



**DEVELOPMENT STRATEGY IMPLEMENTATION ASSESSMENT REPORT  
ANTI-MONEY LAUNDERING AND COMBATING THE  
FINANCING OF TERRORISM**

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***DEVELOPMENT STRATEGY IMPLEMENTATION (DSI)***

***Report***

***KINGDOM OF LESOTHO***

**March 2007**



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# Development Strategy Implementation Assessment Report

## 1. GENERAL INFORMATION

### 1.1 Background Information - Development Strategy Implementation.

1. The Development Strategy Implementation (DSI) is an initiative of the Eastern and Southern and African Anti-Money Laundering Group (ESAAMLG) to assist members in developing their Anti-Money Laundering (AML) and Counter Terrorist Financing (CFT) capacity and to implement effective AML/CFT strategies that meet the standards of the FATF Recommendations. The assessment uses the core elements of the FATF 40 Recommendations and 9 Special Recommendations to assess and identify the basic requirements of an AML/CFT system.

2. The DSI process is specifically designed to assist individual ESAAMLG jurisdictions to plan and implement effective national AML/CFT strategies. The DSI report is the first stage in the DSI process. The report provides an assessment of a country's AML/CFT system against a core number of FATF standards<sup>1</sup>. Recommendations and comments are made on what is required to meet the FATF standard for each Recommendation assessed and areas are identified where additional training, resources and co-ordination are required. Where possible comments on suggested timelines for the implementation of AML/CFT measures are made.

3. The report is provided to the country so that they can consider how best they can improve the effectiveness of their AML/CFT system. Countries are encouraged to share the findings of the report with relevant organisations and jurisdictions that can assist the assessed country in developing their AML/CFT systems with relevant, focused training or technical assistance. The findings of the DSI assessment will be held with the ESAAMLG Secretariat who will ensure that any regional training or technical assistance can be made available.

4. This report was prepared by the ESAAMLG DSI evaluation Team. The onsite evaluation was conducted between the 10<sup>th</sup> of July and the 14<sup>th</sup> of August 2006 in Lesotho. The team consisted of Mr. Peter Smit from South Africa, Mr. Phillip Moustache from Seychelles, Mr. Michael Were from Uganda and Mr. Joseph Jagada from Zimbabwe. Mr. Mark Hammond from the FATF and Ms. Fikile Zitha of South Africa were observers. The evaluation was organized and coordinated by Mr. Wayne Blackburn UN Mentor of ESAAMLG Secretariat.

### 1.2 General information on Lesotho

5. Lesotho is landlocked and is completely surrounded by The Republic of South Africa with a total land area just over 30,355 square kilometres. Maseru is the capital and is also the administrative centre. Population estimates from 2003 indicated that there were more than 1.861,959 inhabitants with an average growth of 0.19%. About 82% of the population lives in rural areas while 28% reside in towns and cities. The official languages spoken are Sesotho and English.

6. The main products of Lesotho are mohair, wool and limited mining of diamonds. The products manufactured are textiles and clothing, which are exported to USA under the Africa Growth Opportunity Act "AGO".

7. Lesotho has been a Constitutional Monarchy since becoming independent from the former British protectorate of Basutoland in 1966. The King is the Head of State. The Constitution is the

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<sup>1</sup> See DSI methodology

supreme law of Lesotho. Parliament provides the legislative arm of government. The King has to assent to Acts of Parliament before promulgation.

8. The Government comprises of the King and Cabinet of Ministers. Prime Minister heads the Government.

9. Lesotho holds elections every five years. The Parliament comprise of 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 of 33 members 22 principals chiefs and 11 nominees of the King acting on the advise of the Prime Minister.

10. The currency of Lesotho is the Loti and is fixed on par with the South African Rand. Lesotho is a member of the Common Monetary Area (CMA), with South Africa, Swaziland and Namibia. Under the terms of the CMA currency can be freely transported across the borders of CMA members. Lesotho is also a member of the Southern Africa Customs Union, which includes South Africa, Swaziland, Botswana and Namibia.

11. Lesotho is a developing country with limited domestic markets; economic performance depends on export orientated industries and is thus influenced by global trends, commodity prices, capital and aid flow. Resources include textile, food products, water and electricity. About 40% of Lesotho's export products including wool, clothing and mohair, are sold internationally, approximately US\$422 million. Lesotho's imports are estimated at US\$738 million.

12. Lesotho's economy is closely linked to the evolving economic and political dynamics of his larger neighbour, South Africa, as well as other countries of the SADC. Economic swings in South Africa are the largest single influence on Lesotho's economy. South Africa accounts for about 85% of local imports, including consumer and petroleum products.

### **1.3 General Situation of Money Laundering and Financing of Terrorism**

13. Lesotho is completely surrounded by South Africa. With South Africa having a very advanced AML/CFT regime, Lesotho may be a natural safe haven for criminals escaping South African FIC and "Scorpions" investigations.

14. The Lesotho authorities informed the team that a number of criminal activities that would generate the proceeds of crime include, drug trafficking, fraud, immigration crime and corruption<sup>2</sup>. Instances of cash smuggling had been detected at border points. In addition, the banks in Lesotho were beginning to submit STRs to the CBL and the LMPS on suspected instances of ML.

15. At present Lesotho lacks laws that criminalise ML and FT, this makes the country exposed to ML and FT vulnerabilities. However, there is a strong desire by the Lesotho authorities to implement an AML/CFT framework and to be in compliance with the various international standards. Serious offences such as drug trafficking, fraud, smuggling, theft, murder, sabotage, are punishable under Lesotho laws. Laws such as the Prevention of Corruption and Economic Crimes Act, 1999, the Criminal Procedure and Evidence Act, 1981, the Penal Code, 2004, and, the Financial Institutions Act, 1999, criminalize these offences. In the absence of AML/CFT laws, the relevant authorities should focus on the proceeds derived from the abovementioned serious offences with a view to understanding their ML and FT risks.

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<sup>2</sup> For example the Lesotho Highlands Water Project Case (Property cited as *Rex -vs- Masupha Ephraim Sole*) the accused was charged with bribery and fraud under the common law.

#### **1.4 Overview of the Financial Sector**

16. Lesotho has four commercial banks of which two are owned by South African Banks. Standard Lesotho Bank and Post Bank are Lesotho owned licenced deposit takers. The South African owned banks operating in Lesotho include Nedbank Lesotho Ltd under the Nedbank Group, RSA, and the First National Bank, which falls under the First Rand Group, RSA. The four licensed banks in Lesotho meet to discuss and co-ordinate issues of mutual interest and have established a Lesotho Bankers Association in 2006. However, as yet, they have not discussed any issues related to AML/CFT.

17. There are six (6) insurance companies, eleven (11) insurance brokers and three hundred (300) agents in Lesotho and their duties are bound by the Insurance Act 1976. Insurance companies provide mainly life insurance, accident and motor vehicles insurance. They also provide small loans to their clients and some reinsurance services.

18. Moneylenders are considered as ancillary service providers under the Financial Institutions Act 1999 (“FIA, 1999) and are also supervised and licensed by the CBL. According to the FIA 1999, ancillary service providers are defined as persons who engage in providing ancillary services such as foreign exchange, electronic funds transfer and other similar ancillary financial services.

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

19. Lesotho established a ML/TF Task Team in 2001 - a working group of stakeholders to address ML and TF issues in the country. The Task Team is co-chaired by the Ministry of Finance and the CBL. The Task Team has extended its mandate to include the review of the draft legislation for AML/CFT, which is scheduled to be presented to The Lesotho Parliament in September 2006.

20. At the time of the on-site visit the Task Team was developing a comprehensive National Strategy for effectively combating ML and TF for Lesotho. The Strategy and the DSI reports recommendations should dovetail; the main Objective of Lesotho’s strategy to date has been included in the DSI template attached.

