin.
320. Only commercial banks have implemented AML/CFT preventative measures. To the extent that the non-banking financial institutions operating in the financial sector of the Kingdom of Lesotho lack AML/CFT awareness and thus have not implemented AML/CFT preventative measures consistent with the FATF Standards, exposes the country's financial sector to money laundering or terrorist financing risks. The assessors observed that the cooperative societies offering financial services are not monitored to implement AML/CFT measures despite the significant growth in their market share in the financial sector, in particular banking services, of the country in the recent past.
321. It is the view of the assessors that implementation of Group AML/CFT procedures has somewhat mitigated the risks of money laundering or terrorist financing especially in areas where the domestic AML/CFT procedures are inadequate. It is worth noting that banks occupy a large part of the financial sector market in the country. However, the risk of

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<sup>17</sup> Other Enforceable Means refers to guidelines, instructions or other documents or mechanisms that set out enforceable requirements with sanctions for non-compliance, and which are issued by a competent or an SRO.

channelling proceeds of crime, engaging in money laundering or terrorist financing activities through the domestic financial institutions against the backdrop of the lack of AML/CFT awareness and inadequate implementation of the MLPCA by the local financial institutions remains a possibility.

### *Scope Issue*

322. In terms of Schedule 1 (List of Accountable Institutions) to the MLPCA and the financial services operating in the Kingdom of Lesotho, all but forex bureaux de change financial institutions are subject to AML/CFT obligations. This means that there is a scope issue created by the exclusion of bureaux de change from AML/CFT obligations. There was no risk assessment undertaken to support the exclusion.

## **3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)**

### **3.2.1 Description and Analysis**

323. Identification and verification of identity measures for accountable institutions are covered under Part III (Money Laundering) of the MLPCA. With the exception of subsidiaries of South African banks, none of the accountable institutions have put measures in place to implement the obligations under the Act. In general, the accountable institutions seemed unaware of the existence of the MLPCA to the extent that they could implement its obligations. By contrast, financial institutions have adequately implemented the KYC Guidelines and the Anti-Money Laundering Guidelines. For purposes of compliance with the FATF Recommendations, the two Guidelines will not be considered as already explained above.

## **Recommendation 5**

### *Legal framework*

Money Laundering and Proceeds of Crime Act

### *Prohibition of anonymous accounts (c.5.1)*

324. The MLPCA under s17(2) and s26 specifically prohibit keeping of account in fictitious name, or a fraudulent documents by accountable institutions. Any person who contravenes these sections commits an offence punishable on conviction to a term of imprisonment not exceeding 10 years, or a fine of not less than M50, 000.00 or both; and a fine of not less than M250, 000.00 in a case of a legal person. An accountable institution can have its licence suspended or revoked.
325. Discussions with the authorities and accountable institutions revealed that there are no anonymous accounts, accounts in fictitious names or numbered accounts maintained by accountable institutions in the Kingdom of Lesotho.

### *When CDD is required (c. 5.2)*

326. There is no law or regulation that requires accountable institutions to conduct customer due diligence when establishing a business relationship. It is however noted that accountable

institutions regulated by the CBL are applying KYC Guidelines which requires them to identify and verify the identity of a customer when establishing a business relationship. Accountable institutions are only required to obtain information on the purpose and nature of business relationship when establishing such a relationship with a customer pursuant to s16(1)(a). Accountable institutions licensed by the CBL voluntarily apply the guidance provided in AML Guidelines (discussed detail under c.5.6) to determine the purpose and nature of business relationship.

327. There is no law or regulation that requires accountable institutions to conduct customer due diligence when a customer carries out an occasional transaction above a threshold or where a transaction is a single operation or in several operations that appear to be linked. It is implied however in s16(9)(d) that accountable institutions should identify a customer who is conducting an occasional transaction in excess of M100,000.00. The section also makes provision for the Minister to prescribe any other amount in a government gazette. This had not been gazetted at the time of the onsite.
328. There is no law or regulation that requires accountable institutions to conduct customer due diligence when the customer is carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR.VII. Although s16(2)(a) of the MLPCA requires accountable institutions to perform customer verification where a customer is carrying out an electronic transfer, the provision does not specifically address "occasional wire transfer transactions". In practice however, banks obtain information on the identity of "walk-in" customers who conduct transactions in the bank even though the customers do not maintain an account with the bank.
329. Accountable institutions are required to conduct customer verification "*where the accountable institution has doubts about the veracity or adequacy of the customer identification and verification or information it had previously obtained*". Discussions held with accountable institutions confirmed that they do ascertain the customer's true identity before any transaction can be carried out on the account where the customer identification and verification is doubtful.
330. Pursuant to s16(2)(b) accountable institutions are required to verify customer identity "*where there is a suspicion of money laundering offence or the financing of terrorism*". In practice, only subsidiaries of foreign banks fully appreciate money laundering or terrorist financing vulnerabilities facing their operations. To the extent that local accountable institutions do not adequately implement AML/CFT preventative measures, it would appear to the assessors that they would not be in a position to identify or raise a money laundering or terrorist financing suspicion on a transaction or business relationship undertaken through their business operations.

#### ***Identification of customers (c.5.3)***

331. There is no direct obligation in law or regulation that requires accountable institutions to identify customers when establishing a business relationship. In terms of s16(1)(a) accountable institutions should when establishing business relationship only obtain information on the purpose and nature of the business relationship, and not information relating to the identity of the customer such as person's names and physical address.

332. There are however obligations in s16(1)(b) for accountable institutions to identify all customers (including existing customers) whenever they conduct a transaction. In this situation, accountable institutions must obtain information on: i) the person's name, address and occupation; and ii) the national identity card or passport or other applicable official identifying documents.
333. It is not clear to the assessors whether the word "*customer*" includes "*occasional customer*" since it is not defined in the MLPCA or Interpretation Act. The only definition of the word "*customer*" is found in Part 1 of the KYC Guidelines, which is based on the understanding of the concept of a "*business relationship*" between a customer and an accountable institution. Since the word "*customer*" appears to only refer to someone who maintains an account with an accountable institution, the assessors concluded that accountable institutions are not required to identify and verify "*occasional*" customers.
334. Further, it is the view of the assessors that the provision of s16(1)(b) places onerous duties on accountable institutions to fulfil, i.e. to identify and verify each and every customer who is conducting a transaction irrespective of whether or not the customer has a business relationship with the accountable institution. In practice however, accountable institutions interviewed indicated that they only carried identity verification on clients with whom they do not maintain business relationships; and for existing customers they require identification documentation before carrying out the transaction to just ensure that the customer is the correct one.
335. Accountable institutions indicated that they applied identification documentation set out in *Schedule 1* of the KYC Guidelines which includes official passport, driver's licence, voter's identity card, letter (or any document) from a recognised public institution to identify and verify customers. With regards to proof of residence, accountable institutions rely on utility bills, letter from a formal employer, local chief's letter, bank account statements not older than 2 months, letter or any document from a recognised public institution.

#### ***Identification of legal persons and other arrangements (c.5.4)***

336. Accountable institutions are only required to obtain information on the purpose and nature of the business relationship when entering into business relationship with a customer, which includes legal persons. There is no specific obligation either in law or regulation to obtain information on the identity of the legal person such as name, address, owners, directors and beneficial owners when establishing the business relationship.
337. The requirement to establish the true identity of a legal person applies only when the legal person conducts a transaction in terms of s16(1)(c). In this case, the accountable institution is required to obtain and verify the customer's name, legal status, address, directors, principal owners, control structure, beneficiaries when the legal person conducts a transaction. In addition, accountable institutions are required to obtain and verify information relating to the provisions regulating the power to bind the entity; and to verify that any person purporting to act on behalf of the customer is so authorised, and identify that person in terms of s16(1)(c)(i to iii).

338. There is however no law or regulation that requires accountable institutions to establish the true identity of a legal person when conducting an occasional customer except where the threshold already discussed under c.5.2 applies.
339. Pursuant to s16(8)(b) the Minister may, acting on the advice of the Authority and the CBL, prescribe the official or identifying documents for any particular customer or class of customers. Although the FIU has powers to issue guidelines which could include identification and verification of customers, the FIU is excluded from providing advice to the Minister in relation to identification documents for purposes of s16(1).
340. Accountable institutions interviewed during the onsite indicated that they applied the identification documentation set out in Schedule 1 to the KYC Guidelines to verify the identity of legal persons. These are:-
- *Certificate of incorporation, and Memorandum and Articles of Association.*
  - *Resolution of the Board of Directors to open an account and identification of those who have authority to operate the account.*
  - *Partnership deeds.*
  - *Trust deeds*
  - *Resolution of the managing body of the foundation or association*
  - *Power of attorney granted to transact business on behalf of.*
  - *Trader's licence.*
  - *Utility bill.*
  - *Tax registration certificate.*
  - *Any official document which provides customer information subject to the satisfaction of the financial institution.*
341. The above information is verified with the relevant competent authority within the country. Where the legal person is based in a foreign jurisdiction, accountable institutions request information from the country of origin. They did however indicate that verifying such information on foreign legal persons is a challenge. Subsidiaries of foreign financial institutions indicated that they rely on parent companies' extensive network of contacts to verify the information provided by and obtained from a foreign legal person.

***Identification of beneficial owners (c. 5.5, 5.5.1& 5.5.2)***

342. There is no law or regulation which requires accountable institutions to identify and verify beneficial owner using relevant information or data obtained from a reliable source such as that the accountable institution is satisfied that it knows who the beneficial owner is.
343. In practice, financial institutions regulated by the CBL apply Paragraph 10 of the KYC Guidelines which requires them to take reasonable measures to identify and verify beneficial owners to the satisfaction of the financial institutions using the information mentioned under c.5.4.

344. For transactions that are conducted by a legal person, accountable institutions are required to take reasonable measures to understand the legal existence and structure, including information relating to directors, principal owners, beneficiaries and control structure. Accountable institutions interviewed indicated that they implement Paragraph 9(3)(c) of the KYC Guidelines which requires them to identify and verify the ownership of at least 25% and control structure and determine the natural persons who ultimately control the legal person.

***Information on purpose and nature of business relationship (c. 5.6)***

345. Accountable institutions are required to obtain information from a customer on the purpose and nature of the business relationship in terms of s16(1)(a) only when entering into a business relationship. Assessors were informed by accountable institutions that in order to determine the purpose and nature of a business relationship they rely on Paragraph 8(2) of the KYC Guidelines which requires financial institutions regulated by the CBL to establish the customer's profile concentrating at the following information:

- *nature of business activity.*
- *source of transaction.*
- *mode of payment.*
- *volume of turnover.*
- *product type.*
- *source of transaction.*
- *transaction type.*
- *transaction value.*
- *type of entity.*

346. For individuals, accountable institutions require proof of income which can range from a salary pay slip, confirmation letter of employment, banks statement for the last two months to any other proof of income to the satisfaction of the accountable institution.

***Ongoing due diligence on Business relationship (c. 5.7, 5.7.1 & 5.7.2)***

347. There is no requirement in either law or regulation for accountable institutions to conduct ongoing due diligence on the business relationship, including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds.
348. Further, the MLPCA has no direct obligation that requires accountable institutions to ensure that documents, data or information collected under the CDD process is kept up to date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships.

***Enhanced due diligence for higher risk customers (c.5.8 to c.5.12)***

349. Accountable institutions licensed by the CBL voluntarily apply the KYC Guidelines issued by the CBL to classify business relationships with customers on the basis of risk as provided



for under Part IV (Customer Categorisation). In particular, Paragraph 15(3) requires financial institutions to have in place a system of periodical review of risk levels of accounts and apply enhanced due diligence measures depending on the level of risk. It does not however require financial institutions to specifically apply enhanced due diligence on high risk customers.

350. The authorities require financial institutions to split customer risk levels as follows:

<b>Classification of Customers According to Risk Perception</b>		
<b>Higher Risk</b>	<b>Medium Risk</b>	<b>Low Risk</b>
Political exposed persons	Business relationship is between 1 year and three years.	Customer who are neither high nor medium.
Customer who appears in the office of foreign assets committee listing	The remaining non-resident customers who are not high risk customers	Individuals with a gross monthly income of M4, 999.99 and below
Customers from countries not implementing or insufficiently applying the FATF Standards.	An individual earning a gross monthly income of M5 000.00 and M2, 999.999.99	Legal entities whose gross monthly income is between M499, 999.99 and below
Correspondent banks	Sole proprietor subject to verification of personal capacity and source of income	

351. The KYC Guidelines do not provide for application of simplified or reduced CDD measures by financial institutions to customers on a risk sensitive basis.

***Timing of verification of identity (c.5.13)***

352. The requirement to verify the identity of a customer under s16(1) of the MLPCA is restricted to when an existing customer is conducting a transaction. It does not cover verification of identity when entering into or during the course of the business relationship. Further, it does not include when the customer is conducting occasional transactions.

353. The MLPCA has no requirement for accountable institutions to verify the identity of a beneficial owner before or during the course of establishing a business relationship, or conducting transactions for occasional customers.

***Verification of identity after establishment of business relationship (c. 5.14)***

354. The MLPCA does not contain any specific provision requiring accountable institutions to verify the identity of customers when establishing business relationships in general. The only requirement to verify the identity of natural persons (s16(1)(b)) and legal persons (s16(1)(c)) is when they are conducting a transaction.

***Failure to complete CDD (c.5.15)***

355. The MLPCA does not specifically prohibit accountable institutions from opening an account, begin business relations or perform a transaction when the customer fails to complete CDD requirements.

***Termination of business relationship (c.5.16)***

356. There is no requirement for accountable institutions to terminate the business relationship and to consider making an STR where the accountable institution has already commenced the business relationship but has not complied with c.5.3 to 5.5.

***CDD requirements for existing customers (c. 5.17)***

357. There is no express requirement for accountable institutions to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times.

***CDD requirements for existing anonymous customers (c.5.18)***

358. There are no anonymous accounts in the Kingdom of Lesotho as already discussed under c.5.1.

**Recommendation 6**

***Requirement to identify foreign PEP (c. 6.1)***

359. Pursuant to s16(3) of the MLPCA accountable institutions are required to adequately identify and verify a customer who is a PEP<sup>18</sup>. The obligations apply to all PEPs irrespective of nationality. Further, accountable institutions are required to put in place appropriate risk management systems to determine whether the customer is a foreign PEP or not. The requirements in relation to performing due diligence on the PEP do not apply to where a foreign PEP is a beneficial owner.
360. The Banking Association of Lesotho indicated that it is difficult to identify family and relatives of foreign PEPs. They expressed that there was further need for guidance from the CBL.

***Risk management of foreign PEP (c. 6.2)***

361. Accountable institutions are required to seek approval from senior management before opening an account with a foreign PEP. Banks assign a prospective customer who is considered a foreign PEP, a relationship manager. The relationship manager will review all the information obtained to ensure that CDD procedures are fulfilled. Once the relationship

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<sup>18</sup> In section 2 of the MLPCA a political exposed person “means an individual who is or has been entrusted with prominent public functions such as, Head of other States or Governments, a Minister or Assistant Minister in the Government, a holder of a statutory position, a senior officer of the disciplined forces, a holder of an executive post in a political party, a Chief Magistrate or Resident Magistrate, Chief Accounting Officers, Members of Parliament, a Chief Executive of State-owned corporation, the Accountant-General, the Governor of the Central Bank and the Deputy Governor of the Central Bank”.

manager is satisfied with the account opening process, he/she will recommend to the senior manager for authorisation to establish the relationship.

362. The manager will monitor and review the status of the foreign PEP on continuous basis through the course of the relationship. In terms of Paragraph 12(3) a PEP who ceases from holding office for a period of twelve months shall no longer be deemed as a PEP.
363. There is no direct enforceable requirement for accountable institutions to obtain senior management approval following a determination that an existing customer or beneficial owner has since become a PEP or subsequently found to be a PEP.

#### *Source of wealth and funds of foreign PEP (c. 6.3)*

364. Pursuant to s16(3)(d) accountable institutions are required to take reasonable measures to establish the source of wealth and property. The banks indicated that they applied various methods to identify the source of wealth and assets. One bank holds dinner meetings with foreign PEPs and other high net worth client. They also indicated that they relied on publicly available sources of information. In addition, they informed the assessors that the small size of the country in population terms meant that it was relatively easier to follow up on some information related to the property status of their client, including of all PEPs.
365. To the extent that foreign PEPs are considered high risk category clients as discussed under c.5.8 to c.5.12, the same information obtained for this purpose is also used to determine their source of wealth and property by banks pursuant to the KYC Guidelines.

#### *Ongoing monitoring of business relationship with foreign PEP (c.6.4)*

366. Accountable institutions regularly carry out enhanced monitoring of business relationships established with foreign PEPs as required under s16(3)(e). Banks indicated that business relationship managers designated to PEPs are responsible for continually interacting with PEPs to obtain information relevant to the customer profiles.

#### *Additional element- Domestic PEP (c.6.5)*

367. Business relationships or transactions conducted with a domestic PEP are subject to s16(3) as accountable institutions are required to treat all PEPs in the same manner irrespective of their nationality. Banks indicated that since PEPs in general are considered high risk clients, the control measures applied are the same for foreign and domestic PEPs.

#### *Additional element –Ratification of Merida Convention (c.6.5)*

368. The Kingdom of Lesotho ratified the UN Convention against Corruption in 2005. There is domestic legislation and a statutory body dealing specifically with corrupt activities.

### **Recommendation 7**

369. Accountable institutions in the Kingdom of Lesotho do not conduct cross-border correspondent banking relationships as cross-border transactions are channelled through foreign subsidiaries of South African banks for clearance by their respective head offices in South Africa. It is noted that since the Kingdom of Lesotho is a member of the Common Monetary Area with South Africa, Namibia and the Kingdom of Swaziland, such transactions are not considered to be cross-border transactions when transferred for clearance in South Africa or to any of the other members of the Area. Lesotho PostBank has an intermediary arrangement with one of the foreign subsidiaries of South African banks to provide cross-border transaction services due to lack of its own capacity to engage in correspondent cross-border relationships. No other financial institutions in the Kingdom of Lesotho engage in cross-border correspondent banking or similar relationships.

***Requirement to obtain information on respondent institution (c. 7.1)***

370. In terms of s16(5) of the MLPCA accountable institutions must gather sufficient information to adequately identify and verify the financial institution with which it conducts cross-border correspondent or other cross border relationship. Accountable institutions must determine from publicly available information the reputation of the financial institutions and the quality of supervision to which the financial institution is subject to.
371. The remaining banks are South African-owned and therefore rely on their respective parent companies' policy on correspondent relationship. The banks indicated that whenever they are being approached by other banks to enter into cross-border correspondent relationship, they only collect information from AMANAC Repository and AML/CFT questionnaire on a respondent bank's state of regulation and supervision. Such information is sent to their respective head offices in South Africa for consideration along with other information collected by the head offices. The approval of the request for such correspondent relationship and the working arrangements thereof is the primary responsibility of the head office in South Africa.

***Assessment of AML/CFT controls in respondent institution (c.7.2)***

372. Pursuant to s16(5)(d) financial institutions are required to assess the respondent banks' AML/CFT control measures. Banks send AML/CFT Questionnaire and request AML/CFT Policy to the respondent bank to determine the adequacy of AML/CFT control measures before a business relationship can be established by the head office in South Africa. They also require senior management structure as well as their identification and contact information.

***Approval for establishing correspondent relationships (c. 7.3)***

373. Accountable institutions are required to seek approval from senior management before establishing a new correspondent relationship in terms of s16(5)(e). Banks indicated that correspondent relationships are managed by their respective Executive Committees and Managing Directors in the country where it is operating. However, the final approval is done at the headquarters of the parent company concerned. In terms of managing correspondent relationship transactions, it is industry standard practice for all banks to have

a central point for clearance. The CBL is notified of the relationship after it has been sealed with the respondent bank.

***Documentation of AML/CFT responsibilities (c. 7.4)***

374. In terms of s16(5)(f) accountable institutions are required to document the responsibilities of the accountable institutions and respondent institution. All documentation containing information obtained during the due diligence process, including terms and conditions of the relationship, are kept both at the subsidiaries' offices and the headquarters in the country of origin.

***Payable through accounts (c.7.5)***

375. In terms of s16(6) where the correspondent relationship involves the maintenance of "payable-through account", accountable institutions are required to verify that the respondent institution has adequately performed normal CDD process, including on-going CDD on the customers that have direct access to accounts of the accountable institutions, and that the respondent institution is able to provide the relevant customer identification information upon request by the accountable institution. One bank indicated that it has assigned a manager to deal with correspondent relationship transactions coming from all branches especially for those perceived by the bank as being risky transactions.

**Recommendation 8**

376. In recent years the Kingdom of Lesotho has seen the introduction of financial products by financial institutions which do not necessarily require customary interface between the customer and the financial institutions. Mobile phone and internet banking are such financial services which are being provided to customers by financial institutions, albeit from a low base.

***Misuse of new technology for ML/FT (c. 8.1)***

377. There are no specific provisions in the laws of the Kingdom of Lesotho requiring 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.

***Risk of non-face to face business relationships (c. 8.2 & 8.2.1)***

378. There is no 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, including when establishing customer relationships and conducting ongoing due diligence. In addition, there are no requirements for accountable institutions to have specific and effective CDD procedures that are applicable to non-face to face customers

### 3.2.2 Recommendations and Comments

379. The AML/CFT obligations for accountable institutions in relation to customer identification and verification procedures, and PEPs set out in section 16 of the MLPA have not been implemented by accountable institutions. The measures set out in the MLPCA for accountable institutions to implement do not include foreign currency exchange entities. The authorities should ensure that bureau de change operations are subject to effective AML/CFT measures. Although accountable institutions, especially banks and insurance sector engage in non-face-to-face transactions there are no requirements for accountable institutions to put in place measures to address or mitigate risks associated with technological advancements advancing non-face-to-face transactions/business relationships. In order to improve the AML/CFT regulatory framework, the authorities should take immediate steps to amend Part III (Money Laundering) of the MLPCA to ensure that accountable institutions are subject to and implement adequate measures to combat money laundering and terrorist financing in a manner consistent with the FATF Recommendations. In addition, the authorities should amend the MLPCA to ensure that non-face-to-face transactions and business relationships are subject to counter-measures in for ML and TF risks.

380. It is further recommended that the authorities should:-

#### FATF Recommendation 5:

- Subject foreign currency exchange services to AML/CFT measures.  
Provide for direct obligations to undertake customer due diligence when: i) entering into business relations, ii) carrying occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR. VII and, iii) carrying out an occasional transaction above a designated threshold.
- Extend the obligations to verify that any person purporting to act on behalf on the customer is so authorised, and verify the identity of that person applied on legal persons when conducting a transaction to also apply to when establishing business relationships. In addition, the legal status of the legal person establishing the relationship and carrying out a transaction must be verified by obtaining adequate and reliable documents and the provisions regulating the power to bind the legal person.
- Oblige accountable institutions to identify and take reasonable measures to verify the beneficial owner using reliable relevant information or data obtained from reliable source to the satisfaction of the accountable institution.
- Extend the requirement to obtain information on the purpose and nature of business relationship to directly include when conducting an occasional transaction.
- For all customers, accountable institutions should be required to determine whether the customer is acting on behalf of another person, and should then take reasonable measures to obtain sufficient identification data to verify the identity of that other person.

- Extend the requirements under s16(1)(c) regarding transactions to also apply to when legal persons establish business relationships and when conducting an occasional transaction.
- Require accountable institutions to conduct ongoing customer due diligence on the business relationship which should include scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile and, where necessary, the source of funds.
- Require accountable institutions to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationship.
- Require accountable institutions to perform enhanced due diligence for high risk categories of customers, business relationships or transactions.
- Oblige accountable institutions to verify the identity of a beneficial owner before or during the course of establishing a business relationship, or conducting transactions for occasional customers.
- Not permit accountable institutions to enter into or commence a business relationship or perform a transaction when is unable to comply with c.5.3 to c.5.5. Further, where this is true, accountable institutions should be required to consider making an STR.
- Require accountable institutions to terminate the business relationship where the business relationship has already commenced when c.5.2(e), c.5.14 or c.5.17 apply and the accountable institution is unable to comply with c.5.3 to c.5.5.
- Require accountable institutions to apply CDD measures on existing customers who were there before the coming into force of MLPCA on the basis of materiality and risk and to conduct CDD on such existing relationships at appropriate times.

FATF Recommendation 6:

- Amend s16(3) of the MLPCA to require accountable institutions to cover beneficial owners, not just customers, when applying measures relating to foreign PEPs in a manner consistent with the FATF Recommendation 6. Furthermore, the authorities should specifically require accountable institutions to obtain senior management approval to continue the business relationship where it has been discovered that an existing customer or beneficial owner was or has subsequently become a PEP.
- Undertake effective awareness raising programmes to ensure that all accountable institutions fully implement the FATF requirements pertaining to foreign PEPs.

FATF Recommendation 8:

- Take immediate steps to set out obligations for accountable institutions to effectively implement the criteria under the FATF Recommendation 8.

**3.2.3 Compliance with Recommendations 5 to 8**

	Rating	Summary of factors underlying rating
R.5	NC	<ul style="list-style-type: none"><li>• There is no law or regulation that directly requires 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.</li><li>• There is no law or regulation which requires 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.</li><li>• There is no requirement in law or regulation for accountable institutions to identify and verify the beneficial owner.</li><li>• There is no requirement in law or regulation for accountable institutions to determine whether the customer is acting on behalf of another person and take reasonable measures to obtain adequate identification data to verify the identity of that other person.</li><li>• There is no requirement in law or regulation for accountable institutions to conduct ongoing due diligence on the business relationships.</li><li>• There is no requirement for accountable institutions to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records especially for higher risk categories of customers or business relationships.</li><li>• There is no requirement for accountable institutions to perform enhanced due diligence for higher categories of customers or transactions.</li><li>• There is no requirement to verify the identity of a customer before or during the course of establishing a business relationship.</li><li>• There is no requirement to verify the identity of a beneficial owner.</li><li>• There is no express requirement for accountable institutions to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing</li></ul>



		<p>relationships at appropriate times.</p> <ul style="list-style-type: none"> <li>• There is no requirement for accountable institutions to consider making an STR where the accountable institutions fail to comply with the required CDD measures under criteria 5.3 to 5.6.</li> <li>• Forex bureaux de change not covered under the MLPCA.</li> <li>• There is no effective implementation of customer identification and verification obligations under the MLPCA among accountable institutions except for subsidiaries of foreign banks.</li> </ul>
<b>R.6</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Beneficial owners who are foreign PEPs are not subject to PEPs requirements.</li> <li>• No requirements regarding an existing customer or a beneficial owner who is subsequently found to be or becomes a PEP.</li> <li>• Not all accountable institutions, including bureau de change, providing financial services effectively implement foreign PEPs requirements.</li> </ul>
<b>R.7</b>	<b>C</b>	<ul style="list-style-type: none"> <li>• This recommendation is fully met.</li> </ul>
<b>R.8</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• There is 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.</li> <li>• There is 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.</li> </ul>

### **3.3 Third parties and introduced business (R.9)**

#### **3.3.1 Description and Analysis**

381. There is a limited number of intermediaries offering financial services to accountable institutions in the Kingdom of Lesotho, mainly due to the small size of the financial sector. Intermediaries are mainly used by insurers, albeit at low scale in terms of the market share.
382. By and large, the regulatory regime for the insurance sector is such that insurance intermediaries must be licensed only against the insurance company to which the agent or broker will be offering services, i.e. independent agents or brokers are not allowed.
383. A subsidiary of a South African insurance company with about 80 percent of the insurance market does not use agents or brokers to enter into relationships or conduct transactions. It has its own unit comprising permanent employees who carry out similar functions to those normally performed by an insurance agent or broker. The remaining insurers occupying about 20 percent of the market use insurance agents or brokers.

384. The insurance intermediary industry in the Kingdom of Lesotho is highly concentrated, controlled by one large foreign-owned insurance brokerage firm offering services to two insurers. It was however observed by the assessors during discussions with the insurance company and the brokerage firm that the level of AML/CFT awareness and implementation was generally low.
385. Although bureau de changes are not covered under the MLPCA, they do not rely on third parties or introduced business to offer foreign currency exchange services.
386. It is worth noting that while the MLPCA provides for measures addressing third parties and introduced businesses, there is no implementation of the measures by accountable institutions relying on third parties or introduced business.

### **Legal framework**

Money Laundering and Proceeds of Crime Act

#### ***Requirement to immediately obtain certain CDD elements (c. 9.1)***

387. Pursuant to s16(7)(a) accountable institutions relying on third parties or introduced business are required to immediately obtain all the information and documents on customer identification and verification. The insurance firm, which is a subsidiary of a South African insurance company, interviewed informed the assessors that they deal directly with the clients and do not use brokers. The subsidiary accounts for about 80 percent of the market share in the insurance industry in the country.

#### ***Availability of Identification Data (c. 9.2)***

388. Accountable institutions are required under s16(7)(b) to ensure that copies of information and other relevant documentation related to customer identification and verification will be made to it from the intermediary or third party upon request without delay.

#### ***Regulation and supervision of third party (c. 9.3)***

389. Accountable institutions are required to take measures to satisfy themselves that the intermediary or third party is well regulated and supervised, and have measures in place to implement AML/CFT control measures pursuant to s16(7)(c).

#### ***Adequacy of application of FATF Recommendations (c. 9.4)***

390. There are no guidelines provided by competent authorities to accountable institutions relying on third parties in relation to the measures that should be applied when such third parties originate from countries which do not or insufficiently implement the FATF Standards. In practice however, the relevant accountable institutions interviewed during the onsite visit indicated that it is industry practice to always manage ML/TF risks from countries which have inadequate regulation and supervision in general.
391. The banks indicated that they conducted due diligence on third parties or introduced business relationship or transactions including collecting information on the general

AML/CFT internal policies, practices and procedures of the bank they are dealing with. In addition, they rely on Safe-Watch System which assists banks in identifying undesirable transactions. The authorities indicated that the system has data on the high risk countries as per the UN Security Council Resolutions. Head Office informs the subsidiaries of the updates. In addition there are Standard Operating Forms (Money Laundering and Terrorist Financing Control Forms).

### ***Ultimate responsibility for CDD (c. 9.5)***

392. There is no enforceable requirement for accountable institutions engaging in introduced businesses to take the ultimate responsibility for knowing the customer when engaging with a third party or introduced business.

### **3.3.2 Recommendations and Comments**

393. The assessors observed that generally accountable institutions in the Kingdom of Lesotho do not rely on intermediaries or other third parties to perform some of their CDD procedures when entering into a business relationship or carrying out a transaction as financial services providers prefer to undertake identification procedures by themselves. In order to fully comply with the obligations for the few accountable institutions which rely on third party or introduced business, the authorities should amend s16(7) of the MLPCA to ensure that competent authorities take into account information available on whether a country in which a third party being relied upon by a domestic accountable institution to undertake some of the CDD procedures sufficiently applies the FATF Recommendations.

### **3.3.3 Compliance with Recommendation 9**

	Rating	Summary of factors underlying rating
<b>R.9</b>	PC	<ul style="list-style-type: none"> <li>There are no requirements to take into account information on whether a third party or introduced business is from a country which adequately or insufficiently apply the FATF Recommendations.</li> <li>There is no enforceable obligation for accountable institutions engaging in third party or introduced transactions or relationships to bear the ultimate responsibility for CDD process.</li> <li>Insurance brokers and agents have not implemented the requirements under R.9</li> </ul>

## **3.4 Financial institution secrecy or confidentiality (R.4)**

### **3.4.1 Description and Analysis**

#### **Legal framework**

Financial Institutions Act

Insurance Act

Central Bank of Lesotho Act

## Money Laundering and Proceeds of Crime Act

### *Inhibition of implementation of FATF Recommendations (c. 4.1)*

394. Financial institutions are required to comply with confidentiality or secrecy provisions by the relevant legislations under which they are subject to. The MLPCA however overrides secrecy or confidentiality provisions by requiring financial institutions to provide information when required under appropriate authority for implementation of the provisions of the Act. Section 32(1) of the MLPCA states that: *"This Act shall have effect notwithstanding any obligation as to secrecy or other restriction on disclosure of information imposed by law or otherwise"*.

#### **3.4.2 Recommendations and Comments**

395. In order to facilitate access to information from financial institutions for effective implementation of the MLPCA in a manner consistent with the FATF standard, it is recommended that the authorities in the Kingdom of Lesotho take immediate steps to resolve the conflict under s64(3) of the Central Bank of Lesotho Act and s32(1) of the MLPCA.

#### **3.4.3 Compliance with Recommendation 4**

	Rating	Summary of factors underlying rating
R.4	C	<ul style="list-style-type: none"><li>• This recommendation is fully met.</li></ul>

### **3.5 Record keeping and wire transfer rules (R.10 & SR.VII)**

#### **3.5.1 Description and Analysis**

396. With the exception of the subsidiaries of foreign banks, the rest of the accountable institutions have not implemented the provisions of the MLPCA relating to recording keeping and maintenance. Instead, the rest of the accountable institutions licensed by the CBL follow the guidance in the Anti-Money Laundering Guidelines and the Know-Your-Client Guidelines which were enacted before the coming into force of the MLPCA. The Guidelines are not considered for purposes of determining compliance with this Recommendation.
397. Forex bureau de changes are not covered under the MLPCA. The provision of the MLPCA relating to recording keeping and maintenance is only limited to records related to suspicious transaction reports.

