



FIRST ROUND MUTUAL EVALUATIONS - POST EVALUATION PROGRESS REPORT OF LESOTHO

Covering the period August 2016 – July 2017

ESAAMLG (2017), First Round Mutual Evaluation - Post Evaluation Progress Report of Lesotho on Anti-Money Laundering and Counter-Terrorist Financing Measures.

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A. Introduction

1. ESAAMLG evaluated the anti-money laundering and combating the financing of terrorism (AML/CFT) laws, systems and structures of the Kingdom of Lesotho from 29th November to 10th December 2010. The Mutual Evaluation Report (MER) was approved by the Council of Ministers in September 2011.

2. Tables 1 and 2 below contain the ratings obtained by the Kingdom of Lesotho with regard to all Recommendations.

Table 1: Ratings of compliance with Core and Key Recommendations

Core Recommendation	1	5	10	13	SR - II	SR - IV
Rating	NC	NC	NC	NC	PC	NC

Key Recommendation	3	23	26	35	36	40	SR-I	SR-III	SR-V
Rating	PC	NC	NC	PC	PC	PC	NC	NC	PC

Table 2: Ratings of compliance with Non-core and Non-Key Recommendations

Non-core & Non-key recommendations	2	4	6	7	8	9	11	12	14	15	16	17	18	19	20	21
Rating	PC	C	PC	C	NC	PC	NC	NC	PC	NC	NC	NC	PC	C	C	NC

22	24	25	27	28	29	30	31	32	33	34	37	38	39	VI	VII	VIII	IX
N/A	NC	NC	PC	PC	NC	NC	PC	NC	NC	NC	PC	PC	PC	NC	NC	NC	NC

B. Overview of Progress made by Lesotho

3. Lesotho had been reporting annually but due to its slow progress, the Council of Ministers resolved at its meeting in September 2014 that the country should report bi-annually starting from March 2015 and a letter should be written to the Authorities expressing ESAAMLG's concern with the slow progress the country was making in addressing the recommendations of the assessors. The letter was written to the Authorities has had been recommended.
4. At the Task Force at its meeting held in Victoria Falls, Zimbabwe in September 2016 noted that Lesotho had still not made any progress under post evaluation monitoring process. In view of this prolonged failure to implement recommendations contained in its MER, the Council of Ministers at its meeting which took place at the same venue soon after the Task Force meetings, resolved to send a High Level Mission to Lesotho. The Mission visited Lesotho from 7th – 8th April 2017.
5. Following the High Level Mission visit, a report was prepared and presented during the Task Force Plenary meeting in Arusha in April 2017. The report outlined a number of recommendations and requested the country to submit a progress report for discussion at the 34th Task Force Meeting in Zanzibar in September 2017.
6. In accordance with the ESAAMLG Mutual Evaluation Procedures, Lesotho has submitted its tenth progress report which covers all FATF Recommendations rated PC and NC and a separate progress report on the High Level Mission.

C. Analysis of Progress

CORE AND KEY RECOMMENDATIONS

BUILDING BLOCK I: LEGAL FRAMEWORK-PROVISIONAL MEASURES (FORFEITURE/CONFISCATION AND FREEZING OF ASSETS)

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

SR. III.1 – Freezing of funds or assets of persons designated in accordance with S/RES/1267(1999)