#### **1.6 The institutional framework for combating money laundering and terrorist financing**

21. A number of government departments who also have a role in Lesotho’s current and future AML/CFT institutional framework: The Ministry of Finance<sup>3</sup> manages, supervises and controls fiscal and financial affairs of government including custody, maintenance and care of government assets and is in charge of the Central Bank of Lesotho (hereinafter referred to as “CBL”). Within the CBL, the Bank Supervision Department is responsible for overseeing and safeguarding the stability, integrity and efficiency of the banking industry. The Department’s objectives include licensing, regulating and supervising banks and financial institutions. Under the Financial Institutions Act, 1999, all financial institutions have been provided with the Financial Institutions (Anti-Money Laundering) “AML” Guidelines, 2000 to adhere to the practices of monitoring and reporting AML activity, in particular suspicious transactions.

22. **The Ministry of Justice<sup>4</sup>, Ministry of Foreign Affairs<sup>5</sup> and Ministry of Home Affairs and Public Safety<sup>6</sup>** currently have limited AML/CFT responsibilities in dispensing justice, promote and

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<sup>3</sup> <http://www.lesotho.gov.ls/mnfinance.htm>

<sup>4</sup> <http://www.lesotho.gov.ls/mnjustice.htm>

<sup>5</sup> <http://www.lesotho.gov.ls/mnforeign.htm>

<sup>6</sup> <http://www.lesotho.gov.ls/mnhome.htm>

maintain good relations between Lesotho and the International Community and promoting the interest of the inhabitants of the Kingdom. These responsibilities would be expected to increase with the requirements of the draft Money Laundering and Proceeds of Crime Bill 2006 (“the MLPC Bill”)

23. **The Lesotho Mounted Police Service (LMPS)**<sup>7</sup>, the Directorate of Corruption and Economic Offences DCEO<sup>8</sup> and, the National Security Service<sup>9</sup> promote the safety and security of the individual, reduce crime, disorder, fear and enhance confidence in the rule of law. Currently, no single law enforcement agency has explicit responsibility for the investigation of ML or TF offences.

24. In the Draft Bill, the DCEO is the institution that is designated to investigate offences for both ML and TF. The agency can enter into Memorandums of Understanding (MOUs) with the Police and other persons or class of persons with the written consent of the Director General and the approval of the Minister. At the present time the police have entered into a MOU with the Directorate. Instances of terrorism or TF have not been detected in Lesotho and no other MOUs have been entered into at the present time. The stakeholders do not seem to have an extensive knowledge of TF and Technical Assistance (TA) in this area may be required when the bill is passed.

25. The ability of Lesotho to implement an effective institutional framework depends heavily on the ability to pass the Money Laundering and Proceeds of Crime Bill 2006 (MLPC Bill) into law. Until this occurs it is very difficult for government departments, law enforcement and financial institutions to implement their own elements of AML/CFT framework as they are unsure whether this will ultimately meet the legal requirements of the Bill once it is law.

## **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**

26. Lesotho has developed a comprehensive draft Money Laundering and Proceeds of Crime Bill 2006 (MLPC) which, once enacted, will provide for the criminalisation of ML.

27. The introduction of the MLPC Bill into the legislative process appears to have reached an advanced stage at the time of the on-site visit. It had already been submitted to the Attorney General for certification, but had been referred back to the drafters to address concerns that certain provisions might impinge on the Constitution of Lesotho and to make certain improvements to the drafting. The process of addressing these concerns in a new draft and re-submitting the Money Laundering Bill to the office of the Attorney General was in progress at the time of the on-site visit.

28. The MLPC Bill contains a provision (clause 25), which will comprehensively criminalise money laundering. This provision appears to contain the elements of a broad money laundering offence in line with recommendations 1 and 2 of the FATF 40 Recommendations on money laundering (“the 40 Recommendations”), save for the manner in which the scope of predicate offences is described.

29. Ancillary offences such as attempts to commit a ML offence, conspiracy to commit and, aiding and abetting of a ML offence have also been included as part of the draft ML offence.

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<sup>7</sup> [http://www.lesotho.gov.ls/mnobjective/prg\\_home.htm](http://www.lesotho.gov.ls/mnobjective/prg_home.htm)

<sup>8</sup> [www.justice.gov.ls/news/anti\\_corruption.html](http://www.justice.gov.ls/news/anti_corruption.html)

<sup>9</sup> <http://www.lesotho.gov.ls/mndefence.htm>

### **2.1.2 Recommendations and Comments (including DSI needs)**

30. The Lesotho authorities are commended on the development of such a comprehensive clause to criminalise ML and are encouraged to continue the current process aimed at the speedy promulgation of the relevant legislation.

31. The current draft makes a serious offence applicable to any criminal conduct, which is punishable by imprisonment for not less than 24 months. However, reducing this threshold to imprisonment for one year or more may extend the scope of predicate offences further. This will bring the provision further into line with Recommendation 1 and allow ML investigations and prosecutions to be undertaken in relation to a broader range of offences that may be the source of criminal proceeds. This issue should, however, not delay the promotion of the MLPC Bill, and may be addressed in a subsequent amendment to improve the Bill.

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

### **2.2.1 Description and Analysis**

32. The MLPC Bill (clause 65) will create a terrorist financing offence, which appears to contain the elements of a terrorist financing offence in line with Special Recommendation II.

### **2.2.2 Recommendations and Comments (including DSI needs)**

33. As in the case of the clauses relating to ML the Lesotho authorities are commended on the development of such a clear and accurate provision to criminalise Terrorist Financing (TF) as is contained in clause 65 of the MLPC Bill.

34. One aspect that may require the attention of the Lesotho authorities is that, in addition to the TF offence, the MLPC Bill will also create an offence of terrorist funding (clause 63). This provision will overlap to some extent with the TF offence in clause 65 which may create confusion among those who will be responsible for the implementation of the MLPC Bill once it is enacted. In addition the terrorist funding provision (clause 63) refers to proscribed organisations; however, the Bill does not contain a mechanism for the proscription of organisations. The effect will be that this aspect of the provision would not be capable of being implemented until a mechanism for the proscription of organisations is developed, either in an amendment to the MLPC Bill or in another piece of legislation. It is therefore the recommendation of the evaluation team that Lesotho strongly consider deleting clause 63 from the MLPC Bill.

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

### **2.3.1 Description and Analysis**

35. The MLPC Bill contains extensive provisions for the freezing, confiscation and forfeiture of the proceeds of crime. The Bill will provide for two processes aimed at removing the proceeds of crime: A conviction-based confiscation process and an *in rem* forfeiture process, which is not dependent on obtaining a conviction. The MLPC Bill will also provide for the establishment of a Criminal Assets Recovery Account where the proceeds of confiscation and forfeiture proceedings will be received.

### **2.3.2 Recommendations and Comments (including DSI needs)**

36. The provisions of the MLPC Bill concerning the freezing, confiscation and forfeiture of the proceeds of crime are very comprehensive. This includes the fact that provision is made for specific powers to be exercised by members of investigating authorities such as the Lesotho Mounted Police Service (“the LMPS”) and the Directorate on Corruption and Economic Offences (“the DCEO”) in relation to investigations that are aimed at the confiscation or forfeiture of the proceeds of crime.

37. The MLPC Bill does not provide for the disbursements that may be made from the Criminal Assets Recovery Account. This is however, not an issue of immediate concern, since the enactment of the MLPC Bill will probably be followed by a substantial implementation period during which the Criminal Assets Recovery Account will not be receiving any income. It is therefore suggested that this issue be addressed through a subsequent amendment to improve the Bill.

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

### **2.4.1 Description and Analysis**

38. The MLPC Bill contains provisions (clauses 62 and 66 read with the definitions of “terrorist” and “terrorist organisation”) that will provide for the freezing of property held on behalf of persons or entities listed from time to time by the United Nations Security Council. This provision appears to be broad enough to include the freezing of funds or other assets of persons or entities listed under United Nations Security Council Resolution 1267.

### **2.4.2 Recommendations and Comments (including DSI needs)**

39. It is suggested that the Lesotho authorities consider whether the ambit of the provisions referred to above is wide enough to include the freezing of terrorist funds pursuant to United Nations Security Council Resolution 1373, where freezing actions will have to be based on requests and information received from other jurisdictions outside of the mechanism of the lists prepared by the Committee established under United Nations Security Council Resolution 1267.