## **Legal framework**

## Money Laundering and Proceeds of Crime Act

### **Recommendation 10**

#### *Record keeping and reconstruction of transaction records (c. 10.1 & 10.1.1)*

398. The obligations for accountable institutions to keep and maintain customer records for at least five years following termination of the transaction and business relationship are provided for under s17 of the MLPCA. This section however requires accountable institutions to only keep records of suspicious transactions in any currency and information obtained through identification and verification procedures. It does not however require accountable institutions to keep and maintain records of any other transaction.
399. For suspicious transactions, the following details must be kept and maintained by accountable institutions as required under s17(3):-
- *the name, address and occupation or where appropriate, business or principal activity of each person conducting the transaction, if known, on whose behalf the transaction is being conducted;*
  - *the nature and date of the transactions;*
  - *the type and amount of currency involved;*
  - *the type and identifying number of any account with the accountable institutions involved in the transactions;*
  - *if the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee, if any, of the instrument and details of any endorsements appearing on the instrument; and*
  - *the name and address of the accountable institution, and the officer, employee or agent of the accountable institution who prepared the report.*
400. There is no requirement under the MLPCA for accountable institutions to keep records longer if requested by a competent authority in specific cases and upon proper authority, regardless of whether the business relationship is still continuing or terminated.
401. Accountable institutions interviewed during the onsite visit indicated that they applied the Anti-Money Laundering Guidelines and the KYC Guidelines to keep all necessary records obtained during the identification process and throughout the business relationship or occasional transaction following termination of a business relationship or transaction. The law enforcement authorities confirmed that they receive all the transaction information and relevant documents whenever requests are made to accountable institutions for purposes of assisting in a criminal investigation.

***Record keeping for identification data (c. 10.2)***

402. Under s17(1)(b) accountable institutions are required to maintain records of identification data. It does not however cover account files and business correspondences. Further, there is no requirement to keep records longer if requested by a competent authority in specific cases upon proper authority.
403. Accountable institutions interviewed by the assessors indicated that they maintain records on identification data, account files and business correspondences for at least 10 years following termination of a business relationship or a transaction. These records are made

available to law enforcement upon proper request. These requirements are set out in the Anti-Money Laundering Guidelines (not enforceable as already discussed).

*Availability of records to competent authorities (c. 10.3)*

- 404. There is no law or regulation that requires accountable institutions to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.
- 405. Discussions with accountable institutions and authorities revealed that accountable institutions are implementing Paragraph 8 of the Anti-Money Laundering Guidelines which requires all records of identification data, account files and business correspondence to be made available to law enforcement upon appropriate authority. Law enforcement authorities confirmed receiving all the information whenever a request is made for purposes of investigations and prosecutions.

**Special recommendation VII**

- 406. Within the CBL, there is National Payment System Division which is responsible for managing payments systems in the country. The NPS Division derives its mandate to regulate payment systems from section 6(h) and (i) of the Central Bank Act 2000. Also, there is an Adhesion Agreement to the participation of Lesotho Wire (RGTS) System. The Division introduced a system called Real Time Gross Settlement (RTGS) to process wire transfers in the Kingdom of Lesotho. It is a wholesale payment system processing only large value and 'time critical' transactions equal to and above M100, 000.00.
- 407. The CBL has another payment system for processing of retail and small transactions known as Automated Clearing House (ACH). The RTGS and the ACH are CBL initiatives for modernisation of the national payment system in the Kingdom of Lesotho.
- 408. For domestic wire transfers of high value and/or are time critical, banks use RTGS. The assessors were informed by the authorities that for retail or low value transactions, it was anticipated that from September 2011 banks would use the ACH which will be administered at BankServe, which is a service provider. It is a clearing system jointly owned and outsourced by the Payments Association of Lesotho. The Payments Association of Lesotho is made up of all the banks which are three commercial banks, CBL and Lesotho Postal Bank. However, the Lesotho Postal Bank is not a member in the clearing and settlement platform.
- 409. For cross-border wire transfers, the banks use the SWIFT network to carry out cross-border wire transactions.
- 410. Banks and Post Office carry out cross-border wire transfers and use SWIFT messaging system. Post Office offers money transmission orders largely destined to Botswana, South Africa and India. However, the provision of the MLPCA and the Adhesion Agreement on wire transfers only covers banks and exclude wire transfers transacted via Post Office. There is no risk assessment conducted to support the exclusion.

### ***Originator information for wire transfers (c. VII.1)***

411. Pursuant to s22(1): *“An accountable institution which is a bank shall include accurate originator information and other related messages on electronic funds transfers and other forms and such information shall remain with the transfer”*.
412. The originator information for wire transfers carried out by banks in foreign currency transactions under the Exchange Control Order, 1987 and its Regulations, 1989, are obtained, cleared and maintained by the Exchange Control Division of the CBL.
413. Banks apply the same customer identification and verification obligations set out in s16(1)(b to c) relating to customers undertaking a transaction to wire transfer transactions.
414. For occasional customers, banks require passport or any other official form of identification (e.g. birth certificate or voter’s registration card), proof of residence, source of income and the purpose of transaction to carry out the transaction. For existing customers, they require identification document and, where the funds appear outside of the profile of the client, proof of source of income for the transaction to go through. The bank also require personal and, where applicable, banking information of the beneficiary irrespective of whether the transaction is domestic or cross-border wire transfer.
415. Money transmission orders conducted by the Post Office are not covered by s22(1) of the MLPCA. It is worth noting that the customer identification and verification requirements applicable to accountable institutions when a transaction is carried out apply equally to money transmission orders. Nevertheless, there is no enforceable obligation for money transmission services provided outside of the banking sector to obtain originator information for the wire transfer. In practice, the Post Office which offers money transmission orders requires passport or any other official form of identification (such as birth certificate or voter’s registration card for Lesotho nationals only) and residential address details. They do not obtain information relating to the source and purpose of the funds being transferred. They also require information on the beneficiary of the funds being transferred.

### ***Inclusion of originator information in cross border wire transfers (c. VII.2& 3)***

416. The MLPCA requires banks to include originator information in all cross-border wire transfers regardless of value conducted by ordering bank in the Kingdom of Lesotho. The banks employ SWIFT and RTGS requirements to obtain originator information for cross-border and domestic transactions, respectively. The information amongst others includes an account number, address, name, relationship, purpose (reason of transfer) and threshold payment. This is done as a directive given under the Exchange Control Rules & Regulations for all transactions. If the information is lacking then the transaction does not go through.
417. It was not clear to the assessors whether the Adhesion Agreement covers cross-border money transmission orders offered by the Post Office.

### ***Originator information through payment chain (c. VII.4 & VII.4.1)***

418. Banks regardless of whether they are intermediary or beneficiary institutions are required to keep in the payment chain all originator information that accompanies a wire transfer in terms of s22. However, there is no requirement for bank acting as an intermediary to keep the originator information for at least five years where technical limitations prevent the full originator information accompanying a cross-border wire transfer from being transmitted with a related domestic wire transfer.
419. There are no requirements covering wire transfers conducted by Post Office through money transmission orders.

### ***Risk based procedures for wire transfers that do not contain originator information (c. VII.5)***

420. There is no requirement for beneficiary financial institutions to adopt risk-based procedures for handling wire transfers that do not contain complete originator information.

### ***Monitoring of compliance with SR VII (c. VII.6)***

421. Cross-border wire transfers done by authorised dealers in foreign currency transactions are monitored by the Exchange Control Division for compliance with the Exchange Control Order and its Regulations.
422. Where wire transfers are conducted through the National Payment System, the National Payment System monitors the transactions.
423. In both cases however, there is no requirement to determine if the transaction lacking in full originator information is suspicious for purposes of reporting it to the DCEO or CBL under the MLPCA and AML Guidelines, respectively.
424. Wire transfers conducted by Post Office in the form of cross-border money transmission orders are not subject to s22(1) and Adhesion Agreements provisions and therefore are not monitored for compliance.

### ***Sanctions (c. VII.7)***

425. Pursuant to s113 of the MLPCA it is an offence for failure to comply with the obligations on wire transfers and liable on conviction to a fine not less than M100, 000.00 or to imprisonment for a period not less than 30 months and in a case of a legal person a fine of not less than M100, 000.00. S113(2) provides discretion to the courts to meet out a lesser penalty than that provided for so long as the courts give reasons for doing so in writing. At the time of the onsite, there was no sanction issued for failure to comply with s22 of the MLPCA. These sanctions do not apply to Post Office in relation to wire transfers conducted through money transmission orders. There are no administrative sanctions such as cancellation of operating license. Further, it is the view of the assessment team that the sanctions do not appear to be effective, proportionate and dissuasive enough for failure to comply with wire transfer obligations.



426. Only domestic wire transfers are processed through Lesotho Wire (RTGS) administered by the National Payments System. The participants are expected to comply with the requirements set out in the Lesotho Wire Rule Book. The offences and sanctions for failure to comply with the Lesotho Wire Rule Book for both domestic and cross-border wire transfers are provided under Clause 4 of the Book. Clause 4 provides for the following:

### **Suspension and Withdrawal of Participants**

#### **Clause 4.1**

427. The Bank may decide to suspend or withdraw a Participant upon occurrence of any event which may reasonably be interpreted by the Bank as a source of financial, legal, operational or more generally systemic risk for the Participant(s), itself, the System or the financial system in Lesotho, including the following events; this list being illustrative and non-exhaustive:

- Where a Participant enters into Insolvency Proceedings or where such Insolvency Proceedings are impending,
- Where the access criteria defined in Clause 3 are not fully met,
- Where a Participant is in breach of any of its obligations under the Rule Book, the CBL Cash Current Account Rules or any other act governing its relation to the Bank.

#### **Clause 4.2**

428. The withdrawal of a Participant shall be automatic in the following cases:

- upon opening of Insolvency Proceedings against such Participant,
- upon withdrawal of its license under the National Payment System Bill, if the Participant is a payment system, a clearing house or a securities settlement system,
- Upon withdrawal of its license under the Financial Institution Act, 1999 if the Participant is a Financial Institution.

#### **Clause 4.3**

429. The suspension of a Participant shall be automatic in the following cases:

- upon impending Insolvency Proceedings which may be opened against such Participant,
- upon suspension of its license under the National Payment System Act, 2006 if the Participant is a payment system, a clearing house or a securities settlement system,
- Upon suspension of its license under the Financial Institution Act, 1999 if the Participant is a Financial Institution.

#### **Clause 4.4**

430. The Bank shall inform the other Participants as soon as practicably possible, of the suspension or withdrawal of one or more Participants.

#### **Clause 4.5**

431. The Participant shall immediately inform the Bank of the opening of Insolvency Proceedings against itself or the occurrence of any fact or event, which may empower the Bank to suspend or withdraw such Participant under Clause 4.1.

#### ***Incoming cross border wire transfers (c. VII.8)***

432. There is no express requirement for all incoming cross-border wire transfers to contain full and accurate originator information.

#### ***Outgoing wire transfers of less than EUR/USD 1,000 (c. VII.9)***

433. The assessment made under criterion VII.2&3 applies.

#### **3.5.2 Recommendations and Comments**

434. The provisions of the MLPCA in relation to recordkeeping and wire transfers do not comply with the applicable criteria under the FATF Recommendations. Accordingly, the authorities should do the following to improve the AML/CFT regulatory framework in the country:-

#### **FATF Recommendation 10:**

- The authorities should amend s17 of the MLPCA to ensure that accountable institutions are required to maintain all records of transactions (not just suspicious transactions) for a minimum period of five years or longer if requested by a competent authority in specific cases and upon proper authority.
- The authorities should amend s17 of the MLPCA to require accountable institutions to maintain records of account files and business correspondence for a period of five years following termination of a business relationship or transaction.
- The authorities should amend s17 to ensure that accountable institutions make available on timely basis all customer and transaction records and information to domestic competent authorities upon appropriate authority.

#### **Special Recommendation VII:**

- The authorities should ensure that wire transfers (domestic and cross-border) conducted by Post Office in the form of money transmission orders are subject to relevant provisions of the Exchange Control Regulations and Rules, Wire Rule Book of the Adhesion Agreement and amend s22 of the MLPCA to include all wire transfers irrespective of the name of the accountable institution carrying out the transaction. The current listing of banks is too restrictive.
- Ensure 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.

- Require beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. In addition, where lack of originator information raises suspicion, such information should be reported to the FIU or relevant competent authority.
- Set up measures to effectively monitor the compliance of financial institutions (e.g. banks and Post Office) with rules and regulations arising from the Exchange Control Regulations, Adhesion Agreement (Wire Rule Book) and MLPCA implementing the requirements under SR.VII.
- The authorities should consider requiring that all incoming cross-border wire transfers irrespective of value contain full and accurate originator information as the current requirements only cover outgoing wire transactions.

### 3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	NC	<ul style="list-style-type: none"> <li>• There is no law or regulation that requires accountable institutions to keep all necessary transaction records as the MLPCA covers only suspicious transactions.</li> <li>• There is no obligation whether in or regulation requiring accountable institutions to maintain account files and business correspondence.</li> <li>• There are no obligations whether in law or regulation for accountable institutions to ensure that all customer and transaction records and information is made available for competent authorities on timely basis upon appropriate authority.</li> <li>• A bureau de change operating outside of banks is not subject to recordkeeping obligations.</li> </ul>
SR.VII	NC	<ul style="list-style-type: none"> <li>• It is not clear whether wire transfer requirements under Adhesion Agreement include wire transfers through money transmission orders offered by Post Office.</li> <li>• Money transmission orders transacted at Post Office not subject to MLPCA provision on wire transfers.</li> <li>• There is 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.</li> <li>• Beneficiary financial institutions should be required to adopt</li> </ul>

		<p>effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.</p> <ul style="list-style-type: none"> <li>• There are 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.</li> <li>• The Kingdom of Lesotho does not have measures in place to effectively monitor the compliance of financial institutions with available rules and regulations implementing domestic SR.VII requirements.</li> <li>• The sanctions do not cover administrative measures, and are also not effective, proportionate and dissuasive.</li> </ul>
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### **Unusual and Suspicious Transactions**

#### **3.6 Monitoring of transactions and relationships (R.11 & 21)**

##### **3.6.1 Description and Analysis**

##### **Legal framework**

Money Laundering and Proceeds of Crime Act

##### **Recommendation 11**

##### ***Special attention to complex, unusual large transactions (c. 11.1)***

435. Pursuant to s21 accountable institutions must pay special attention to all complex, unusual or large transactions and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. In terms of Paragraph 15 of the KYC Guidelines, financial institutions monitoring of transactions should depend on the risk sensitivity of the account. One bank informed the assessors that they are still working towards installing a transaction monitoring system for unusual large transactions. The banks check all transactions on daily basis and prepare a daily report on unusual and large transactions.

436. The other accountable institutions interviewed informed the assessors that they are yet to implement measures to pay special attention to complex, unusual large transactions.

##### ***Examination of complex & unusual transactions (c.11.2)***

437. There is no enforceable requirement for accountable institutions to examine as far as possible the background and purpose of such transactions and to set forth their findings in writing. The banks indicated that they applied Paragraph 15(2) to periodically review the operations of the account to detect unusual large transactions and apply enhanced due diligence on the account where such transactions have been identified. The variables on the

purpose and nature of business relationship (c.5.6), and the customer risk categorisation (c.5.8 to c.5.12) are periodically reviewed to determine the required level of due diligence measures on the account. Banks interviewed indicated that they conduct daily and quarterly monitoring of transactions to detect complex and unusual transactions which should be monitored consistently on the basis of their risk.

#### ***Record keeping of findings of examination (c.11.3)***

438. Accountable institutions apply the recordkeeping period under s17(4) of the MLPCA for information and data regarding a business relationship and transaction. There is no direct requirement however for accountable institutions to keep such findings available for competent authorities and auditors for at least five years.

### **Recommendation 21**

#### ***Special attention to countries not sufficiently applying FATF Recommendations (c.21.1 & 21.1.1)***

439. There are no requirements for accountable institutions 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. Further, there is no requirement for accountable institutions to put in place effective measures to ensure that accountable institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.

#### ***Examination of transactions with no apparent economic or visible lawful purpose (c. 21.2)***

440. There is no obligation for transactions that have no apparent economic or visible lawful purpose, the background and purpose of such transactions should, as far as possible, be examined, and written findings should be available to assist competent authorities (e.g. supervisors, law enforcement agencies and the FIU) and auditors.
441. There is no obligation for accountable institutions to examine as far as possible transactions that have no apparent or visible lawful purpose their background and purpose, and to put the findings in writing for use by competent authorities and auditors

#### ***Ability to apply counter measures with regard to countries that insufficiently apply FATF Recommendations (c. 21.3)***

442. There is no obligation for accountable institutions to apply appropriate counter-measures where a country continues not to apply or insufficiently applies the FATF Recommendations when dealing with business relationships or transacting from that country.

### **3.6.2 Recommendations and Comments**

443. In order to put in place effective AML/CFT control measures for monitoring of complex, unusual large transaction and transactions or business relationships from countries which do not or inadequately apply the FATF Standards, the authorities should do the following:-

FATF Recommendation 11:

- The authorities should require accountable institutions to set forth the findings resulting from examination of the background and purpose of complex, unusual large transactions in writing and make such findings available for use by competent authorities and auditors for at least five years.

FATF Recommendation 21:

- The authorities should take immediate steps to require accountable institutions to comply with the obligations of the FATF Recommendation 21.

444. The authorities should undertake effective awareness raising programmes to all accountable institutions, not just banks, to ensure that the requirements set out in the FATF Recommendations 11 and 21 are effectively implemented in the financial sector of the Kingdom of Lesotho.

**3.6.3 Compliance with Recommendations 11 & 21**

	Rating	Summary of factors underlying rating
<b>R.11</b>	NC	<ul style="list-style-type: none"><li>• Bureau de changes are not subject to criteria under R.11</li><li>• With the exception of banks, the other accountable institutions have not implemented measures to pay special attention to complex, unusual large transactions.</li><li>• Accountable institutions not required to set forth their findings on monitoring of complex, unusual transactions in writing.</li><li>• There is no requirement for accountable institutions to make available such findings to competent authorities and auditors for at least a period of five years.</li></ul>
<b>R.21</b>	NC	<ul style="list-style-type: none"><li>• Accountable institutions are 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 are no effective measures in place to ensure that accountable institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.</li><li>• There are 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.</li><li>• There are no measures to ensure that reporting persons are advised of concerns about weaknesses in the AML/CFT systems of other countries.</li><li>• The MLPCA does not make provision for the possibility to apply appropriate counter measures where a country continues</li></ul>

		not to apply or insufficiently applies the FATF Recommendations
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### **3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)**

#### **3.7.1 Description and Analysis<sup>19</sup>**

445. Bureaux de changes are not covered, therefore not subject to reporting obligations under the MLPCA.

#### **Legal framework**

Money Laundering and Proceeds of Crime Act

#### **Recommendation 13**

##### ***Requirement to make STRs on ML & TF to FIU (c.13.1 & IV.1)***

446. The reporting obligation under s18(1) of the MLPCA which requires accountable institutions to file an STR when there is a reasonable ground to suspect that the transaction is related to the commission of money laundering offence are not yet in force.
447. Pursuant to s23 supervisors and auditors of an accountable institution are required to file an STR where it suspects or has reasonable grounds to suspect that information that it has concerning any transaction or attempted transaction may be related to the commission of an offence, a money laundering offence or an offence of financing of terrorism; or when it has information that it suspects may be relevant to an act preparatory to an offence of the financing of terrorism, or an indication of money laundering.
448. However despite the MLPCA not having been fully implemented at the time of the on site visit, the assessors were informed that it was only banks which were filing STRs with the LMPS for investigation and with the CBL for recordkeeping purposes.

##### ***STRs related to Terrorism and its financing (c. 13.2)***

449. Pursuant to s18(1) an accountable institution is required to report to the FIU and the DCEO when it has a reasonable ground to suspect that a transaction is related to the commission of a terrorist financing offence.

##### ***No reporting threshold for STRs (c. 13.3)***

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<sup>19</sup> The description of the system for reporting suspicious transactions in s.3.7 is integrally linked with the description of the FIU in s.2.5, and the two texts need to be complementary and not duplicative.

450. Pursuant to s18(1) of the MLPCA, accountable institutions are required to report any transaction where it has reasonable grounds to suspect that it is related to the commission of money laundering or terrorist financing offence.
451. While there is an obligation for supervisors and auditors to report attempted transactions under s23, the Act does not have similar requirements for accountable institutions.

***Making of ML& TF STRs regardless of possible involvement in tax matters (c.13.4 & IV.2)***

The MLPCA requires accountable institutions to report any transaction where there are reasonable grounds to suspect that they relate to the commission of a money laundering or terrorist financing offence, regardless of whether tax matters are involved or not.

***Additional element –reporting of all criminal acts (c. 13.5)***

452. The MLPCA provides that *“whenever an accountable institution has reasonable grounds to suspect that any transaction is related to the commission of a money laundering offence or terrorist financing they must report. This means that accountable institutions must report all transactions arising from proceeds of criminal acts that could be related to the commission of money laundering offence or terrorist financing.*

**Recommendation 14**

***Protection for making STRs (c. 14.1)***

453. Pursuant to s33 and s34 of the MLPCA, accountable institutions, their directors, officers and employees are protected from any action, suit or other proceedings for breach of any restrictions on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision for making a report in good faith to the FIU and the DCEO.
454. Supervisors and auditors reporting under s23 are not protected from any criminal or civil liability arising from making an STR.

***Prohibition against tipping-off (c. 14.2)***

455. Tipping-off against STRs information is prohibited in the Kingdom of Lesotho. In terms of s24(1) accountable institutions, their directors, officers and employees are prohibited from tipping-off the fact that an STR or related information is being reported or provided to the FIU. This however does not cover STRs reported to the DCEO.
456. However, s26(6) states that: “In proceedings for an offence against subsection 5 (tipping off), it is a defence to prove that the person did not know or have reasonable grounds to suspect that the disclosure was likely to prejudice any investigation of an offence or possible offence of money laundering under section 25”. It would appear that this provision is likely to compromise the effectiveness of the prohibition against disclosure of STR information reported to the FIU.



457. Supervisors and auditors making reports under s23 are not prohibited by law from disclosing the fact that an STR or related information is being reported or provided to the FIU and the DCEO. It is not clear to the assessors why supervisors are subject to same reporting obligations like the regulated entities. Further, it was not clear to the assessors how the authorities intended to sanction the CBL (as a supervisor) in an event it contravenes s24 of the MLPCA.

*Additional element –confidentiality of reporting staff (c. 14.3)*

458. There is no enforceable requirement to ensure that the names and personal information of staff of accountable institutions that make STRs are kept confidential by the FIU and the DCEO.

**Recommendation 19**

459. In terms of s16(10) accountable institutions are required to report any transaction in excess M100, 000.00 or any amount as may be prescribed by the Minister by notice in a gazette in a format to be prescribed by the Minister. The section however does not state the institution/agency to which the threshold reports should be submitted.

**Recommendation 25**

*Feedback to financial institutions (c. 25.2)*

460. The CBL and the CCCU of the LMPS do not provide adequate and appropriate feedback to reporting entities.

**3.7.2 Recommendations and Comments**

461. The AML/CFT regulatory framework provides for reporting of suspicious transactions and prohibition against tipping-off obligations for accountable institutions. However, reporting obligations under the MLPCA are not yet in force and subsequently affect the implementation of prohibition against tipping-off requirements. In order to improve the AML/CFT regulation and implementation measures, it is recommended that the authorities should do the following:-

FATF Recommendation 13:

- Take necessary action to bring into force the provision under the MLPCA and ensure that accountable institutions report STRs only to the FIU Lesotho.
- Take necessary steps to require bureau de changes to report STRs
- Take urgent steps to amend s18 of the MLPCA to require accountable institutions to report only to the FIU suspicious transactions when they suspect or have reasonable grounds to suspect that funds are the proceeds of a criminal activity in a manner consistent with the minimum requirements regarding predicate offences to money laundering as required under c.1.3 of the FATF Recommendation 1.
- Undertake effective outreach programme to make all accountable institutions aware of their reporting obligations under the MLPCA.

Special Recommendation IV:

- Bring into force the reporting obligations provision under the MLPCA on STRs relating to financing of terrorism for submission to the FIU.
- Take immediate steps to subject bureau de change to reporting obligations under the MLPCA.

FATF Recommendation 14:

- Consider applying the criteria under R.14 to supervisors and auditors for reports made under s.23 given that they are required to submit STRs to the FIU Lesotho.

FATF Recommendation 19:

- Design and implement the currency threshold transactions reporting format and state the institution/agency to which the reports should be submitted. Further, the institution/agency should have a national computerised database accessible to authorised institutions/agencies.

FATF Recommendation 25:

- Take necessary steps to provide accountable institutions that are required to make STRs with adequate and appropriate feedback taking into account the *FATF Best Practice Guidelines on Providing Feedback to Reporting Financial Institutions and Other Persons*.

**3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV**

	Rating	Summary of factors underlying rating
R.13	NC	<ul style="list-style-type: none"><li>• Reporting obligations under s18 of the MLPCA are not in force.</li><li>• Bureau de changes are not subject to reporting obligations.</li><li>• Accountable institutions are not required to report attempted transactions where there is reasonable suspicion for ML or TF.</li><li>• Effectiveness could not be determined since the reporting obligations under the MLPCA have not yet been implemented.</li></ul>
R.14	LC	<ul style="list-style-type: none"><li>• Effectiveness could not be determined as reporting obligations have not yet been implemented.</li></ul>
R.19	C	<ul style="list-style-type: none"><li>• This recommendation is fully observed.</li></ul>
R.25	NC	<ul style="list-style-type: none"><li>• No adequate and appropriate feedback provided to reporting entities.</li><li>• Issue guidelines to accountable institutions to assist them in reporting STRs.</li></ul>

SR.IV	NC	<ul style="list-style-type: none"> <li>• Reporting obligations not yet in force.</li> <li>• Bureau de changes are not subject to reporting obligations.</li> <li>• Effectiveness could not be determined since the reporting obligations under the MLPCA have not yet been implemented.</li> </ul>
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### Internal controls and other measures

## **3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)**

### **3.8.1 Description and Analysis**

#### **Legal framework**

462. Independent foreign exchange bureaus are not subject to the MLPCA provisions, and do not have foreign branches. The MLPCA contains no explicit provision relating to internal procedures, policies and controls that address AML/CFT matters. With respect to foreign branches and subsidiaries, the Act does not specifically require financial institutions to ensure that they observe any AML/CFT measures.
463. Given the limited provisions in the MLPCA, the authorities rely on the provisions in the Financial Institutions (Internal Control Systems) Regulations of 2000 and Financial Institutions (Anti-Money Laundering) Guidelines of 2000 to meet the criteria relating to Recommendation 15. The Guidelines and the Regulations were issued before the coming into force of the MLPCA in 2008. The Regulations and the Guidelines were issued under Section 71 of FIA. However, section 71 empowers the Commissioner to issue guidelines, regulations etc in order to give full effect to the implementation of the FIA. The FIA does not contain any provisions addressing AML/CFT matters. For this reason, the assessors are of the view that the Regulations and Guidelines do not have the legal basis – they cannot be used to address, or be extended to cover, matters that are not included in the primary legislation.
464. In addition, the MLPCA does not designate the Commissioner as a supervisory authority of financial institutions licensed under FIA for AML/CFT purposes. For this purpose, the Commissioner does not have legal powers to issue AML Regulations or Guidelines and enforce AML/CFT compliance. In addition to this deficiency, it is also important to note that application of these Guidelines is limited to institutions licensed under FIA. The FIA does not contain any AML/CFT provisions nor does it make reference to the MLPCA.

## Recommendation 15

### *Establish and maintain internal controls to prevent ML& TF (c. 15.1, 15.1.1 & 15.1.2)*

465. The MLPCA does not contain any specific requirement for accountable institutions to establish and maintain internal procedures, policies and controls that address CDD, record retention, detection of unusual and suspicious transactions to prevent ML and FT. Instead pursuant to s19(1), *accountable institutions are required to establish and maintain internal reporting procedures*. With respect to the requirement to appoint an AML/CFT compliance officer, the Act provides that accountable institutions should identify persons who will ensure compliance with the obligations under the MLPCA, This provision appears unclear to the assessors since the word “*to identify*” does not ordinarily mean “*to appoint*”. In addition, the Act stipulates that the identified person must be a senior officer with relevant qualifications and experience to champion AML/CFT activities in terms of s19(2)(a). However, it is not clear whether the senior officer will be at a management level and the term “senior officer” has not been defined. Despite the deficiency in the law, it appears from discussions with representatives of the banking sector that Compliance Officers hold management positions.
466. The functions of the *senior officer* include development of and ensuring compliance with AML/CFT Compliance Manual, having *reasonable access* to information and acting as a liaison person between the accountable institutions, FIU and the DCEO. The assessors are of the view that “reasonable access” to information by the senior officer may not necessarily mean “timely access”. In addition, reasonable access to information is limited to the senior officer as the provision does not include “other appropriate staff”.
467. With respect to financial institutions licensed under FIA, Part II of the Financial Institutions (Anti-Money Laundering) Guidelines requires them to develop internal controls, policies, and procedures against money laundering. They are also required to designate compliance officers at management level. However, as observed in the foregoing paragraphs, these Guidelines do not have a legal basis and can not be enforced since the FIA, under which they were issued, does not contain anti-money laundering provisions.

### *Independent audit for internal controls to prevent ML & TF (c. 15.2)*

468. Pursuant to s20(c) accountable institutions are required to have an audit system to implement compliance measures. However, there is no specific requirement that requires accountable institutions to maintain an adequately resourced and independent audit function to test compliance with AML/CFT internal procedures, policies and controls. It is noteworthy that Financial Institutions (Internal Control Systems) Regulations, 2000 requires accountable institutions licensed under the FIA to establish an effective and comprehensive internal audit system carried out by operationally independent, appropriately trained and competent staff. Considering that s71 of the FIA limits the scope of the Regulations, the assessors are of the view that they cannot be enforced for AML/CFT purposes.
469. The authorities indicated that AML onsite inspections include review of internal audit reports of accountable institutions to confirm that such internal audits test compliance with

AML requirements. It was not possible to determine the extent of implementation of the Regulations as assessors were not provided with inspection reports to confirm the impressions of the supervisory authorities on the adequacy and scope of the internal audit function.

470. However, one bank indicated that they maintained a risk management division which included AML/CFT section. It further stated that general annual audit on risk management included risks related to ML and TF and resources are allocated accordingly to mitigate all risks identified in the audit report.
471. It is also important to note that the application of these Regulations is limited to financial institutions licensed under FIA. In addition, the rest of the laws such as the Insurance Act, Money Landers Act, do not have any provisions relating to internal controls as well as AML/CFT related provisions.

***Ongoing employee training on AML/CFT matters (c. 15.3)***

472. Accountable institutions are obliged to establish and maintain internal reporting procedures to provide employees with appropriate training in the recognition and handling of ML and TF transactions and that compliance officers must ensure that staff comply with the manual of compliance procedures (s19(2)(c)(ii) and s20(b)). Further, accountable institutions are required under s20(a) to take appropriate measures to make employees aware of domestic AML/CFT laws, including its internal procedures and related policies under the Act.
473. However, training for employees is limited to recognition and handling of ML and TF transactions. It does not specifically extend to CDD and new development of ML and TF, and methods and trends. There is no enforceable requirement for the training to be on an ongoing basis.
474. In addition, the FIU is expected under s15(2)(j) to create training requirements and provide such training to any accountable institution in respect of transactions record keeping and suspicious transaction reporting obligations.
475. Compliance officers of subsidiaries of foreign banks are required by their respective companies to register for AML/CFT programmes at a university in South Africa. One bank indicated that all compliance officers attend annual compliance conferences organised by the parent company for their African subsidiaries where AML/CFT compliance issues are also discussed.
476. The bank further disclosed that all staff is trained on AML/CFT especially internal control rules as standard requirement under the AML/CFT Group Policy. Regular training is provided on the basis of the outcomes of the reviews on internal control rules and interventions recommended by head office arising from monthly AML/CFT situational analysis.

***Employee screening procedures (c. 15.4)***

477. Under the AML/CFT framework there is no legal or regulatory requirement for accountable institutions to have in place screening procedures to facilitate application of high standards when hiring employees. However, with respect to institutions licensed under the FIA, there is a provision prohibiting appointment of directors and officers who are not fit and proper, in terms of probity, competence, soundness of judgement, diligence and criminal record (s43 and s44). The scope of these provisions does not include all employees as s2 of the FIA defines an “officer” as Chairman, Vice-Chairman, President, Vice-President, Managing Director, General Manager, Controller, Secretary or Treasurer. Despite the deficiency in the legal provision, industry representatives explained that they do carry out screening exercises for all employees, which includes checking for criminal records with the LMP.

*Additional element – independence of compliance officer (c. 15.5)*

478. There is no clear provision stipulating that the Compliance Officer shall act independently and report to senior management. Section 19 of the MLPCA merely states that an accountable institution shall identify a senior officer who must have relevant qualifications and experience to enable him to respond sufficiently well to enquiries relating to its business. The law does not prescribe any reporting lines within the institution. However, according to discussions with reporting entities, compliance officers do act independently and report to senior management. Banks indicated that compliance officers are part of Executive Management and participate in management decision-making meetings.

**Recommendation 22**

479. This FATF Recommendation does not apply to the Kingdom of Lesotho since domestic financial institutions do not have foreign branches and subsidiaries operating in other jurisdiction(s).
480. Nevertheless, there is no statutory, regulatory or other enforceable provision that would require accountable institutions to apply AML/CFT measures to foreign branches and subsidiaries consistent with those of the Kingdom of Lesotho.

**3.8.2 Recommendations and Comments**

481. In order for the authorities to adequately implement effective internal controls, compliance and audit measures against money laundering and terrorist financing, the following should be in place:-
- require accountable institutions to establish and maintain internal procedures, policies and controls to prevent ML and FT, and to communicate these to their employees. This requirement should extend to developing compliance management arrangements, including the designation of an AML/CFT compliance officer at the management level who has timely access to all records and information.
  - require accountable institutions to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with the procedures, policies and controls.
  - require accountable institutions, and not the FIU, to establish on-going employee training to ensure that employees are well equipped to take AML/CFT measures.

- a clear requirement should be created for employees' screening procedures to ensure high standards.
- The MLPCA should cover foreign exchange bureaus and subject them to internal control and policies obligations.
- Effective awareness raising and implementation programmes to ensure that accountable institutions understand how to comply with R.15 measures.

