ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM REGIME

NATIONAL STRATEGY

JANUARY 2010
TABLE OF CONTENTS

PART I-- PRELIMINARY

Introduction 3
Background 3

PART II- LESOTHO’S VISION, MISSION AND STRATEGY

Vision statement 5
Mission Statement 5
Strategic objectives 6
Strategy to achieve the objectives 6
PART I-PRELIMINARY

1. INTRODUCTION

1. The AML/CFT strategic plan seeks to indicate clearly how Lesotho intends to implement measures to combat money laundering and financing of terrorism in line with internationally acclaimed standards. The strategy seeks to consolidate the Financial Action Task Force Forty Recommendations and Nine Special Recommendations on Terrorist Financing through legislation and other legally binding measures with the ultimate result of confiscating all proceeds of serious crimes.

1.1 BACKGROUND

1.1.1 Money laundering as a global problem:

2. It has been some time since the International Community made some concerted efforts in fighting money laundering (ML). It was realized that international and regional coordination was needed in order to effectively fight the pandemic. In effectively combating ML a need for legislation countering it was identified. Nonetheless, it later transpired that legislation alone was not sufficient, and that the financial sector and law enforcement agencies had to be brought on board as they all played significant roles in combating money laundering.

3. Several attempts have been made at defining money laundering by the International Community and instruments thereto. The UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (Vienna Convention) has defined money laundering as concealing the true origin or nature of property, knowing it to be derived from commission of an offence. The Vienna Convention however, limited the definition to the proceeds from drug trafficking alone. The definition has since been expanded by the UN Convention against Transnational Organized Crime (2000) (Palermo Convention). It now covers a wide range of predicate offences to include other serious crimes. Simply put, money laundering has been defined as a process whereby proceeds of a criminal activity are disguised to conceal their illicit origins. By so doing criminals introduce their dirty money in the financial sector, a factor which enables them to avoid prosecution, conviction and confiscation of their criminal proceeds.
1.1.2 Terrorist Financing as a Global Problem:

4. The United Nations has made some attempts at fighting terrorism and ultimately the financing of it. The *UN Convention for the Suppression of the Financing of Terrorism (1999)* provides that a person commits a crime if he/she unlawfully and willingly collects funds with the intention/knowledge that they are going to be used to finance an act *inter alia*, intended to cause death or serious bodily harm to a civilian. Simply put, financing of terrorism is defined as financial support of any form, of terrorism or those who encourage, plan or engage in terrorist acts.

5. In financing of terrorism, the origin of the funds is immaterial, whether they are from legitimate sources or otherwise. Whilst financing of terrorism is a relatively simple concept, the international community has experienced problems in defining terrorism itself, and hence no definition will be ventured forth.

1.1.3 Linking Money Laundering and Financing of Terrorism:

6. Money laundering and financing of terrorism have similar features in as far as concealment of sources of money, and intended use are concerned. Money launderers conceal the origin of proceeds by using the legitimate channels so that the money is reflected as legitimate money in the end. The financiers of terrorism conceal the origin of their funds, whether legal or otherwise to ensure continuity of financing of the terrorism acts. The end result for these persons is the same, which is a reward. Money launderers get to use the money as legitimate sources in the market and the terrorist financiers are able to carry finance strategies or attacks. It is important to note that money laundering can be a predicate offence to financing of terrorism, as money used can also be illicit gains.

1.1.4 Importance of taking action

7. It is important for governments to take action against money laundering and financing of terrorism. Money laundering permits criminals to benefit from their criminal activities thus, making crime an attractive option. It also facilitates corruption and ultimately the accumulation of
economic and financial power by criminal organizations which are likely to end up undermining national economies.

8. Money laundering knows no boundaries, it is transnational in nature, and so is financing of terrorism. With the globalization of the world markets, the world is now a village, and the different types of financial institutions are affected. All countries have to take action against them for effective regimes.

1.1.5 The Eastern and Southern Africa Anti-Money Laundering Group (ESAMLG)

9. In realizing the growing problem of money laundering, the Organization for Economic Co-operation and Development (OECD) at its Economic Summit by the Heads of States of the G-7 nations in 1989, founded the Financial Action Task Force (FATF). Its mandate was amongst others to, “assess the results of cooperation already undertaken in order to prevent the utilization of the banking system and financial institutions for the purpose of money laundering and to consider additional preventive measures including the adaptation of the legal and regulatory systems, so as to enhance multilateral judicial assistance”.