### **General comments concerning legislative framework**

40. During discussions with the Lesotho authorities it was mentioned that there is a need to modernise many of the statutes, which may create predicate offences for ML. Penalty provisions, in particular, have in many cases not been reviewed since the statutes were enacted. As a result the maximum penalties, which the courts may impose, do not adequately reflect the seriousness of the offences involved. It is suggested that the Lesotho authorities consider reviewing statutes which were enacted relatively long ago with a view to ensure that the penalties provided for by those statutes fit the offences created by them. This issue is not only important in relation to the general enhancement of the response to serious crime, but may also impact on the range of predicate offences which can give rise to a ML investigation and prosecution.

41. The provisions of the MLPC Bill will create a number of new institutions such as the Financial Intelligence Unit (FIU) and the ML Authority as well as introducing a number of new offences and new procedures such as those aimed at the confiscation and forfeiture of the proceeds of crime. In addition the MLPC Bill will also introduce obligations of a regulatory nature, which will apply, to a broad range of financial and non-financial institutions. As a result the effective implementation of the MLPC Bill will require a rigorous collaborative effort among a number of public sector stakeholders. It is therefore strongly recommended that the Lesotho authorities pay attention to issues of cooperation among the responsible departments and agencies, including the establishing and maintaining structures that will facilitate communication among the relevant role-players.

### **Investigative Authorities**

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

### **2.5.1 Description and Analysis**

42. Lesotho has a number of agencies responsible for law enforcement: The DCEO, the National Security Services, the Military Intelligence and LMPS. The LMPS are able to employ a range of techniques to access records in the course of an investigation including the serving search warrants under section 46 of the Criminal Procedure and Evidence Act, 1981. It is also possible for the LMPS to utilise a number of covert investigation techniques. Law enforcement agencies in accordance with section 247 of the Criminal Procedure and Evidence Act, 1981 may compel the production of bank account records, financial transaction records and other records maintained by financial institutions or other entities for the purposes of processing a lawful purpose such as an investigation. Section 247(2) of the Criminal Procedure & Evidence Act of 1981 empowers a police officer of the rank of lieutenant or above, to demand the production of bank ledgers, cashbooks or other account books notwithstanding that there are no criminal proceedings pending. Under section 247 (1) banks shall not be compelled to produce these books and records except by court order.

43. Lesotho has not yet enacted laws, which allow for criminal confiscation for ML and FT and other serious offences. There appear to have been confiscations for other serious offences made under existing laws however statistics on the success of these convictions are not available.

44. The MLPC Bill (clause 11) will establish a dedicated authority with responsibility for the prevention, investigation and prosecution of ML and TF, namely the AML Authority (“the AMLA”). AMLA will be housed in the DCEO. The DCEO’s investigators have a limited knowledge of AML investigations, but do have the basic investigative skills that have been developed in investigating cases of corruption. The DCEO has been operational for three years and has approximately forty on staff. Most of the DCEO’s staff has an investigative background with the LMPS. The DCEO has a MOU with the LMPS to extend co-operation.

45. The current shortage of skills available to investigate more complex financial crimes is reflected in the DCEO current work practices where more detailed accounting investigations are outsourced to private financial consulting companies. The assessment team noted that currently the DCEO would not have the capacity to undertake ML or TF investigations under any new AML mandate.

### **2.5.2 Recommendations and Comments (including DSI needs)**

46. The clear identification of the law enforcement agency(s) with the primary task(s) of investigating ML and TF offences in the MLPC Bill will go a long way to ensuring that this function receives adequate attention and that there is accountability for the manner in which it is performed. It is suggested that great care should be taken in the manner in which the AMLA’s functions and powers are framed in the MLPC Bill.

47. The MLPC Bill (clause 11(1)) provides expressly that the AMLA will be responsible for the investigation of ML and TF offences without any reference to any other investigating authority. In addition the MLPC Bill contains several references to powers, which may be exercised by police officials in the course of investigations relating to the confiscation or forfeiture of the proceeds of crime. These factors may be interpreted as an indication that investigating authorities other than the AMLA may conduct investigations aimed at the confiscation or forfeiture of the proceeds of crime, but are precluded from investigating ML or terrorist TF. The Lesotho authorities should consider clarifying the roles and responsibilities of investigating authorities other than the AMLA (such as investigators in the LMPS) in relation to ML and TF investigations. This should preferably be done through joint discussions between representatives of the DCEO, the LMPS and the Ministry of Finance and Development (as the policy makers in relation to ML and TF).

48. Additionally, the MLPC Bill (clause 11(3)) contains a provision to the effect that the AMLA shall not conduct investigations into ML except for investigations with the purpose of ensuring compliance by accountable institutions. The effect of such a provision would be that the AMLA would, itself be precluded from conducting criminal investigations with the view to charging a suspect with ML. This is probably not the intended effect of the provision in question in which case it should be redrafted to make the function of the AMLA in relation to ML investigations clear.

49. The MLPC Bill (clause 12 (1)), will give the AMLA extensive powers to enter upon premises and conduct searches concerning documents that are relevant to ensuring compliance with the Bill. The MLPC Bill (clause 12(3)) further allows the AMLA to transmit information to other law enforcement and supervisory authorities if it believes that the information is relevant to an investigation for non-compliance with the Bill. In addition, the Bill (clause 13) will allow the AMLA to issue directives concerning non-compliance by accountable institutions with their obligations under the Bill. These provisions create the impression that the AMLA's role will be that of a supervisor, rather than a law enforcement authority. This may distract the AMLA from its function as the primary investigating authority in respect of ML and TF, in addition to opening the actions of the AMLA in relation to ML and TF investigations to challenges.

50. If the role of the AMLA as investigator of ML offences is clarified as recommended above, it is suggested that the AMLA concentrate on performing this role in the period, which will immediately follow the enactment of the MLPC Bill. It is suggested further that the AMLA do not exercise any of the powers relating to the supervision of compliance with the Bill by accountable institutions during this period. The policy makers and the relevant bodies such as the supervisors of accountable institutions could then be afforded the opportunity to give proper consideration to the issue of supervision of compliance with the MLPC Bill. Once a decision is reached as to the appropriate allocation of roles and responsibilities concerning the supervision of compliance by accountable institutions the necessary amendments could be made to the MLPC Bill.

51. The DCEO and LMPS should consider the training requirements that will be required to investigate ML and other economic crimes to enable them to prepare to meet their new mandate and also consider how in the longer term it can have access to specialist forensic accounting or financial investigation skills. Computer training may be required to develop needed skills and associated accommodation may need to be considered to house if there are any increases in staff and equipment.

52. In general, the team considered that it would be useful to examine ways in which Lesotho could increase the overall skills and capacity available to conduct financial investigations in ML/T and other economic crimes. This could include secondments or attachments between relevant government departments. For example: It may be worth considering if some DCEO staff could be attached to the Auditor- General to improve and sharpen skills needed in financial investigation and following audit trails.

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

### **2.6.1 Description and Analysis**

53. Lesotho does not have an FIU or formalized specialized unit within any of the government ministries or agencies to receive, analyse and disseminate financial reports related to ML. However, in line with the CBL Internal Control Systems Regulation 2000 and the AML Guidelines 2000 financial institutions are obliged to report STRs to the CBL and to the LMPS Commercial Crime Section.

54. The MLPC Bill (clause 14) will establish the Financial Intelligence Unit ("the FIU") as a department in the CBL and report to the Governor of the CBL. The evaluation team considered that

the Central bank would provide a creditable home for an office functioning as the Lesotho FIU. All four commercial banks expressed the opinion that they were in favour of the establishment of the FIU in the CBL.

55. At the time of the on-site visit no advance arrangements had been made to plan for the creation of an FIU. The CBL of Lesotho had not yet identified who would be responsible for starting development on the FIU. No budget has been considered for the FIU, not had any estimates for the resources and needs been identified.

## **2.6.2 Recommendations and Comments (including DSI needs)**

56. A number of issues that arise from the provision in the MLPC Bill (clause 15) on the functions of the Unit. The MLPC Bill refers to the Unit as the agency for disseminating financial information to investigatory and supervisory bodies. The qualification of the type of information which the Unit may pass on to law enforcement authorities may have the effect of preventing the Unit from lawfully passing on information which is not necessarily of a financial nature but which will contribute to a ML investigation. The Lesotho authorities may therefore consider removing the qualification of the nature of the information that may be made available to law enforcement authorities.