### 3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	NC	<ul style="list-style-type: none"> <li>• There is no enforceable requirement for accountable institutions to establish and maintain internal control policies, procedures and controls.</li> <li>• 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.</li> <li>• There is no requirement for ongoing training to ensure that employees are kept updated on new developments, techniques, trends and methods of ML and TF.</li> <li>• Accountable institutions are not required to have screening procedures to ensure high standards when hiring employees.</li> </ul>
R.22	N/A	<ul style="list-style-type: none"> <li>• Accountable institutions in the Kingdom of Lesotho do not have foreign branches or subsidiaries operating in other jurisdictions.</li> </ul>

## 3.9 Shell banks (R.18)

### 3.9.1 Description and Analysis

#### Legal framework

Financial Institutions Act

#### *Prohibition of establishment of shell banks (c. 18.1)*

482. According to s.4(1) of the FIA no banking or credit business is permitted within the Kingdom of Lesotho or abroad by a local financial institution or in the Kingdom of Lesotho by a foreign financial institution unless that financial institution has been licensed by the Commissioner. Furthermore, s.5(1)(f) requires the applicants to submit information about the location of its principal office and other places of business in the Kingdom of Lesotho where it proposes to carry on its activities.
483. The process of reviewing an application for a banking licence involves, among other things, examining full particulars of the business it proposes to carry on and the manner in which it proposes to carry out its activities (s.5). In addition, before a bank opens a new place of business the Commissioner or any authorised officer acting on his behalf conducts a premises inspection. This process permits the Commissioner to satisfy himself that the bank has physical presence.

484. If the Commissioner establishes that the proposed banking institution will conduct its business in a manner that meets the description of the shell bank, then such an application is rejected. The CBL has not chartered any shell bank and there are no shell banks operating in the Kingdom of Lesotho. The assessors concluded that licensing regulatory procedures for financial institutions particularly banks effectively prevent establishment of shells banks in the Kingdom of Lesotho.

***Prohibition of correspondent banking with shell banks (c. 18.2)***

485. There is no express provision in the MLPCA or the FIA, or any other law in the Kingdom of Lesotho that prohibits banks to enter into, or continue, correspondent banking relationships with shell banks.

***Requirement to satisfy respondent financial institutions prohibit the use of accounts by shell banks (c. 18.3)***

486. There is no enforceable obligation for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. The banks are voluntarily implementing the KYC Guidelines, which urges them to guard against establishing relationships with respondent foreign banks that permit the use of their accounts by shell banks. However, the banks that met the assessors did not explain satisfactorily how they satisfy themselves that the respondent banks comply with this requirement and the authorities have not provided any guidance to that effect.

**3.9.2 Recommendations and Comments**

487. In order to fully comply with the requirements relating to shell banks consistent with the FATF Recommendations, the authorities should not permit financial institutions to enter into, or continue, correspondent banking relationships with shell banks; and should require them to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

**3.9.3 Compliance with Recommendation 18**

	Rating	Summary of factors underlying rating
R.18	PC	<ul style="list-style-type: none"><li>• There is no requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign jurisdiction do not permit their account to be used by shell banks.</li><li>• There is no prohibition for financial institutions to enter into, or continue correspondent banking relationship with shell banks.</li></ul>

**Regulation, supervision, guidance, monitoring and sanctions**



### **3.10 The supervisory and oversight system - competent authorities and SROs**

#### **Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)**

#### **3.10.1 Description and Analysis**

488. The list of accountable institutions under Schedule 1 to the MLPCA does not cover foreign exchange bureaus as required under the FATF 2004 Methodology. The deficiencies identified under Section 3 of this report regarding obligations of financial institutions to implement adequate AML/CFT control measures consistent with the FATF Recommendations will affect the adequacy of regulation and supervision, including effective implementation. Further, the scope and deficiencies of the MLPCA are adequately discussed under Section 3.1 of this report.
489. It is worth noting that for prudential supervision, the CBL only supervises accountable institutions licensed under the FIA, the Money Lenders Act, the Building Finance Institutions Act and the Insurance Act (s.6(e)) and foreign exchange dealers and licensed institutions in terms of the Central Bank Act (s6(e)).

#### **Legal framework**

Money Laundering and Proceeds of Crime Act  
Financial Institutions Act  
Central Bank Act

#### **Recommendation 23**

##### ***Regulation and supervision of financial institutions (c. 23.1 & c.23.2)***

490. In terms of s15 (2) of MLPCA, the FIU is responsible for supervision of accountable institutions to ensure compliance with the provisions of the Act. As already discussed under R.26, the FIU provision was not yet in force at the time of the onsite and two months immediately thereafter. Effectively, there is no supervision of accountable institutions to ensure compliance with AML/CFT obligations.
491. The CBL applies its general supervisory powers under the Central Bank Act (s 6(e)) and the FIA (s49) to also cover AML issues in line with the AML Guidelines. However, as already observed under Recommendation 15, the CBL does not have the necessary legal basis for carrying out AML/CFT supervision. The legal framework confers supervisory powers on CBL with respect to safety and soundness of the financial sector without specific reference to AML/CFT matters.

##### ***Prevention of criminals from controlling institutions (c. 23.3 & 23.3.1)***

#### **Banks**

492. The CBL is responsible for authorising acquisition of interest in capital stock of a local financial institution which would confer him a voting share exceeding 10% of the total (section 18 (2) of the FIA) of a new or existing financial institution. This is understood to

cover initial acquisition of stock for a new financial institution and subsequent acquisitions that may happen thereafter. A review of the FIA did not show any information that is required to support an application to acquire shareholding above the threshold in an existing financial institution. In addition, the authorities did not satisfy the assessors with respect to how they ensure that prospective shareholders do not use illegitimately acquired funds to acquire stake in the banks.

493. In the auxiliary financial services sector, the Financial Institutions (Auxiliary Financial Service Providers) (licensing requirements) Regulations 2003 which were issued under s.12 of the FIA address, among other issues, licensing requirements applicable to prospective shareholders. These regulations, read together with Schedules I to III of Personal Declaration Form require prospective (both direct and indirect) shareholders to declare information and submit documents that may assist in conducting investigations to establish that these individuals meet the first and proper test. One of the documents required is a police clearance report. If the prospective shareholder is a foreign entity, the CBL requires clearance from respective supervisory authorities of that entity. However, the assessors were not able to get satisfactory explanations on how the authorities deal with a prospective foreign shareholder which is not a supervised institution.
494. The Act does not have a provision (similar to s18) that addresses acquisition of stock in an existing ancillary financial service provider (i.e. long after it has been licensed).
495. With respect to management, the FIA provides for the vetting of appointment of directors and officers in a financial institution. In particular, s43 (1) and s44 of FIA provide that no person shall be first director of a newly licensed financial institution and no person shall be elected or appointed as a director or officer of a licensed institution if the person has been convicted of a felony or any offence involving fraud, dishonesty or breach of trust. Furthermore section 7 (1) of the Financial Institutions Act stipulates that: "In considering an application for a license, the commissioner shall conduct such investigations and enquiries as may be deemed necessary to determine whether the applicant is fit and prosper to be granted a license under this Act". However, in the absence of the guidelines used to vet the appointments and procedures applied to confirm the suitability of directors or senior management, it was difficult to establish that the authorities take necessary measures to prevent criminals or their associates from holding a management function in a financial institution.
496. The FIA does not have similar provision (to s43 and s44) that address appointment of directors and senior management subsequent to the licensing stage. Furthermore, the rest of the laws do not have provisions that ensure vetting of shareholders, directors and senior management.

#### *Insurance*

497. Every person wishing to conduct insurance business must apply to the Commissioner of the CBL in a prescribed form in a manner consistent with s9 of the Insurance Act. The information needed for a licence applicant include: i) a certified copy of the memorandum and articles of association, ii) the names, addresses and occupations of directors, and other

relevant documentation for a foreign company on its affairs; and where an applicant is a foreign company, the name and address of the principal officer in Lesotho and the name and address of one person resident in Lesotho who is authorised to accept any notice required to be served upon the applicant, iii) the address of the place of business of the applicant, iv) the names and addresses of persons holding five percent (5%) or higher of the share capital of the applicant and the number of shares allotted to each applicant. An insurance business licence will be issued under s10 if the applicant fulfils the registration requirements. The licence is renewable on annual basis. The Commissioner of the CBL reserves the right to renew or cancel a licence for any unsatisfactory conduct by a licensee pursuant to s11. Any changes to the insurance company must be communicated to the Commissioner of CBL within a month as required under s15.

498. For a foreign insurance company, s21 requires a certificate from the home regulator to the effect that the insurer has complied with the insurance regulatory regime in the country of origin. The CBL liaises with Financial Services Board (FSB) in South Africa to validate information received and to also request additional information on the applicant, where necessary, to carry out fit and proper test.
499. All insurance intermediaries (s52) and brokers (s53) are required to obtain a licence from the Commissioner of CBL pursuant to s50 for a period of one year with an option for renewal. It also requires each insurance company to keep a register of all its insurance agents and brokers.
500. Pursuant to s58 any insurance company that contravenes the provisions of this Act or regulations where no specific penalty is provided shall be guilty of an offence and on conviction is liable to a penalty not exceeding M1,000 and M200, 00 for every day during which the default or contravention continues, and every director, manager, secretary, or other officer or agent of the insurance company who knowingly is a part to the default or contravention, shall be liable for the offence.

#### *Money Lenders*

501. Pursuant to section 3(1) of the Money –Lenders Order, 1989 all money-lenders must apply for and be granted a licence by the Commissioner of the CBL to carry on money lending business. Every money lender who owns several money lending branches must obtain a license for each business/location address as required under s4(1). Money lenders are not subjected to fit and proper test and are not required to submit declaration forms on shareholders and directors and the other requirements such as police clearance. The authorities were of the view that there was no prevalence of unlicensed money lenders as the market was flooded. In terms of s15 unlicensed money lenders are prohibited and it is an offence which on conviction carries a penalty of either M2, 000.00 or a term of two years imprisonment. The licence is subject to renewal on annual basis in terms of s14 of the Order. There is a Money Lenders Association, which is not a statutory board but an association of registered money lenders.
502. For companies, the CBL vets the Memorandum of Association focusing on initial shareholding. There is no requirement to apply fit and proper test on beneficial owners.

#### *Application of prudential regulations to AML/CFT (c. 23.4)*

503. The CBL indicated that they applied Core Principles of Basel Committee on Effective Banking Supervision when conducting prudential regulation on their regulated entities to also include AML/CFT issues under the general supervision powers under the FIA and the Insurance Act. However, the assessors were not provided with supervision copies despite requesting the same to review the nature and extent of coverage of AML/CFT issues. In addition, the assessors were not satisfied with the explanations provided by the CBL in the absence of supervision reports. The assessors concluded that in the absence of supervision reports, they could not determine whether the Core Principles were being applied, to what extent and how effective they were. It is noted that the licensing procedures under the FIA and the Insurance Act require fulfilment of *fit and proper* requirements for licensees. The authorities did not provide the assessors with the fit and proper guidelines which they indicated that they use to determine the suitability of market participants.
504. The regulatory measures for money lending operations under the Money Lenders Order and Cooperative Societies Act (SACCOs) do not have direct requirements for prudential regulation and supervision to the extent that the assessors could determine whether the same can apply for AML/CFT measures.

#### *Licensing or registration of Value Transfer Services (c. 23.5)*

505. Money or value transfer service providers are licensed under FIA while currency or money changing service providers are licensed under the Exchange Control Order (see SR VI for more discussion on this.)
506. The majority of money or value transfer and currency changes are done by licensed commercial banks under the regulation and supervision of the CBL. Apart from these banks, the Post Office also provides domestic and cross-border money or value transfer services. However, it was not clear from the assessors whether the Post Office is licensed or registered as required under the criteria. The authorities could not provide any information on this.

#### *Monitoring and supervision of Value Transfer Services (c. 23.6)*

507. Only money or value transfer and currency changing services provided by subsidiaries of foreign banks are subject to monitoring and supervision for compliance with domestic AML requirements under the Anti-Money Laundering Guidelines. However, other MVTs (such as the Post Office) and independent bureau de changes are not monitored and supervised for AML/CTF compliance.

#### *Licensing and AML/CFT supervision of other financial institutions (c. 23.7)*

508. SACCOs are licensed and registered by the Department of Cooperatives. The Department does not have enough resources to monitor or provide oversight of the operations under the Cooperative Societies Act. There is no AML/CFT awareness within the Department and thus no supervision in this regard.

509. With the exception of commercial banks of subsidiaries of foreign banks, all value transfer service providers are not subject to AML/CFT supervision even though they are designated as accountable institutions under Schedule 1 to the MLPCA. There is lack of AML/CFT awareness.

### **Recommendation 30**

#### *Structure, funding, staffing and other resources of AML/CFT supervisors (c. 30.1)*

##### *The Central Bank of Lesotho*

##### *Structure*

510. The Lesotho Monetary Act No 13 of 1978 established the Lesotho Monetary Authority and the name of the Authority was changed to the Central Bank of Lesotho under Lesotho Monetary Authority (Amendment) Act of 1982. Section 4 of the Central Bank of Lesotho Act, 2000 provides for the continuation of the bank.
511. The CBL is administered by a Board of Directors which is responsible for policy and general affairs and business of the Bank in terms of s8(1). The Board consists of: a) the governor, b) two deputy governors and c) 5 other directors. The Board members are appointed by the Minister of Finance on the basis of their professional experience and knowledge in areas such as finance, business, economics, law and banking.
512. CBL is headed by a Governor who is assisted by Deputy Governors who are appointed by the King for five years on the advice of the Prime Minister and are eligible for re-appointment. The Governor is the Chief Executive of the Bank and reports to the Board. The Members of the Board are subjected to fit and proper requirements which, among other things, disqualify anyone with a criminal record and professional misconduct from being employed as a Board member pursuant to s11 of the CBL Act.
513. The CBL reports directly to the Minister but enjoys operational independence and autonomy. The objective of the CBL is to achieve and maintain price stability pursuant to s5. One of the functions of the CBL is to license or register and supervise institutions pursuant to the FIA, Money Lenders Act and Insurance Act in terms of s6(e).
514. Pursuant to s17 of the CBL Act, the Bank may establish and maintain such departments or divisions as it may consider necessary to carry out its functions. The heads of the divisions report directly to the Governor. The four divisions that are responsible for the financial sector are:
- **Financial Institutions Division:** It is responsible for prudential regulation and supervision of banks. As part of its compliance functions, the division also supervises banks for compliance with AML obligations. It has a staff establishment of 10 but currently has a staff compliment of 6.

- **Policy and Exchange Control Division:** It responsible for administering exchange controls and oversees dealers in foreign exchange business operations. It has a staff compliment of 4 but has a staff establishment of six posts.
- **Insurance Division:** It is responsible for licensing and registration of insurers under the Insurance legislation and its regulations. In future, pensions will fall under this division. It conducts onsite and offsite inspections to ensure compliance with prudential requirements. It has a full staff compliment of 9 professionals.
- **Non-Bank Division:** It is responsible for licensing and registration of money lenders, ancillary financial service providers, foreign exchange houses and money transfer providers, **collective** investment schemes and credit institutions. It ensures compliance with prudential requirements under the FIA. It has a staff compliment of 3, with a staff establishment of 6 posts. It is managed by the Head of Division, who is assisted by a Head of Section and professional staff.

515. In all four divisions of the Financial Institutions Supervision Department, there is a serious shortage of AML/CFT compliance skills and lack of exposure to the domestic AML/CFT regulatory measures. Much of the understanding on AML/CFT was based on the Guidelines issued by the CBL. Very few staff members of the divisions are aware of the MLPCA, including the obligations it places on their regulated entities. Since the authorities are in the process of amending the current legislative and regulatory measures to designate the CBL as the supervisor under the MLPCA, the current supervision capacity will not be adequate to enable the responsible divisions of the CBL to effectively carry out their new functions.

### *Funding*

516. The Central Bank of Lesotho is well resourced to carry out its statutory functions. With the envisaged legislative changes to designate the CBL as the AML/CFT supervisor, the discussions held with the Supervision Department revealed that there is an urgent need for the management of the CBL to begin committing resources (human, financial and technical) to improve the AML/CFT supervision capacity of the division to enable it to effectively ensure compliance with the obligations under the MLPCA and any other relevant law or regulation. This will also ensure that AML/CFT regulation and supervision is extended to all financial institutions under Schedule 1 of the MLPCA, and not just the banking sector.

### *Integrity of AML/CFT supervisors (c. 30.2)*

517. In terms of s11(4)((e) of the CBL Act no director of the CBL who has been found guilty of serious professional misconduct and as a consequence barred from practising his profession shall be appointed or if this happens while he is already a director, he shall be removed. All staff appointed in the supervision department are professionals, with a minimum qualification of Bachelors Degree. For insurance, academic and professional requirements include a bachelor's degree specialising in insurance, auditing and accountancy with relevant experience. The vetting process involves gathering of information and vetting of all the personal information (name, place of birth, schooling record, relations and conduct) and criminal records.

### *Training for staff of AML/CFT supervisors (c. 30.3)*

518. Few staff members of the Financial Institutions Supervision Division have exposure to AML/CFT issues albeit at a basic level. Some of the staff regularly participate in ESAAMLG programmes. The rest of the staff members of the Financial Institutions Supervision Department have not been trained on AML/CFT supervision.

### **Recommendation 29**

#### *Power for supervisors to monitor AML/CFT requirement (c. 29.1)*

519. The FIU, which is supposed to be a supervisor, does not have adequate powers to monitor and ensure compliance by accountable institutions with domestic AML/CFT requirements in a manner consistent with the FATF Recommendations. As already explained under R.26, the FIU was not yet operational at the time of the onsite and not carrying out supervision to monitor compliance with the AML/CFT requirements under the MLPCA.

#### *Authority to conduct AML/CFT inspections by supervisors (c. 29.2)*

520. The MLPCA does not give authority to any supervisor to conduct inspections of accountable institutions to ensure compliance with AML/CFT obligations. In terms of s15(2)(i) the powers of the FIU to inspect records held by an accountable institution are only limited to situations where a suspicious transaction report has been made to the Unit
521. In practice, the CBL applies s51 of the FIA for prudential inspections to also cover AML compliance by commercial banks under the Anti-Money Laundering Guidelines.

#### *Power for supervisors to compel production of records (c. 29.3 & 29.3.1)*

522. The MLPCA has no direct provision that gives power to any supervisor to compel production of or obtain access to all records, documents or information relevant to monitoring compliance.
523. The CBL applies its general powers under s53 of the FIA to obtain all the necessary information it requires to supervise compliance with the Anti-Money Laundering Guidelines. Section 53 gives powers to the Commissioner or any authorised officer of the CBL to enter any licensed financial institution under the FIA and conduct inspections of the affairs of that institution by, amongst others, examining records, documents, books, accounts and minutes of meetings, and produce an inspection report for sharing with the inspected institution.

#### *Powers of enforcement & sanction (c. 29.4)*

524. Under s15(2)(d) the FIU has powers to enforce compliance by accountable institutions to the provisions of the MLPCA.
525. Also, pursuant to s31 the DCEO has powers to enforce compliance by lodging an application for a directive to be issued to an accountable institution that failed to comply with the requirements of the MLPCA. The process for enforcement is set out in s13 which

requires the DCEO to first issue a directive to the accountable institution that failed to comply. It states that: "...the Authority upon application to court and after satisfying the court that an accountable institution has failed, without reasonable excuse, to comply in whole or part with any obligations under this Act, may obtain an order against any or all of the officers or employees of the accountable institutions on such terms as the court deems necessary to enforce compliance with the obligation".

526. If found guilty of failing to comply with the court order, the accountable institution or its officer or employee is liable to a fine not exceeding M100, 000.00 or imprisonment not exceeding 10 years.
527. There is no similar process or procedures outlined in the MPLCA relating to the nature and extent of steps which the FIU should take where there are grounds to institute enforcement proceedings against an accountable institution for non-compliance.

## Recommendation 17

### *Availability of effective, proportionate & dissuasive sanctions (c. 17.1)*

528. In determining non-compliance and related sanctions, the court is required under s26(2) of the MLPCA to have regard to all the circumstances of the case, including such customs and practice as may from time to time be current in the relevant trade, business, profession or employment, and may take account of any relevant guidance adopted, approved by a public authority acting in the public interest, supervisory functions in relation to the accountable institution, or any other body that regulates or is a representative of any trade, business or profession, employment carried on by that person.
529. The table below sets out the obligations for accountable institutions and their associated sanctions under the MLPCA.

**Table 12: Sanctions for non-compliance with AML/CFT obligations**

Obligations for Accountable Institutions	Sanction for non-compliance	
Customer identification and verification (s16)	<b>Natural person:</b> Imprisonment for a term not exceeding 10 years, or a fine of not less than M50, 000.00 or both	<b>Legal person:</b> A minimum fine of M250, 000.00
Record keeping and maintenance (s17)	Same as above.	Same as above.
STR reporting (s18)	Same as above.	Same as above.
Internal control procedures (s19 & s20)	Same as above.	Same as above.
Prohibition against tipping off (s24)	Same as above	Same as above. Suspension or revocation of business license.



Any other obligations for accountable institution (e.g. pay special attention to complex, unusual or large transactions under s21).	<b>General Penalty (s113) where no penalty is provided:</b>	
	<b>Natural person:</b> A fine not less than M10, 000.00 or Imprisonment for a term not less than 30 months (i.e. 2 years and six months)	<b>Legal person:</b> a minimum fine of M100, 000.00

530. The criminal, civil and administrative sanctions which apply to natural persons and legal persons are set out under s26 (Related offences). From the table above, it is evident that sanctions for the offences of money laundering and terrorist financing do not create administrative liability. Further, the General Penalty provision does not contain administrative sanctions.
531. Since the DCEO has not yet imposed any sanctions for failure to comply with the provisions of the MLPCA due mainly to lack of capacity, it is not possible for the assessors to determine effectiveness of the sanctions.

***Designation of authority to impose sanctions (c. 17.2)***

The DCEO is referred to as the Anti-Money Laundering Authority in terms of s11 of the MLPCA. The DCEO has authority to impose sanctions against financial institutions that fail to comply with the obligations under the MLPCA pursuant to s13. It is the view of the assessors that this may not be an optimal way of enforcing and cultivating the culture of compliance by accountable institutions if accountable institutions will be brought to court for every infringement irrespective of the nature and extent of the contravention. Further, this approach does not give any discretion (e.g. issue a warning notice) to the DCEO to apply alternative measures without necessarily going to the courts.

532. As already explained above, it is worth noting that the DCEO does not have the capacity to carry out its enforcement functions including imposing sanctions. No sanctions had been imposed by the DCEO under the MLPCA at the time of the onsite.

***Ability to sanction directors and senior management of financial institutions (c. 17.3)***

533. In terms of s13 the DCEO can issue sanctions against officers or employees of an accountable institution following the process explained under c.17.2. It states that: "...an officer or employee thereof shall pay a monetary penalty in the sum not less than M100, 000 or imprisonment for a period not exceeding 10 years". It is not clear to the assessors whether "officers" include directors and senior management as the MLPCA does not define the word officer.
534. However the definition of an "officer" under the FIA seems to include "directors" and "senior management" of a financial institution. At the time of the onsite, no sanction had been issued against any director or senior management of a financial institution which

would have enabled the assessors to determine the scope of the word “officer” as referred under s13(3).

535. Accordingly, the assessors concluded that the MLPCA does not have a direct provision giving adequate authority to a competent authority to impose sanctions against directors and senior management of accountable institutions that fail to comply with a compliance directive issued by the courts.

***Range of sanctions – broad and proportionate (c. 17.4)***

536. When compared to similar offences and sanctions applicable to financial institutions in the country, it would appear that the sanctions against accountable institutions under sections 16-20, 24 of the MLPCA are proportionate and could be effective and dissuasive if well implemented. However, the sanctions are considered not broad enough due to the limited administrative sanctions available. For other sanctions under s113 of the MLPCA relating to AML/CFT obligations, they are considered not to be broad and proportionate including that the sanctions have low monetary and imprisonment penalties as indicated in the table above. Although not yet applied for non-compliance, the assessors are of the view that sanctions under s113 of the MLPCA might not be proportionate, dissuasive and effective.

**Recommendation 25**

***Guidelines for financial institutions (applying c.25.1)***

537. There are no guidelines issued to financial institutions to assist with the implementation of AML/CFT obligations under the MLPCA as required under s15(2)(e) given that the provision establishing the FIU is not yet in force. Banks are relying on the Anti-Money Laundering Guidelines issued by the CBL before the coming into force of the MLPCA.

**3.10.2 Recommendations and Comments**

538. In order to improve the AML/CFT regulatory framework to be consistent with the FATF Recommendations, the Kingdom of Lesotho should do the following:-

*FATF Recommendations 17:*

- provide capacity to the DCEO to enable it to carry out its enforcement powers under the Act.
- ensure that administrative sanctions can be applied to a broad number of sanctions for non-compliance with AML/CFT obligations.
- amend the Act to ensure that the DCEO has room to issue sanctions and not always rely on the courts to enforce and ensure compliance with the Act.
- ensure that directors and senior management of accountable institutions are subject to sanctions for contravention of the Act.

*FATF Recommendation 23*

- take immediate steps to operationalise the FIU so that it can assume its supervisory functions under the MLPCA.

- Consider amending the law so that sector supervisory authorities such as the CBL are designated as AML/CFT regulators and supervisors of institutions under their purview, and have the FIU regulate and supervise accountable institutions that do not have a supervisory authority.
- The FIU as the supervisory authority should be adequately resourced and its staff well trained to enable it to carry out effective AML/CFT supervision.
- For avoidance of doubt, authorities should consider having a section in the MLPCA dealing with FIU functions and another addressing the powers of the FIU as the current provisions appears unclear.
- Foreign exchange bureaus should be included on the list of accountable institutions and be supervised for compliance with the provisions of the MLPCA.
- Providers of money or value transfer services (other than banks) must be subject to licensing or registration and supervision for AML/CFT purposes.

FATF Recommendation 25:

- issue guidelines under s15(2)(i) of the MLPCA to assist financial institutions to implement and comply with AML/CFT obligations.

FATF Recommendation 29:

- amend the MLPCA to give adequate powers to a competent authority (e.g. the FIU) to monitor and ensure compliance by accountable institutions with domestic AML/CFT requirements.
- amend the MLPCA to give authority to a competent authority (e.g. the FIU and the DCEO) to conduct inspections (onsite and offsite) of accountable institutions to ensure compliance. Further, the inspections should include review of policies, procedures, books and records, and should extend to sample testing.
- give powers to the FIU and the DCEO to compel production of or obtain access to all records, documents or information relevant to monitoring of AML/CFT compliance by accountable institutions. This includes all documents or information related to accounts or other business relationships, or transactions, including any analysis the financial institution has made to detect unusual or suspicious transactions.
- ensure that the FIU and the DCEO have adequate powers of enforcement and sanctions against accountable institutions and their directors and senior management for failure to comply with or properly implement requirements to combat ML and TF.

### 3.10.3 Compliance with Recommendations 23, 29, 17 & 25

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	NC	<ul style="list-style-type: none"> <li>• No administrative sanctions are available to a broad number of sanctions including for ML/TF offences.</li> <li>• Every sanction for non-compliance can only be issued by courts.</li> <li>• No sanctions available against directors and senior management of accountable institutions for contravention of the Act.</li> <li>• Effectiveness in relation to sanctions under the MLPCA could not be determined as the Act has not been implemented</li> </ul>

R.23		<ul style="list-style-type: none"> <li>• Foreign exchange bureaus not subject to AML/CFT obligations.</li> <li>• There is 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 is not yet operational.</li> <li>• CBL could not demonstrate how prudential regulation under the Basel Core Principles is applied to AML/CFT measures.</li> <li>• Authorities do not take necessary measures to prevent criminals or their associates from holding or being a beneficial owner of controlling interest in financial institutions.</li> <li>• Not all money or value transfer service providers are subject to licensing and supervision.</li> <li>• Effectiveness in relation to AML/CFT regulation and supervision under the MLPCA could not be demonstrated as the supervisor (i.e. FIU) is not yet operational.</li> </ul>
R.25	NC	<ul style="list-style-type: none"> <li>• No guidelines have been issued to financial institutions under the MLPCA.</li> </ul>
R.29	NC	<ul style="list-style-type: none"> <li>• The DCEO does not have adequate powers to monitor and ensure compliance with the obligations under the MLPCA.</li> <li>• The powers of the FIU to monitor and ensure compliance with the Act are unclear in the absence of implementation.</li> <li>• The DCEO has no authority to conduct inspections of financial institutions to ensure compliance as its authority is limited to investigations under the Act.</li> <li>• The inspection powers of the FIU are limited to suspicious transaction reports. Further, the FIU is not operational.</li> <li>• There are no powers to compel production of or obtaining access to any information for purposes of monitoring compliance. These powers are limited to investigation of an offence or STR.</li> <li>• The FIU does not have adequate powers of enforcement and sanctions as it relies on courts for every violation.</li> <li>• There are no direct enforcement and sanction provisions against directors and senior management.</li> <li>• Effectiveness in relation to enforcement under the MLPCA could not be assessed as the Act has not been implemented.</li> </ul>

### 3.11 Money or value transfer services (SR.VI)

#### Legal framework

Under Schedule 1 to the MLPCA money transmission services are subject to the provisions of the MLPCA.

#### *Designation of registration or licensing authority (c. VI.1)*

539. Pursuant to s11(4) of the Financial Institutions Act ancillary financial service providers must obtain a valid licence from the CBL before carrying out business operations. In addition, the Financial Institutions (Licensing Requirements) Regulations 2003 provides for licensing procedures for money or value transfer services and money or currency changing service. An ancillary financial service provider is defined to mean “*a person who engages in providing auxiliary services such as foreign exchange dealing services, electronic funds transfer and other similar auxiliary financial services*” under the Financial Institutions Act. Therefore, to operate a money or value transfer service, a provider must be licensed or be registered by the CBL.
540. Money or value transfer services are offered by commercial banks, PostBank and Post Office. Although there is no direct legal prohibition, independent money or value transfer operators are not licensed in the country. Independent MVT operators can only operate money or value transfer through a principal-agent business arrangement, wherein an MVT operator is allowed to use its money or value transmission technology to provide MVT services as part of business operations of a licensed bank in the Kingdom of Lesotho.
541. Post Office *provides* money transmission order services but the authorities indicated that they are not aware of whether the Post Office registers or obtains a license to provide this service.
542. TEBA specialises in transmitting remittances of Basotho miners working in the South African mining industry to the Kingdom of Lesotho through its agents. This remittance represents the largest source of foreign remittance into the country. TEBA has entered into arrangements *with* several mining companies in South Africa where miners from the Kingdom of Lesotho work and open bank offices to provide money transfer services. Miners wishing to transfer money require identification documents (i.e. passport) of the miner and details of the beneficiary. The miner sends a message to the beneficiary informing the beneficiary that money has been sent. The beneficiary must bring proof of identification, and the money is paid at the spot in cash. TEBA has a system for bank transfers and also pays in cash at its offices to the unbanked miners. TEBA has an account with one of the foreign subsidiaries of commercial banks.
543. TEBA is registered and supervised by the CBL which expects them to submit monthly reports, indicating inflow of the remittances as well as payments made to beneficiaries. Remittances conducted through TEBA represent the single most important source of transferring funds into the country by mine workers from the Kingdom of Lesotho working in South Africa. Where there are discrepancies, the CBL normally seeks further information from TEBA agents. The inflows for period 2008/2009 were:

Remittances	Amount
2008	M51, 314 million
2009	M68, 991 million

***Application of FATF Recommendations (applying R.4-11, 13-15 & 21-23 & SRI-IX) (c. VI.2)***

544. Only banks have put in place control measures to combat ML or TF through money or value transfer services. However, the same deficiencies identified regarding financial institutions

under Section 3 of this report also apply to money or value transfer services provided by banks. Post Office and TEBA have not implemented ML /TF control measures for money or value transfer transactions.

***Monitoring of value transfer service operators (c. VI.3)***

545. There is no competent authority with responsibility to monitor compliance by money or value transfer service providers with the domestic AML/CFT requirements.
546. In practice, the CBL in terms of the Anti-Money Laundering Guidelines monitors money or value transfer services offered by commercial banks of subsidiaries of foreign banks.
547. Post Office and TEBA money or value transfers are not monitored for purposes of compliance with AML/CFT requirements.

***List of agents of value transfer service operators (c. VI.4)***

548. The authorities do not require licensed or registered MVT service operators to maintain a current list of its agents and make it available to a designated competent authority. In practice, the CBL has a list of all ancillary financial providers licensed by it which includes agents of money transmission services.

***Sanctions (applying c.17.1-17.4- c. VI.5)***

549. Sanctions discussed under the FATF Recommendation 17 in this report also apply to licensed MVT services operators.

**Additional element- applying Best Practices Paper for SR VI (c. VI.6)**

550. The Best Practice Paper for money or value transfer is not applied as required.
- While money transmission service providers are subject to MLPCA provisions, there is no implementation.
  - No monitoring of TEBA and Postal Office for compliance with the domestic AML/CFT requirements.
  - The CBL monitors money or value transfer services provided by banks under the Anti-Money Laundering Guidelines, which do not cover TF.
  - There is no requirement to maintain a list of agents.

**3.11.2 Recommendations and Comments**

551. Although the MLPCA subjects money or value transfer operators to domestic AML/CFT requirements, the level of awareness and implementation is very low. In order to improve the AML/CFT regulatory environment on money or value transfer services, it is recommended that the authorities should do the following:-
- Subject all money or value transfer operators to monitoring to ensure compliance with the FATF Recommendation.

- Require each licensed or registered MVT to maintain a list of its agents and make it available to authorities upon request.
- Undertake effective awareness raising programmes on money or value transfer operators in relation to implementation of the MLPCA in a manner consistent with the FATF Recommendations.