10. Since the founding of the FATF, regional organizations have been founded, referred to as FATF-Styled Regional Bodies (FSRBs). They are under the supervision and guidance of the FATF in fighting money laundering and financing of terrorism.

11. ESAMLG is one such FSRB. It was founded in August, 1999 in Arusha, Tanzania. In the meetings convened by ESAMLG, it became clear that member countries were not moving with a desirable pace in adopting and implementing their AML/CFT regimes. As one of the recommendations of the FATF in AML/CFT, all countries are to criminalize money laundering and financing of terrorism. It became important therefore, that member countries draw their respective strategies for fighting money laundering and terrorist financing. Member countries are expected to report on the progress made in that regard.
PART II-Lesotho’s Vision, Mission and Strategic Objectives

2. VISION STATEMENT

12. A strong and dynamic Anti-Money Laundering and Combating the Financing of Terrorism Regime committed to eradicating money laundering, terrorist financing and proceeds of crime in Lesotho

3. MISSION STATEMENT

13. To deploy concerted effort, nationally, bilaterally, regionally and internationally to combat money laundering, terrorist financing and proceeds of crime.

4. STRATEGIC OBJECTIVES

14. The following strategic objectives will further be described in the implementation matrix attached herein as schedule 1.

   I. National co-operation
   II. Comprehensive, Effective Legislation
   III. Effective Enforcement Structure & Resources
   IV. Effective International and regional Co-operation
   V. Effective Regulation of Accountable Institutions
   VI. Enhance awareness and appreciation of AML/CFT
   VII. Assessing money laundering and terrorist financing risks and vulnerabilities

5. STRATEGY TO ACHIEVE THE STRATEGIC OBJECTIVES

5.1. National co-operation
5.1.1 Establish National Co-ordination Committee

15. It is intended that an interagency committee\(^1\) should be established to comprise relevant agencies to AML/CFT chaired and coordinated by the

\(^1\) The interagency committee shall comprise: Finance and Development planning, Justice Law and Constitutional Affairs, Home Affairs and Public Safety, Foreign Affairs and International Relations, Central Bank of Lesotho, Financial Intelligence Unit, Police Service, Directorate on Corruption and Economic Offences, Lesotho Revenue Authority and such other agencies as the Minister may deem relevant.
Ministry of Finance and Development Planning. A memorandum of understanding should be drawn to define the mandate of the interagency cooperation. In some instances a service level agreement may be a prerequisite.

5.1.2 Purpose and Function of the National Coordination Committee

16. The committee should serve as a forum to discuss AML/CFT issues. This will enable policy makers, the Financial Intelligence Unit, law enforcement agencies and supervisors and other competent authorities to have effective mechanisms in place which facilitate co-operation and coordination domestically with each other concerning the development and implementation of policies and activities to combat serious crimes, money laundering and terrorist financing.

5.1.3 Expected output

17. Effective mechanisms in place to facilitate cooperation and coordination of AML/CFT activities.

5.2. Comprehensive and effective legislation

5.2.1. Criminalisation of money laundering and financing of terrorism

18. Developing Effective Legislation to criminalize money laundering and financing of terrorism and confiscate all proceeds of crime. The legislation should respond to international conventions and instruments.


20. The other challenge will be providing resources to implementing institutions as well as, harmonization of the Act with already existing pieces of legislations relevant to AML/CFT. Legislation relevant will have to be identified and accordingly harmonized.

5.2.2. Expected output

5.3. **Effective Enforcement Structure & Resources**

22. Effective Enforcement through which reports will be processed and investigations, prosecutions as well as confiscation of suspected proceeds of money laundering, terrorist financing be undertaken.

23. The Objective here is to process reports through intelligence after which investigations into suspected money laundering or terrorist financing will be undertaken and lead to successful prosecution. The enforcement structure should also be able to respond to international requests.

24. The structures to be employed for effective enforcement are the Financial Intelligence Unit and the Anti-Money Laundering Authority. The following are mandates of these institutions:

**5.3.1. The Financial Intelligence Unit**

25. The mandate of the financial intelligence unit is spelt out in the Act[^2], in addition however, the FIU will be expected to perform the following:-

(a) Ensure commitment to confidentiality, this should culminate into:-
(i) customers not being approached unless crime is suspected;
(ii) source of intelligence being protected; and
(iii) all information not relevant to ongoing investigations to be destroyed as soon as possible.

(b) Ensure commitment to financial sector by providing:-
(i) feedback; and
(ii) training.