57. The MLPC Bill (clause 15(2)(d)) will provide the Unit with the function of supervision of compliance by accountable institutions. This provision will overlap with the provisions pertaining to the AMLA discussed above in addition to distracting the focus of the Unit from its core function of receiving, analysing, and disseminating information. The remarks made earlier concerning the supervisory function of the AMLA are equally applicable in this regard.

58. Also, the MLPC Bill (clause 15(3)) will require the Unit to pass on to supervisory authorities, a copy of all information referred to the relevant law enforcement agencies. It is not clear what the purpose is of this duplication of referrals based on reports received by the Unit. It is suggested that the Lesotho Authorities consider deleting this sub clause from the MLPC Bill.

59. Apart from dealing with the legal aspects pertaining to the Unit the Lesotho authorities will have to undertake a number of actions to ensure that the Unit can become operational within a reasonable amount of time after the enactment of the legislation. A number of suggestions, which the Lesotho authorities can consider in this regard, are the following:

- Consideration may be given to appointing a person for the specific purpose of taking responsibility to create the Unit and make it operational. This can be done even before the enactment of the MLPC Bill. The project to create the Unit may be considered as a component part of the national strategy to combat money laundering and terrorist financing, involving a subcommittee of the National Coordinating Committee comprising the project manager for the establishment of the Unit and representatives of the DCEO, the LMPS and the CBL. Some of the key issues with which such a subcommittee will have to deal include reaching agreement on the nature and format of the products which the Unit will have to deliver to the investigating authorities, the most appropriate sections or other points of contact within the investigating authorities to receive the products which the Unit will deliver and the basis or the conditions upon which investigating authorities will be able to request information from the Unit.
- Those responsible for establishing the Unit will have to estimate the number of reports, which the Unit is likely to receive from accountable institutions. In addition they will also have to determine the most appropriate way for communicating the various reports to the Unit. It is recommended that representatives from a variety of accountable institutions be included in exercises to establish these issues to ensure that the reporting methods that will be put in place function well in practice.

- Those responsible for establishing the Unit will have to determine the appropriate profiles of staff and combination of skills that will have to be brought into the Unit for it to become operational. In addition, training should be established within the CBL to train staff to analyse STR's and to liaise with those nominated to investigate the STRs.

60. Lesotho authorities may also want to consider how the FIU can integrate with other sources of information that may assist it in identifying ML or TF cases. This could include having access to the declarations of cross-border conveyance of cash, and also a close working relationship with investigators who are examining predicate crimes that can generate proceeds from which ML offences may be generated. For example corruption, drugs, car theft. Looking towards the future, once the FIU is operational the Lesotho authorities could seek to identify a potential sponsoring member of the Egmont group to assist them in applying for full membership. .

61. Consideration could be made that staff should be sent on attachment to the Auditor General's Office to sharpen their investigative skills and enable them to follow the cash audit trail. Staff members who will be analyzing STRs should obtain training in this field. The authorities should identify the appropriate staff and attach them to the office of the Auditor General. It would assist further if the services of a Forensic Accountant could be obtained within the FIU.

62. The FIU could also consider maintaining a database of all STRs disseminated, their status and whether any prosecutions have occurred. The FIU should request for feedback on a regular basis of the status of the report from the investigatory and supervisory authority.

### **3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS**

#### **Customer Due Diligence & Record Keeping**

##### **3.1 Customer due diligence (R.5 & 6)**

###### **3.1.1 Description and Analysis:**

63. Though no primary legislation exists on ML, the CBL has issued a set of Financial Institutions (Anti-Money Laundering) Guidelines in 2000. Under section 71 of the Financial Institutions Act 1999 the Commissioner of the CBL prescribes the AML Guidelines as a legal notice (199 of 2000) Currently these AML Guidelines require banks to conduct a number of KYC requirements including identification upon opening an account, retention of identification documents and the establishment of sources of funds.

64. Financial institutions are required to abide by KYC principles in relation to procedures and controls with regard to customer identification, account opening, record keeping, and knowledge of the customer's activities, adequate internal controls and staff awareness. Guideline 7 (1) of the AML Guidelines 2000 states that financial institutions require a customer or client to disclose a true identity of the person on whose behalf the account is opened or the transaction is conducted, and Guideline 6 (1) and (2) provide that financial institutions are not allowed to keep anonymous accounts or accounts in fictitious names.

65. The FIA Act and AML Guidelines 7(1) and 8, require financial institutions to identify their customers on the basis of an official or other identifying document, and to record their identity, when establishing business relations, and to identify and record the identity of their occasional customers when performing transactions over a specified threshold and to renew identification when doubts appear as to their identity in the course of their business relationship. If the customer is a legal entity, financial institutions are required to verify its legal existence and structure, including information

concerning the customer's name, legal form, address, directors in order to establish the true identity of the customer. However no provisions exists for 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 those persons.

66. The provisions of the MLPC Bill that relate to customer identification require that accountable institutions (as defined in the Bill) are required to verify identity and obtain information on the purpose and nature of the business relationship. If the transaction is conducted by a legal entity, adequately identify and verify its legal existence and structure.

67. The MLPC Bill (clause 16) does not clearly distinguish between identification at the start of a business relationship and identification for occasional transactions. It only refers to identification in relation to transactions in excess of M100, 000 (or any amount as may be prescribed by the Minister by notice in a gazette). The value of M100, 000 for occasional transactions might be high considering that Lesotho has a large informal economic base where the majority of occasional transactions would tend to be much smaller.

68. In the absence of primary ML and FT legislation the banking sector is mostly complying with KYC requirements as part of banks having to abide by the Basel Core Principles and the South African Head Office direction and rules. Post Bank, a very new Lesotho bank, is working to implement these requirements. Three of the four banks in Lesotho are subsidiaries of South African Multinational Banks and are following the head office requirements for AML/CFT.

69. Except for Post Bank, the three subsidiaries of South African Banks have AML procedures issued by that include the compliance officers. Two subsidiaries of the South African Banks also have policy on high-risk customers such as PEPS and intend to monitor such accounts closely. However, current AML guidelines issued by the CBL only require financial institutions to exercise reasonable caution in their business and transactions with persons, including companies and financial institutions from other countries. There is no other explicit requirement to undertake additional KYC or Customer Due Diligence (CDD) measures where there may be a higher risk of ML. Clause 16 (3) of the MLPC Bill, however, does propose additional measures to be taken if the client is a PEP.

#### ***Lesotho bankers association***

70. In 2006 the four licensed banks in Lesotho established the Lesotho Bankers association. As yet they have not discussed any issues related to AML. The banks have met and during the last meeting raised the issue of getting the legislation passed as well as responding to the CBL's paper especially as to the exclusions and exemptions. The Bankers Association indicated that they intended to examine issues such as proof of address as certain segments of the market do not have utility bills to ascertain their permanent address.

71. The branches of the three South African Banks have submitted STR's to CBL who has in turn after reviewing the ascertaining that they are indeed suspicious have forwarded them to the police. So far no responses have been received on these disclosures. However, the bankers have not yet held meetings with the police to discuss the various problems being encountered, which are being attributed to the lack of resources and capability.

#### ***Insurance Companies***

72. Insurance Companies in Lesotho are not currently required to verify the source of payments from clients. Insurance customers do have to fill the application form, which, in the case of companies, requires an identity card. In practice the team was informed that Insurance companies in Lesotho do not accept policies on behalf of third parties and do not transfer policies from one person to the other. Brokers are licensed by CBL and are able to sell insurance products directly.

### **3.2.2 Recommendations and Comments (including DSI needs)**

73. Until the enactment of the MLPC Bill there are limited obligations on financial institutions to conduct CDD; these are contained in the AML Guidelines. To date the guidelines have specified additional obligations on financial institutions under the FIA Act 1999. Guidelines are a very useful supplement to primary AML legislation and consideration should be given to the production of guidelines to support the MLPC Bill when it is enacted. The guidelines should provide information on what is required for CDD, when CDD is required and when additional CDD measures may be required in circumstances when the risk of ML / TF is high. Additional guidance on higher risk scenarios could also be provided. To meet the requirements of the FATF Recommendations CDD obligations should be enforceable requirements with sanctions for non-compliance (that are effective, proportionate and dissuasive) and are issued by a competent authority.