### 3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	NC	<ul style="list-style-type: none"> <li>• Authorities not aware whether the Post Office registers or requires a license to operate money remittance services.</li> <li>• No competent authority to monitor implementation of the AML/CFT obligations.</li> <li>• TEBA and Postal Office have not implemented AML/CFT requirements</li> <li>• Licensed MVT providers not required to maintain a list of agents.</li> </ul>

## 4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

### 4.1 Customer due diligence and record-keeping (R.12) (*applying R.5, 6, and 8 to 11*)

#### Legal framework

Casino Order, 1989 and its Regulations, 1990

The Law Society Act, 1983

The Legal Practitioners Act, 1983

The Accountant Act, 1977

The Precious Stones Order, 1970

The Money Laundering Proceeds of Crime Act, 2008

#### 4.1.1 Description and Analysis

552. The AML/CFT requirements for DNFBPs (referred to as “Accountable Institutions” under Schedule 1) are set out in Part III (Money Laundering) the MLPCA. These are: legal professionals, accountant, estate agent, casino and lottery, gambling house, precious stones and metals and company service providers. The assessment of AML/CFT obligations for financial institutions discussed in Section 3 of this report applies to DNFBPs.

553. The following DNFBPs operate in the country:-

- Lawyers
- Casinos
- Accountants
- Dealers in precious stones

554. The following do not operate in the country:

- Real estate agents
- Dealers in precious metals
- Trust Company and Service Providers.

555. In general, the assessors observed that all DNFBPs operating in the country are not familiar with the AML/CFT regulatory framework. This means that all DNFBPs in the Kingdom of Lesotho have not implemented AML/CFT preventative obligations set out in Part III of the MLPCA, and therefore effectiveness of implementation of the measures by the DNFBP sector in the country could not be assessed.

### *Casinos*

556. The Kingdom of Lesotho has a small and monopolised casino industry. There is one casino jointly-owned by the Government of the Kingdom of Lesotho and a South African-owned international casino group.

557. Casino industry is regulated and supervised by the Casino Board in terms of s4(1) of the Casino Order. It has the power to issue, amend, renew, suspend and revoke authorisations and licences to operate a casino business. The Board reports directly to the Minister of Tourism, Sports and Culture. Casinos are licensed to operate slot machines and any other games. In terms of s26 of the Casino Order casino operators are required to ensure that “citizens of Lesotho participate in games in a casino only on cash basis” which includes traveller’s cheques but exclude personal cheques, credit cards and other forms of credit. It is however not clear to the assessors, just as it is to the authorities, whether this section also applies to non-citizens.

558. There is no internet casino operation in the country.

### *Dealers in precious stones*

559. Mines and Geology Department is responsible for licensing and supervision of mineral exploration and mining activities. It is headed by a Commissioner, who manages three divisions, namely: administration section (receives applications – 20 staff), geology section (11 staff) and mining section (40 staff). The Commissioner reports to the Permanent Secretary, Ministry of Natural Resources. The country is only endowed with one kind of precious stone which is diamonds. There are no precious metals. There is always one representative from the Mines and Geology Department present at every mine during the sorting out of the diamonds to ensure accurate reporting of diamonds output.

560. Dealers in diamonds are licensed by the Mining Board on recommendation of the Mines and Geology Department. The licence is issued only in the name of the individual applying, not a company. Only two dealers have been licensed to deal in diamonds, which are mostly sold in Antwerp, Belgium. Only Basotho can be dealers, although there is no legal prohibition against licensing of foreigners. Among other things, the dealer must meet as core requirements is a bank account with initial capital of M100, 000.00, a letter of good standing from the bank, a police clearance, physical location and equipment adequacy.



Some smaller dealers have been refused licenses as they failed to produce banking details and the authorities suspected that the intention was to use the licence to smuggle diamonds within the country and from other diamond-producing countries in the region.

561. Miners are put through polygraph test by the mine, and it is a requirement that CCTV cameras be installed to monitor the sorting out of diamonds. The country has produced some of the largest diamonds in history. In October 2010, a large diamond was mined in the country and sold for USD 20million in Antwerp, Belgium. Mining (diamonds, sandstone and quarrying) contribute 6 percent to the country's GDP.
562. There is no AML/CFT awareness, including being aware of the obligations of dealers in precious stones under the MLPCA. Interviews during the onsite revealed that the Mines and Geology Department did not even appreciate the possible ML and TF risks associated with precious stones industry. For criminal investigations, the Department closely work with the Drugs and Diamond Unit, which is a specialised unit within the LMPS.

### *Real Estate Agents*

563. There are no registered real estate agents in the Kingdom of Lesotho. According to the authorities, real estate agents are not operating in the country due to the absence of a vibrant property market and the cultural ways of conducting real estate transaction. It is not clear to the assessors whether it is illegal to operate as a real estate agent. Nevertheless, real estate agents are subject to the provisions of the MLPCA as designated accountable institutions under Schedule 1.
564. The authorities explained that real estate transactions involving residential property are directly conducted between a buyer and a seller without an intermediary. Once the transaction is concluded, the necessary registration of the property is lodged with the Deeds' Office. However, for commercial real estate, it was indicated that lawyers and accountants facilitate the transactions between the seller and the buyer.

### *Lawyers, notaries and conveyancers*

565. The legal profession in the Kingdom of Lesotho is managed and administered by the Law Society of Lesotho (the Society) pursuant to s2, read with s4, of the Law Society Act, 1983. The Society is managed by a Council which consists of a President, Vice-President, a Secretary, a Treasurer and one ordinary member, elected through nomination and voting process on annual basis. The Council has powers in terms of s12 of the Law Society Act to make rules addressing issues related to code and ethics, including integrity and professional behaviour, of its members.
566. All legal practitioners must be issued with a certificate by the Society which is renewable annually. Where a legal practitioner violates the provisions of the legal practitioners Act and other such regulations the High Court has the authority to suspend or cancel the practising certificate in terms of s26.

567. The membership of the Society is open to all legal practitioners who comply with registration requirements (e.g. fit and proper, pass admission examination, bachelors of law degree) prescribed under the legal practitioners Act, 1983. This includes advocates, attorneys, notaries and conveyancers, whether practising or not. Notary and conveyance services are only done by attorneys as required under s23 and s24 of the legal practitioners Act.
568. Only practising attorneys, notaries and conveyancers with an office in the country are authorised to open and keep a separate trust account at a bank within the country in which deposits of all moneys held or received by him or her in connection with his practice within Lesotho on account of any person shall be held (discussed in detail under the FATF Recommendation 34).

### *Accountants*

569. The Institute of Accountants is a statutory body established under s3 of the Accountant Act to regulate and supervise the practice of the profession in the Kingdom of Lesotho. The membership is open to public accountants, registered accountants and licensed accountants subject to meeting minimum academic and fit and proper requirements under s23. There is a register of all members of the Institute maintained by the Registrar of Accountants established by the Institute pursuant to s12. About 85 percent of accountants in the country are not yet registered with the Institute.
570. In terms of s19, as read together with s21, there is a Disciplinary Committee to decide on the complaints laid against the members. A member who is aggrieved by the decision of the Committee may appeal to the High Court. Only registered and licensed professionals are allowed to operate as accountants.
571. Services provided by accountants include consultancy work on selling and buying of real estate for customers in the Kingdom of Lesotho.
572. The Institute is a member of the International Federation of Accountants and East and Central Federation of Accountants. It subscribes to the statement of membership which sets out obligations of members in areas such as professional quality assurance, monitoring of members to ensure adherence to ethics and standards, including detection of fraud and money laundering transactions. In general, the level of interaction between the Institute and the authorities in relation to money laundering and terrorist financing implementation is low.
573. In terms of domestic cooperation, the Institute has entered into MOUs with the DCEO (for when the DCEO needs expertise in forensic auditing), LRA (on tax compliance training), Lesotho Chamber of Commerce and Industry (private sector compliance with accountancy standards) and Lesotho Bankers Association for quality assurance of employees in the accounting field.

### *Applying Recommendation 5, 6 and 8 to 11*

574. FATF Recommendations 5, 6, 8, 10 and 11 apply to DNFBPs operating in the country. Therefore the relevant AML/CFT obligations assessed under Section 3 of this report for accountable institutions also apply to the DNFBPs. It should be noted that DNFBPs are referred to as “Accountable Institutions”, just as financial institutions are, and are listed in Schedule 1 to the MLPCA, 2008.

575. It is to be noted that none of the DNFBPs in the country were aware of the obligations under the MLPCA and therefore there is no implementation of the applicable provisions under the Act dealing with the FATF Recommendations 5, 6, 8, 10 and 11.

#### **4.1.2 Recommendations and Comments**

576. The deficiencies relating to the effective implementation of the FATF Recommendations 5, 6, 8, 10 and 11 should be remedied as recommended.

577. The authorities in the Kingdom of Lesotho should implement an effective AML/CFT outreach programme to ensure implementation of the FATF Recommendations by the DNFBP sector

#### **4.1.3 Compliance with Recommendation 12**

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
<b>R.12</b>	<b>NC</b>	<ul style="list-style-type: none"><li>• DNFBPs operating in the country have not implemented AML/CFT measures under the MLPCA.</li><li>• The deficiencies identified in Section 3 of this report in relation to the adequacy of the provisions of the MLPCA against FATF Recommendations 5, 6, 8, 10 and 11 also apply to the DNFBP sector</li><li>• Effectiveness of the implementation of the provisions of the MLPCA by the DNFBP sector could not be determined.</li></ul>

### **4.2 Suspicious transaction reporting (R.16)** *(applying R.13 to 15 & 21)*

#### **4.2.1 Description and Analysis**

578. As accountable institutions, DNFBPs are required to report suspicious transactions, and are prohibited from tipping off on STR information. They are also required to implement internal control measures under the MLPCA. There is no requirement under the MLPCA for DNFBP to implement measures addressing the FATF Recommendation 21. The assessment made on the adequacy of the applicable provisions of the MLPCA against the FATF Recommendations in Section 3 of this report also applies to the DNFBP sector. It is worth noting that the provision in the MLPCA dealing with R.13 was not yet in force at the time of the onsite. Further, it is worth noting that the DNFBP sector in the Kingdom of Lesotho is not aware of the requirements under R.16, and therefore it was not possible to conduct

compliance with the applicable FATF Recommendations. This means that effectiveness could not be determined.

#### 4.2.2 Recommendations and Comments

579. In order to improve the AML/CFT framework in the Kingdom of Lesotho, the authorities should ensure that all DNFBPs are subject and effectively implement and comply with reporting obligations (R.13), prohibition against tipping off (R.14), and internal control measures (R.15) under the MLPCA in a manner consistent with the FATF Recommendations. The authorities should subject business relationships and transactions conducted by DNFBPs to the requirements under Recommendation 21, where they apply.

#### 4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	NC	<ul style="list-style-type: none"> <li>Reporting obligations under the MLPCA are not yet in force.</li> <li>The Reporting obligations under the MLPCA do not cover attempted transactions.</li> <li>Deficiencies identified under Section 3 of this report on R.14 and R.15 also apply to the DNFBPs to the extent possible.</li> <li>There is no requirement to comply with R.21 under the MLPCA.</li> <li>Effectiveness could not be determined due to the absence of implementation of the AML/CFT measures by the DNFBP sector.</li> </ul>

### 4.3 Regulation, supervision and monitoring (R.24-25)

#### 4.3.1 Description and Analysis

##### Legal framework

Money Laundering and Proceeds of Crime Act

Casino Act

##### Recommendation 24

##### *Regulation and supervision of casinos (c.24.1, 24.1.1, 24.1.2 & 24.1.3)*

580. Casinos are listed under Schedule 1 as accountable institutions and therefore are subjected to the obligations set out in the MLPCA. In terms of s15(2)(d) the financial intelligence unit is responsible for supervision of casinos for compliance with AML/CFT obligations under the MLPCA. Since the financial intelligence unit is not yet operational, there has been no supervision of casinos for purposes of ensuring compliance with the Act.

581. For purposes of licensing and prudential requirements, casinos are regulated and supervised by the Casino Control Board. It should be noted that the Board has no capacity

(human, technical or financial) at all to adequately undertake its functions under the Casino Act. There is only one officer manning the Board, and has not been exposed to AML/CFT matters.

582. The authorities have taken some necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owners of a significant or controlling interest, holding a management function in, or being an operator of a casino. For a casino to operate in the country it must first register as a company under the Companies Act (discussed in detail under R.33). The Board relies on the verification of information procedures of the Registrar of Companies. Still, the Board focuses only on directors and board of directors, not shareholders when licensing casinos.

583. The authorities are currently conducting a review of all laws and regulations applicable to the casino and gaming industry in the country to strengthen the current regulatory regime.

#### ***Monitoring (c.24.2 & 24.2.1)***

584. There are no effective systems for monitoring and ensuring compliance with the AML/CFT requirements for all DNFBPs operating in the country. For casinos, AML/CFT monitoring is done at head office as part of monitoring implementation of AML/CFT Group Policy through regular reports submitted by casino operations managers.

### **Recommendation 25**

#### ***Guidelines for DNFBPs (applying R.25.1)***

585. The MLPCA designates the FIU as the responsible authority to issue guidelines to the DNFBPs pursuant to s15(2)(e). Since the FIU is not yet operational, there can be no guidelines issued in this regard.

### **4.3.2 Recommendations and Comments**

586. In order to improve the AML/CFT regulatory framework on DNFBPs, the authorities should do the following:-

- Ensure that the FIU is operational and well-resourced to enable it to issue guidelines
- Take the necessary legal or regulatory measures to ensure that criminals or their associates are prevented from holding or being beneficial owners of a significant or controlling interest, holding a management in or being an operator of a casino.
- To ensure that there are effective systems for monitoring and ensuring compliance by DNFBPs with national AML/CFT requirements.
- Operationalise and provide adequate resources, including the Casino Board of Control, to enable it to undertake its supervision and regulation functions properly.
- Undertake effective AML/CFT awareness raising programmes in the DNFBP sector.

#### 4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	NC	<ul style="list-style-type: none"><li>There is no regulation and supervision of casino industry for compliance with domestic AML/CFT requirements</li></ul>
R.25	NC	<ul style="list-style-type: none"><li>No guidelines to assist DNFBPs to meet their AML/CFT obligations have been issued by the authorities to DNFBPs</li></ul>

#### 4.4 Other non-financial businesses and professions

##### Modern secure transaction techniques (R.20)

##### 4.4.1 Description and Analysis

###### Legal framework

Money Laundering and Proceeds of Crime Act, 2008  
Financial Institutions (Know Your Client) Guidelines, 2000

###### *Other vulnerable DNFBPs (c. 20.1)*

587. In Schedule 1 to the MLPCA gaming house and lotteries is subject to domestic AML/CFT requirements. There is however, no implementation of the obligations to combat ML/TF.

###### *Modernisation of conduct of Financial Transactions (c. 20.2)*

588. The Kingdom of Lesotho is a cash-intensive economy, i.e. most transactions are conducted using cash. The authorities and the financial sector have taken deliberate steps to promote access to financial services by the low income segment of the population. There are a number of automated teller machines rolled out by financial institutions throughout the country, mostly in town centres of the ten districts with Maseru having the largest number. This has increased usage of bank cards. The bank cards in use are the ordinary ATM cards which are used as debit cards and credit cards (local banks only act as agents to the issuance of credit cards). At the time of the on-site visit, there were no ATMs in the rural areas yet.

589. In 2007, an initiative was started to pay civil servants through their own bank accounts with the aim of controlling fraud which was being done through cheque payments and also to cut on stationery expenditure. The practice has now been extended to payment of suppliers to Government and in turn Government only settles accounts held at a bank.

##### 4.4.2 Recommendations and Comments

590. Although the authorities have expanded AML/CFT requirements beyond the minimum FATF standards by covering other DNFBP sectors, there is no implementation of the requirements by them. It is recommended that the authorities should take steps to ensure that the gaming houses and lotteries effectively implement the applicable provisions of the MLPCA.

#### 4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	C	<ul style="list-style-type: none"><li>• This recommendation is fully met.</li></ul>

### 5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

#### 5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

##### 5.1.1 Description and Analysis

##### Legal framework

591. Legal persons in the Kingdom of Lesotho include companies, societies (association) of ten or more persons, friendly societies covering trusts and partnerships. The registration of legal persons is provided for under different Acts:

- Companies are registered under the Companies Act.
- Association of ten or more persons are registered under the Societies Act.
- Friendly societies including trusts are registered under the Friendly Societies Act
- Partnerships under the Partnership Proclamations Act.

592. The Acts only provide for the registration of legal persons not their licensing. The Registrar General's Office created in terms of the Deeds Registry Act of 1967 is responsible for the registration of legal persons. The Office is headed by the Registrar General. The Registrar General's Office performs various functions under different portfolios including administering the Companies Act when registering companies, the Friendly Societies Act when registering friendly societies, the Societies Act when registering associations and the Partnership Proclamation Act when registering partnerships.

##### *Measures to prevent unlawful use of legal persons (c. 33.1)*

593. Although the law currently provide certain measures to prevent the unlawful use of legal persons, the authorities indicated that the measures were not comprehensive therefore the laws were being revised.

594. Companies, societies and friendly societies are registered with the office of Registrar General. According to the authorities, the type of legal entity being registered determines the role to be played by the Registrar General during the registration of that entity, if it is registration of a company then the Registrar General or his or her representative becomes the Registrar of Companies in terms of the Companies Act. There is no single body regulating or supervising the societies. The Registrar General's office only registers these entities but licensing is done by different government ministries depending on the type of activities the entity wants to engage in. A typical example was said to be of a society registered for purposes of operating a school, such a society would be licensed by the Ministry of Education. The expectation therefore was that the Ministry would be the one to

supervise/regulate activities of the society, however such supervision was not provided for by the law.

595. The authorities informed the assessors that at the time of registration, the Registrar General's Office did not require any identity documents of the shareholders, directors or beneficiaries, nor did the office verify their identity. The Registrar General only relied on the documents filed by the applicant who in most cases is represented by a lawyer during the registration process. A representative of the Law Society indicated that the lawyers when applying for the registration of their clients' companies or societies do not verify the registration documents given to them by their clients. Also no effort is made by the lawyers to verify the authenticity of the documents filed with them by their clients on the shareholders, directors or beneficiaries for registration purposes.
596. Registration of societies is not compulsory under the Societies Act but practically however, if the society is not registered it cannot open a bank account or make any transactions with another party through a financial institution as registration documents would be required by the financial institution before the opening of an account. This requirement has led most of the societies to be registered. Section 6 of Societies Act deals with registration of societies.

#### *Company registry (Registrar of Companies)*

597. The laws of the Kingdom of Lesotho require that companies intending to do business in the Kingdom be registered. The companies are registered at the Registrar of Companies. The Registrar General appointed in terms of section 7 of the Companies Act is the Registrar of Companies. The Registrar of Companies registers companies under the Deeds Registry Act 12 (1967), the Companies Act 25 (1967), Companies (Amendment) Act 35 (1984), Companies Act (Increase of fees) Notice 179, (1989), Stamp Duties Order 5 (1972), Stamp Duties Order 8 (1989), Stamp Duties (Amendment) Act, 2001 and Stamp Duties (Amendment of Schedule) Regulations, 2010. Section 7(2) of the Companies Act provides for filing of the register of the company with the Registrar of Companies. The Registrar of Companies registers about 1 500 companies annually but only around 30 of them go into business. Registration of companies is still done manually. The information relating to the names of companies, the directors and shareholders is computerised at the time of registration for preservation of names and name searches but for any other information one has to refer to the files which are kept manually. The lodging of an application for registration of a legal person at the Registrar of Companies is done by lawyers and the use of company service providers is not known in the Kingdom of Lesotho.
598. The Registrar of Companies regulates private companies limited by shares, private companies limited by guarantee, public limited companies, unlimited companies and foreign registered companies which have been incorporated in the Kingdom of Lesotho. In terms of section 23 of the Companies Act in circumstances where an application for licensing has been made to the Minister of Trade and he is satisfied that an association exists for a lawful purpose, is pursued for the public interest and intends to apply its profits or income to promote its objects and to prohibit paying any dividends to its members, the Minister may grant the company a license to operate. In terms of section 30 of the



Companies Act, a private company has to limit its membership to 50 and prohibit offering of its shares to the public. Section 9 of the Companies Act provides for public companies whose shares can be offered to the general public.

599. The Companies Act, under section 19 requires that there be a clear distinction between the company as a legal person and its shareholders. Individuals, other registered companies and legal entities such as state corporations, societies, partnerships and trusts can own shares in a company.
600. The requirements for registration of a company set out in section 12 of the Companies Act are the same for private companies limited by shares, private companies limited by guarantee and public limited companies. The registration process is commenced by the lodging of an application for reservation of company name. The subscribers or legal representative of the company must lodge a Form A with Registrar of Companies. Form A is expected to have information of the applicant's name and surname, address, name applied for and two alternative names in order of preference and must be signed and dated.
601. The name search is done manually through checking of records and also of the computer to see if the name has already been reserved. The checking process takes about a day or two. Once the name has been approved the legal representative nominated in the Power of Attorney is then expected to submit the approved Form A, Power of Attorney which must fully state the subscribers' names in full, the name of the nominated Attorney or Advocate, the approved name of the company, bear the subscribers' signatures against their names, be dated and should bear the revenue stamp, Form F which should state the name of the company, the complete registration office of the company including full residential/business address and postal address, must be signed and dated and state the presenter's name, a Declaration which must be signed and dated, a Memorandum of Association and Articles of Association.
602. The Memorandum of Association among other things should state the name of the company, objects of the company, the liability of the members is limited for a company limited by shares and guarantee, the minimum shares which can be taken by subscribers if it is a company limited by shares and unlimited and the subscribers must give their full particulars (full names, business or residential address, occupation). The subscribers are expected to sign against their names on the Memorandum of Association. The witnesses are also required to give similar particulars to those of the subscribers and to sign and endorse the date. Seemingly under the Articles of Association, the subscribers are expected to give the same information as required of them under the Memorandum of Association. In addition the Articles of Association are expected to state the full names of the directors, the number of the directors and the name of the company secretary. The subscribers to the company are those members who will have signed the Memorandum of Association and by signing it are deemed to have become members of the company and on its registration are entered as members to its register of members.
603. The registration requirements for a foreign company are almost similar to those of local company but in addition to providing an approved Form A, Power of Attorney and Form F, a copy certified by a director residing in the Kingdom of Lesotho or by a notary public of a

charter, statutes, or memorandum and articles or other instrument defining the company's constitution, a list of the directors of the company and the name of the person who will be responsible for running the business of the company in the Kingdom of Lesotho, a person who will accept service of process and any notices on behalf of the company will be required.

604. Once a company has been fully registered, the Registrar of Companies issues it with a Certificate of Incorporation.
605. The authorities indicated that they do not verify the information given to them of beneficial owners and control of the legal person for purposes of registration. In the event of change of ownership and control of the company, the authorities indicated that a Form L is supposed to be submitted to the Registrar of Companies indicating the changes made. However, the authorities informed the assessors that information on such changes is hardly submitted by the companies and although there were sanctions these were hardly enforced. In the few instances that such information was submitted, the Registrar's Office would take about three days to update their records.
606. The authorities indicated that a body corporate can become a shareholder as long as it files its certificate of incorporation with the Registrar of Companies and other relevant documents confirming registration of the corporate. The authorities informed the assessors that further checks as to verify the current status of the corporate and its directors were not done. The Registrar of Companies does not inquire on the beneficiary owners of the corporate but takes the information submitted to it at face value. The authorities indicated that corporate as directors are not allowed and a corporate cannot be a company secretary but has to appoint a natural person to act on its behalf. In practice however body corporate at the time of the on site visit were said to be still registering as company secretaries without appointing a natural person to represent them. The practice of using nominee shareholders is unknown in the Kingdom of Lesotho and the law was silent on the use of nominee shareholders.

#### *Corporate record keeping requirement*

##### *Register of members*

607. In terms of section 88 of the Companies Act, each company is expected to maintain a register of its members. The register accurate information on the names and addresses of each one of the members and the date each person was entered as a member in the register and the date the person ceased to be a member. If it is a company with share capital, the amount of shares held by each member with each share distinguished by its number and the amount paid or agreed to have been paid on the shares. The register of members has to be kept at the registered office of the company and the company has to inform the Registrar of the place where the register of members is kept and any changes thereto, within 30 days of date of incorporation or such change in place being made.
608. During the on site visit the assessors were informed by the authorities that individuals, other registered companies and legal entities such as state corporations, societies, partnerships and trusts can become shareholders. For partnerships and trusts, the Registrar

of Companies highlighted that it would require the deed of partnership and deed of trust to be provided.

#### Register of Directors and Secretaries

609. Pursuant to section 158 of the Companies Act, every company is required to maintain at its registered office a register of its directors and secretaries. The register should contain in respect to each one of them, if it is an individual, the present forenames and surname and if the particulars have changed, information on where the changes took place, the nationality of the person, the usual residential address, the person's business occupation and particulars of any other directorship held by the person, if any. In the case of a body corporate, particulars relating to its name and registered or principal office are expected to be in the register.
610. The company is expected within 21 days from the date of the appointment of the first directors of the company or if it is an existing company 90 days after the commencement of the Companies Act to send to the Registrar a return in the prescribed form with information contained in the register. Such information will also include notification of any changes to the directorship or secretaries or any other particulars which are part of the register and the date when the changes were made.
611. The register maintained in terms of section 158 should be open to members for inspection without any charge and for a prescribed fee by any other person who is not a member. Failure of the company and its officers to comply with the provisions of this section becomes a criminal offence and liable on conviction to a fine.

#### Annual returns

612. In terms of section 96 of the Companies Act, companies are expected to file returns with the Registrar of Companies at least 42 days after their annual meeting. The returns should show the following information:
- The number of members which will have ceased to be members of the company since the last preceding annual meeting or date of incorporation of the company;
  - Directors of the company;
  - Secretary of the company;
  - Names and addresses of persons appointed as auditors of the company;
  - Update on the registered office of the company and place where the register of members is kept;
  - Amount of share capital of the company and information of the shareholding ( number of shares taken from the date of incorporation of the company to the date of the return being filed, number of shares issued for cash and shares issued against specific considerations); and
  - Shares forfeited.

613. Defaulting in filing the returns with the Registrar General makes the company and its officers liable of having committed a criminal offence in terms of section 96(8) of the Companies Act and upon being convicted to pay a specified fine for each day the company is in default of filing the returns. The authorities however highlighted to the assessors during the on site visit that most of the companies did not file their returns which affected the accuracy of the information kept by the Registrar. The authorities were of the view that the penalty provided (which was ten rand for each day that the company defaulted in filing its returns at the time of the on-site visit) was not adequate and deterrent enough to encourage enforcement of the provision.

***Access to information on beneficial owners of legal persons (c. 33.2)***

614. Both government agencies and members of the public can access information or records kept by the Registrar of Companies. The police, Lesotho Revenue Authority, courts, Directorate of Corruption and Economic Crimes and other government agencies can access such information without paying anything if it is required for official purposes. The general public is required to pay a nominal search fee of one rand. The police, LRA, DCEO and courts can access the information instantly if they visited the Registrar General's Office to request for the information but it takes a little bit longer for the Registrar's Office to provide the same information if the request is made in writing.
615. The authorities explained that it was difficult for them to confirm that the information they give to members of the public, different law enforcement agencies and other competent authorities was accurate and adequate as most of the companies after being registered did not file their annual returns with the Registrar of Companies as required by the law. In addition, the Registrar of Companies did not verify or use other independent sources of information to confirm the beneficiary owners of legal persons particularly where the legal persons are shareholders. This position was further worsened by the fact that most of the work in the Registrar of Companies was still being done manually making it difficult for that Office to keep accurate records and to provide the information as quickly as it would have been if the information was kept electronically. The office also did not have adequate staff to do the manual updating of the records as frequently as would enable the office to keep accurate records.

***Prevention of misuse of bearer shares (c. 33.3)***

616. The authorities indicated that the issuing of bearer shares was not common in the Kingdom of Lesotho although the law did not specifically provide a position on it. The Companies Act is also silent on the issuing of share warrants. The absence of such provisions leaves the jurisdiction vulnerable to bearer shares and, or share warrants being misused for ML. The assessors were of the view that the risk of that happening was quite high as the authorities from the Registrar of Companies indicated that not at all times did companies inform the Registrar of the transfer of shares and that not all the companies file their annual returns to enable the Registrar to know of the change in shareholding. In practice therefore it was possible for shares to be transferred without the knowledge of the Registrar increasing the risk of such transfers being abused for ML.

***Additional element- access to information on beneficial owners of legal persons by financial institutions (c. 33.4)***

617. Financial institutions just like anyone else are allowed access to information at the Registrar of Companies. The authorities indicated that financial institutions often consulted the Registrar's Office to verify information on ownership and beneficiaries of companies and societies which they considered high risk.
618. However, there were possibilities of the information given to the financial institutions not being accurate due to the companies not frequently updating their records with the Registrar of Companies as already discussed in c.33.2 above.

**5.1.2 Recommendations and Comments**

619. The authorities indicated that the lodging of applications for registration of companies with the Registrar General's Office is only done by lawyers but the lawyers and Registrar's office did not verify the information given to them by the clients intending to register the companies. In terms of section 2 of the MLPCA, lawyers are listed as accountable institutions which means for purposes of that Act they are supposed to verify the information given to them by their clients particularly on the ownership and control of the companies before lodging the registration application with the Registrar. It is recommended that lawyers verify the information given to them by clients intending to engage them for registration of companies before lodging the applications with the Registrar of Companies.
620. It is also recommended that to enhance accountability on the verification of the information brought to the Registrar of Companies supporting the applications for registration of companies, there be an agreed process between the lawyers and the Registrar of Companies to ascertain that such verification has indeed been done.
621. The law should be clear on whether the use of nominee shareholders is allowed in the Kingdom of Lesotho to ensure that proper measures are put in place to enable the identity of beneficiaries of such arrangements.
622. The authorities should enforce the requirement of a body corporate being represented by a natural person where it has to act as a company secretary in order to ensure that identity of the company secretary is not obscured.
623. The penalty provisions of the Companies Act relating to failure of filing of returns and updating of the Registrar of Companies on company changes specified under the Act need to be revisited as they are outdated and not deterrent enough.
624. There Registrar of Companies needs to be supported with resources to enable electronic filing of records and information which will allow easy access to the records, their accuracy, storage and preservation.

**5.1.3 Compliance with Recommendations 33**

	Rating	Summary of factors underlying rating
R.33	NC	<ul style="list-style-type: none"> <li>• There are 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;</li> <li>• Inadequate measures to ensure that information kept at the Registrar of Companies is updated and accurate;</li> <li>• Poor enforcement of measures currently available to ensure that companies file their returns which would enable the Registrar to keep up to date information on the current control of companies in terms of shareholders, directors and company secretaries;</li> <li>• Manual filing of information may undermine timely access of such information by investigative bodies and supervisory authorities;</li> <li>• The law does 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;</li> <li>• Possibility of bearer shares/ share warrants being used for ML/TF purposes.</li> </ul>

## 5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

### 5.2.1 Description and Analysis

#### Legal framework

625. The authorities indicated that there was no specific legislation regulating the activities carried out by trusts in the Kingdom of Lesotho although the trusts are registered under the Friendly Societies Act and the Partnership Proclamation Act No. 78/57.

#### *Measures to prevent unlawful use of legal arrangements (c. 34.1)*

626. According to the authorities trusts and partnerships were registered with the Deeds Registry Office in the Ministry of Local Government. Depending on the activity the trust or partnership is going to engage in, it would then be licensed by the line Ministry responsible for that activity. The authorities further indicated that there was no single body that supervised or regulated trusts or partnerships.

627. The lawyers prepared the documents for registration including the trust deed, indicating the beneficiaries and what has to be donated, whether it is money or property. The Registrar of Deeds however indicated to the assessors that the information contained in the trust deed was not verified by the Deeds Registry Office before registering or upon registering the trust or partnership. The lawyers also indicated to the assessors that they did not verify the

information brought to them by their clients for purposes of registering trusts or partnerships. Most of the trusts registered were those of donations and/or for minors' funds where the Office of the Master of the High Court appointed the Trustee.

628. The Registrar of Deeds does not check or record information on the trustees, settlers or beneficiary owners of the trusts they register. The authorities also do not verify the particulars of the trustees, settlers or beneficiary owners with information which can be obtained from other sources of information which are publicly available. In the event of changes in the ownership and control of the trusts, the Deeds Registry Office use information from an addendum prepared by the lawyers of the trust and also cross-check the information against the information contained in the original application for registration at their offices. However, there was no obligation on the owners of trusts and beneficiaries to report to the Deeds Registrar on the changes. Trust service providers are not used to register trusts in the Kingdom of Lesotho.

*Access to information on beneficial owners of legal arrangements (c. 34.2)*

629. The authorities from the Registrar of Deeds informed the assessors during the on site visit that law enforcement agencies and other competent authorities had access to the information on trusts kept by their office. The public however was said to have limited access to the information and was not allowed to make copies of the information. The Deeds Registry did not require any payment for anyone to access the records. Information required by law enforcement agencies was provided on the same day but only in hard copies.
630. The Registrar of Deeds could however not confirm to the assessors that when the information was given to law enforcement agencies it would be accurate and adequate as the keeping of the records was not yet automated and the office was understaffed. It was indicated that the automation of the records in that Office was in the pipeline under a Lands Administration Project. The authorities also indicated that although they had not yet received requests for information from abroad, if it was to happen they were of the view that they would be able to exchange such information.

*Additional element- access to information on beneficial owners of legal arrangements by financial institutions (c. 34.3)*

631. The authorities indicated that financial institutions had access to information kept by the Registrar of Deeds on the beneficiary owners of trusts or those in control of the trusts but the Registrar at the time of the on site visit had not received such requests.

**5.2.2 Recommendations and Comments**

632. It is recommended that the authorities enact legislation that provides for the administration and regulation of trusts and other legal arrangements.
633. The authorities should enhance measures which are currently in place to ensure that there is verification of the identity of trustees, settlers and beneficiary owners of trusts by both lawyers who apply for registration of the trusts and the Deeds Registry Office to prevent the unlawful use of trusts for purposes of ML/TF.