(c) Ensure domestic interagency links.

**5.3.2. The Anti-Money Laundering Authority**

26. The Act mandates the Directorate on Corruption and Economic Offences to setup the Anti-Money Laundering Authority. Over and above investigative powers it has the Authority is expected to play a major role in facilitating mutual legal assistance from foreign states.

[^2]: The Money Laundering and Proceeds of Crime Act No. 4 of 2008
27. The Enforcement agencies should be well equipped with personnel and systems resources.

28. The following human resources may be vital:
   (i) Financial investigators;
   (ii) forensic auditors; and
   (iii) specialised prosecutors on commercial crimes.

5.3.3 Expected output
29. (i) Dissemination of reports;
   (ii) Law enforcement cooperation; and
   (iii) Successful prosecutions and confiscations.

5.4 Effective International and Regional Co-operation

30. Money laundering and terrorist financing are transnational in nature. Lesotho has therefore taken effort in joining the international community to fight against these crimes through ratifying international instruments relevant to AML/CFT.

31. Lesotho shall continue to uphold the international call to keep on domesticating the international instruments relevant to AML/CFT.

5.4.1 There should be co-operation between:
32. (i) Governments through Legal Treaties;
   (ii) Enforcement agencies through exchange of information and Provision of assistance;
   (iii) Financial Intelligence Units through memorandum of understanding;
   (iv) Lesotho should also apply for Egmont Group membership; and
   (v) Where necessary and in the best interest of Lesotho, International and Regional Groups membership with the objective of fighting transnational crimes should be promoted.

5.4.2 Expected output
33. (i) Timeous and improved access to information;
   (ii) Admission to Egmont group; and
   (iii) Smooth investigations.

5.5 Effective Regulation of Accountable Institutions Sector
5.5.1. **Ensure compliance by accountable institutions with the obligations imposed by the Act**

5.5.2 **Mechanisms for effective compliance should be through:-**

34. (i) Definition of the sector;
    (ii) Assessment of the maturity of the sector; and
    (iii) Effective regulation of the sector.

5.5.3 **Expected output**

35. Understanding and compliance with obligations imposed by Money Laundering and Proceeds of Crime Act and any other legislation relating to it as well as, flexibility of the definition of the sector.

5.6 **Enhance awareness and appreciation of AML/CFT**

36. The money laundering and terrorist financing are new phenomena in our jurisdiction. Members of the public may have little knowledge about the dangers it may pose on the socioeconomic of the country. Thus unless the public is well informed, it becomes difficult for law enforcement agencies to detect money laundering or terrorist financing criminals. Therefore, it is intended that the general populace be sensitised on the dangers of money laundering and financing of terrorism using all possible avenues available. It is believed that an informed public will be able to work closely with law enforcement agencies by reporting suspected money laundering or financing of terrorism activities in their communities.

5.6.1 **Expected output**

37. (i) A well informed civil society; and
    (ii) Willingness to report money laundering and terrorist financing activities.

5.7 **Assessing money laundering and terrorist financing risks and vulnerabilities**

38. This objective seeks to undertake a national money laundering and terrorist financing exercise by identifying risks, threats, or vulnerabilities across various areas and sectors and to develop key priority actions to respond to those risks or vulnerabilities.

39. The achievement of this objective is expected among others to be informed by the mutual evaluation reports.
40. A standard template shall be attached and divided into:

(i) Prevailing crime type;
(ii) Institutional framework (Legal, Judicial and Law Enforcement Agencies);
(iii) Economic and Geographical Environment; and
(iv) Accountable Institutions (Financial and Non-Financial Bodies or Professions).

6.7.1 Expected output
41. An institutionalised Anti-Money Laundering and Combating the Financing of Terrorism Regime.
### SCHEDULE 1 (paragraph 14)

**LESOTHO’S AML/CFT IMPLEMENTATION MATRIX**

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>STRATEGIC ACTION</th>
<th>INDICATOR</th>
<th>MEANS OF VERIFICATION</th>
<th>MAIN ACTOR</th>
<th>Challenges/Risks</th>
<th>REQUIREMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>National co-operation</td>
<td>- Establish the National Inter agency committee comprising: Finance and Development planning, Justice Law and Constitutional Affairs, Home Affairs and Public Safety, Foreign Affair and International relations, Central Bank of Lesotho and Lesotho Revenue Authority.</td>
<td>-Existence of the committee</td>
<td>-Memorandum of Understanding</td>
<td>-AMLA</td>
<td>- Lack of coordination at a higher management level -Lack of MOUs³</td>
<td>Working group to develop memorandum</td>
</tr>
<tr>
<td></td>
<td>- define the mandate of the committee</td>
<td>-implementation of the mandate</td>
<td>- Service Level Agreement</td>
<td>-FIU -relevant agencies</td>
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<tr>
<td>Comprehensive</td>
<td>- criminalise money</td>
<td>-implementation</td>
<td>-Acts and</td>
<td>-AMLA</td>
<td>- Lack of effective</td>
<td>-Implement MLPC</td>
</tr>
</tbody>
</table>