74. Immediate steps can be taken by banks and other accountable institutions to prepare for the implementation of the CDD provisions of the MLPC Bill. The focus of banks and other accountable institutions should be on developing their own internal systems and policies for meeting the customer due diligence obligations, which the MLPC Bill will place on their institutions. Additionally accountable institutions should look at specific training, which will help their staff to comply with the obligations of the new legislation. Although certain staff in banks may benefit from broader exposure to training relating to money laundering and terrorist financing I do not think that the banks should be focusing on the type of training that would be relevant to ML investigators.

75. In the longer term, the CBL should ensure that a budget is available to provide for AML training to officers and staff from Bank Supervision. Staff should be selected and sent to participate in AML seminars/ workshops out of the country. Such staff could specialize in AML/CFT and could eventually be seconded to the FIU when it is established.

76. Staff of insurance companies, and brokers selling insurance products, need to be exposed to AML training before the enactment of the AMLPC Bill. AML training could be provided locally with the law faculty of the University of Lesotho. The CBL could consider conditions that when brokers are licensed they should be made conversant and have followed a course on AML. Local training on AML to be provided by the Faculty of Law at the University of Lesotho by CBL Staff.

## **3.2 Shell banks (R.18)**

### **3.2.1 Description and Analysis:**

77. Under Financial Institutions Act, 1999 legislation in Lesotho does not allow shell banks to be established in Lesotho. Only banks operating in Lesotho qualify for a banking license. There is, however, no provision in Lesotho's domestic legislation to prevent financial institutions to enter into, or continue, correspondent relationships with shell banks.

### **3.2.2 Recommendations and Comments (including DSI needs)**

78. Lesotho should consider, at some point in the future, obligations for financial institutions to prevent financial institutions to enter into, or continue, correspondent relationships with shell banks. This could potentially be included in any updating of the AML Guidelines 2000 in light of legislative changes arising from the MLPC Bill once it is passed into law.

## **Record keeping (R.10)**

### **3.3 Description and Analysis**

79. The AML Guidelines 2000 describe record keeping requirements for financial institutions. Guideline 9 (1) and 9 (2) require that records that enable financial institutions to comply with information requests from competent authorities should be maintained for a minimum of 10 years.

80. All accountable institutions (as defined in the proposed MLPC Bill) in Lesotho are required to maintain records of an account holders identity, the name, address and occupation or where appropriate or the business principal activity, including the nature and date of the transaction, and the type and amount of currency involved of each person conducting the transaction. All suspicious transactions (section 17 (1 a)) in any currency as may be specified from time to time by CBL must also be retained. Such records are required to be maintained for a period of at least 10 years from the date the relevant business transaction was completed. The private sector expressed an opinion to the assessment team that the 10-year period for the retention of documents was considered excessively long.

### **3.3.2 Recommendations and Comments (including DSI needs)**

81. The authorities could consider reducing the record retention period to 5 years, which would be in line with the requirements of FATF Recommendation 10. Maintenance of record on transactions should cover both domestic and international transactions for at least five years following completion of the transaction and be sufficient to permit the reconstruction of individual transactions.

## **Unusual and Suspicious Transactions**

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

#### **3.4.1 Description and Analysis**

82. Section 34 of the draft MLPC Bill provides immunity to officials whose powers are exercised in good faith: No suit, prosecution or other legal proceedings shall lie against a person in respect of anything done by or on behalf of that person, with due diligence and in good faith, in the exercise of any power or the performance of a function under the MLPC Bill or a rule or an order made there under.

#### **3.4.2 Recommendations and Comments (including DSI needs)**

83. The MLPC Bill appears to ensure that financial institution secrecy laws do not inhibit the implementation of FATF Recommendations; Lesotho should ensure that when, in the future considering implementing Recommendations 7, 9 and Special Recommendation VII, that secrecy and confidentiality laws do not inhibit financial institutions from relevant exchanges of information.

### **3.5 Monitoring of transactions and relationships (R.11)**

#### **3.5.1 Description and Analysis<sup>10</sup>**

84. There are no detailed provisions in existing laws and regulations that address complex, unusual large transactions, transactions of unusual pattern having no economic or lawful purpose. Section 17 and 18 of the FIA Guidelines 2000 provides for limited guidance about large cash transactions and suspicious transactions.

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<sup>10</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.

85. AML Guideline 2(a) defines a “suspicious transaction” as one that is inconsistent with a customer’s known legitimate business or personal activities or with the normal business of that type of account”.

86. Under section 19 of the draft MLPC Bill, accountable institutions are required to take reasonable measures to ascertain the purpose of any transaction in excess of M 100,000 or the Minister may prescribe any amount as by notice in the gazette. If a customer is identified as a PEPS, the accountable institution is required to conduct enhanced monitoring of the business relationship

### **3.5.2 Recommendations and Comments (including DSI needs)**

87. Except for the requirement on PEPS, the bill does not appear to contain any specific provision requiring ongoing monitoring of transactions of other class of customers. Lesotho could include a provision requiring accountable institutions to monitor all its business relationships and the transactions undertaken throughout the course of the relationships. Consideration could be given to including these requirements in any guidelines that define CDD (see Recommendation 5).

## **3.6 Suspicious transaction reports and other reporting (R.13, 14 & SR.IV)**

### **3.6.1 Description and Analysis**

88. Under Section 18 of the Bill whenever a financial institution has reasonable grounds to suspect that any transaction is related to the commission of money laundering or terrorist financing, it shall as soon as possible but not later than 3 days after forming that suspicion, take reasonable measures to ascertain the purpose of the transaction, the origin and ultimate destination of the funds involved, submit a report to the FIU.

89. Currently, banks submit suspicious transaction reports to both the CBL and the LMP, which is duplication of work.

90. No accountable institution or any director, officer or employee can disclose to their customer or third party that information was provided to the FIU or that a report concerning suspected money laundering or financing of terrorism is being or has been submitted to the FIU (section 24 of the draft MLPC Bill).

### **3.6.2 Recommendations and Comments (including DSI needs)**

91. AML Guideline 2(a) specifies the basic requirements for reporting suspicious transactions and a description of what constitutes a suspicious transaction, further examples of STRs need to be included in particular those which may relate to the TF. Additionally, regulations should stress the importance of financial institutions’ adequate monitoring systems in order to identify all types of suspicious transactions. Banks should also issue internal guidance in this area and incorporate procedures to test the system in an inspection manual.

92. Suspicious transaction reports should be submitted only to the FIU once it is set up. After it has been analysed, the FIU will disseminate the report to the appropriate investigatory and supervisory authority (section 15).

## **4. INTERNATIONAL CO-OPERATION**

93. International co-operation is an important aspect of any AML/CFT framework as often ML and TF are international crimes where the money is located in a separate jurisdiction to that where the crime has been committed. Under the FATF Recommendations jurisdictions are encouraged to provide the widest possible range of mutual legal assistance in AML/CFT investigations, prosecutions and related proceedings.

### **4.1 The Conventions and UN Special Resolutions (R.35 & SR.I)**

#### **4.2 Description and Analysis**

94. Lesotho has signed the 1988 Vienna Convention, the 1999 International Convention for the Suppression of the Financing of Terrorism, and the United Nations Convention against Transnational Organized Crime in 2000. Lesotho's compliance with the UN Security Council Resolutions 1267 (1999) and 1373 (2001) are covered in section 2.2. Lesotho has extradition treaties with a number of countries (Commonwealth countries) South Africa and China being recently added to the list. The treaties were signed on 19 April 2001.

##### **4.1.2 Recommendations and Comments (including DSI needs)**

95. Implementation of the Conventions is still premature and legislation will need to be passed to enable the conventions in Lesotho. Implementation of the Conventions is still premature and legislation will need to be passed to enable the conventions in Lesotho. Lesotho authorities indicated that they are contemplating a fully-fledged suppression of Terrorism Legislation. When drafting this legislation they should take into account their obligations under the UN TF Convention.