634. The information kept by the Deeds Registry Office on trusts and provided to law enforcement agencies should be accurate and adequate. It is recommended that the authorities hasten the process of automation of the Office to ensure accuracy of the records kept and their easy update.

### 5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	NC	<ul style="list-style-type: none"><li>• No legislation regulating the registration of trusts in terms of the required FATF standards;</li><li>• Information kept by the Deeds Registry Office on trusts and other legal arrangements is not accurate and adequate;</li><li>• There is 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</li></ul>

## 5.3 Non-profit organisations (SR.VIII)

### 5.3.1 Description and Analysis

#### Legal framework

The Societies Act, 1966

The Societies Rules, 1967

#### Overview of the sector

635. The authorities explained that the societies could not be classified according to the activities they carry out as well as the regions they are operating from as the exercise to classify them had not been done. The total number of societies was given as 4 210.

#### Registration

636. Societies are registered by the Registrar-General's Office in terms of s5(1) of the Societies Act. The Office is headed by a Registrar, who is being assisted by Assistant Registrars. The Office reports directly to the Ministry of Law and Constitutional Affairs. The Office has a staff compliment of 8 professional staff (Lawyers) and 2 Clerical Assistants working directly with societies.
637. There is a societies' registry within the office of the Registrar General. The registers were recently automated and it is possible to access required information with ease. However one cannot say the information is accurate as some societies do not update the information, in particular information like executive committees and membership. Enforcement of



compliance is greatly affected by the inadequate staff compliment. The Office therefore lack the capacity to properly undertake its functions.

638. Pursuant to s6 all societies must apply for certificate of registration to the Registrar-General. In terms of Rule 6 of the Societies Rule, the following, but not limited to, should be contained in the prescribed application form:

- The name of the society and its proposed location in Lesotho;
- The objects of the society;
- The manner in which funds are raised and collected and the purposes for which they are to be used;
- Membership requirements;
- Conditions for members' benefits, including the nature and extent of such benefit;
- Appointment, removal from office, powers and remuneration of the officers;
- Powers of investment of funds;
- Undertaking to maintain records of books of accounts, including where trust funds exist;
- The custody of securities and books;
- Appointment of auditors and duration thereof; and
- Manner of calling Annual General Meetings and Special General Meetings.

639. Where the prospective society's application does not meet the registration requirements, the Registrar-General has the power to refuse registration of the applicant in terms of s6(1). However, the applicant can lodge an appeal against the decision to the High Court.

640. In terms s4(1) the Registrar-General should keep societies registry with all the records and registers operating in the Kingdom of Lesotho.

***Review of adequacy of laws and regulations of NPOs (c. VIII.1)***

641. The authorities have not undertaken review of the adequacy of laws and regulations of the societies. In addition, the authorities do not have the capacity to obtain timely information on the size, activities and other relevant features of the societies for the purposes of identifying the features and types of societies that are at risk of being misused for terrorist financing by virtue of their activities or characteristics. The authorities have not undertaken periodic assessment by reviewing information on the sector's potential vulnerabilities to terrorist activities.

***Protecting the NPO sector from terrorist financing through outreach and effective oversight (c. VIII.2)***

642. The authorities have not undertaken outreach to the societies sector with a view to protecting the sector from terrorist financing abuse. There is no systematic outreach programme to promote transparency, integrity, accountability and public confidence in the societies sector. The authorities indicated that the lack of funding is a major factor contributing to inadequate outreach and effective oversight initiatives in the societies sector.

The Registrar-General Office officials further requested for technical assistance to create a capacity for better regulation and supervision of the societies sector.

*Diversion of funds for terrorists purposes (c. VIII.3)*

643. The authorities have not identified societies which account for a significant portion of the financial resources under the control of the sector and the substantial share of the sector's international activities with a view to promoting effective supervision or monitoring.
644. There is no express provision for societies to maintain information on the purpose and objectives of their stated activities, the identity of persons(s) who own, control, or direct their activities, including senior officers, board members and trustees.
645. In terms of s16 members of the public can upon payment of a prescribed fee have access to the records of information on a society stored in the societies register held by the Registrar-General.
646. Pursuant to s14(1) the Registrar-General has authority to request a society to supply, in writing, i) a true copy and complete copy of the rules of the society, ii) true and complete list of office-bearers and of the members of the society in terms of nationality and residence, iii) number of and places where meetings of the society were held, iv) such accounts, returns and other information as deemed necessary.
647. In addition, Rule 9 of the Societies Rules requires every society to furnish the Registrar-General annual returns containing the following information:-
- A revenue account showing incomes and expenditures.
  - Balance sheet to determine financial position.
  - In case of a society which controls trust funds, a certificate by a suitably qualified person approved by the Registrar-General that such trust funds are correctly controlled and invested.
  - Audited annual accounts.
  - A copy of annual report outlining the society's programmes as issued to the shareholders and members.
  - A copy of any document presented to its members or shareholders during that financial year.
648. It is an offence for failure to provide such information which carries a liability on conviction of M200.00 or in default of payment to imprisonment term not exceeding six months.
649. Further, in terms of s15(1) it is the personal obligation of the individuals running the society such as the president, chairman or secretary to furnish such information as requested by the Registrar-General. Although this section creates an offence for failure to supply requested information, there is no sanction to punish offenders.
650. There is no direct requirement for societies to maintain, for a period of at least five years, and make available to appropriate authorities, records of domestic and international

transactions that are sufficiently detailed to verify that funds have been spent in accordance with the purpose and objectives of a society.

651. Further, pursuant to Rule 10 of the Societies Rule the Registrar-General has the power to reject annual returns or any information supplied in response to a request by a society if deemed unsatisfactory and order the society to resubmit.

***Powers to investigate and sanction (c. VIII.4, VIII.4.1, VIII.4.2 & VIII.4.3)***

652. The authorities in the Kingdom of Lesotho have not implemented adequate measures to ensure effective investigation and gathering of information on societies sectors. The LMPS has the authority in terms of s24 to conduct investigations relating to breaches committed by societies. The section further provides for powers of entry, search and seizure through an order of the High Court to the LMPS where a society is carrying on its activities contrary to the provisions of the Societies Act and its Rules. The LMPS should receive consent of the DPP's Office before criminal charges can be lodged, summons can be issued, or preparatory examination can be held in respect of the offences under the Societies Act.

653. The Societies Act provides for the following offences and sanctions:-

<b>Section of Societies Act</b>	<b>Applicable Sanction:</b>
s15: failure to provide information requested by the Registrar-General	M200.00. Failure to pay may result in imprisonment for a period not exceeding 6 months.
s19: manages or assist in management of an illegal society or becomes a member of an illegal society.	Same as for s15.
S22: participate in a meeting of an illegal society	M200.00 or imprisonment not exceeding five years or to both.
s23: knowingly allows a meeting of an illegal society or a member of it to be held in any venue belonging to or occupied by someone who owns or controls it.	Same as for s22.

654. The range and nature of the sanctions against the societies that fail to comply with the Societies Act are inadequate, and the assessors could not determine effectiveness as no sanctions have been issued by the authorities. The authorities have got no power to revoke or suspend a licence of a registered society that fail to comply with the requirements. During mediations of dispute arising from non-compliance the societies are advised to either deregister or to dissolve.

655. Since the authorities have not undertaken an assessment to determine which societies are vulnerable to misuse for terrorist activities, there can be no effective domestic cooperation, coordination and information sharing to the extent possible to identify potential terrorist financing risks facing the societies sector. In addition, to the extent that the Societies Register is not kept up to date, it would appear that there are no effective measures to gather

information on administration and management of a particular society (including financial and programmatic information) for use during investigations.

656. There is no mechanism for the prompt sharing of information among all relevant competent authorities in order to take preventative or investigative action when there is suspicion or reasonable grounds to suspect that a particular society is being exploited for terrorist financing purposes or is a front organisation for terrorist fundraising.

#### ***Domestic and international cooperation (c. VIII.5)***

657. The Registrar-General's Office is the appropriate point of contact for any matters relating to the societies sectors. However, there are no procedures to respond to international requests for information regarding particular societies that are suspected of terrorist financing or other forms of terrorist support. No international request in this regard was made to and by the Registrar-General's Office.

#### **5.3.2 Recommendations and Comments**

658. The authorities in the Kingdom of Lesotho have not implemented effective regulatory measures for the societies sector in a manner consistent with the requirements of the SR.VIII. In order to develop and implement effective measures to protect the societies against financing of terrorism activities, it is recommended that the authorities should do the following:-

- Urgently conduct a review of the domestic laws and regulations in relation to protection of the societies sector against terrorist financing activities in a manner consistent with SR.VIII.
- Take immediate steps to conduct outreach programmes (including awareness raising and promotion of transparency, accountability, integrity and public confidence in the administration and management of societies) to the societies sector with a view to protecting the sector from terrorist abuse.
- Undertake appropriate steps to promote effective supervision or monitoring of those societies which account for a large share of the financial resources and international activities.
- Ensure that the information submitted to the Societies Register is sufficient 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. The authorities may also require the societies to keep this information submitted to the Registrar-General's Office for at least a period of five years.
- Put in place appropriate and effective sanctions against societies and those acting on behalf of the societies for failure to comply with the provisions of the laws and regulations governing the societies sector.
- Take immediate steps to ensure that competent authorities (e.g. LMPS) can effectively investigate and gather information on societies in relation to administration and management matters. Additionally, create effective domestic mechanism to ensure cooperation, coordination and exchange of information among

all competent authorities and relevant organisation to deal with societies that raise potential financing of terrorism concern.

- Implement effective procedures to address international requests for information regarding particular NPOs that are suspected of terrorist financing or other forms of terrorist support.
- Take immediate steps to significantly improve the capacity of the Registrar-General's Office by providing adequate resources (i.e. human, technical and financial) for effective regulation and supervision of the societies sector in the country.

### 5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	NC	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• There is no effective supervision or monitoring of those societies which account for a large share of the financial resources and international activities.</li> <li>• There is 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.</li> <li>• There are no appropriate and effective sanctions against societies and those acting on behalf of the societies for failure to comply with the provisions of the laws and regulations governing the societies sector.</li> <li>• There is no capacity for competent authorities to effectively investigate and gather information on societies in relation to administration and management matters.</li> <li>• There is no effective domestic mechanism to ensure cooperation, coordination and exchange of information among all competent authorities and relevant organisation to deal with societies that raise potential financing of terrorism concern.</li> <li>• There are no effective procedures to address international requests for information regarding particular NPOs that are suspected of terrorist financing or other forms of terrorist support.</li> </ul>

		<ul style="list-style-type: none"> <li>• There are no adequate resources at the Registrar-General's Office for effective regulation and supervision of the societies sector in the country.</li> </ul>
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## 6. NATIONAL AND INTERNATIONAL CO-OPERATION

### 6.1 National co-operation and coordination (R.31 & R.32)

#### 6.1.1 Description and Analysis

659. The LMPS, LRA and DCEO entered into a memorandum of understanding (MOU) which lays out mechanisms for cooperation in combating crime amongst the three institutions. The DCEO and Police have also entered into an MOU which outlines cooperation in the investigation of crimes.

#### *Mechanism for domestic cooperation and coordination in AML/CFT (c. 31.1)*

##### Policy cooperation

660. There is a multi-ministerial committee called the Steering Committee on Counter-Terrorism. The Committee is co-chaired by the Ministries of Defence and National Security and Home Affairs and Public Safety. It comprises of the following Ministries and Departments:

- Defence and National Security;
- Home Affairs and Public Safety;
- LMPS
- Foreign Affairs;
- DCEO
- Justice and Human Rights;
- Finance and Development Planning;
- Trade and Industry Cooperatives and Marketing;
- Civil Aviation;
- Attorney General's Chambers;
- Registrar General's office;
- Labour and Employment;
- Immigration;
- Trade and Industry Cooperatives and Marketing;
- Lesotho Defence Forces;
- Commissioner of Lesotho Revenue Authority; and
- Central Bank of Lesotho.

661. The function of the Committee is to advise Government on issues pertaining to countering terrorism in the Kingdom of Lesotho. This includes ratification of international treaties relating to terrorism, their domestication through enactment of laws and regulations

on anti-terrorism, as well as enforcement measures. The authorities informed the assessment team that the Committee was in the process of drafting the Anti-Terrorism Bill. The committee also prepares state-party reports on fulfilment of its obligations under the conventions.

662. The Committee reports to a Higher Body on Transnational Organised Crime and Terrorism. The body comprises of Principal Secretaries and some of the Ministers.
663. In 1999, the Central Bank of Lesotho set up the Task Team on Anti-Money Laundering. The Task Team is chaired by the Ministry of Finance and Development Planning. The Task Team Meets monthly to discuss policy issues on the development of Anti-Money Laundering and Combating Financing of Terrorism.
664. The Task Team was comprised of Ministries and Agencies. The ministries and agencies included were Finance and Development Planning, Attorney-General's Chambers, Director of Public Prosecution's Office, Lesotho Mounted Police Service, Directorate on Corruption and Economic Offences, Foreign Affairs, Immigration Department, Central Bank of Lesotho, Lesotho Revenue Authority (Customs).

#### Operational cooperation

665. The heads of Border Agencies meet monthly to discuss problems and management of the border posts. The border agencies consist of LRA, immigration, police, National Security Services and the officers from the Road Fund. The authorities also indicated that when it becomes necessary the heads can meet on a weekly basis.
666. The cooperation by the border agencies at the border posts enables them to perform clearly defined roles amongst themselves. The set up allows the different agencies to know which officer from which Ministry or department should check the visitor first and the kind of information the officer should pass to the next officer and in the event of an offence being committed who should effect the arrest.
667. The Border Agencies however do not necessarily meet to consider coordination of AML/CFT matters but coordination and exchange of information on issues affecting the borders in general.
668. There is an MOU entered into by the DCEO, LRA and LMPS on cooperation. Pursuant to the MOU, the cooperation includes but not limited to:
- Operational assistance;
  - Sharing of information;
  - Custody and handling of detainees ; and
  - Technical assistance and capacity enhancement.
669. At the time of the onsite visit the FIU was not yet in place and part of the MLPCA which establishes the FIU was not yet operational.<sup>20</sup> There was therefore no system in place to ensure appropriate coordination between authorities at the law enforcement/FIU level, and

between the FIU, law enforcement and supervisors. The authorities however indicated that to help with preparations of eventually setting up the FIU, a temporary arrangement had been made which includes the appointment of an Acting Director and two officers to handle the preparations.

***Additional element –mechanisms for consultation between competent authorities (c. 31.2)***

670. Under section 15 of the MLPCA, the FIU has an obligation to issue guidelines to accountable institutions including banks and members of relevant professions or occupations for purposes of combating ML/FT activities.

671. The assessors were concerned that the above provision does not provide for the FIU to issue the guidelines provided for under that section in consultation with the accountable institutions for them to provide their comments before the guidelines are issued.

***Recommendation 32 (c.32.1)***

672. The Kingdom of Lesotho authorities have not reviewed the effectiveness of the AML/CFT systems in the Kingdom of Lesotho.

**6.1.2 Recommendations and Comments**

673. The authorities should expedite the law which enable the establishment of an FIU to come into operation.

674. In the absence of an FIU there is a gap in the domestic coordination of the development and implementation of policies and activities to combat ML/TF between law enforcement, supervisors and other competent authorities.

675. The authorities should conduct reviews on the effectiveness of the AML/CFT system in the Kingdom of Lesotho

**6.1.3 Compliance with Recommendation 31 & 32 (criterion 32.1 only)**

	Rating	Summary of factors underlying rating
<b>R.31</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>The FIU which should assist with the coordination of information has not yet been established</li> <li>The section which mandates the FIU to provide guidelines does not specifically require it to do so in consultation with the other stakeholders for their input.</li> <li>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 is expected of them.</li> </ul>
<b>R.32</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>There are no mechanisms in place to review the effectiveness of the AML/CFT regime.</li> </ul>



## 6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

### 6.2.1 Description and Analysis

#### Legal framework

676. The Kingdom of Lesotho relies on the dualist principle of law and therefore the nation has to domesticate international instruments that it signs and ratifies, that is international instruments do not take effect immediately upon ratification but have to be incorporated into domestic legislation in order for them to be fully implemented.

#### *Ratification of AML related UN Conventions (c. 35.1)*

677. The Kingdom of Lesotho is a State party to the United Nations Convention on Transnational Organised Crime (the Palermo Convention). Lesotho signed the Convention on the 14<sup>th</sup> of December, 2000 and ratified it on the 24<sup>th</sup> of September, 2003. Lesotho also ratified the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 on the 28<sup>th</sup> of March 1995. The MLPCA was enacted in order to domesticate the two conventions, however not all the provisions of the Conventions have been domesticated.

#### *Ratification of CFT related UN Conventions (c.I.1)*

678. The Kingdom of Lesotho signed the United Nations Convention for the Suppression of Terrorism, 1999, on the 6<sup>th</sup> of September, 2000 and ratified it on the 12<sup>th</sup> of November, 2001. There is no comprehensive legislation on Anti-Terrorism in Lesotho but the MLPCA contains limited provisions that criminalise the financing of terrorism. The Kingdom of Lesotho has not ratified all the conventions and protocols which are annexes to the Convention for the Suppression of the Financing of Terrorism.

#### *Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19- c. 35.1)*

679. The legislative framework of the Kingdom of Lesotho has not fully implemented the Vienna Convention. The following Articles have not been fully implemented. The Drugs of Abuse Act, 2008 is the principal statute that domesticates the Vienna Convention.

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|-----------|--|
| Article 3 | <ul style="list-style-type: none"><li>• Section 43 (1) of The Drugs of Abuse Act does not criminalise brokerage of psychotropic substances.</li><li>• The Drugs of Abuse Act does not criminalise the organization, management or financing of any of the offences enumerated in paragraphs (a)(i), ii), iii) or iv.</li></ul>   |
| Article 5 | <ul style="list-style-type: none"><li>• The power to identify and trace proceeds, property, instrumentalities or any other things is not vested equally in all the competent authorities. Under the MLPCA, only the Anti Money Laundering Authority is empowered to apply for monitoring and tracing orders and preservation of property orders under sections</li></ul> |

30 and 88, respectively.

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|------------|---|
| Article 7  | <ul style="list-style-type: none"><li>• The Kingdom of Lesotho does not have Legislation on Mutual legal Assistance. Mutual legal Assistance is based mainly on the London and Harare Schemes for Mutual Legal Assistance as well as bilateral treaties. The two Schemes are restricted to commonwealth member countries.</li></ul>   |
| Article 8  | <ul style="list-style-type: none"><li>• The law does not provide for transfer of criminal proceedings.</li></ul>  |
| Article 9  | <ul style="list-style-type: none"><li>• The authorities in the Kingdom of Lesotho have not initiated, developed or improved specific training programmes for law enforcement and other personnel, including customs, charged with the suppression of offences relating to psychotropic substances and proceeds of crime.</li></ul>  |
| Article 10 | <ul style="list-style-type: none"><li>• The Kingdom of Lesotho is a developing nation with financial challenges and consequently has no capacity currently, to assist and support transit States and, in particular, other developing countries in need of such assistance and support, through programmes of technical co-operation on interdiction and other related activities.</li></ul>                        |
| Article 15 | <ul style="list-style-type: none"><li>• The Kingdom of Lesotho does not have special measures to require commercial carriers to take reasonable precautions to prevent the use of their means of transport for the commission of offences related to narcotic drugs and psychotropic substances as well as proceeds of the offences.</li></ul>  |
| Article 17 | <ul style="list-style-type: none"><li>• This Article does not apply to the Kingdom of Lesotho with regard to physically dealing with vessels as the Kingdom of Lesotho is a landlocked country which is surrounded entirely by the Republic of South Africa. Section 2 of the Drugs of Abuse Act however extends the jurisdiction of the Kingdom of Lesotho to vessels which fly the flag of the Kingdom.</li></ul> |
| Article 19 | <ul style="list-style-type: none"><li>• The Kingdom of Lesotho does not have specified procedures for postal checking nor has it adopted specific measures to suppress the use of the mails for illicit traffic.</li><li>• There are no specific provisions for international cooperation to suppress the use of the mails for illicit traffic.</li></ul>   |

***Implementation of SFT Convention (Articles 2-18, c 35.1 & c. I.1)***

680. The authorities of the Kingdom of Lesotho have not fully implemented the United Nations Convention for the Suppression of the Financing of Terrorism. The MLPCA is the principal Act that seeks to domesticate the Convention.

- Article 2
- The MLPCA does not create an offence for a person to contribute to the commission of one or more terrorism offences as set forth in paragraphs 1 or 4 of Article 2 by a group of persons acting with a common purpose.
- Article 3
- The MLPCA does not exclude the applicability of the Convention where the offence is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State and no other State has a basis to exercise jurisdiction.
- Article 4
- The MLPCA does not criminalise the financing of an individual terrorist.
  - The penalties for terrorist financing offences under the MLPCA are generally inadequate when viewed in relation to the gravity of the offences. Under section 65(4) of the MLPCA, a person may be liable to a fine or imprisonment without being liable to both the fine and imprisonment.
- Article 5
- The MLPCA does not provide for criminal, civil or administrative liability for a legal entity located in the Kingdom of Lesotho or organized under the laws of the Kingdom when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence set forth in Article 2.
- Article 7
- The MLPCA does not provide for the criminalisation of terrorist acts directed against internationally protected persons.
  - The MLPCA does not provide for the criminalisation of terrorist acts committed by a stateless person who has his or her habitual residence in the territory of the Kingdom of Lesotho.
  - The MLPCA does not provide for the criminalisation of terrorist acts directed towards or resulting in the carrying out of a terrorism offence, against a State or government facility of that State abroad, including diplomatic or consular premises of that State.
- Article 8
- The MLPCA provides for a Criminal Asset Recovery Fund. However, there are no mechanisms to enable the funds derived from the forfeitures to be utilized to compensate the victims of terrorist offences, or their families.
- Article 9
- The MLPCA does not provide for any national accused of an offence under the Convention to communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect

that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides.

- The MLPCA does not provide for a national accused of an offence under the Convention to be visited by a representative of that State.
  - The MLPCA does not provide for a national accused of an offence under the Convention to be informed of his/her rights under the domestic laws and to be visited by a representative of the state of which that person is a national or, in the case of a stateless person, where the person habitually resides.
- Article 10
- The legal system of the Kingdom of Lesotho does not have any provisions creating an obligation for the Kingdom of Lesotho to prosecute a person of whom a request for extradition has been refused.
- Article 11
- The legal system of the Kingdom of Lesotho makes extradition conditional on the existence of a treaty. Where the Kingdom of Lesotho receives a request for extradition from another State Party with which it has no extradition treaty, it does not consider the Convention as a legal basis for extradition in respect of terrorism offences since it uses a dualist system and has to domesticate international instruments in order for them to be effective.
- The Fugitive Offenders Act does not contain provisions to give full effect to Article 11.
- Article 14
- The Fugitive Offenders Act, in section 6 provides for general restrictions on extradition. There is no specific exception for offences under Article 2 of the Convention.
- Article 16
- The legal framework of the Kingdom of Lesotho does not contain provisions giving effect to Article 16 regarding transfer of persons for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under Article 2.
- Article 18
- The legal system of the Kingdom of Lesotho inhibit it from fully cooperating in the prevention of offences set out in Article 2 as it has not yet fully adapted its legislation, to prevent and counter preparations in the Kingdom of Lesotho for the commission of

terrorist offences set out in Article 2, within or outside Lesotho.

- Measures to prohibit illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of terrorist offences are not completely in place.
- Obligations for suspicious transaction reporting have not been fully implemented.

***Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34- c. 35.1)***

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|------------|---|
| Article 5  | <ul style="list-style-type: none"><li>• The laws of the Kingdom of Lesotho to a large extent do not criminalise participation in an organised criminal group. The Drugs of Abuse Act however does conform to this Article but is restrictive in its application to narcotic drugs and psychotropic substances only and is not applicable to other offences.</li></ul>   |
| Article 6  | <ul style="list-style-type: none"><li>• This Article is not applied to the widest range of predicate offences.</li><li>• The threshold of 24 months under the Laws of Lesotho and the fact that most offences are common law offences means that predicate offences cannot be clearly determined in relation to the threshold since Judges have the discretion to give punishment that falls below the 24 month threshold.</li></ul>  |
| Article 7  | <ul style="list-style-type: none"><li>• The Kingdom of Lesotho has not put in place a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and other bodies particularly susceptible to money-laundering, in order to deter and detect all forms of money-laundering, which regime emphasizes requirements for customer identification, record-keeping and the reporting of suspicious transactions.</li><li>• The authorities enacted the MLPCA to implement this Article. The Act however does not comprehensively cover all the provisions under this Article.</li></ul> |
| Article 10 | <ul style="list-style-type: none"><li>• The liability of legal persons does not extend to participation in organised criminal groups.</li><li>• The law does not provide administrative sanctions for legal persons.</li></ul>  |
| Article 20 | <ul style="list-style-type: none"><li>• The Kingdom of Lesotho does not have provisions for controlled delivery that are of general application. The Drugs of Abuse Act does however make provision for controlled delivery relating to</li></ul>   |

narcotic drugs and psychotropic substances offences.

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|------------|--|
| Article 24 | • The Kingdom of Lesotho does not provide comprehensive measures in terms of the law for the protection of witnesses.  |
| Article 25 | • The Kingdom of Lesotho does not provide comprehensive measures in terms of the law for the protection of victims.  |
| Article 26 | • The Kingdom of Lesotho does not provide comprehensive measures for the protection of former members of organised criminal groups that provide information to competent authorities.                                      |
| Article 29 | • The Kingdom of Lesotho has not conducted comprehensive training to its law enforcement and competent authorities responsible for the prevention, detection and control of the offences covered by the Convention.        |
| Article 30 | • The Kingdom of Lesotho is a developing nation that does not provide technical assistance to other countries due to lack of financial capacity but receives assistance itself.  |
| Article 31 | • The Kingdom of Lesotho does not have 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. |

***Implementation of UN SCRs relating to Prevention and Suppression of FT (c. I.2)***

681. There are no laws or regulations for the implementation of United Nations Security Council Special Resolutions 1267 and 1373.

***Additional element- ratification or implementation of other relevant international conventions (c. 35.2)***

682. No information was provided by the authorities on whether the other relevant international conventions such as the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the 2002 Inter- American Convention against Terrorism have been signed, ratified or fully implemented.

**6.2.2 Recommendations and Comments**

683. In order to fully implement the Recommendation, the Kingdom of Lesotho should:
- enact legislation to criminalise terrorist acts;
  - fully implement the Palermo, Vienna and Suppression of Terrorism Conventions;
  - put in place comprehensive measures for mutual legal assistance; and

- put in place comprehensive measures for the implementation of UNSCR 1267 and 1373;
- 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;
- Put in place measures for the promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;
- conduct comprehensive training to its law enforcement and competent authorities responsible for the prevention, detection and control of the offences covered by the Convention;
- provide comprehensive measures for the protection of witnesses;
- extend the liability of legal persons to include their participation in organised criminal groups;
- amend the law to provide administrative sanctions for legal persons that commit offences;
- amend the MLPCA to provide jurisdiction extending to an offence that is committed on board a vessel that is flying the flag of the Kingdom of Lesotho or an aircraft that is registered under the laws of Lesotho at the time that the offence is committed, as is the case with the Drugs of Abuse Act;;
- provide for the criminalisation of terrorist acts committed by a stateless person who has his or her habitual residence in the territory of the Kingdom of Lesotho;

### 6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	PC	<ul style="list-style-type: none"> <li>• The Kingdom of Lesotho has not fully implemented the Palermo, Vienna and Suppression of Terrorism Conventions.</li> <li>• There are no comprehensive measures for mutual legal assistance in place.</li> <li>• The Kingdom of Lesotho has 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.</li> <li>• There are no comprehensive measures in place for the protection of witnesses.</li> <li>• Participation of legal persons in organised criminal groups is not criminalised.</li> <li>• The laws do not provide administrative sanctions for legal persons that commit offences;</li> </ul>

		<ul style="list-style-type: none"> <li>• The MLPCA does not provide jurisdiction extending to an offence that is committed on board a vessel that is flying the flag of the Kingdom of Lesotho or an aircraft that is registered under the laws of the Kingdom of Lesotho at the time that the offence is committed, as is the case with the Drugs of Abuse Act; and</li> <li>• The laws do not provide for the criminalisation of terrorist acts committed by a stateless person who has his or her habitual residence in the territory of the Kingdom of Lesotho.</li> </ul>
<b>SR.I</b>	NC	<ul style="list-style-type: none"> <li>• There are no laws or regulations for the implementation of UNSCRs 1267 and 1373.</li> <li>• There are no appropriate measures to monitor effectively the compliance with freezing obligations by persons and entities other than with financial institutions and companies.</li> <li>• There are no defined and publicly known procedures for the freezing of assets and funds of listed organisations and individuals.</li> <li>• There are no defined and publicly known procedures for the unfreezing of assets and funds of organisations and individuals inadvertently listed under the UNSCRs 1267 and 1373.</li> </ul>

### 6.3 Mutual Legal Assistance (R.36-38, SR.V)

#### 6.3.1 Description and Analysis

##### Legal framework

684. The Kingdom of Lesotho is a party to various international instruments and arrangements which provide for mutual legal assistance. These are:

- The United Nations Convention against Transnational Organised Crime 2000;
- The SADC Protocol on Mutual Legal Assistance in Criminal Matters;
- The Scheme Relating to Mutual Legal Assistance in Criminal Matters within the Commonwealth and 1990, 2002 and 2005 amendments;
- Agreement on the establishment of a joint bilateral commission of cooperation with the Republic of South Africa;
- Treaty on Mutual Legal Assistance in Criminal Matters 2001; and
- Memorandum of Understanding Concerning Cooperation in the Legal Field.

685. The Kingdom of Lesotho does not have specific legislation on mutual legal assistance in criminal matters.

#### Recommendation 36



***Widest possible range of mutual assistance (c. 36.1)***

686. The MLPCA has provisions for assistance relating to foreign offences. Section 11 of the Act empowers the Anti-Money Laundering Authority to “extend legal assistance to foreign jurisdictions with respect to property tracking, monitoring and confiscation orders”. It must be noted that at the time of the on site visit the provisions of section 11 were not yet in operation.
687. Section 81 of the Act provides for the obtaining of production orders in relation to foreign offences. The section provides as follows:-
- “Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction, the provisions of section 82 apply with necessary modifications.”*
688. Section 84 of the Act further provides that:-
- “Where a foreign state requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction, the provisions of section 83 apply with necessary modification.”*
689. Section 83 deals with the procedure for obtaining a search warrant for location of documents relevant to locating property.
690. The definition of serious offence in section 2 of the MLPCA includes conduct which is punishable as an offence in a foreign country which if it had occurred in the Kingdom of Lesotho would have been an offence and punishable by a term of imprisonment of not less than twenty-four months. The consideration of a foreign offence with a certain sentencing threshold seemed to allow mutual assistance for such foreign offences which are recognised in the Kingdom of Lesotho to be provided.
691. The Criminal Procedure and Evidence Act, provides the rules of criminal procedure applicable in the Kingdom of Lesotho. The authorities indicated that in practice the provisions of the Act are utilised to investigate both domestic and foreign offences where a request for mutual legal assistance is made. They further stated that in order for a foreign request for mutual legal assistance to be dealt with, a local inquiry would be opened and the matter dealt with as if it was a local investigation.
692. The agreement between the Kingdom of Lesotho and the Government of the Republic of South Africa on the establishment of a Joint Bilateral Commission of Cooperation provides for cooperation in various areas including the areas of stability and security. The authorities informed the assessors that the departments and Ministries that take part in the activities relating to stability and security cooperation include Defence, Justice, Police and Correctional Services, Constitutional Affairs, Land Affairs, Home Affairs, Intelligence, Foreign Affairs and Revenue Services.

***Provision of assistance in timely, constructive and effective manner (c. 36.1.1)***

693. The Authorities of the Kingdom of Lesotho indicated that mutual legal assistance is provided through diplomatic channels by way of formal requests channelled through the Ministry of Foreign Affairs and in some instances through direct communications between competent authorities.
694. The Kingdom of Lesotho neither has legislation on mutual legal assistance nor prescribed procedures for providing responses to requests for mutual legal assistance. During the on site visit, the authorities indicated that requests for mutual legal assistance are received by the Ministry of Foreign Affairs and then channelled to the Director of Public Prosecutions for transmission to the competent authority to deal with the request in question.
695. Further the Authorities conceded that in some instances, requests take long to respond to and in some cases took as long as six months. It was also noted that there were no prescribed time limits in which a response or even acknowledgement of receipt of the request was made. The range of assistance available was stated to cover all matters that may be dealt with under the Criminal Procedure and Evidence Act. At the time of the on site visit the assessors requested for statistical information in order to confirm the duration of the response time to requests as well as the volume of requests received. The authorities could not provide the statistics therefore the assessors could not determine whether the Kingdom of Lesotho can and actually provides assistance in a timely, constructive and effective manner to other foreign jurisdictions.

*No unreasonable or unduly restrictive conditions on mutual assistance (c. 36.2)*

696. According to the authorities, the grounds to reject a request for mutual legal assistance from a state party, included situations where, in the opinion of the Kingdom of Lesotho, a request related to a political or military offence or the request would impair the Kingdom's sovereignty, security or public order.
697. The Kingdom of Lesotho also relied on the grounds of refusal contained in Article 18 (21) of the Palermo Convention and article 8 of Scheme Relating to Mutual Legal Assistance in Criminal Matters within the Commonwealth.
698. Under the Commonwealth Scheme on Mutual Legal Assistance, a requested State may, under article 8, refuse to provide assistance where the request is thought to concern:-
- (a) Conduct which would not constitute an offence under the law of that country;
  - (b) An offence or proceedings of a political character;
  - (c) Conduct which in the requesting country is an offence only under military law or a law relating to military law or a law relating to military obligations;
  - (d) Conduct in relation to which the person accused or suspected of having committed an offence has been acquitted or convicted by a court in the requested country.
699. The article further provides that the requested country may refuse to comply wholly or partially with a request for assistance under the scheme:-

- “(a) to the extent that it appears to the Central Authority of that country that compliance would be contrary to the Constitution of that country, or would prejudice the security, international relations or other essential public interests of that country; or
- (b) where there are substantial grounds leading the Central Authority of that country to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions or would cause prejudice for any of these reasons to any person affected by the request.”