**NOTE**

³ The MOU will be a tool to facilitate cooperation and sharing of information between and amongst relevant Government agencies in the fight against money laundering and terrorist financing in Lesotho
<table>
<thead>
<tr>
<th>and Effective Legislation</th>
<th>laundering &amp; terrorist financing</th>
<th>of measures to combat money laundering &amp; terrorist financing - Criminal Asset Recovery Fund established</th>
<th>regulations in place - disbursement of funds</th>
<th>- FIU - High Court - AMLA</th>
<th>implementation of legislation - Lack of financial and human resources</th>
<th>Act by 1st of April 2009</th>
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<tbody>
<tr>
<td>Effective Enforcement Structure &amp; Resources</td>
<td>- Process intelligence</td>
<td>- Dissemination of information - investigations complete - Charge sheet drawn - Existence of mechanisms to facilitate requests</td>
<td>reports</td>
<td>- FIU - LEAs</td>
<td>FIU</td>
<td>Absence of FIU - Lack of admissibility of electronic data as evidence in the courts of law - Capacity building both financial and human</td>
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</tbody>
</table>

<p>| LEAs | - Capacity building, both financial and human - Lack of necessary infrastructure - Lack of access to banks for availability of financial records on investigations | Technical Assistance to facilitate FIU setup - Amendment of law of evidence | 13 |</p>
<table>
<thead>
<tr>
<th>Effective International and Regional Co-operation</th>
<th>- ratification of international &amp; Regional instruments</th>
<th>- domestication of international instruments</th>
<th>- implementation</th>
<th>-Foreign Affairs - AMLA</th>
<th>-DPP - AMLA</th>
<th>-Lack of Mutual Legal Assistance legislation</th>
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<tr>
<td>-cooperation amongst:-</td>
<td>- Legal Treaties developed</td>
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<td>• governments</td>
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<tr>
<td>-Existence of Mutual Legal Assistance</td>
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<td>- Mutual Legal Assistance Act in place</td>
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<tr>
<td>-Memorandum of Understanding</td>
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<td>- Application for Egmont Group</td>
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</table>

- Coordinate with DPP’s office to draft the mutual legal assistance Bill
- FIU to facilitate information sharing
## Effective Regulation of Accountable Institutions

- Define Accountable institutions into categories
- monitor compliance
- categorisation of financial and non-financial bodies and professions
- regulated sector

| Membership | - Supervisory bodies
| - reports
| - Lack of Supervisory bodies
- Cash based economy
- Lack of paper trails on investigation of financial crimes
- Lack of national IDs

- Make an inventory of accountable institutions to determine supervisory mechanisms

## Enhance awareness and appreciation of AML/CFT

- develop outreach programmes

| Implication of money laundering and terrorist financing well understood
| - awareness campaigns held
| -AMLA
- Capacity building both human and financial to conduct awareness campaign

| Secure funding for these activities.

## Assessing money laundering and terrorist financing risks and vulnerabilities

- Undertake mutual evaluation
- undertake periodic exercise to identify & assess risks, threats and vulnerabilities

| -mutual evaluation report finalised
| -periodic reports with recommendations
| -FIU
-AMLA
- Lack of implementation of above strategies may lead to a negative evaluation outcome

| Need to implement recommendations informed by this strategy, the DSI and Mutual Evaluation Report

### List of acronyms

**AMLA**-Anti-Money Laundering Authority

**AML/CFT**-Anti-Money Laundering and Combating the Financing of terrorism
DCEO-Directorate on Corruption and Economic Offences
DPP- Director of Public Prosecutions
DSI-Development Strategy Implementation
FIU-Financial Intelligence Unit
LEA-Law Enforcement Agencies
MLPC- Money Laundering and Proceeds of Crime Act
MOU-Memorandum of Understanding
SLA-Service Level Agreement