96. Lesotho's foreign relations appear to be dominated by several key jurisdictions, notably South Africa and China. To ensure that there are immediate and effective co-operation channels Lesotho should seek to finalise international co-operation agreements with these two jurisdictions

### **4.2 Mutual Legal Assistance (R.36-38)**

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

97. Section 61 of the MLPC Bill provides that where a foreign state requests assistance to locate or seize property suspected to be tainted property in respect of an offence in its jurisdiction, the provisions of section 57 (search warrant) and 58 (search warrant granted by phone) apply with necessary modification.

98. Currently law enforcement agencies in Lesotho use the SADC and SARPCCO protocols to obtain international cooperation. This is expected to be supplemented in the future by MOUs. An MOU is in the final stages of agreement between The Republic of South Africa and Lesotho. The Lesotho DPP's office is also in the process of considering a draft Bill on MLA. Currently there are not MOUs between Lesotho and RSA police to combat crime. There is a treaty between the Government of Lesotho and the Government of the Republic of South Africa on Mutual Legal Assistance in Criminal Matters. This allows contracting parties to assure each other that they shall provide the widest measure of Mutual Legal Assistance in Criminal matters.

99. There is another area of cooperation between Lesotho and South Africa which is termed Joint Bilateral Commission of Cooperation (JBCC). The JBCC covers the Defence and Police under this

commission for Stability and Security cluster issues. This Commission meets every three months between Lesotho and RSA Provinces bordering Lesotho.

#### **4.2.2 Recommendations and Comments (including DSI needs)**

100. The MOU underdevelopment with the republic of South Africa should be concluded and MOUs should be developed with foreign counterparts for the exchange of information related to AML/CFT.

101. Lesotho will need to established bilateral international agreements with other countries to share information and provide mutual legal assistance, including authority to freeze and seize assets that may be subject to forfeiture, for ML and FT offences as well as the underlying ML predicate offences.

102. The Foreign Affairs office should consider taking a more significant role in the ML Task Team and become more involved in the AML/CFT process to assist on enquiries and investigations, which will start with the implementation of the AMLPC Bill.

### **4.3 Extradition (R.37 & 39)**

#### **4.3.1 Description and Analysis**

103. Currently the Fugitive Offenders Act, 1967 provides the basis for extradition. In addition, Section 27 of the draft MLPC Bill states that ML and TF are extraditable offences for the purposes of this Act and any other legislation dealing with extradition. Lesotho currently has extradition treaties with South Africa and China. Treaties have been ratified with South Africa and China but have not been domesticated.

#### **4.3.2 Recommendations and Comments (including DSI needs)**

104. Lesotho has finalised their treaties with South Africa and China and should seek further agreements with other relevant jurisdictions – for example - jurisdictions with which it has important trade and financial links.

### **4.4 Other Forms of International Co-operation (R.40)**

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

105. Aside from SADC and SARPCCO protocols, law enforcement agencies in Lesotho have still not established bilateral international agreements with other countries to share information and provide mutual legal assistance, including authority to freeze and seize assets that may be subject to forfeiture, for ML and FT offences as well as the underlying ML predicate offences. International cooperation is limited to some informal exchanges of information with bordering countries.

106. There is a need for Lesotho to develop and implement bilateral, multilateral agreements as well MOUs with other supervisory authorities. Assistance will be required from experts on how to prepare these agreements and implement them.

#### **4.4.2 Recommendations and Comments (including DSI needs)**

107. The MLPC Bill 2006 will establish an FIU for Lesotho. The FIU will need assistance in developing to become effective and meet Egmont Group Standards. The MLPC Bill should also allow MOUs to be developed with foreign supervisors for the exchange of information.

108. South Africa should be requested to assist in the development of the FIU and related issues regarding AML/CFT to ensure harmony in policies and procedures in the region.

## **5. NATIONAL AND INTERNATIONAL COORDINATION**

### **5.1 National co-operation and coordination (R.31 & 32)**

#### **5.1.1 Description and Analysis**

##### ***Recommendation 31***

109. Co-ordination of domestic authorities in Lesotho has, since 2001, occurred through the multi-disciplinary task team on ML. The Task Team includes representatives from the CBL (chair), the Ministry of Finance, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Home Affairs, the Police, the Directorate on Corruption and Economic Offences, the National Security Service, the Law Society, the Insurance Sector and representatives from Commercial Banks. The Money Laundering Task Team met on an ad hoc basis to discuss issues relating to ML and FT from 2000 to 2005. In 2005 the Task Team became a National Coordinating Committee with Terms of Reference and the Committee meets monthly and produces minutes. The Task Team's primary responsibilities, up to the time of the on-site visit, were to draft the MLPC Bill, 2001.

110. The 2004 mutual evaluation noted that "The Task Team should also clearly delineate responsibilities among the parties concerned to avoid duplicating efforts and resources"; and that minutes of the Money Laundering Task Team were not always well disseminated.

111. Coordination between the Lesotho Mounted Police Service and the CBL occurs in relation to the receipt and investigation of STRs. The AML guidelines require financial institutions to report STRs to the CBL (who monitor STRs for statistical purposes) and the Lesotho Police (who are responsible for investigation of the STR). The CBL and the Commercial Crime Section of the Lesotho Police liaise on the progress of any investigations derived from STRs.

112. The DCEO and the Police also co-operate to investigate corruption cases. An MOU between the Lesotho Police and the DCEO enables co-operation; allowing the Police to assist the DCEO. The draft MLPC Bill anticipates that the DCEO will be the "AML authority", responsible for investigating ML and TF offences.

113. Overall, co-operation and co-ordination appears to work well in Lesotho and there are relatively open communication channels within and across departments.

#### **5.5.2 Recommendations and Comments (including DSI needs)**

114. There is a requirement for national co-ordination in any AML/CFT system to co-ordinate the different government and non-government entities required to operate an effective system. The National Coordinating Committee provides the forum for all relevant government departments and financial institutions to discuss AML/CFT issues. The Committee performed an important role in co-ordinating stakeholders in the drafting and review of the draft MLPC Bill.

115. The Committee currently has a large number of participants. As a consequence it may be difficult to discuss specific implementation issues of the MLPC Bill. It is suggested that Lesotho consider dividing the many functions of the National Coordinating Committee into several sub groups. These groups could meet monthly to discuss issues of concern to each subgroup. There could then be a larger meeting of the group (held quarterly for example) to discuss the relevant national issues. Lesotho's authorities could consider:

***A Financial Sector Liaison subgroup*** – To promote issues in relation to the prevention of ML and TF and the detection and reporting of STRs to the FIU.

***A Law Enforcement Co-ordination subgroup*** – To promote co-operation between Lesotho Police, the DCEO and the CBL in relation to the investigation STRs and other ML and TF investigations, including cross-border crime issues that may relate to ML and the proceeds of crime and co-ordination with foreign counterparts in ML investigations.

***An Outreach subgroup for DNFBCs*** – To promote co-operation with other “accountable institutions” in complying with their obligations under the MLPC Bill.

116. Each of the subgroups could examine their own specific issues and would report to the main National Coordinating Committee that could continue to meet on a periodic basis to discuss the main issues relating to the implementation of the MLPC Bill.

117. In the longer term Lesotho should consider mechanisms that allow clear communication channels between the policy-making departments of government - primarily the Ministry of Finance and Development and CBL in relation to ML and TF issues that may arise from the implementation of the MLPC Bill. In addition, mechanisms should be in place to allow for periodic reviews of the current ML and TF situation in Lesotho. This will require coordination between the authorities responsible for investigating ML and TF, the FIU and supervisors. Consideration could be given to using the communication channels offered by the National Coordinating Committee.

118. Lesotho should consider mechanisms to ensure that the authorities responsible for the investigation of ML and TF offences (currently the commercial crime section of the Lesotho Police, but in future the DCEO) have clear mechanisms for exchanging information with competent authorities that investigate other predicate offences that generate the proceeds of crime (drugs investigations, vehicle theft, organised immigration crime).