700. In addition, the Kingdom of Lesotho may refuse to comply in whole or in part with a request for assistance to the extent that the steps required to be taken in order to comply with the request cannot under the laws the Kingdom of Lesotho be taken in respect of criminal matters.

701. The authorities indicated that in order for assistance to be rendered within the scope of any international convention to which both the requesting and requested countries are parties and it imposes an obligation on the parties either to extradite or in the event of refusal to extradite to prosecute the person accused of the commission of the offence under their own jurisdiction, an offence should not be of a political character.

#### *Efficiency of process (c. 36.3)*

702. The Kingdom of Lesotho has no legislation relating to mutual legal assistance and consequently there are no established mechanisms for the execution of the mutual legal assistance apart from those stipulated in agreements and international instruments to which the Kingdom of Lesotho is a party. Due to the absence of established mechanisms for the execution of mutual legal assistance requests, the authorities indicated that requests for assistance are made either directly to a competent authority or through diplomatic channels.

703. The authorities indicated that requests dealt with using diplomatic channels were generally prone to delays and were not favoured by law enforcement personnel. The authorities however indicated that in one instance where a request was made directly to a law enforcement agency in another country, the request had been declined and the authorities were advised to make the request through diplomatic channels in order for it to be dealt with.

704. There was no statistical data provided by the authorities regarding the amount of requests made, received from other jurisdictions, attended to and the average time it took to attend to the requests.

#### *Provision of assistance regardless of possible involvement of fiscal matters (c. 36.4)*

705. The Kingdom of Lesotho does not have any legal provisions that place restrictions on the provision of mutual legal assistance based on matters that are considered fiscal.

#### *Provision of assistance regardless of existence of secrecy and confidentiality laws (c. 36.5)*

706. The Kingdom of Lesotho generally does not apply secrecy provisions when rendering mutual legal assistance, except on the basis of a court order. Section 247 of the Criminal

Procedure and Evidence Act provides that a bank cannot be compelled to provide certain books unless the production is done pursuant to a court order.

707. The MLPCA, in section 32 overrides secrecy provisions. The section provides among other things that the Act shall have effect notwithstanding any obligation to secrecy or other restriction on disclosure of information imposed by law or otherwise.

*Availability of powers of competent authorities (applying R28, c.36.6)*

708. The MLPCA makes provision for giving mutual legal assistance to foreign authorities under sections 81 and 84. The sections empower a police officer or an authorised officer to provide assistance to foreign authorities based on an order of the court.
709. The Act in section 2 defines an authorised officer as an officer of the Directorate of Corruption and Economic Offences or a person or class of persons as may be designated as such by the Director-General (of the DCEO) in writing with the approval of the Minister.

*Avoiding conflicts of jurisdiction (c. 36.7)*

710. The Kingdom of Lesotho does not have legislative provisions for dealing with conflicts of jurisdiction relating to mutual legal assistance requests.
711. In terms of law at the time of the on site visit, it was only possible under section 11 of the Fugitive Offenders Act for countries asserting jurisdiction over a person to request the person to be brought to that country based on nationality, citizenship and ordinary residence.

*Additional element –Availability of powers of competent authorities required under R28 –(c. 36.8)*

712. Sections 81 and 84 of the MLPCA which provide for mutual legal assistance relating to location and seizing of property suspected to be tainted property do not place any restrictions on the competent authorities in responding to such requests made directly from foreign judicial or law enforcement authorities provided the competent authorities have the consent of the owner or occupier of the place to be searched or a search warrant.

*International cooperation under SR V (applying c.36.1-36.6 in R.36, c. V.1)*

713. Sections 81 and 84 of the MLPCA described above and in R3 of this report, equally apply to mutual legal assistance requests relating to TF. The Kingdom of Lesotho is therefore able to render mutual legal assistance to foreign countries upon request to the extent provided by the MLPCA or in terms of any other international instrument or arrangement to which the Kingdom is a party.

*Additional element- (applying c. 36.7 & 36.8 in R 36, c. V.6)*

714. Sections 81 and 84 of the Money Laundering and Proceeds of Crime do not place any restrictions on the competent authorities in responding to requests for mutual legal assistance which, are made directly from foreign judicial or law enforcement authorities (comments made under R36.8 above also apply).

## Recommendation 37

### *Legal framework*

715. Mutual legal assistance in the Kingdom of Lesotho is provided primarily under the MLPCA, the Fugitive Offenders Act and international instruments to which the Kingdom of Lesotho is a party such as the Commonwealth Scheme on Mutual Legal Assistance.

### *Dual criminality and mutual assistance (c. 37.1 & 37.2)*

716. Under the legal framework of the Kingdom of Lesotho, mutual legal assistance is based on dual criminality. The MLPCA provides that for conduct to be considered as a serious offence, it should be an offence against the laws of the Kingdom of Lesotho or against the laws of the foreign country which if it had occurred in the Kingdom of Lesotho would have been an offence. The Authorities in Lesotho indicated that mutual legal assistance is generally granted on the basis of dual criminality.

717. Under the Commonwealth Scheme on Mutual Legal Assistance, a requested State may, under article 8, refuse to provide assistance where the request is thought to concern conduct which would not constitute an offence under the law of that country. The Kingdom of Lesotho therefore may decline a request for mutual legal assistance which does not meet the requirements of dual criminality. However, the authorities could not give examples of cases where a request for mutual legal assistance was declined based on this principle.

718. Extradition under the laws of the Kingdom of Lesotho is regulated by the Fugitive Offenders Act. Pursuant to the Act in order for a request for extradition to be successful, the offence has to be relevant in terms of it being conduct which if it had occurred in the Kingdom of Lesotho would have been recognised as an offence. Section 5(1) of the Act specifically states that:-

*“5. (1) 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 law of Lesotho if it took place within Lesotho or, in the case of an extra-territorial offence, in corresponding circumstance outside Lesotho.*

719. For extradition and forms of mutual legal assistance where dual criminality is required, there are no legal or practical impediments to rendering assistance where both countries criminalise the conduct underlying the offence.

720. The technical differences between the laws in the Kingdom of Lesotho and the requesting states in terms of the categorisation or denomination of the offences do not pose an

impediment to the provision of mutual legal assistance. Section 5 of the Act specifically provides that an offence against the law of a designated country, no matter how described, is a relevant offence if it falls within any description set out in the First Schedule of the Act.

***International co-operation under SRV (applying c. 37.1-37.2 in R37, cV.2)***

721. The observations relating to R37.1-37.2 also apply to the offences of TF, which are criminalised under the MLPCA. Mutual legal assistance can be rendered under sections 81 and 84 of the MLPCA in relation TF but only to the extent provided under the sections. The mutual legal assistance provided under the MLPCA is not wide enough to cover all aspects of mutual legal assistance.

722. In terms of extradition, section 27 of the MLPCA provides that money laundering and the financing of terrorism are extraditable offences for the purposes of the Act and any other legislation dealing with extradition. Extradition is governed by the Fugitive Offenders Act and the same requirements relating to dual criminality described in R37.1 above would also apply to the offences of TF.

**Recommendation 38**

***Timeliness to requests for provisional measures including confiscation (c. 38.1)***

723. The Kingdom of Lesotho, other than provisions set out in the MLPCA which provide for mutual legal assistance to foreign countries in certain specific areas, does not have in place specific legislation outlining procedures to facilitate effective and timely response to mutual legal assistance requests by foreign countries related to the identification, freezing, seizure, or confiscation of:-

- (a) laundered property from,
  - (b) proceeds from,
  - (c) instrumentalities used in, or
  - (d) instrumentalities intended for use in,
- the commission of any ML, FT or other predicate offences.

724. The MLPCA, in sections 81 and 84 provides for the provision of assistance to foreign countries for the search and seizure of documents required to locate tainted property and search and seizure of property suspected to be tainted property in respect of the foreign offence provided the conduct for which the evidence is required would have been an offence if it had occurred in the Kingdom of Lesotho. Section 84 of the MLPCA provides as follows:-

*“Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction, the provisions of section 83 apply with necessary modification.”*

725. Sections 57 further provides for search warrants for the seizure of tainted property to be applied for and granted within seventy-two hours prior to a search. Section 57(1) reads:-

*“57(1) Where a police officer or an authorised officer has reasonable ground for suspecting that there is, or may be within the next 72 hours, tainted property of a particular kind-*

- (a) on a person;*
- (b) in the clothing that is being worn by a person;*
- (c) otherwise in a person’s immediate control;*
- (d) upon land or upon or in any premises,*

*The police officer or the authorised officer may lay before a Magistrate an information on oath setting out those grounds and apply for the issue of a warrant to search the person, the land or the premises as the case may be, for tainted property of that kind.”*

726. In addition, a warrant may be issued under section 57 of the Act in relation to tainted property, whether or not information has been laid before the magistrate, setting out the grounds for suspecting that tainted property may be found with the person or on the land or other item which is the subject of the warrant.

727. Section 57(4) provides for a measure meant to safeguard the rights of suspects by requiring that where no information had been laid setting out the grounds of suspicion for the location of the tainted property, the magistrate before issuing the warrant has to be satisfied that such information can be provided within 48 hours of the grant of a warrant and that the property against which the application for the warrant is being made is tainted property. Section 57(4) provides as follows:-

*“57(4) A Magistrate shall not issue a warrant under subsection (2) unless, where information has not been laid in respect of the relevant offence at the time when the application for the warrant is made, the Magistrate is satisfied that-*

- (a) information will be laid in respect of the relevant offence within 48 hours; and*
- (b) the property is tainted property.”*

728. In terms of section 58 of the MLPCA, in certain situations the law allows the application for a search warrant to be made by telephone. Section 58 of the Act reads as follows:-

*“58. (1) Where by reason of urgency a police officer or an authorised officer considers it necessary to do so he or she may make application for a search warrant under section 57 by electronic communication.*

*(2) A Magistrate to whom an application for the issue of a warrant is made by electronic communication may sign a warrant if he or she is satisfied that it is necessary to do so and shall inform the police officer or an authorised officer shall complete a form of warrant in the terms furnished by the Magistrate.*

*(3) The police officer or an authorised officer to whom a warrant is granted by electronic communication shall, not later than the next day following the execution of the warrant, give the Magistrate duly sworn information and the form of warrant completed by him or her.”*

729. The periods provided under the MLPCA appear to provide timely procedures to secure evidence required by the requesting jurisdiction however, the authorities could not

demonstrate how much time it took them to relay back the information or evidence to the requesting jurisdiction once it had been collected. There were no systems in form of records or set out practices in place to be relied on to verify the time the process took.

730. Section 61 of the Money Laundering and Proceeds of Crime Act also provides that-

*“61. Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction, the provisions of section 57 and 58 apply with necessary modification.”*

731. The effectiveness of the implementation of the provisions however could not be determined as they had not been judicially tested. In addition, the delays that arose between the time a request for assistance was made by a foreign jurisdiction through diplomatic channels and the time that the request was relayed to law enforcement agencies and the information gathered by law enforcement being relayed back to the requesting jurisdiction could not be established. However based on the general explanation made by the authorities during the on site visit, the process appeared to take a considerable length of time, which ultimately resulted with foreign requests for mutual legal assistance not being dealt with in an effective and timely manner despite the existence of provisions of the MLPCA.

***Property of corresponding value (c. 38.2)***

732. The provisions relating to effective and timely response to mutual legal assistance requests by foreign countries discussed under c.38.1 above, also equally apply to property of corresponding value.

733. In terms of section 45 of the MLPCA where the court has satisfied itself that a confiscation order should be made in respect of a person convicted of a serious offence's property but the property, or any part thereof, or interest therein for some reason which might include the property being no longer locatable, transferred to another person under circumstances which do not give rise to suspicion of the property being transferred for purposes of avoiding confiscation, the property having diminished in value to the extent of being worthless cannot be made subject to such an order, the court may instead order the person to pay to the Government of the Kingdom of Lesotho an amount equal to the value of the property, part thereof or interest therein.

***Coordination of seizure and confiscation actions (c. 38.3)***

734. Section 11 (3) (d) of the MLPCA empowers the Anti-Money Laundering Authority to extend legal assistance to foreign jurisdictions with respect to property tracking, monitoring and confiscation orders.

735. In addition, there are provisions in the Commonwealth Scheme on Mutual Legal Assistance for putting in place measures to matters that are not embodied in the text of the agreement, on terms that may be agreed between State parties. Such arrangement may extend to measures relating to coordination, seizure and confiscation actions. Article 32 of the Commonwealth Scheme provides as follows:-



*“After consultation between the requesting and the requested countries assistance not within the scope of this Scheme may be given in respect of a criminal matter on such terms and conditions as may be agreed by those countries.”*

736. The authorities in the Kingdom of Lesotho indicated that where a foreign request for confiscation or seizure was made, a local inquiry was opened and the request was dealt with as if the subject of the request was a local matter which is subject to the laws of Lesotho. The procedure for treatment of a foreign request and the execution by law enforcement officers of such requests could not be confirmed as there was no statistical information provided to verify the practical application of the process of execution of foreign requests. Further, the MLPCA has not been judicially tested.

***International cooperation under SR V (applying c. 38.1-38.3 in R.38, c.V.3)***

737. The MLPCA criminalises funding and financing of terrorism under sections 63 and 65, respectively. Accordingly, assistance in connection with requests by foreign states for the identification, freezing, seizure, or confiscation of terrorist funds or proceeds derived from the commission of an offence under sections 63 or 65 may be rendered where the requirement of dual criminality is complied with. The discussion under 38.1 to 38.3 also applies to this paragraph.

***Asset forfeiture fund (c. 38.4)***

738. The Kingdom of Lesotho has established an asset forfeiture fund called the Criminal Assets Recovery Fund through the MLPCA. Section 109 of the Act establishes the Criminal Asset Recovery Fund into which proceeds from criminal activities should be deposited.

***Sharing of confiscated assets (c. 38.5)***

739. Section 110 (b) of the MLPCA provides that the Fund shall consist in part of “the balance of all moneys derived from the execution of foreign confiscation orders after payments have been made to the requesting states in terms of that [sic] Act.”
740. By the time of the on site visit, the Kingdom of Lesotho had not yet prescribed mechanisms on how the sharing of confiscated assets would be conducted.

***Additional element – recognition of foreign orders for a) confiscation of assets from organisations principally criminal in nature; b) civil forfeiture and c) confiscation of property which reverses burden of proof (applying c. 3.7 in R3- c. 38.6)***

741. The legal framework of the Kingdom of Lesotho does explicitly provide for the recognition of foreign orders for confiscation or seizure of assets from organisations principally criminal in nature. The provisions of the Money laundering and Proceeds of Crime Act in as far as they provide for acting on requests from foreign states suggest that foreign orders may be given recognition where they form the basis for a request under the Act.
742. Part V of the MLPCA provides for the civil recovery of property and section 87 under that Part provides that all proceedings under that Part shall be civil proceedings where the

rules of evidence applicable in civil proceedings apply and the rule of construction applicable only in criminal proceedings shall not apply.

***Additional element under SR V (applying c. 38.4-38.6 in R38, c. V.7)***

743. The discussion of the additional element applying c. 38.4-38.6 in R.38, extends to TF offences.

***Statistics (applying R32)***

744. The authorities did not provide statistics on the number of requests for mutual legal assistance sent, received or executed by the Kingdom of Lesotho.

**6.3.2 Recommendations and Comments**

745. In order to fully implement the recommendations, the Kingdom of Lesotho should take the following steps:

***Recommendation 36***

- Enact legislation to fully implement mutual legal assistance measures that ensure effective and timely execution of requests from foreign States;
- Put in place measures to facilitate the taking of witness statements on behalf of a foreign State;
- Facilitate the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country;
- Maintain statistical information on mutual legal assistance matters;

***Recommendation 37***

- Dispense with the requirement of dual criminality as a pre-requisite for rendering mutual legal assistance in particular for less intrusive and non compulsory measures.

***Recommendation 38***

- Redefine serious offences from a term of imprisonment of 24 months to 12 months in order to provide for the full range of predicate offences for money laundering and facilitate effective mutual legal assistance relating to the identification, freezing, seizure, or confiscation of laundered property from, proceeds from, instrumentalities used in, or instrumentalities intended for use in, the commission of any ML/FT or other predicate offences;
- Maintain statistics relating to mutual legal assistance requests sent, received and executed.

**6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V**

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
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R.36	PC	<ul style="list-style-type: none"> <li>• The absence of legislation on mutual legal assistance made it difficult for the assessors to determine the extent of mutual legal assistance which can be provided by the authorities;</li> <li>• 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;</li> <li>• There are no procedures to facilitate the taking of witness statements on behalf of a foreign State.</li> <li>• There are no procedures to facilitate the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country;</li> <li>• The absence of statistics and information on requests executed, the nature of assistance required, requests acceded to and rejected and the length of time it took on average to attend to the requests, made it impossible for the assessors to determine if the Kingdom of Lesotho could provide mutual legal assistance in a timely, constructive and effective manner; and</li> <li>• Overall effectiveness could not be determined due to the absence of statistics.</li> </ul>
R.37	PC	<ul style="list-style-type: none"> <li>• The requirement of dual criminality as a pre-requisite in rendering mutual legal assistance may limit the provision of mutual legal assistance particularly in less intrusive and non compulsory measures; and</li> <li>• The failure of a request to meet the dual criminality requirement may serve as a ground for refusing mutual legal assistance.</li> </ul>
R.38	PC	<ul style="list-style-type: none"> <li>• The 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 are common law with no defined terms of sentencing, results in the full range of predicate offences for money laundering not being covered which impedes 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</li> </ul>

		<p>instrumentalities intended for use in, the commission of any ML/FT or other predicate offences, including property of corresponding value;</p> <ul style="list-style-type: none"> <li>• Lack of implementation of the mutual legal assistance provisions set out in the MLPCA;</li> <li>• Lack of clear arrangements for coordinating seizure and confiscation actions with other countries; and</li> <li>• The absence of statistical information made it impossible to verify whether the authorities had used the laws and procedures for providing mutual legal assistance in response to requests for identification, seizure, freezing or confiscation in an effective and timely manner.</li> </ul>
SR.V		<ul style="list-style-type: none"> <li>• The deficiencies applicable to Recommendations 36, 37 and 38 also apply to SRV.</li> </ul>

#### 6.4 Extradition (R.37, 39, SR.V)

##### 6.4.1 Description and Analysis

###### Legal framework

746. The Kingdom of Lesotho principally deals with extradition under the Fugitive Offenders Act. The MLPCA provides offences which are extraditable. In addition the Kingdom of Lesotho is a party to international instruments that contain provisions relating to extradition namely:-

- (a) The SADC Protocol on Extradition, 2002;
- (b) The London Scheme for Extradition within the Commonwealth, 2002;
- (c) Palermo Convention, 2000;
- (d) Treaty between the Kingdom of Lesotho and Republic of South Africa, 2001; and
- (e) Treaty between the Kingdom of Lesotho and China.

###### *Dual criminality and mutual assistance (c. 37.1 & 37.2)*

747. Extradition requests to the Kingdom of Lesotho are granted on the basis of dual criminality. Section 5 of the Fugitive Offenders Act, requires that for an extradition request to be granted, an offence in a designated country where the offence is committed has to fall within the description of the conduct set out in the first schedule to the Act. Further, the MLPCA provides that for conduct to be considered a serious offence, it should be an offence against the laws of the Kingdom of Lesotho or against the laws of the foreign country which had they occurred in the Kingdom of Lesotho would have constituted an offence for which

the maximum penalty if death, or imprisonment for life or other deprivation of liberty for a period of not less than 24 months.

748. Under the Commonwealth Scheme on Mutual Legal Assistance, to which Lesotho is a party, a requested State may, under article 8, refuse to provide assistance where the request is thought to concern conduct which would not constitute an offence under the law of that country.

749. For extradition and those forms of mutual legal assistance where dual criminality is required, there are no legal or practical impediments to rendering assistance where both countries criminalise the conduct underlying the offence. Further, section 5(2) of Fugitive Offenders Act states that any special intent or state of mind or special circumstances of aggravation which may be necessary to constitute the offence under the law of a designated state shall be disregarded, for the purposes of proceedings under the Act.

750. The technical difference between the laws of the Kingdom of Lesotho and the requesting states in terms of the categorisation or denomination of the offences does not pose an impediment to the provision of mutual legal assistance. Section 5 of the Fugitive Offenders Act specifically provides that an offence against the law of a designated country, no matter how described, is a relevant offence if it falls within any description set out in the First Schedule of the same Act.

#### ***Money laundering as extraditable offence (c. 39.1)***

751. The offence of Money laundering is an extraditable offence under the MLPCA. Section 27 provides as follows:-

*“27. Money laundering and the financing of terrorism are extraditable offences for the purposes of this Act and any other legislation dealing with extradition.”*

752. Part II of the Fugitive Offenders Act prescribes procedures for the extradition of offenders.

#### ***Extradition of nationals (c. 39.2)***

753. Article 43 of the Constitution of Lesotho defines a person who is not a citizen of the Kingdom of Lesotho as an alien, and this term is used where a distinction is meant to be made between citizens and non-citizens of Kingdom, such as under the Alien Control Act of 1966.

754. With regard to extradition, the legislation of the Kingdom of Lesotho refers to a person. Although the definition of person is not given in the Fugitive Offenders Act, the assessors were of the view that in the absence of such definition then the meaning of person used in the Act could be given the general meaning and be applied to both citizens and non-citizens of the Kingdom of Lesotho.

755. Section 3 of the Fugitive Offenders Act provides for the extradition of a person found within the Kingdom of Lesotho who is accused of a relevant offence in any other country to which the section applies, or who is alleged to be unlawfully at large after conviction of such an offence in such a country. In terms of this section it does not appear that the Fugitive Offenders Act precludes the Kingdom of Lesotho from extraditing its own nationals. The only limitation is that the section only applies to countries designated in terms of section 4 of the same Act. At the time of the on site visit the authorities could not clearly describe as to what would happen to an extradition request from a country which is not designated in terms of the Act.

*Cooperation for prosecution of nationals (applying c. 39.2(b), c. 39.3)*

756. In view of the response to c. 39.2 above, the requirement under this criterion is not applicable as the Kingdom of Lesotho can extradite its own nationals.

*Efficiency of extradition process (c. 39.4)*

757. There is no time frame set under the Fugitive Offenders Act within which extradition proceedings are handled. There are no prescribed procedures for the making of applications for extradition or established mechanisms on how such requests are considered and dealt with.

758. The Authorities at the time of the on site visit indicated that they had not received any requests for extradition relating to ML/TF therefore it was not possible for the assessors to determine the efficiency with which such requests would be dealt with or of the extradition process.

*Additional element – existence of simplified procedures relating to extradition (c. 39.5)*

759. There are no simplified procedures in place relating to extradition in the Kingdom of Lesotho.

*Extradition under SR V (applying c. 39.1-39.4 in R.39, c.V.4)*

760. The observations relating to c.39.1-c.39.4 also apply to the offences of TF, which is an extraditable offence under section 27 of the MLPCA.

*Additional element under SR V (applying c. 39.5 in R 39, c. V.8)*

761. The Fugitive Offenders Act applies to both money laundering and the financing of terrorism offences without a distinction. As noted in c.39.5, there are no simplified procedures in place relating to extradition in the Kingdom of Lesotho.

*Statistics (applying R32)*

762. There was no statistical information provided on the number of requests for extradition sent and received by the Kingdom of Lesotho and how these were dealt with by the authorities.

#### 6.4.2 Recommendations and Comments

763. In order to fully implement the recommendations, the Kingdom of Lesotho should-

- Put in place specific legislation outlining procedures to facilitate effective and simplified extradition procedures ;
- Put in place measures to ensure that dual criminality is not a pre-requisite for extradition;
- The authorities must ensure that requests and proceedings relating to ML are handled without undue delay and specific time frames are prescribed for responses to extradition requests.
- Comprehensive statistics on extradition requests received, granted and time taken to process the requests must be kept and maintained by the authorities.

#### 6.4.3 Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	PC	<ul style="list-style-type: none"><li>• There are no simplified procedures in place relating to extradition in the Kingdom of Lesotho.</li><li>• There are no procedures to ensure that there is no undue delay in the processing and execution of extradition requests.</li><li>• Effectiveness could not be determined as the legislation has not been applied in court.</li><li>• Comprehensive statistics on extradition requests received, granted and time taken to process the requests were not maintained by the authorities.</li></ul>
R.37	PC	<ul style="list-style-type: none"><li>• Dual criminality is a pre-requisite for extradition and its absence can be a basis for refusal of a request for extradition.</li><li>• There are no specific procedures and mechanisms in place for the handling of extradition requests once they have been made by requesting states.</li></ul>
SR.V	PC	<ul style="list-style-type: none"><li>• The deficiencies applicable to Recommendations 37 and 39 also apply to SRV.</li></ul>

#### 6.5 Other Forms of International Co-operation (R.40 & SR.V)

##### 6.5.1 Description and Analysis

*Widest range of international cooperation (c. 40.1)*

FIU to FIU cooperation

764. The FIU was not yet in operation at the time of the on site visit.

Police to police cooperation

765. The LMPS is a member of INTERPOL. The LMPS engages INTERPOL as a gateway for exchange of information with foreign counter-parts. Confidentiality of information exchanged is guaranteed by INTERPOL standards of confidentiality. This enables the Kingdom of Lesotho to cooperate with other countries which are members to INTERPOL in coordinating information relating to law enforcement.

766. The LMPS is also a member to the SARPCCO Agreement. SARPCCO facilitates the exchange of information to the LMPS with other police institutions which are members to this organisation in the SADC Region. The organisation has also enabled the LMPS to join simultaneous police to police operations to deter specific offences within the SADC Region.

767. The Republic of South Africa was said to have appointed a special representative at its embassy in Maseru to facilitate quick exchange of information between the Kingdom of Lesotho authorities in law enforcement and the South African Police Service.

768. The authorities indicated that whilst they received requests for assistance from other jurisdictions particularly from South Africa on almost a daily basis the responses however varied according to the circumstances of each and every case. The assessors were also informed that the LMPS and the South African Police Service had successfully carried a joint operation to recover stolen vehicles which had resulted with the recovery of 74 vehicles although at the time of the on site visit only 24 of the vehicles had been identified by the owners.

769. The authorities highlighted that the area where greater cooperation was still required with other law enforcement agencies was in the illegal smuggling of diamonds from the Kingdom of Lesotho. The authorities indicated that according to their observations the smuggling was mostly being done by people of Asian origin and this was an issue of concern to them.

Supervisor to supervisor cooperation

770. There is no specific legal provision that empowers the CBL to provide international cooperation and exchange of information with counterparts. Nevertheless, the CBL has entered into MOUs with counterparts within the CMA to facilitate exchange of information and cooperation on cross-border financial operations.

771. At regional level, the CBL is a member of the Committee of Insurance, Securities and Non-Financial Activities (CISNA), which is a regional body under the SADC for exchange of information and cooperation. Globally, the CBL is a member of the International Association of Insurance Supervisors (IAIS)

Other agencies (customs, immigration)



### DCEO

772. The authorities from the DCEO indicated that there were no specific provisions of the law that limited their cooperation and exchange of information with other law enforcement agencies. The authorities however emphasized that such sharing of information is only for purposes of facilitating law enforcement inquiries and investigations. The assessors were also informed that at times the sharing of information was done informally depending on the circumstances as according to the authorities the main objective according to the authorities was to enable international cooperation.
773. The DCEO is a member of Southern Forum Against Corruption (SAFAC) and through its participation in this group, it has been able to share information on corruption with other law enforcement agencies within the Southern African Region who are members to this group

### LRA

774. In order to facilitate cooperation with the other customs authorities the LRA has entered into MOUs with the South Africa revenue authority, SARS and the Zimbabwe Revenue Authority. Under the MOU with South Africa contact persons have been appointed to facilitate quick exchange of information and the authorities informed the assessors that similar arrangement was under way with the Zimbabwean customs authorities.
775. At the time of the on site visit the authorities indicated that LRA was currently having discussions with SARS to safeguard in international property rights by dealing with fake products. This would ultimately ensure the seizing of fake products and implementation of other measures against fake products.
776. The LRA is also a member of the World Customs Organisation which enables it to exchange information with the other members to the Organisation.

### Immigration

777. The Immigration Department in order to facilitate exchange of information is a member to the International Organisation of Migration and International Civil Aviation Organisation. Participates in activities organised UN High Commission for Refugees. It has acceded to the SADC Protocol on the Free Movement of Persons.

### The Postal Corporation/Post Office

778. Lesotho Postal Service is a member of the Universal Postal Union and the Pan African Postal Union.

### ***Clear and effective gateways for exchange of information (c. 40.2) & Spontaneous exchange of information (c. 40.3)***

779. The LMPS seemed to have clear and effective gateways for exchange of information through INTERPOL, SARPPCO and through bilateral arrangements with the South African

authorities. However the effectiveness of the gateways could not be verified at the time of the on site visit as there were no specific examples of requests for information given and how long it had taken either to receive the information or send the information through INTERPOL or SARPCCO and also with the special arrangement made for the exchange of information with the South African Authorities. The same observations were made with DCEO and LRA.

780. The exchange of information spontaneously between the various agencies and their counterparts seemed possible through the membership of the agencies to regional and international organisations and bilateral arrangements but again due to lack of specific examples, it was difficult for the assessors to determine whether in practice this was really being done.

*Making inquiries on behalf of foreign counterparts (c. 40.4)*

781. Where a request is made to inquire into a criminal conduct, relevant authorities, in this case, the Lesotho Mounted Police Service or Directorate on Corruption and Economic Offences conduct such inquiry as if the conduct is sanctioned under the domestic laws. That is to say a case docket will be opened and judicial proceedings will be set in motion.

*FIU authorised to make inquiries on behalf of foreign counterparts (c. 40.4.1)*

782. The FIU is not yet operational and the provisions of the MLPCA which provides for the set up of the FIU were not yet in operation at the time of the on site visit although the authorities had set up a project team to look at the needs of the FIU in anticipation of it being set up at a later date.

*Conducting of investigations on behalf of foreign counterparts (c. 40.5)*

783. The LMPS indicated that they can carry out investigations on behalf of foreign counterparts, however before that is done the request has to be formalised through the DPP's Office which will then instruct the police to assist their foreign counterparts with the assistance required.

*No unreasonable or unduly restrictive conditions on exchange of information (c. 40.6)*

784. It did not appear to the assessors that there were impediments or unduly restrictive conditions on exchange of information.

*Provision of assistance regardless of possible involvement of fiscal matters (c.40.7)*

785. The Kingdom of Lesotho does not refuse cooperation on the basis that an offence involves fiscal matters.

*Provision of assistance regardless of existence of secrecy and confidentiality laws (c. 40.8)*

786. On matters relating to ML/FT provided for under the MLPCA, section 32 of the Act overrides all secrecy obligations or any other restrictions on disclosure of information

imposed in terms of the law or in any other manner other than the privileged communication between a legal advisor and client.

***Safeguards in use of exchanged information (c.40.9)***

787. Section 2 of the Lesotho Mounted Police Service (Administration) (Amendment) Regulations, 2004 makes it an offence for any police officer to disclose information which is his or her duty not to disclose whether verbally or in writing. The provisions of section 39 of the Prevention of Corruption and Economic Offences Act, prohibits any person without the authority of the Director General of the DCEO to disclose any information which is confidential in terms of the Act.

***Additional element –exchange of information with non-counterparts (c.40.10 & c.40.10.1)***

788. It did not appear possible that the law enforcement agencies and supervisory authorities could exchange information with non-counterparts.

***Additional element- provision of information to FIU by other competent authorities pursuant to request from foreign FIU (c. 40.11)***

789. The Kingdom of Lesotho did not have an FIU in operation yet at the time of the on site visit. Comments under c.40.4.1 above also apply here.

***Statistics (applying R.32)***

790. The authorities could not provide any statistics of the requests received by them from their counterparts and how the requests were attended to.

**6.5.2 Recommendations and Comments**

791. The authorities should bring the provisions establishing the FIU into operation in order to facilitate the exchange of information with other FIUs.

792. The powers of the DCEO to enter into MOUs with its counterparts to enable exchange of information should clearly be provided for under the Prevention of Corruption and Economic Crimes Act.

793. The law enforcement agencies and the supervisory authorities should put in place mechanisms to ensure that information relating to spontaneous requests is properly maintained.

794. The authorities should maintain statistics of the requests for information received from their counterparts, the nature of the information or assistance with investigations required, how many of the requests were acceded to and how many were rejected and the timeframes taken to deal with the requests.

795. There was lack of awareness by most of the authorities on the need to maintain statistics on requests for international cooperation.

### 6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
<b>R.40</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The FIU not yet in operation to enable exchange of information with other FIUs.</li> <li>• The powers of the DCEO to enter into agreements of exchange of information with its counterparts are not provided for in the Prevention of Corruption and Economic Offences Act.</li> <li>• There are no mechanisms to retain information relating to spontaneous requests.</li> <li>• The authorities do not maintain statistics on the requests for information received therefore effectiveness could not be determined.</li> </ul>
<b>SR.V</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Not possible to determine whether the gateways of information described by the authorities worked in practice as no records of the requests were maintained.</li> <li>• The effectiveness of the various agencies on international cooperation under R40 could not be determined.</li> <li>• Lack of awareness on the agencies to retain statistics on the requests made relating to international cooperation.</li> </ul>

## 7. OTHER ISSUES

### 7.1 Resources and statistics

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
<b>R.30</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• The FIU is not yet in operation as part of law enforcement.</li> <li>• The DPP's Office, the Judiciary and the DCEO were not adequately structured to deal with ML/TF cases. The DPP's Office and Judiciary have got no specialised units or courts in ML/TF. Few of the prosecutors and magistrates have been exposed to AML/CFT. The DCEO had also not established a unit to investigate ML/TF.</li> <li>• The LMPS, the DPP's Office, DCEO and the Judiciary were not adequately funded. The DCEO's budget had been severely reduced affecting the performance of its duties.</li> <li>• The DPP's Office and the DCEO did not have adequate technical and other resources. The DPP's Office did not have its own</li> </ul>

		<p>vehicles but relied on poll vehicles from the parent Ministry. Its staff did not have adequate computers and libraries. The few computers which the DCEO had been affected by a virus. Anti-virus and internet services, due to the budget constraints were not being provided.</p> <ul style="list-style-type: none"> <li>• The Judiciary, in particular the magistrates had high staff turnover due to poor resources and remuneration.</li> <li>• The DPP's Office other than the lack of adequate resources appeared to have sufficient operational independence.</li> <li>• The integrity, professional and confidentiality standards could not be determined for most of the law enforcement agencies other than with the LMPS as no statistics on cases of indiscipline were made available to the assessors.</li> <li>• No adequate and relevant training had been provided to law enforcement agencies, prosecution and the judiciary on ML/TF offences to the extent that some of the officials were not aware of the existence of the MLPCA.</li> </ul>
<b>R.32</b>	NC	<ul style="list-style-type: none"> <li>• No comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating ML/TF were maintained by the authorities.</li> </ul>

## 7.2 Other relevant AML/CFT measures or issues

796. There are no other relevant AML/CFT measures or issues.

## **TABLES**

**Table 1: Ratings of Compliance with FATF Recommendations**

**Table 2: Recommended Action Plan to improve the AML/CFT system**

**Table 3: Authorities' Response to the Evaluation (if necessary)**

**Table 1. Ratings of Compliance with FATF Recommendations**

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (N/A).

Forty Recommendations	Rating	Summary of factors underlying rating <sup>20</sup>
<b>Legal systems</b>		
1. ML offence	NC	<ul style="list-style-type: none"> <li>• The legal framework does not criminalise the full range of predicate offences for the purposes of ML.</li> <li>• The threshold for determining what constitutes a serious offence for the purposes of a ML offence is too high and should be reduced to the internationally acceptable standard of 12 months.</li> <li>• Most offences in the Kingdom of Lesotho are common law offences and do not have prescribed sentences.</li> <li>• Effectiveness could not be determined as no cases have been taken to court under the MLPCA.</li> </ul>
2. ML offence – mental element and corporate liability	PC	<ul style="list-style-type: none"> <li>• The possibility of suspension or postponement of a sentence under section 314 of the CP&amp;E Act for money laundering offences negates the proportionality and dissuasiveness of sanctions for money laundering offences.</li> <li>• There are no provisions for the</li> </ul>

<sup>20</sup> These factors are only required to be set out when the rating is less than Compliant.

		<p>imposition of administrative sanctions for money laundering.</p> <ul style="list-style-type: none"> <li>• The provisions of the MLPCA have not been applied to specific cases to demonstrate the implementation of the law.</li> <li>• Due to the lack of statistics, assessors could not determine that sanctions are applied effectively to natural or legal persons.</li> </ul>
3. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> <li>• It is 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 are common law offences;</li> <li>• The statutory threshold of a maximum term of imprisonment of not less than 24 months is too high limiting common law offences which can qualify to be predicate offences under the MLPCA depending on the penalties applied by the courts;</li> <li>• The lack of definition of the word “instrumentalities” and its interchangeable use with “tainted property” created confusion as to what property is liable to confiscation;</li> <li>• The power to apply for identification and tracing orders is not available to all competent authorities; and</li> <li>• No cases have been brought to court yet under the MLPCA, making it difficult to determine the effectiveness of its provisions.</li> </ul>



Preventive measures		
4. Secrecy laws consistent with the Recommendations	C	<ul style="list-style-type: none"> <li>• This recommendation is fully met.</li> </ul>
5. Customer due diligence	NC	<ul style="list-style-type: none"> <li>• Forex bureau de changes are not subject to CDD obligations under the MLPCA.</li> <li>• There is no law or regulation that directly requires 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</li> <li>• There is no law or regulation which requires accountable institutions to use reliable, independent source documents, data or information to identify the customer and verify that customer's true identity.</li> <li>• There is no law or regulation which requires 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.</li> <li>• There is no requirement in law or regulation for accountable institutions to identify and verify the beneficial owner.</li> <li>• There is no requirement in law or regulation for accountable institutions to determine whether the customer is acting on behalf of another person and take reasonable measures to obtain adequate identification data to verify the identity of that other person.</li> <li>• There is no requirement in law or regulation for accountable institutions to conduct ongoing</li> </ul>

		<p>due diligence on business relationships.</p> <ul style="list-style-type: none"> <li>• There is no requirement for accountable institutions to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records especially for higher risk categories of customers or business relationships.</li> <li>• There is no requirement for accountable institutions to perform enhanced due diligence for higher categories of customers or transactions.</li> <li>• There is no requirement to verify the identity of a customer before or during the course of establishing a business relationship.</li> <li>• There is no express requirement for accountable institutions to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times.</li> <li>• There is no requirement to verify the identity of a beneficial owner.</li> <li>• There is no requirement for accountable institutions to consider making an STR where the accountable institutions fail to comply with the required CDD measures under criteria 5.3 to 5.6.</li> <li>• There is no effectiveness of the customer identification and verification obligations under the MLPCA among accountable institutions except for subsidiaries of foreign banks.</li> </ul>
6. Politically exposed persons	PC	<ul style="list-style-type: none"> <li>• Beneficial owners who are foreign PEPs are not subject to PEP</li> </ul>

		<p>requirements.</p> <ul style="list-style-type: none"> <li>• No requirements regarding an existing customer or a beneficial owner who is subsequently found to be or becomes a PEP.</li> <li>• Not all accountable institutions providing financial services implement foreign PEP requirements.</li> </ul>
7. Correspondent banking	C	<ul style="list-style-type: none"> <li>• This recommendation is fully met.</li> </ul>
8. New technologies & non face-to-face business	NC	<ul style="list-style-type: none"> <li>• There is 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.</li> <li>• There is 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.</li> </ul>
9. Third parties and introducers	PC	<ul style="list-style-type: none"> <li>• There are no requirements to take into account information on whether a third party or introduced business is from a country which adequately or sufficiently apply the FATF Recommendations.</li> <li>• There is no enforceable obligation for accountable institutions engaging in third party or introduced transactions or relationships to bear the ultimate responsibility for CDD process.</li> <li>• Insurance brokers and agents have not implemented the requirements under R.9</li> </ul>

10. Record keeping	NC	<ul style="list-style-type: none"> <li>• A bureau de change operating outside of banks is not subject to recordkeeping obligations under the MLPCA.</li> <li>• There is no law or regulation that requires accountable institutions to keep all necessary transaction records as the MLPCA covers only suspicious transactions.</li> <li>• There is no obligation in law or regulation requiring accountable institutions to maintain account files and business correspondence.</li> <li>• There are no obligations in law or regulation requiring accountable institution to ensure that all customer and transaction records and information is made available to competent authorities on timely basis with appropriate authority</li> </ul>
11. Unusual transactions	NC	<ul style="list-style-type: none"> <li>• Bureau de changes are not subject to criteria under R.11</li> <li>• With the exception of banks, the other accountable institutions have not implemented measures to pay special attention to complex, unusual large transactions.</li> <li>• Accountable institutions are not required to set forth their findings on monitoring of complex, unusual transactions in writing.</li> <li>• There is no requirement for accountable institutions to make available such findings to competent authorities and auditors for at least a period of five years</li> </ul>
12. DNFBP – R.5, 6, 8-11	NC	<ul style="list-style-type: none"> <li>• DNFBPs operating in the country have not implemented AML/CFT measures under the MLPCA.</li> <li>• The deficiencies identified in Section 3 of this report in relation to the adequacy of the provisions of the MLPCA against FATF Recommendations 5, 6, 8, 10 and 11</li> </ul>

		<p>also apply to the DNFBP sector</p> <ul style="list-style-type: none"> <li>Effectiveness of the implementation of the provisions of the MLPCA by the DNFBP sector could not be determined.</li> </ul>
13. Suspicious transaction reporting	NC	<ul style="list-style-type: none"> <li>Reporting obligations under s18 of the MLPCA are not in force.</li> <li>Bureau de changes are not subject to reporting obligations.</li> <li>Accountable institutions are not required to report attempted transactions where there is reasonable suspicion for ML or TF.</li> <li>Effectiveness could not be determined since the reporting obligations under the MLPCA have not yet been implemented.</li> </ul>
14. Protection & no tipping-off	PC	<ul style="list-style-type: none"> <li>Effectiveness could not be determined as reporting obligations are not yet in force.</li> </ul>
15. Internal controls, compliance & audit	NC	<ul style="list-style-type: none"> <li>There is no enforceable requirement for accountable institutions to establish and maintain internal control policies, procedures and controls.</li> <li>There is no enforceable requirement for FIs to maintain an adequately resourced and independent audit function to test compliance with AML/CFT policies, procedures and controls.</li> <li>There is no requirement for ongoing training to ensure that employees are kept updated on new developments, techniques, trends and methods of ML and TF.</li> <li>Accountable institutions are not required to have screening procedures to ensure high standards when hiring employees.</li> </ul>
16. DNFBP – R.13-15 & 21	NC	<ul style="list-style-type: none"> <li>Reporting obligations under the</li> </ul>

		<p>MLPCA are not yet in force.</p> <ul style="list-style-type: none"> <li>• The Reporting obligations under the MLPCA do not cover attempted transactions.</li> <li>• Deficiencies identified under Section 3 of this report on R.14 and R.15 also apply to the DNFBPs to the extent possible.</li> <li>• There is no requirement to comply with R.21 under the MLPCA.</li> <li>• Effectiveness could not be determined due to the absence of implementation of the AML/CFT measures by the DNFBP sector.</li> </ul>
17. Sanctions	NC	<ul style="list-style-type: none"> <li>• Sanctions for non-compliance can only be issued by courts.</li> <li>• No sanctions available against directors and senior management of accountable institutions for contravention of the Act although note is taken of the general provisions under the C.P&amp;E Act.</li> <li>• Effectiveness in relation to sanctions under the MLPCA could not be determined as the law has not been implemented</li> </ul>
18. Shell banks	PC	<ul style="list-style-type: none"> <li>• There is no requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign jurisdiction do not permit their account to be used by shell banks.</li> <li>• There is no prohibition for financial institutions to enter into, or continue correspondent banking relationship with shell banks.</li> </ul>
19. Other forms of reporting	C	<ul style="list-style-type: none"> <li>• This recommendation is fully met.</li> </ul>
20. Other NFBP & secure transaction techniques	C	<p>This requirement is fully met.</p>

21. Special attention for higher risk countries	NC	<ul style="list-style-type: none"> <li>Accountable institutions are 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 are no effective measures in place to ensure that accountable institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.</li> <li>There are 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 them available to assist competent authorities.</li> <li>There are no measures to ensure that reporting persons are advised of concerns about weaknesses in the AML/CFT systems of other countries.</li> <li>The MLPCA does not make provision for the possibility to apply appropriate counter measures where a country continues not to apply or insufficiently applies the FATF Recommendations</li> </ul>
22. Foreign branches & subsidiaries	N/A	<ul style="list-style-type: none"> <li>Accountable institutions in the Kingdom of Lesotho do not have foreign branches or subsidiaries operating in other jurisdictions.</li> </ul>
23. Regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> <li>Foreign exchange bureaus are not subject to AML/CFT obligations.</li> <li>There is 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 is not yet operational.</li> <li>CBL could not demonstrate how</li> </ul>

		<p>prudential regulations under the Basel Core Principles are applied to AML/CFT measures.</p> <ul style="list-style-type: none"> <li>• Authorities do not take necessary measures to ensure prevention of criminals or their associates from holding or being a beneficial owner of controlling interest in financial institutions.</li> <li>• Not all money or value transfer service providers are subject to licensing and supervision.</li> <li>• Effectiveness in relation to AML/CFT regulation and supervision under the MLPCA could be demonstrated.</li> </ul>
24. DNFBP - regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> <li>• There is no regulation and supervision of DNFBPs industry for compliance with domestic AML/CFT requirements</li> </ul>
25. Guidelines & Feedback	NC	<ul style="list-style-type: none"> <li>• No adequate and appropriate feedback provided to reporting entities.</li> <li>• No guidelines issued to assist financial institutions and DNFBPs to implement and comply with their respective AML/CFT requirements.</li> </ul>
<b>Institutional and other measures</b>		
26. The FIU	NC	<ul style="list-style-type: none"> <li>• There is no operational FIU as the provision establishing the FIU is not yet in force.</li> <li>• The authorities have not implemented the requirements under the FATF Recommendation 26.</li> </ul>
27. Law enforcement authorities	PC	<ul style="list-style-type: none"> <li>• The DCEO has not applied measures used to waive or postpone arrests of persons for the purposes of identifying</li> </ul>



		<p>persons involved in ML/TF cases.</p> <ul style="list-style-type: none"> <li>• No comprehensive statistics maintained on cases where special investigative techniques have been used on both predicate and ML offences.</li> <li>• 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.</li> <li>• Effectiveness could not be determined as the MLPCA was still to be tested in the courts.</li> </ul>
28. Powers of competent authorities	PC	<ul style="list-style-type: none"> <li>• Officers of the DCEO have not been sensitised on AML/CFT though they are the designated Anti-Money Laundering Authority under the MLPCA.</li> <li>• The AML law is not yet fully operational which limits the use of its provisions in gathering evidence by law enforcement.</li> <li>• There are no explicit provisions of the law empowering the police to record statements from witnesses.</li> <li>• The Authority under the DCEO has got no capacity yet to implement the MLPCA.</li> </ul>
29. Supervisors	NC	<ul style="list-style-type: none"> <li>• The DCEO and the FIU do not have adequate powers to monitor and ensure compliance with the obligations under the MLPCA.</li> <li>• Further, the powers of the FIU to monitor and ensure compliance with the Act are unclear.</li> <li>• The DCEO has no authority to conduct inspections of financial institutions to ensure compliance as its authority is limited to investigations under the Act.</li> </ul>

		<ul style="list-style-type: none"> <li>• The inspection powers of the FIU are limited to suspicious transaction reports. Further, the FIU is not operational.</li> <li>• There are no powers to compel production of or access information for purposes of monitoring compliance. These powers are limited to investigation of an offence or STR.</li> <li>• The DCEO does not have adequate powers of enforcement and sanctions as it has to go to court for every violation.</li> <li>• There are no direct sanction provisions against directors and senior management other than the general provisions in the C.P &amp; E Act.</li> <li>• Effectiveness in relation to application of enforcement powers under the MLPCA could not be assessed as the Act has not been implemented by the authorities.</li> </ul>
30. Resources, integrity and training	NC	<ul style="list-style-type: none"> <li>• The FIU is not yet in operation as part of law enforcement.</li> <li>• The DPP's Office, the Judiciary and the DCEO were not adequately structured to deal with ML/TF cases. The DPP's Office and Judiciary have got no specialised units or courts on ML/TF. Few of the prosecutors and magistrates have been exposed to AML/CFT. The DCEO had also not established a unit to investigate ML/TF.</li> <li>• The LMPS, the DPP's Office, DCEO and the Judiciary were not adequately funded. The DCEO's budget had been severely reduced affecting the performance of its duties.</li> </ul>

		<ul style="list-style-type: none"> <li>• The DPP's Office and the DCEO did not have adequate technical and other resources. The DPP's Office does not have its own vehicles but relies on poll vehicles from the parent Ministry. Its staff does not have adequate computers and libraries. The few computers which the DCEO had have been affected by a virus. Anti-virus and internet services, due to the budget constraints are not being provided.</li> <li>• The Judiciary, in particular the magistrates have a high staff turnover due to poor resources and remuneration.</li> <li>• The integrity, professional and confidentiality standards could not be determined for most of the law enforcement agencies other than with the LMPS as no statistics on cases of indiscipline were made available to the assessors.</li> <li>• No adequate and relevant training has been provided to law enforcement agencies, prosecution and the judiciary on ML/TF offences to the extent that some of the officials are not aware of the existence of the MLPCA.</li> </ul>
31. National co-operation	PC	<ul style="list-style-type: none"> <li>• The FIU which should assist with the coordination of information has not yet been established</li> <li>• The section which mandates the FIU to provide guidelines does not specifically require it to do so in consultation with the other stakeholders for their input.</li> <li>• It was difficult to determine the</li> </ul>

		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 is expected of them.
32. Statistics	NC	<ul style="list-style-type: none"> <li>No comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating ML/TF were maintained by the authorities.</li> </ul>
33. Legal persons – beneficial owners	NC	<ul style="list-style-type: none"> <li>There are 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;</li> <li>Inadequate measures to ensure that information kept at the Registrar of Companies is updated and accurate;</li> <li>Poor enforcement of measures (e.g. Companies Act) currently available to ensure that companies file their returns;</li> <li>Manual filing of information may undermine timely access of such information by investigative bodies and supervisory authorities;</li> <li>The law does 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;</li> <li>Possibility of bearer shares/ share warrants being used for ML/TF</li> </ul>

		purposes.
34. Legal arrangements – beneficial owners	NC	<ul style="list-style-type: none"> <li>• No legislation regulating the registration of trusts in terms of the required FATF standards;</li> <li>• Information kept by the Deeds Registry Office on trusts and other legal arrangements is not accurate and adequate;</li> <li>• There is 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</li> </ul>
<b>International Co-operation</b>		
35. Conventions	PC	<ul style="list-style-type: none"> <li>• The Kingdom of Lesotho has not fully implemented the Palermo, Vienna and Suppression of Terrorism Conventions.</li> <li>• There are no comprehensive measures for mutual legal assistance in place.</li> <li>• The Kingdom of Lesotho has 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.</li> <li>• There are no comprehensive measures in place for the protection of witnesses.</li> <li>• Participation of legal persons in organised criminal groups is not criminalised.</li> <li>• The laws do not provide administrative sanctions for legal persons that commit offences;</li> <li>• The MLPCA does not provide</li> </ul>

		<p>jurisdiction extending to an offence that is committed on board a vessel that is flying the flag of the Kingdom of Lesotho or an aircraft that is registered under the laws of the Kingdom of Lesotho at the time that the offence is committed, as is the case with the Drugs of Abuse Act; and</p> <ul style="list-style-type: none"> <li>• The laws do not provide for the criminalisation of terrorist acts committed by a stateless person who has his or her habitual residence in the territory of the Kingdom of Lesotho.</li> </ul>
36. Mutual legal assistance (MLA)	PC	<ul style="list-style-type: none"> <li>• The absence of legislation on mutual legal assistance made it difficult for the assessors to determine the extent of mutual legal assistance which can be provided by the authorities; -</li> <li>• 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;</li> <li>• There are no procedures to facilitate the taking of witness statements on behalf of a foreign State.</li> <li>• There are no procedures to facilitate the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country;</li> <li>• The absence of statistics and</li> </ul>

		<p>information on requests executed, the nature of assistance required, requests acceded to and rejected and the length of time it took on average to attend to the requests, made it impossible for the assessors to determine if the Kingdom of Lesotho could provide mutual legal assistance in a timely, constructive and effective manner; and</p> <ul style="list-style-type: none"> <li>• Overall effectiveness could not be determined due to the absence of statistics.</li> </ul>
37. Dual criminality	PC	<ul style="list-style-type: none"> <li>• The requirement of dual criminality as a pre-requisite in rendering mutual legal assistance may limit the provision of mutual legal assistance particularly in less intrusive and non compulsory measures; and</li> <li>• The absence of dual criminality may also serve as a ground for refusing mutual legal assistance.</li> </ul>
38. MLA on confiscation and freezing	PC	<ul style="list-style-type: none"> <li>• The 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 are common law with no defined terms of sentencing, results in the full range of predicate offences for money laundering not being covered which impedes on the ability by the authorities to facilitate effective mutual legal</li> </ul>

		<p>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;</p> <ul style="list-style-type: none"> <li>• Lack of implementation of the mutual legal assistance provisions set out in the MLPCA;</li> <li>• Lack of clear arrangements for coordinating seizure and confiscation actions with other countries; and</li> <li>• The absence of statistical information made it impossible to verify whether the authorities had used the laws and procedures for providing mutual legal assistance in response to requests for identification, seizure, freezing or confiscation in an effective and timely manner.</li> </ul>
39. Extradition	PC	<ul style="list-style-type: none"> <li>• There are no simplified procedures in place relating to extradition in the Kingdom of Lesotho.</li> <li>• There are no procedures to ensure that there is no undue delay in the processing and execution of extradition requests.</li> <li>• Effectiveness could not be determined as the legislation has not been applied in court.</li> <li>• Comprehensive statistics on</li> </ul>



		extradition requests received, granted and time taken to process the requests were not maintained by the authorities.
40. Other forms of co-operation	PC	<ul style="list-style-type: none"> <li>• The FIU not yet in operation to enable exchange of information with other FIUs.</li> <li>• The powers of the DCEO to enter into agreements for exchange of information with its counterparts are not provided for in the Prevention of Corruption and Economic Offences Act.</li> <li>• There are no mechanisms to retain information relating to spontaneous requests.</li> <li>• The authorities do not maintain statistics on the requests for information received therefore effectiveness could not be determined.</li> </ul>
<b>Nine Special Recommendations</b>	<b>Rating</b>	
SR.I Implement UN instruments	NC	<ul style="list-style-type: none"> <li>• There are no laws or regulations for the implementation of UNSCRs 1267 and 1373.</li> <li>• There are no appropriate measures to monitor effective compliance with freezing obligations by persons and entities other than with financial institutions and companies.</li> <li>• There are no defined and publicly known procedures for the freezing of assets and funds of listed organisations and individuals.</li> </ul>

		<ul style="list-style-type: none"> <li>• There are no defined and publicly known procedures for the unfreezing of assets and funds of organisations and individuals inadvertently listed under the UNSCRs 1267 and 1373.</li> </ul>
SR.II Criminalise terrorist financing	<b>PC</b>	<ul style="list-style-type: none"> <li>• The financing of an individual terrorist is not criminalised;</li> <li>• The possibility of suspension or postponement of a sentence for TF offences negates the proportionality and dissuasiveness of the sanctions;</li> <li>• No concurrent sentence to both a fine and a term of imprisonment where appropriate;</li> <li>• There are no provisions for the imposition of administrative sanctions for TF offences;</li> <li>• The sanctions for TF, when compared to those in the Region are not proportionate and dissuasive enough; and</li> <li>• No cases have been brought to court under the provisions of the MLPCA to determine the effectiveness of the Act and sanctions.</li> </ul>
SR.III Freeze and confiscate terrorist assets	<b>NC</b>	<ul style="list-style-type: none"> <li>• There are 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;</li> <li>• There are no effective laws and procedures to freeze terrorist funds or other assets of persons designated in the context of</li> </ul>

		<p>S/RES/1373(2001) without delay and without prior notice to the designated persons involved;</p> <ul style="list-style-type: none"> <li>• There are no effective laws and procedures to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions.</li> <li>• There are no effective systems for communicating actions taken under the freezing mechanisms to financial institutions immediately upon taking such action;</li> <li>• There is no clear guidance to financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under the freezing mechanisms;</li> <li>• There are no effective and publicly-known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner consistent with international obligations;</li> <li>• There are no effective and publicly-known procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person;</li> <li>• There are no appropriate procedures for authorising access</li> </ul>
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		<p>to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses in accordance with S/RES/1452(2002);</p> <ul style="list-style-type: none"> <li>• There are no appropriate procedures through which a person or entity whose funds or other assets have been frozen can challenge that measure with a view to having it reviewed by a court;</li> <li>• There are no provisions for confiscation of proceeds of crime related to financing of terrorism generally; and</li> <li>• There are no measures to monitor effectively the compliance with the Money Laundering and Proceeds of Crime Act, rules or regulations governing special Resolutions 1267 and 1373 and impose civil, administrative or criminal sanctions for failure to comply.</li> </ul>
SR.IV Suspicious transaction reporting	NC	<ul style="list-style-type: none"> <li>• Reporting obligations not yet in force.</li> <li>• Bureau de changes are not subject to reporting obligations.</li> <li>• Effectiveness could not be determined since the reporting obligations under the MLPCA have not yet been implemented.</li> </ul>
SR.V International co-operation	PC	<ul style="list-style-type: none"> <li>• The deficiencies applicable to Recommendations 36, 37 and 38</li> </ul>

		<p>also apply to SRV.</p> <ul style="list-style-type: none"> <li>• Not possible to determine whether the gateways of information described by the authorities worked in practice as no records of the requests were maintained.</li> <li>• Lack of awareness on the agencies to retain statistics on the requests made relating to international cooperation.</li> </ul>
SR VI AML requirements for money/value transfer services	NC	<ul style="list-style-type: none"> <li>• Authorities not aware whether the Post Office registers or requires a license to operate money remittance services.</li> <li>• No competent authority to monitor implementation of the AML/CFT obligations.</li> <li>• TEBA and Postal Office have not implemented AML/CFT requirements.</li> <li>• Licensed MVT providers not required to maintain a list of agents.</li> </ul>
SR VII Wire transfer rules	NC	<ul style="list-style-type: none"> <li>• It is not clear whether wire transfer requirements under Adhesion Agreement include wire transfers through money transmission orders offered by Post Office.</li> <li>• Money transmission orders transacted at the Post Office are not subject to MLPCA provision on wire transfers.</li> <li>• There is no requirement that where technical limitations prevent the full originator information accompanying a cross-border wire transfer from being transmitted</li> </ul>

		<p>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.</p> <ul style="list-style-type: none"> <li>• Beneficiary financial institutions are not required to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.</li> <li>• There are 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.</li> <li>• The Kingdom of Lesotho does not have measures in place to effectively monitor the compliance of financial institutions with available rules and regulations implementing domestic SR.VII requirements.</li> </ul>
SR.VIII Non-profit organisations	NC	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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</li> </ul>

		<p>with a view to protecting the sector from terrorist abuse.</p> <ul style="list-style-type: none"> <li>• There is no effective supervision or monitoring of those societies which account for a large share of the financial resources and international activities.</li> <li>• There is 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.</li> <li>• There are no appropriate and effective sanctions against societies and those acting on behalf of the societies for failure to comply with the provisions of the laws and regulations governing the societies sector.</li> <li>• There is no capacity for competent authorities to effectively investigate and gather information on societies in relation to administration and management matters.</li> <li>• There is no effective domestic mechanism to ensure cooperation, coordination and exchange of information among all competent authorities and relevant organisations to deal with societies that raise potential financing of terrorism concern.</li> <li>• There are no effective procedures to address international requests for information regarding particular NPOs that are suspected of terrorist financing or other forms of terrorist support.</li> <li>• There are no adequate resources at the Registrar-General's Office for effective regulation and</li> </ul>
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		supervision of the societies sector in the country.
<b>SR.IX Cross Border Declaration &amp; Disclosure</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• The requirements of SR. IX have not been implemented in the Kingdom of Lesotho</li> <li>• The designated authorities are not aware of their responsibilities under the MLPCA and the Exchange Control Regulations, 1989.</li> <li>• The provisions on declaration of currency and bearer negotiable instruments above the prescribed threshold are not being enforced.</li> <li>• Lack of proper systems to maintain information on records of cross-border currency and bearer negotiable instruments transactions reported or recorded.</li> </ul>



**Table 2: Recommended Action Plan to Improve the AML/CFT System**

AML/CFT System	Recommended Action (listed in order of priority)
1. General	No text required
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 & 2)	<p>The authorities should:</p> <ul style="list-style-type: none"> <li>• codify common law offences or have an all crimes approach in order to have certainty in the offences that may be predicate offences to money laundering;</li> <li>• revise the threshold for the consideration of an offence as a serious offence from a maximum term of imprisonment of not less than 24 months to the FATF standard of not less than 12 months;</li> <li>• Although the CP&amp;E Act provides for liability for managers and servants of legal persons for offences committed by the legal persons, the authorities should consider creating a substantive offence in the MLPCA in order to make the implementation of the law more clearer;</li> <li>• remove the possibility of suspension or postponement of a sentence for money laundering offences created under section 314 of the CP&amp;E Act;</li> <li>• provide for the minimum range of ancillary offences covered under the FATF standards;</li> <li>• create predicate offenses for money laundering for the following categories of offences: <ul style="list-style-type: none"> <li>➤ participation in an organised criminal group and racketeering;</li> <li>➤ terrorism; and</li> </ul> </li> </ul>

	<p>➤ insider trading and market manipulation.</p> <ul style="list-style-type: none"> <li>• amend the MLPCA in order to provide for administrative sanctions for ML offences;</li> <li>• law enforcement officers should be encouraged to investigate and prosecute ML offences in addition to prosecution of predicate offences;</li> </ul> <p>and</p> <ul style="list-style-type: none"> <li>• maintain comprehensive statistics on ML cases.</li> </ul>
2.2 Criminalisation of Terrorist Financing (SR.II)	<p>The authorities should:</p> <ul style="list-style-type: none"> <li>• Ratify and fully implement all the international conventions and protocols listed in the Annex to the Convention on Terrorist Financing;</li> <li>• Amend the MLPCA in order to criminalise the financing of an individual terrorist;</li> <li>• Revise the threshold for the consideration of an offence as a serious offence from a maximum term of imprisonment of not less than 24 months to the acceptable international standard of not less than 12 months;</li> <li>• Remove the possibility of suspension or postponement of a sentence in terms of section 314 of the CP&amp;E Act for TF offences as this undermines the proportionality and dissuasiveness of sanctions for TF offences ;</li> <li>• Enhance the penalties for terrorist financing in order to make them proportionate and dissuasive.</li> <li>• Should incorporate a sanction of a concurrent fine and term of imprisonment where appropriate as part of the penalties under the TF offences;</li> <li>• Consider amending the MLPCA to provide for administrative sanctions for TF offences; and</li> </ul>

	<ul style="list-style-type: none"> <li>• Maintain statistics to enable effectiveness on terrorist financing cases to be determined.</li> </ul>
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	<p>The authorities should:</p> <ul style="list-style-type: none"> <li>• amend the MLPCA so as to extend the coverage of confiscation measures to the full range of predicate offences;</li> <li>• amend the provisions relating to pardons by the King in order to ensure that there is no reversal of the consequences of a conviction which would result in the restitution of tainted property to a person who has been pardoned;</li> <li>• define what is meant by “instrumentalities” of crime in sections 88(2), 98(1)(a), 99(1)-(3), 100 and 102 of the MLPCA in order to avoid confusion as currently the term appears to be used interchangeably with the definition of “tainted property”;</li> <li>• amend the MLPCA to allow other competent law authorities to make applications for identification and tracing of property subject to confiscation; and</li> <li>• amend the MLPCA to ensure that the voiding of a transaction is not dependant on the issuance of a restraining order.</li> </ul>
2.4 Freezing of funds used for terrorist financing (SR.III)	<p>The authorities should:</p> <ul style="list-style-type: none"> <li>• put in place effective 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;</li> <li>• put in place 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;</li> </ul>

	<ul style="list-style-type: none"> <li>• put in place effective laws and procedures to examine and give effect to, when appropriate, the actions initiated under the freezing mechanisms of other jurisdictions. Such procedures should ensure the prompt determination, according to applicable national legal principles, whether reasonable grounds or a reasonable basis exist to initiate a freezing action and the subsequent freezing of funds or other assets without delay;</li> <li>• put in place freezing actions that extend to: <ul style="list-style-type: none"> <li>(a) funds or other assets wholly or jointly owned or controlled, directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organisations; and</li> <li>(b) funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations;</li> </ul> </li> <li>• put in place effective systems for communicating actions taken under the freezing mechanisms to financial institutions immediately upon taking such action;</li> <li>• put in place clear guidance to financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms;</li> <li>• put in place effective and publicly-known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner</li> </ul>
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	<p>consistent with international obligations;</p> <ul style="list-style-type: none"> <li>• put in place effective and publicly-known procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person;</li> <li>• put in place appropriate procedures for authorising access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses in accordance with S/RES/1452(2002);</li> <li>• put in place appropriate procedures through which a person or entity whose funds or other assets have been frozen can challenge that measure with a view to having it reviewed by a court; and</li> <li>• put in place measures to monitor effectively the compliance with the Money Laundering and Proceeds of Crime Act, rules or regulations governing UN Special Resolutions 1267 and 1373 and impose civil, administrative or criminal sanctions for failure to comply</li> </ul>
<p>2.5 The Financial Intelligence Unit and its functions (R.26)</p>	<p>The authorities should:</p> <ul style="list-style-type: none"> <li>• Take urgent steps to operationalise the FIU.</li> <li>• Take immediate measures to ensure sufficient operational independence and autonomy of the FIU, so that it is free from undue influence or interference.</li> <li>• Issue guidance to all accountable institutions, not just to banks, regarding the manner of reporting, including the specifications of reporting forms, and the procedures that should be followed when reporting.</li> <li>• Implement effective mechanisms to have access on a timely basis to financial, administrative and law enforcement information that the FIU</li> </ul>