119. Lesotho could consider enter into agreement with other supervisors to facilitate detection and deterrence of cross-border misconduct by market participants.

120. Lesotho does not appear to have any cooperative mechanisms in place at the international level to facilitate the detections and deterrence of cross-border misconduct and to assist in the discharge of licensing and supervisory responsibilities. Currently there is cooperation through INTERPOL and SADC Protocols.

121. Whilst the Task Team has coordinated the AML/CFT Bill “Money Laundering and Proceeds of Crime Bill 2006” minimal efforts have been made to identify logistic requirements for implementation of the Legislation. Study tours may be required for members of the stakeholders’ community to fully understand the requirements of the AML/CFT program. Consideration of study tours of South Africa would be beneficial given the similarity of the legal systems and the future liaison channels that could be established for the future.

## **6. OTHER RELEVANT FATF RECOMMENDATIONS TO ASSIST EFFECTIVE IMPLEMENTATION OF AN AML/CFT SYSTEM**

### **6.6.1 Description and Analysis**

122. The DSI methodology provides an assessment on a limited number of FATF Recommendations – covered in chapters 1 to 5 in the report. There may, however, be FATF Recommendations that, whilst outside the DSI methodology, the evaluation team considers useful for the assessed country to consider in assisting in implementing an effective AML/CFT regime. Lesotho has a number of country-specific ML/TF issues that could be addressed by applying some of the FATF Special Recommendations.

123. Lesotho, as a jurisdiction that is land-locked by South Africa, has a number of cross-border issues in relation to the moving of the proceeds of crime. As a member of the Common Monetary Area (CMA) currency is allowed to move freely between Lesotho, South Africa, Swaziland and Namibia. The CMA, the border of Lesotho with South Africa and the cash-based nature of the economy present a number of challenges for the effective implementation of an AML/CFT regime. The evaluation team was informed that last year some people were caught with a significant amount of cash at the Lesotho Airport. Since then the customs have had considerable contact with the CBL and have started to work together on projects.

124. The team were informed that Lesotho was in the process of amending border controls, including the introduction of a declaration of currency form at the border. The MLPC Bill also includes provisions to seize and detain suspicious imports or exports of currency if an authorized officer has reasonable grounds to suspect that it is derived from a serious offence (and if it exceeds a sum prescribed by the Commissioner).

125. Lesotho's society and economy is becoming increasingly diverse, numbers of Lesotho nationals seek work outside the country and there is also an increasing immigrant population. Remittances, both in and out of the country, will continue to play an important part in the economy of Lesotho. Foreign exchange services are emerging as a financial service and a number of applications to provide such services have been made to the CBL of Lesotho. It is also probable that money remittance services will be in demand in the future as Lesotho's society becomes more mobile and heterogeneous. At the time of the on-site visit the team were informed that an estimated 30% of the population had bank accounts. Lesotho therefore operates a significant cash-based economy<sup>11</sup>, and a number of informal and underground banking operations have been noted.

126. Managing border issues in Lesotho is the responsibility of several difference agencies. Immigration, Police, Security Services, Lesotho Revenue Authority and Customs all operate at the border under their respective mandates. 300 officers are allocated to cover the land borders and Maseru Airport. The biggest border posts are at Maseru and Maputo, each with 13 officers. The borders of Lesotho are porous and the staffs from the different agencies at the border posts are not currently able to share computerised information. Communications at the border posts are limited because there is a minimum of telecommunications. To try and solve common problems Immigration, Police, Security Services, Lesotho Revenue Authority and Customs hold regular meetings to discuss common issues of concern.

### **6.6.2 Recommendations and Comments (including DSI needs)**

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<sup>11</sup> See work being conducted by the World Bank: Global Dialogue Series: AML/CFT in Cash-Based Economies

127. The evaluation team strongly advise that Lesotho consider implementing the requirements of Special Recommendation IX relating to the cross-border movement of cash and bearer negotiable instruments. The team consider that this will significantly improve the effectiveness of Lesotho's AML/CFT system addressing a relevant national risk for ML or TF. The new form being developed to collect information on cross-border movements should take into consideration the requirements of Special Recommendation IX.

128. There is a need for computerization of border crossings and building the capacity of those who work at the border to address the issues of AML/CFT. Harmonizing these functions and powers at the border for law enforcement, immigrations – a formal understanding of what information can be shared in what circumstances by which agencies – mainly a concern of the Lesotho revenue service. Additionally, the Lesotho authorities should consider sharing information on cross-border movement of cash with the FIU when it is established (and when the new declaration form is introduced).

129. Consideration could also be made to training immigration in AML issues, particularly in relation to the cross-border movement of the proceeds of crime in cash and bearer negotiable instruments. The ability for border posts to be able to assist in the prevention and detection of ML could be assisted by the provision electricity, telephone, fax and computerization for each border post.

130. To guard against remittance services and bureau de change being abused for ML or TF purposes it is suggested that Lesotho consider ensuring that the requirements of Special Recommendation VI are met when considering any current or future authorisation of these financial services.

131. In addition, to ensure that competent authorities are able to conduct comprehensive ML inquiries it is suggested that Lesotho consider ways in which, over time, the requirements of Special Recommendation VII could become the standard for both banking remittances and any money remittance services. This is an issue that the banking association could work with the Ministry of Finance and Development in the longer term.

132. In general, encouraging those that are currently unbanked to become banked could reduce the risk of ML.

## **7. DEVELOPMENT STRATEGY NEEDS**

### **7.7.1 Assessment of the fundamental DSI requirements**

133. Overall the evaluation team found that many of the legal requirements for an AML/CFT framework are met with the MLPC Bill 2001. The team did, however, note that the Lesotho authorities could consider some minor amendments to the Bill that could assist in addressing some of the concerns raised (see comments on legal section).

134. Unsurprisingly, as the Bill has not yet been submitted to Parliament there was limited awareness of the implications of the legislation outside the members of the National Coordination Committee. The Bill itself is relatively complicated and impacts on a number of different government departments as well as imposing obligations on a number of "accountable institutions". Lesotho should consider sensitising or briefing government ministers on the important issues addressed by the Bill – providing them with an opportunity to ask questions of ML/TF legislators. This will allow the bill to be comprehensively discussed prior to considering its enactment.

135. Lesotho could also consider ensuring that prior to the Bill becoming law that financial investigation skills and expertise are available to investigate potential ML cases that will be available for prosecution once the MLPC Bill is enacted. The financial investigators should also have clear communication gateways to gather evidence and assist other law enforcement investigators who

investigate predicate crimes from which a ML offence may be derived. Sensitisation of judges should also occur prior to, or close to the time of enactment of the law.

136. It is also suggested that an appropriate AML/CFT institutional capacity should be available to ensure the MLPC Bill's requirements can be met. Initially it is important to ensure that Lesotho plans effectively to introduce an FIU that will be ready for operation from on the enactment of the MLPC Bill. There are a number of initiatives that can be undertaken to prepare other stakeholders for the introduction of the FIU. Lesotho could consider inviting speakers from international organisations/institutions to conduct sensitisation sessions on AML and CFT to the different stakeholders and make them aware of the dangers that these scourges pose to the economy if left unchecked. The FIU itself should consider approaching South Africa to mentor them for entry to the Egmont Group of FIUs.

137. To ensure that international ML cases can be successfully investigated a framework of national and international cooperation should be considered.

138. Outside the methodology of the DSI there are a number of other international standards that Lesotho could consider implementing to ensure an effective AML/CFT regime. These would include measures to detect cross-border movement of cash and bearer negotiable instruments (under Special Recommendation IX); the licensing or registration of bureau de change and money remitters (under Special Recommendation VI) and the introduction of requirements for cross-border wire transfers (under Special Recommendations VII). Lesotho should consider measures indicated in the Interpretative Notes of these Special Recommendations and could consider best practices indicated in their respective Best Practice Papers.