	<p>requires to properly perform its functions, including analysis of suspicious transaction reports.</p> <ul style="list-style-type: none"> <li>• Ensure that the information held by the FIU is securely protected and disseminated in accordance with the provisions of the MLPCA.</li> <li>• Once operational, the FIU should publicly release periodical reports, and such reports should include statistics, typologies and trends as well as information regarding its activities.</li> <li>• Consider joining the Egmont Group of FIUs and have regard to its principles for information exchange once fully operational.</li> <li>• Undertake effective awareness raising programmes involving all stakeholders in the financial sector, including other professions and business, and public sector institutions with interest in AML/CFT issues in the country. This should also include members of the public.</li> <li>• Identify technical assistance needs which can assist in the setting up of a well-functioning FIU capable of effectively undertaking its primary functions.</li> </ul>
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	<p>The authorities should:</p> <ul style="list-style-type: none"> <li>• Amend the Police Services Act or the CP&amp;E Act to provide specific provisions which empower the police to record statements from witnesses.</li> <li>• Adequately capacitate the officers of the members of LMPS and DCEO to effectively investigate ML and TF cases.</li> <li>• Maintain comprehensive statistics on predicate offences, investigation and prosecution of ML/TF offences.</li> </ul>
2.7 Cross Border Declaration & Disclosure	<p>The authorities should:</p> <ul style="list-style-type: none"> <li>• Enforce the provisions of the laws on cross-border movement of currency and bearer negotiable instruments.</li> <li>• Put in place possible appropriate mechanisms to monitor cross-border movement of currency</li> </ul>

	<p>and bearer negotiable instruments.</p> <ul style="list-style-type: none"> <li>• Ensure that the designated competent authorities responsible for laws on cross-border movement of currency and bearer negotiable instruments are sensitised on their responsibilities.</li> <li>• Put in place proper systems to maintain information on records/comprehensive statistics of cross-border currency and bearer negotiable instruments transactions reported or recorded.</li> </ul>
<b>3. Preventive Measures – Financial Institutions</b>	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	<p>The authorities should:</p> <p><u>FATF Recommendation 5:</u></p> <ul style="list-style-type: none"> <li>• Subject foreign currency bureau de changes to CDD measures.</li> <li>• Provide for obligations to undertake customer due diligence when: i) entering into business relations, ii) carrying occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR. VII, and iii) carrying out occasional transactions above the required designated threshold.</li> <li>• Extend the obligations to verify that any person purporting to act on behalf of the customer is so authorised, and verification of the identity applied on legal persons when conducting a transaction to also apply when establishing business relationships. In addition, the legal status of the legal person establishing the relationship and carrying out a transaction must be verified by obtaining adequate and reliable documents and the provisions regulating the power to bind the legal person.</li> <li>• Obligate accountable institutions to identify and take reasonable measures to verify the</li> </ul>

	<p>beneficial owner using reliable relevant information or data obtained from reliable sources to the satisfaction of the accountable institution.</p> <ul style="list-style-type: none"> <li>• For all customers, accountable institutions should be required to determine whether the customer is acting on behalf of another person, and then take reasonable measures to obtain sufficient identification data to verify the identity of that other person.</li> <li>• Extend the requirements under s16(1)(c) regarding transactions to also apply to when legal persons establish business relationships and when conducting an occasional transaction.</li> <li>• Require accountable institutions to conduct ongoing customer due diligence on the business relationship which should include scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile and, where necessary, the source of funds.</li> <li>• Require accountable institutions to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationship.</li> <li>• Require accountable institutions to perform enhanced due diligence for high risk categories of customers, business relationship or transactions.</li> <li>• Obligate accountable institutions to verify the identity of a beneficial owner before or during the course of establishing a business relationship, or conducting transactions for occasional customers.</li> <li>• Not permit accountable institutions to enter into or commence a business relationship or perform a transaction which does not comply with c.5.3 to c.5.5. Further, where this happens, accountable institutions should be required to consider making an STR.</li> <li>• Require accountable institutions to terminate the business relationship where the business relationship has already commenced when</li> </ul>
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	<p>c.5.2(e), c.5.14 or c.5.17 apply and the accountable institution is unable to comply with c.5.3 to c.5.5.</p> <p><u>FATF Recommendation 6:</u></p> <ul style="list-style-type: none"> <li>• Require foreign currency bureau de change to implement measures on foreign PEPs.</li> <li>• Amend s16(3) of the MLPCA to require accountable institutions to cover beneficial owners, not just customers, when applying measures relating to foreign PEPs in a manner consistent with the FATF Recommendation 6.</li> <li>• Furthermore, the authorities should specifically require accountable institutions to obtain senior management approval to continue the business relationship where it has been discovered that an existing customer or beneficial owner was or has subsequently become a PEP.</li> <li>• Undertake effective awareness raising programmes to ensure that all accountable institutions fully implement the FATF requirements pertaining to foreign PEPs.</li> </ul> <p><u>FATF Recommendation 8:</u></p> <ul style="list-style-type: none"> <li>• Take necessary measures to require accountable institutions to implement policies or such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes.</li> <li>• Take necessary measures to require accountable institutions to implement policies and procedures to address any specific risks associated with non-face to face business relationships or transactions.</li> </ul>
<p>3.3 Third parties and introduced business (R.9)</p>	<ul style="list-style-type: none"> <li>• The authorities should amend s16(7) of the MLPCA to ensure that accountable institutions take into account information available on whether a country in which a third party being relied upon by a domestic accountable institution to undertake some of the CDD procedures sufficiently applies the FATF Recommendations.</li> </ul>

	<ul style="list-style-type: none"> <li>• Require through enforceable means, accountable institutions engaging in third party or introduced transactions or relationships to bear the ultimate responsibility for CDD process.</li> <li>• Ensure that insurance brokers and agents implement the requirements under R.9 when engaging in third parties and introduced businesses.</li> </ul>
3.4 Financial institution secrecy or confidentiality (R.4)	<ul style="list-style-type: none"> <li>• This recommendation is fully observed.</li> </ul>
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	<p>The authorities should:</p> <p><u>FATF Recommendation 10:</u></p> <ul style="list-style-type: none"> <li>• Subject foreign currency bureau de changes to recordkeeping obligations consistent with R.10.</li> <li>• Amend s17 of the MLPC to ensure that accountable institutions are required to maintain all records of transactions (not just suspicious transactions) for a minimum period of five years or longer if requested by a competent authority in specific cases and upon proper authority.</li> <li>• Amend s17 of the MLPCA to require accountable institutions to maintain records of account files and business correspondence for a period of five years following termination of a business relationship or transaction.</li> <li>• Amend s17 to ensure that accountable institutions make available on timely basis all customer and transaction records and information to domestic competent authorities upon appropriate authority.</li> </ul> <p><u>Special Recommendation VII:</u></p> <ul style="list-style-type: none"> <li>• Ensure that wire transfers (domestic and cross-border) conducted by the Post Office in the form of money transmission orders are subject to relevant provisions of the Exchange Control Regulations and Rules, Wire Rule Book of the Adhesion Agreement and amend s22 of the MLPCA to include all wire transfers irrespective of the name of the accountable institution carrying out the transaction. The</li> </ul>

	<p>current listing of banks is too restrictive.</p> <ul style="list-style-type: none"> <li>• Ensure 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.</li> <li>• Require beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. In addition, where lack of originator information raises suspicion, such information should be reported to the FIU or relevant competent authority.</li> <li>• Set up measures to effectively monitor the compliance of financial institutions (e.g. banks and Post Office) with rules and regulations arising from the Exchange Control Regulations, Adhesion Agreement (Wire Rule Book) and MLPCA implementing the requirements under SR.VII.</li> <li>• The authorities should consider requiring that all incoming cross-border wire transfers irrespective of value contain full and accurate originator information as the current requirements only covers outgoing wire transactions.</li> <li>• Provide proportionate, dissuasive and effective sanctions, including administrative sanctions for non-compliance with wire transfer requirements.</li> </ul>
<p>3.6 Monitoring of transactions and relationships (R.11 &amp; 21)</p>	<ul style="list-style-type: none"> <li>• The authorities should undertake effective awareness raising programmes to all accountable institutions, not just banks, to ensure that the requirements set out in the FATF Recommendations 11 and 21 are effectively implemented in the financial sector of the Kingdom of Lesotho.</li> </ul> <p><u>FATF Recommendation 11:</u></p> <ul style="list-style-type: none"> <li>• Subject foreign currency bureau de changes to criteria under R.11.</li> <li>• The authorities should require accountable</li> </ul>

	<p>institutions to set forth the findings resulting from examination of the background and purpose of complex, unusual large transactions in writing and make such findings available for use by competent authorities and auditors for at least five years.</p> <p><u>FATF Recommendation 21:</u></p> <ul style="list-style-type: none"> <li>• The authorities should require accountable institutions 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.</li> <li>• Further, accountable institutions should be advised of concerns about weaknesses in the AML/CFT systems of other countries and require them to take effective measures to counter such business relationships or transactions.</li> <li>• The authorities should require accountable institutions 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 them available to assist competent authorities.</li> <li>• The MLPCA should be amended to make provision for the possibility of applying appropriate counter measures where a country continues not to apply or insufficiently applies the FATF Recommendations</li> </ul>
<p>3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 &amp; SR.IV)</p>	<p>The authorities should:</p> <p><u>FATF Recommendation 13:</u></p> <ul style="list-style-type: none"> <li>• Take urgent steps to operationalise and amend s18 of the MLPCA to require accountable institutions to report suspicious transactions only to the FIU.</li> <li>• Subject foreign currency bureau de change to reporting obligations consistent with R.13.</li> <li>• Accountable institutions not required to report attempted transactions where there is reasonable suspicion for ML or TF.</li> <li>• Effectiveness could not be determined since the reporting obligations under the MLPCA have not yet been implemented.</li> </ul>

	<ul style="list-style-type: none"> <li>• Undertake effective outreach programmes to make all accountable institutions aware of their reporting obligations under the MLPCA.</li> </ul> <p><u>Special Recommendation IV:</u></p> <ul style="list-style-type: none"> <li>• Operationalise s18 of the MLPCA.</li> <li>• STRs on financing of terrorism must be sent only to the FIU.</li> <li>• Subject foreign currency bureau de change to reporting obligations consistent with SR.IV.</li> <li>• Undertake awareness programmes to ensure that accountable institutions implement the requirements relating to STRs on TF.</li> </ul> <p><u>FATF Recommendation 14:</u></p> <ul style="list-style-type: none"> <li>• Ensure that there is effective implementation of prohibition against tipping-off provision in the MLPCA by all accountable institutions by, inter alia, undertaking effective awareness raising programmes. Effectiveness could not be determined since the provision under MLPCA on STRs is not yet in force.</li> </ul> <p><u>FATF Recommendation 19:</u></p> <ul style="list-style-type: none"> <li>• Design and implement the currency transaction reporting threshold transactions reporting format and state the institution/agency to which the reports should be submitted.</li> <li>• Further, the institution/agency should have a national computerised database accessible to authorised institutions/agencies.</li> </ul> <p><u>FATF Recommendation 25:</u></p> <ul style="list-style-type: none"> <li>• Provide adequate guidance and feedback to accountable institutions on submitted STRs.</li> <li>• Issue guidelines to accountable institutions to assist them to implement AML/CFT obligations as required.</li> </ul>
3.8 Internal controls, compliance, audit and foreign branches (R.15)	<p>The authorities should:</p> <ul style="list-style-type: none"> <li>• Require accountable institutions to establish and maintain internal procedures, policies and controls to prevent ML and FT, and to communicate these to their employees. This requirement should extend to developing compliance management arrangements, including the designation of an AML/CFT</li> </ul>

	<p>compliance officer at management level, who has timely access to all records and information.</p> <ul style="list-style-type: none"> <li>• Require accountable institutions to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with the procedures, policies and controls.</li> <li>• Require accountable institutions, and not the FIU, to establish on-going employee training to ensure that employees are well equipped to take AML/CFT measures.</li> <li>• create requirements for accountable institutions to screen employees to ensure high integrity and professional standards.</li> <li>• Effective awareness raising and implementation of programmes to ensure that accountable institutions understand how to comply with R.15 measures.</li> </ul>
3.9 Shell banks (R.18)	<ul style="list-style-type: none"> <li>• The authorities should require financial institutions to satisfy themselves that respondent financial institutions in a foreign jurisdiction do not permit their account to be used by shell banks.</li> <li>• The authorities should prohibit financial institutions to enter into, or continue correspondent banking relationships with shell banks.</li> <li>• The authorities should carry out supervision programmes that would enable them to ascertain the nature and measures taken by banks to satisfy themselves that the respondent banks do not allow use of their accounts by shell banks.</li> </ul>
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	<p>The authorities should:</p> <p><u>FATF Recommendations 17:</u></p> <ul style="list-style-type: none"> <li>• Provide capacity to the DCEO to enable it to carry out its enforcement powers under the MLPCA.</li> <li>• Ensure that there is parallel application of administrative sanctions to a broad number of offences including for the offences of money laundering and terrorist financing.</li> <li>• Amend the MLPCA to ensure that the DCEO</li> </ul>

	<p>has room to issue sanctions and not always rely on the courts to enforce and ensure compliance with the Act.</p> <ul style="list-style-type: none"> <li>• Ensure that directors and senior management of accountable institutions for purposes of consistence are subject to sanctions for contravention of the MLPCA.</li> </ul> <p><u>FATF Recommendation 23</u></p> <ul style="list-style-type: none"> <li>• Take immediate steps to operationalise the provisions on the FIU to enable it to assume its supervisory functions under the MLPCA.</li> <li>• Subject foreign exchange bureaus to AML/CFT obligations and carry out effective supervision.</li> <li>• The authorities should ensure that supervisory authorities whose licensed entities are subject to prudential regulation under the Basel Core Principles also apply the same on AML/CFT measures.</li> <li>• Consider amending the law so that supervisory authorities such as the CBL are designated as AML/CFT regulators and supervisors of institutions under its purview. The FIU should regulate and supervise accountable institutions that do not have a supervisory authority.</li> <li>• The FIU as the supervisory authority should be adequately resourced and trained to enable it to carry out effective AML/CFT supervision.</li> <li>• For avoidance of doubt, authorities should consider having a section dealing with FIU functions and another for FIU powers as the current provisions appear unclear.</li> <li>• Foreign exchange bureaus should be included on the list of accountable institutions and be supervised for compliance with the provisions of the MLPCA.</li> <li>• Providers of money or value transfer services (other than banks) must be subject to licensing or registration and supervision for AML/CFT purposes.</li> </ul> <p><u>FATF Recommendation 25:</u></p> <ul style="list-style-type: none"> <li>• Issue guidelines under s15(2)(i) to assist financial institutions to implement and comply with AML/CFT obligations.</li> </ul>
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	<p><u>FATF Recommendation 29:</u></p> <ul style="list-style-type: none"> <li>• Amend the MLPCA to give the competent authority (e.g. supervisor) adequate powers to monitor and ensure compliance by accountable institutions with domestic AML/CFT requirements.</li> <li>• Amend the MLPCA to give authority to a competent authority to conduct inspections (onsite and offsite) of accountable institutions to ensure compliance. Further, the inspections should include review of policies, procedures, books and records, and should extend to sample testing.</li> <li>• Give powers to supervisors to compel production of or have access to all records, documents or information relevant to monitoring compliance. This includes all documents or information related to accounts or other business relationships, or transactions, including any analysis the financial institution has made to detect unusual or suspicious transactions.</li> <li>• Ensure that the supervisor has adequate powers of enforcement and sanctions against accountable institutions and their directors and senior management for failure to comply with or properly implement requirements to combat ML and TF.</li> </ul>
3.11 Money value transfer services (SR.VI)	<p>The authorities should:</p> <ul style="list-style-type: none"> <li>• Subject all money or value transfer operators to monitoring to ensure compliance with the FATF Recommendation.</li> <li>• Require each licensed or registered MVT to maintain a list of its agents and make it available to authorities upon request.</li> <li>• Undertake effective awareness raising programmes on money or value transfer operators in relation to implementation of the MLPCA in a manner consistent with the FATF Recommendations.</li> </ul>
<b>4. Preventive Measures – Non-Financial Businesses and Professions</b>	
4.1 Customer due diligence and record-keeping (R.12)	<p>The authorities should:</p>



	<ul style="list-style-type: none"> <li>• Implement the requirements under FATF Recommendations 5, 6, 8, 10 and 11.</li> <li>• Undertake effective AML/CFT outreach programmes to ensure compliance of the FATF Recommendations by the DNFBP sector</li> </ul>
4.2 Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> <li>• The authorities should ensure that DNFBPs implement requirements relating to R13 to 15.</li> <li>• Require DNFBPs to report attempted transactions to the FIU.</li> <li>• Conduct awareness raising programmes to ensure that DNFBPs implement reporting obligations.</li> </ul>
4.3 Regulation, supervision and monitoring (R.24-25)	<p>The authorities should:</p> <ul style="list-style-type: none"> <li>• Ensure that the FIU is operational and well-resourced to enable it to issue guidelines</li> <li>• Take the necessary legal or regulatory measures to ensure that criminals or their associates are prevented from holding or being beneficial owner of a significant or controlling interest, holding a management in or being an operator of a casino.</li> <li>• To ensure that there are effective systems for monitoring and ensuring compliance by DNFBPs with national AML/CFT requirements.</li> <li>• Operationalise and provide adequate resources, including the Casino Board of Control, to enable it to undertake its supervision and regulation functions properly.</li> <li>• Undertake effective AML/CFT awareness raising programmes in the DNFBP sector.</li> </ul>
4.4 Other non-financial businesses and professions (R.20)	<ul style="list-style-type: none"> <li>• The authorities should take steps to ensure that the gaming houses and lotteries effectively implement the applicable provisions of the MLPCA.</li> </ul>
<b>5. Legal Persons and Arrangements &amp; Non-Profit Organisations</b>	
5.1 Legal Persons – Access to beneficial ownership and control	<p>The authorities should:</p>

information (R.33)	<ul style="list-style-type: none"> <li>• Ensure that lawyers registering companies should verify client information on ownership and control of the companies before lodging the registration application with the Registrar, including considering adopting formal procedures obligating them to do so.</li> <li>• Provide clarification on whether the use of nominee shareholders is legally allowed to ensure that proper measures are put in place to enable the identity of beneficiaries of such arrangements.</li> <li>• The authorities should enforce the requirement of a body corporate being represented by a natural person where it has to act as a company secretary in order to ensure that identity of the company secretary is not obscured.</li> <li>• The penalty provisions of the Companies Act relating to failure of filing of returns and updating of the Registrar of Companies on company changes specified under the Act need to be revisited as they are outdated and not deterrent.</li> <li>• Capacitate the Registrar of Companies with resources to enable electronic filing of records and information which will allow easy access to the records, their accuracy, storage and preservation.</li> </ul>
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	<p>The authorities should:</p> <ul style="list-style-type: none"> <li>• Enact legislation that provides for the administration and regulation of trusts and other legal arrangements;</li> <li>• Strengthen the existing measures on verification of the identity of trustees, settlers and beneficiary owners of trusts by lawyers who apply for registration of the trusts and ensure</li> </ul>

	<p>that the Deeds Registry Office prevents the unlawful use of trusts for purposes of ML/TF;</p> <ul style="list-style-type: none"> <li>• Implement reliable database with accurate and up to date information held by the Deeds Registry Office.</li> </ul>
5.3 Non-profit organisations (SR.VIII)	<ul style="list-style-type: none"> <li>• The authorities should implement the requirements under SR.VIII.</li> </ul>
<b>6. National and International Co-operation</b>	
6.1 National co-operation and coordination (R.31)	<p>The authorities should:</p> <ul style="list-style-type: none"> <li>• Expedite the law which enable the establishment of an FIU to come into operation.</li> <li>• Ensure that the FIU becomes a custodian of national coordination and cooperation on AML/CFT.</li> <li>• Overtime conduct reviews on the effectiveness of the AML/CFT system in the Kingdom of Lesotho.</li> </ul>
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	<p>The authorities should:</p> <ul style="list-style-type: none"> <li>• Enact legislation to criminalise terrorist acts;</li> <li>• Fully implement the Palermo, Vienna and Suppression of Terrorism Conventions;</li> <li>• Put in place comprehensive measures for mutual legal assistance; and</li> <li>• Put in place comprehensive measures for the implementation of UNSCR 1267 and 1373;</li> <li>• 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;</li> <li>• Put in place measures for the promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes</li> </ul>

	<p>of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;</p> <ul style="list-style-type: none"> <li>• Conduct comprehensive training to its law enforcement and competent authorities responsible for the prevention, detection and control of the offences covered by the Convention;</li> <li>• Provide comprehensive measures for the protection of witnesses;</li> <li>• Extend the liability of legal persons to include their participation in organised criminal groups;</li> <li>• Amend the law to provide administrative sanctions for legal persons that commit offences;</li> <li>• Amend the MLPCA to provide jurisdiction extending to an offence that is committed on board a vessel that is flying the flag of the Kingdom of Lesotho or an aircraft that is registered under the laws of Lesotho at the time that the offence is committed, as is the case with the Drugs of Abuse Act;;</li> <li>• Provide for the criminalisation of terrorist acts committed by a stateless person who has his or her habitual residence in the territory of the Kingdom of Lesotho.</li> </ul>
<p>6.3 Mutual Legal Assistance (R.36-38 &amp; SR.V)</p>	<p>The authorities should:</p> <p><u>FATF Recommendation 36</u></p> <ul style="list-style-type: none"> <li>• Enact legislation to fully implement mutual legal assistance measures that ensure effective and timely execution of requests from foreign States;</li> <li>• Put in place measures to facilitate the taking of witness statements on behalf of a foreign State;</li> <li>• Facilitate the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country;</li> </ul>

	<ul style="list-style-type: none"> <li>• Maintain statistical information on mutual legal assistance matters;</li> </ul> <p><u>FATF Recommendation 37</u></p> <ul style="list-style-type: none"> <li>• Dispense with the requirement of dual criminality as a pre-requisite for rendering mutual legal assistance in particular for less intrusive and non compulsory measures.</li> </ul> <p><u>FATF Recommendation 38</u></p> <ul style="list-style-type: none"> <li>• Redefine serious offences from a maximum term of imprisonment of not less than 24 months to 12 months in order to provide for the full range of predicate offences for money laundering and facilitate effective mutual legal assistance relating to the identification, freezing, seizure, or confiscation of laundered property from, proceeds from, instrumentalities used in, or instrumentalities intended for use in, the commission of any ML/FT or other predicate offences;</li> <li>• There should be implementation of the mutual legal assistance procedures set out in the MLPCA to enable effective and timely responses to foreign requests related to identification, freezing, seizure or confiscation of tainted property, proceeds of crime and property of corresponding value;</li> <li>• There should be clear arrangements for coordinating seizure and confiscation actions with other countries; and</li> <li>• Maintain statistics relating to mutual legal assistance requests sent, received and executed.</li> </ul>
6.4 Extradition (R.39, 37 & SR.V)	<p>The authorities should:</p> <ul style="list-style-type: none"> <li>• Put in place specific legislation outlining procedures to facilitate effective and simplified extradition procedures ;</li> </ul>

	<ul style="list-style-type: none"> <li>• Put in place measures to ensure that dual criminality is not a pre-requisite for extradition, particularly on less intrusive and non compulsory measures ;</li> <li>• The authorities must ensure that requests and proceedings relating to ML are handled without undue delay and specific time frames are prescribed for responses to extradition requests.</li> <li>• Comprehensive statistics on extradition requests received, granted and time taken to process the requests must be kept and maintained by the authorities.</li> </ul>
6.5 Other Forms of Co-operation (R.40 & SR.V)	<p>The authorities should:</p> <ul style="list-style-type: none"> <li>• Bring the provisions establishing the FIU into operation in order to facilitate the exchange of information with other FIUs.</li> <li>• Extend the powers of the DCEO to enter into MOUs with its counterparts to enable exchange of information should clearly be provided for under the Prevention of Corruption and Economic Crimes Act.</li> <li>• Ensure that law enforcement agencies and supervisory authorities put in place mechanisms for information relating to spontaneous requests to be properly maintained.</li> <li>• Maintain statistics of the requests for information received from their counterparts, the nature of the information or assistance with investigations required, how many of the requests are acceded to and how many are rejected and the timeframes taken to deal with the requests.</li> </ul>
<b>7. Other Issues</b>	
7.1 Resources and statistics (R. 30)	<ul style="list-style-type: none"> <li>• The authorities should provide adequate</li> </ul>

& 32)	<p>resources to relevant competent authorities to ensure effective implementation of the MLPCA.</p> <ul style="list-style-type: none"> <li>• All relevant competent authorities should maintain up to date comprehensive statistics to enable the authorities to undertake reviews of the AML/CFT systems in the country.</li> </ul>
7.2 Other relevant AML/CFT measures or issues	None
7.3 General framework – structural issues	None

**Table 3: Authorities’ Response to the Evaluation (if necessary)**

<b>Relevant sections and paragraphs</b>	<b>Country Comments</b>



## ANNEXES

### **Annex 1: List of abbreviations**

**Annex 2: Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others.**

*Ministries, other government authorities or bodies*

1. Accountant General's Office
2. Anti-Money Laundering Task Force Team
3. Attorney General's Office
4. Auditor General's Office
5. Central Bank of Lesotho
6. Chief Magistrate's Office- Central Division
7. Commissioner of Cooperative Societies
8. Commissioner of Mines and Geology
9. Directorate of Corruption and Economic Offences
10. Director of Public Prosecutions' Office
11. Lesotho Mounted Police Service
12. Lesotho Revenue Authority
13. Master of the High Court
14. Ministry of Finance (F.I.U.)
15. Ministry of Foreign Affairs
16. Postal Bank
17. Post Office
18. Registrar of Deeds
19. Registrar General
20. Registrar of the High Court

*Private sector representatives and others*

21. AON Insurance Brokers
22. Bankers' Association
23. Boliba Savings and Credit
24. First National Bank
25. Green Financial Services
26. Law Society of Lesotho
27. Lesotho Institute of Accountants
28. Lesotho Sun Casino
29. Metropolitan Insurance
30. Money Lenders Association
31. Standard Lesotho Bank
32. TEBA

## **Annex 3: Copies of key laws, regulations and other measures**

### **Money laundering offences (MLPCA)**

#### **Section 25**

*“A person commits the offence of money-laundering if the person-*

- (a) acquires, possesses or uses property; or*
- (b) converts or transfers property with the aim of concealing or disguising the illicit origin of that property or of aiding any person involved in the commission of an offence to evade the legal consequences thereof; or*
- (c) conceals or disguises the true nature, origin, location, disposition, movement or ownership of property,*

*knowing or having reason to believe that such property is derived directly or indirectly from acts or omissions-*

- (i) in Lesotho which constitute an offence against this Part, or another law of Lesotho punishable by imprisonment for not less than 24 months;*
- (ii) outside Lesotho which, had they occurred in Lesotho, would have constituted an offence under Lesotho law, punishable by imprisonment for not less than 24 months.”*

#### **Section 2**

*“property” means currency and any asset of every kind, whether corporeal or incorporeal, moveable or immoveable, 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, travellers 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”*

*“proceeds of crime” means any property derived or realised directly or indirectly from a serious offence and includes, on a proportional basis, property into which any property derived or realised directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realised from such property at any time since the offence;”*

*“serious offence” means an offence against a provision of-*

- (a) any law in Lesotho, for which the maximum penalty is death or imprisonment for life or other deprivation of liberty for a period of not less than 24 months and includes money laundering;*
- (b) a law of a foreign State, in relation to acts or omissions, which had they occurred in Lesotho, would have constituted an offence for which the maximum penalty is death, or imprisonment for life or other deprivation of liberty for a period of not less than 24 months;”*

## **Terrorist Financing Offences (MLPCA)**

### **Section 63**

*“A person who-*

- (a) solicits, receives, provides or possesses funds or other property;*
- (b) enters into, or becomes concerned in, an arrangement as a result of which money or other property is made available or is to be made available,*

*for the purposes of terrorism, or for a proscribed organisation, commits an offence and is liable on conviction to a fine not less than M100,000 or to imprisonment for a term not less than 10 years.”*

### **Section 65**

*“65. (1) A person commits an offence of terrorist financing if he or she by any means, directly or indirectly, wilfully, 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-*

- (a) to carry out a terrorist act;*
- (b) by a terrorist organisation.*

*(2) The offence is committed irrespective of an occurrence of a terrorist act referred to in paragraph (1), or whether the funds have actually been used to commit such an act.*

*(3) It shall be an offence-*

- (a) to participate as an accomplice in an offence within the meaning of subsection (1);*
- (b) to organise or direct others to commit an offence within the meaning of subsection (1).*

*(4) A person who contravenes this section commits an offence and shall be liable on conviction to a fine of not less than M10, 000 or imprisonment for a term of not less than 2 years and in case of a body corporate a fine not less than 10 times that amount.”*

## **The FIU**

**Establishment**

**Objectives**

**Functions**

**General powers**

## **AML/CFT Obligations**

**KYC & CDD measures**

**Record keeping**

**Property associated with terrorism**

**Reporting of suspicious and unusual transactions**

**Compliance by accountable institutions**

## **Predicate offences (CP&E Act)**

### **Section 302**

*“302 (1) A person liable to a sentence of imprisonment for life or any period may be sentenced to imprisonment for any shorter period and a person liable to sentence of a fine may be sentenced to a fine of any lesser amount.”*

## **Sanctions for ML (CP&E Act)**

### **Section 314**

*“314 (1) Whenever a person, is convicted before the High Court or any subordinate court of any offence other than an offence specified in Schedule III, the court may postpone for a period not exceeding 3 years the passing of sentence and release that person on one or more conditions (whether as to compensation to be made by that person for damage or pecuniary loss, good conduct or otherwise) as the court may order to be inserted in recognizances to appear at the expiration of that period and if at the end of that period that person has observed all the conditions of the recognizances, the court may discharge him without passing any sentence.*

(2) Whenever a person, is convicted before the High Court or any subordinate court of any offence other than an offence specified in Schedule III, the court may pass sentence, but order the whole or any part thereof be suspended for a period not exceeding 3 years, which period of suspension, in the absence of any order to the contrary, shall be computed in accordance with sub-sections (3) and (4) respectively, and the order shall be subject to such conditions (whether as to compensation to be made by that person for damage or pecuniary loss, good conduct or otherwise) as the court may specify therein."

## **Annex 4: List of all laws, regulations and other material received**

### **List of Laws, Regulations and Guidelines**

1. Accountant Act, 1977
2. Act of 1882 (Friendly Societies),
3. Alliance Control Act, 1966
4. Anti-Trafficking in Persons Act
5. Casino Order, 1989
6. Central Bank of Lesotho Act, 2000
7. Collective Investment Schemes Regulations, 2001
8. Companies Act, 1967
9. Companies (Amendment) Act, 1984
10. Companies (Amendment) Order, 1989
11. Criminal Procedure and Evidence Act, 1981
12. Customs and Excise Regulations, 1984
13. Deeds Registry Act, 1967
14. Directorate of Corruption and Economic Offences Investigations Manual
15. Drugs Abuse Act
16. Fugitive Offenders Act, 1967
17. Fugitive Offenders (Amendment) Order, 1971
18. Financial Institutions Act, 1999
19. Anti-Money Laundering Guidelines, 2000
20. Know Your Customer Guidelines, 2007
21. Income Tax Order (Consolidated)
22. Insurance Act, 1976
23. Insurance Regulations, 1985
24. Legal Notice No. 146 of 1990 (Casino Regulations)
25. Legal Practitioners Act, 1983
26. Lesotho Constitution
27. Lesotho Know Your Customer Guidelines
28. Lesotho Revenue Authority Act, 2001
29. Mines and Minerals Act,
30. Money Laundering and Proceeds of Crime Act, 2008
31. Money Laundering and Proceeds of Crime Act, 2008 (Commencement Notice, 2009)
32. Money Lenders Order, 1989
33. Money Lenders (Amendment) Act, 1993
34. National Security Services Act, 1998
35. Prevention of Corruption and Economic Offences (Amendment) Act, 2006
36. Police Act
37. Police Investigations Manual
38. Police Regulations, 2003/4
39. Post Office Act
  
40. Precious Stones (Diamond Dealer's Licence Grant and Renewal) Regulations, 2004

- 41. Precious Stones (Kimberly Process) Regulations, 2003
- 42. Precious Stones Order, 1979
- 43. Prevention of Corruption and Economic Offences, 1999
- 44. Sexual Offences Act
- 45. Societies (Amendment) Act, 2001
- 46. Societies Rules, 1967
- 47. South African Criminal Law and Procedure, Volume II
- 48. Law Society Act, 1983
- 49. The Societies Act, No. 20
- 50. VAT Act, 2001

#### **Bills**

- 51. Companies Bill
- 52. Penal Code

#### **Case Law**

- 53. Rex Vs Masupha Ephraim Sole
- 54. Reatile Thabo Mochebelele & Another Vs The Crown [Court of Appeals (Crim) No. 1/ 2009]

#### **Agreements and MOUs**

- 55. Arusha Declaration
- 56. MOU between the DCEO, LRA and the LMPS on exchange of information
- 57. CMA Multi-Lateral Agreement
- 58. MOU between the FIU and CBL
- 59. MOU between Lesotho Revenue Authority and South African Revenue Authority
- 60. MOU between Zimbabwe Revenue Authority and Lesotho Revenue Authority
- 61. Scheme for Mutual Legal Assistance in the Commonwealth
- 62. The London Scheme for Extradition within the Commonwealth

#### **Annual Reports**

- 63. Annual Report of the CBL Bank Supervision Division
- 64. Auditor General's Annual Report
- 65. Lesotho Institute of Accountancy Annual Report
- 66. LMPS Annual Report

#### **Code of Ethics**

- 67. LRA Corporate Values, Ethics and Conduct

#### **Other Documents**

- 69. Adhesion Agreement: Rule Book on Wire Transfers
- 70. Conflict of Laws: Central Bank Act 2000 and Money Laundering and Proceeds of Crime Act 2008 (Opinion by the Attorney General's Office)



71. DCEO Establishment
  72. DCEO Organisational Chart
  73. List of conventions and protocols ratified and acceded to.
  74. Lesotho Post Bank AML Policy
  75. Lesotho Post Bank KYC Questionnaire
  76. Lesotho Revenue Authority Declaration Form
  77. Proposed amendments to the MLPCA by the FIU
  78. Report on Human Trafficking
  79. The Struggle against Corruption – A Fresh Impetus by the Government of Lesotho.
- Consultation Paper
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