139. Lesotho has drafted a national strategy that sets out 6 objectives, with a number of associated activities, indicators, target dates and agencies responsible for delivery. The strategy sets a number of high level targets that, in many cases, match the findings of the DSI team. The Lesotho Authorities should consider breaking down each of these high-level targets into smaller "sub-strategies" with concrete, measurable outcomes and processes to achieve these outcomes for each such "sub-strategy". For example, one of the elements of the strategy is "Operationalize Financial Intelligence Unit". This could be the objective of a "sub-strategy" with a process consisting of a sequence of outcomes that will lead to the establishment of a functional FIU. Lesotho should also consider taking steps to ensure that national strategy has identified all the training and technical assistance needs in advance of the enactment of the MLPC Bill.

140. At the present time Lesotho is starting from a position where it has no legislation or infrastructure to address AML/CFT. The Task team is very willing and dedicated to implement programs after legislation is passed and there is political will at this time to place the Bill before Parliament and implement an AML/CFT regime.

### **7.7.2 Recommendations on the timetable for implementation**

141. A schedule should be established with the donor community to identify Technical Assistance needs and obtain commitment to assist development to meet needs established by the Lesotho Stake holders. Technical Assistance should be encouraged to reflect the needs of Lesotho and not be "off the Shelf" Technical Assistance.

142. TA should be requested of ESAAMLG and South Africa FIC to assist in development of structure of training of law enforcement and establishment of the Lesotho FIU.

## TABLES

**Table 1: Recommendations concerning developmental areas to improve the AML/CFT system**

**Table 2: Priority areas for AML/CFT delivery**

**Table 3: Authorities' Response to the Evaluation (if necessary)**

**Table 1: Recommendations concerning developmental areas to improve the AML/CFT system /  
To be completed ]**

AML/CFT System	Recommendations (listed in order of priority)
<b>1. General</b>	
<b>2. Legal System and Related Institutional Measures</b>	
Criminalisation of Money Laundering (R.1, 2)	
Criminalisation of Terrorist Financing (SR.II.)	
Confiscation, freezing and seizing of proceeds of crime (R.3)	
Freezing of funds used for terrorist financing (SR.III)	
Law enforcement, prosecution and other competent authorities (R.27 & 28)	
The Financial Intelligence Unit and its functions (R.26)	
<b>3. Preventive Measures – Financial Institutions</b>	
Customer due diligence (R.5 & 6)	
Shell banks (R.18)	
Record keeping (R.10)	
Financial institution secrecy or confidentiality (R.4)	
Monitoring of transactions and relationships (R.11)	
Suspicious transaction reports and other reporting (R.13, 14 & SR.IV)	
<b>4. International Co-operation</b>	
The Conventions and UN Special Resolutions (R.35 & SR.I)	
Mutual Legal Assistance (R.36-38)	
Extradition (R.39, 37)	
Other Forms of Co-operation (R.40)	
<b>5.National and International coordination</b>	
(R.31)	
<b>6. Other relevant FATF Recommendations to assist effective implementation of a AML/CFT system</b>	

**Table 2 – Priority areas for AML/CFT delivery [To be updated]**

This table lists the priority areas that should be addresses for the implementation of an effective AML/CFT strategy. The areas have been listed in priority order and where necessary any comment added where there may be a dependency or link between areas.

<b>Main Tasks (in order of importance)</b>	<b>Concurrent Tasks (if required) to support the main task (in order of importance)</b>	<b>Possible training, TA or other preparation to be considered for the DSI</b>	<b>Addresses requirements of Recommendation(s) in DSI methodology</b>
1. Establish criminal offences of ML and TF (also strategic objective 1.1 in draft Lesotho strategic plan)		Sensitisation training / briefings for Parliamentarians in advance of the reading of the Bill.	<b>1,2,3,4,SR I, SR II, 10</b>
	1.a Ensure that there is capacity and expertise to investigate ML/TF cases from a) STRs and b) from other predicate crimes. See also 2 c	Training in financial investigation (under the MLPC legislation) for those authorities responsible for ML and TF investigations	<b>27,28</b>
	1.b Ensure that issues regarding “legal privilege” and reporting are understood in advance of enactment of the legislation.	Continued discussions between the law society, representatives of the Coordinating Committee and University of Lesotho Law Faculty	
	1.c Sensitisation of the new legislation for judges and magistrates	Sensitisation training for judges after the agreement of the final draft of the Bill.	
2. Build institutional capacity including establishing FIU (also strategy priority 2.2 and 3)	2. Establish a position responsible for the research and establishment of the FIU.	Examine Egmont principles of FIUs: <a href="http://www.egmontgroup.org/">www.egmontgroup.org/</a> Conduct study tours of other FIUs and report to the coordinating committee	<b>26, 11, 13, SR IV</b>
	2.c Consider dividing the tasks in the	Awareness training for the	<b>31</b>

	coordinating committee into sub groups	requirements of different “accountable institutions”	
	2.d Ensure that there are continued resources to investigate ML and TF offences.	Consider train the trainers / mentoring for financial investigators	<b>27,28</b>
	2. Awareness raising for “accountable institutions”	Awareness training for financial institutions, DNFBPs, Lesotho Chamber of Commerce etc.	<b>5,6</b>
	2.b Consider approaching South Africa as a mentor for the FIU joining the Egmont Group	Consider approaching South Africa for support	<b>26</b>
3. Establish framework for national and international cooperation (also strategy objective 6.1)	Ensure that MLA measures are in place and effective with South Africa		<b>35,36,37,38,39,40</b>
	Ensure that MLA measures are in place and effective with other important international partners		<b>35,36,37,38,39,40</b>
	Ensure that law enforcement is aware of the available channels for national and international co-operation.	Consider awareness training after the enactment of the MLPC Bill	<b>35,36,37,38,39,40</b>
	Ensure that the national coordination committee meets regularly enough to ensure the smooth implementation of the MLOC legislation.	Consider re-structuring the national coordination committee to address a number of different ‘stakeholder specific’ issues	<b>31</b>
4. Introduce preventative measures (also strategy objective 3.1 & 4)	Consider conducting a threat assessment of the border-related criminal activity, including ML and TF.	Consider bi-lateral co-operation on the project with South Africa to address border issues of common concern.	<b>SR IX</b>
	Consider introducing requirements for Bureau de Change and Money Remitters to mitigate their risk against ML.		<b>SR VI</b>
	Consider introducing requirements for		<b>SR VII</b>

	cross-border wire transfers		
<i>To be completed....</i>			

**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.**
- Annex 3: Copies of key laws, regulations and other measures**

## **Annex 1**

### **ABBREVIATIONS**

<b>AML</b>	<b>Anti Money Laundering</b>
<b>CBL</b>	<b>Central Bank of Lesotho</b>
<b>CFT</b>	<b>Combating the Financing of Terrorism</b>
<b>ESAAMLG</b>	<b>Eastern and Southern Africa Anti-Money Laundering Group</b>
<b>FATF</b>	<b>Financial Action Task Force on Money Laundering</b>
<b>FIA</b>	<b>Financial Institutions Act, 1999</b>
<b>FIU</b>	<b>Financial Intelligence Unit</b>
<b>FT</b>	<b>Financing of Terrorism</b>
<b>KYC</b>	<b>Know Your Customer</b>
<b>LMPS</b>	<b>Lesotho Mounted Police Service</b>
<b>ML</b>	<b>Money Laundering</b>
<b>MLPC</b>	<b>Money Laundering and Proceeds of Crime Bill</b>
<b>MOF</b>	<b>Ministry of Finance</b>
<b>MOJ</b>	<b>Ministry of Justice</b>
<b>MOU</b>	<b>Memorandum of Understanding</b>
<b>NBFIs</b>	<b>Non Bank Financial Institutions</b>
<b>NCCT</b>	<b>Non-Cooperative Countries and Territories</b>
<b>POCEO</b>	<b>Prevention of Corruption and Economic Offences Act, 1999</b>
<b>SADC</b>	<b>Southern African Developing Countries</b>
<b>SARPPCO</b>	<b>Southern Africa Regional Police Chiefs Cooperation Organization</b>
<b>STRs</b>	<b>Suspicious Transaction Reports</b>
<b>PEPs</b>	<b>Politically Exposed Persons</b>
<b>UN</b>	<b>United Nations</b>
<b>WCO</b>	<b>World Customs Organisation</b>

**Annex 2 – Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others.**