7. The Assessors recommended Lesotho to put in place mechanisms for the implementation of UNSC Resolutions 1267/1373.

8. Lesotho has the legal framework to issue regulations for implementation of the UNSCRs 1267 and 1373.
9. Under Regulations 26(2)(c) and 27(6) of the Money Laundering and Proceeds of Crime Regulations 2017, the Minister of Finance based on the recommendations of the Anti-Terrorism Committee is the competent authority responsible for proposing persons and entities under the United Nations Security Council Resolutions (UNSCRs) 1267/1989 and 1988 United Nations Sanctions Regimes and communicating the freezing order. The Regulations lay down the procedure for proposing and designating persons and entities for each sanctions regime whereby the Ministry responsible for foreign affairs and international relations receives the List from the United Nations and then transmit it to Ministry of Finance which in turn publishes the Sanctions List in respect of a designated person or entity. For the 1373 List, the Minister determines the designation based on information provided by the Anti-Terrorism Committee from the requesting state or domestically for the Lesotho List. The standard of proof for proposing and designating a person or entity is *reasonable ground to suspect*, and not a criminal standard (Reg. 27 (6)). Under both circumstances, the Minister issues a freezing order against all funds or assets of a listed person or entity to FIs, DNFPBs and NPOs to take the necessary actions without delay and giving prior notice to the designated person(s) involved (Reg. 28(1)).
10. In terms of Regulation 31 of the aforesaid Regulations, Lesotho has put in place freezing actions that extend to funds or other assets as well as funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations. However, the procedures have not yet been tested by issuing the necessary guidelines and directives. Lesotho has also put in place appropriate procedures for authorising access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses in accordance with S/RES/1452(2002) in terms of Reg.32 of the same Regulations.
11. The freezing orders have an indefinite duration based on Reg.33, unless the Ministry of Foreign Affairs and International Relations receives information from relevant

UNSC Committee or third party that a person or entity is no longer a subject of the Sanctions List.

12. Pursuant to section 18B of the MLPC Act as read with Regulations 30 and 36 of the Regulations, Lesotho has put in place measures to monitor compliance with the MLPC Act, rules or regulations governing UN Special Resolutions 1267 and 1373 and civil, administrative or criminal sanctions for failure to comply.

Conclusion

13. This recommendation is addressed.

BUILDING BLOCK V – INTERNATIONAL COOPERATION

5.1 International Conventions (R.35)

14. Assessors recommended Lesotho to fully implement the Palermo, Vienna and Suppression of Terrorism Conventions, and that the Authorities should also put in place comprehensive measures for mutual legal assistance and an enabling framework for the implementation of UNSCR 1267 and 1373, and comprehensive measures to develop and evaluate national projects aimed at the prevention of transnational organized crime, and amendment of the Drugs of Abuse Act.
15. Sections 14(18D) and 20(5) of the MLPC Amendment Act provide for the imposition of administrative sanctions by the FIU or a sector supervisory authority of a financial penalty not exceeding M1,000,000.00 for legal persons that commit offences. Section 20(1) of the same Act provides jurisdiction extending to an offence that is committed on board a vessel that is flying the flag of Lesotho or registered under the laws of Lesotho. Some mechanisms for implementing UNSCR 1267 and 1373 have been put in place as provided for in the Money Laundering and Proceeds of Crime Regulations 2017. However, there are still outstanding issues regarding implementation of the aforementioned conventions, including the amendment of the Drugs of Abuse Act which are still to be addressed.

Conclusion

16. This recommendation is not fully addressed.

5.2 Mutual Legal Assistance (R.36 and SRV)

17. The Assessors recommended that Lesotho enact legislation to fully implement mutual legal assistance measures that ensure effective and timely execution of requests from foreign States; put in place measures to facilitate the taking of witness statements on behalf of a foreign State; and facilitate the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country; and maintain statistical information on mutual legal assistance matters.

18. Though the Authorities indicated that Section 6(h) of the MLPC Amendment Act enables the investigatory authorities to take witness statements on behalf of a foreign jurisdiction, such provision cannot be enforceable to render MLA as it also requires amendment or enactment of various other legislations. In addition, Regulation 35 of the Money Laundering and Proceeds of Crime Regulations, 2017 does not comprehensively cover all aspects of MLA consistent with of the FATF Standards.

Conclusion

19. The Recommendation is not addressed.

5.3 International cooperation and exchange of information (R.40 and SRV/ratings PC and PC)

20. The Assessors recommended that the powers of the DCEO to enter into MOUs with its counterparts to enable exchange of information should clearly be provided for under the Prevention of Corruption and Economic Crimes Act; and that the Authorities should also maintain comprehensive statistics of the requests for information received from their counterparts.

Conclusion

21. The Recommendation is not addressed.

5.4 Ratification and implementation of UN instruments (SR I)

See the analysis made in Para. 5.1, above.

Conclusion

22. The Recommendation is not fully addressed.

5.5 International cooperation (SRV-Rated PC)

See the analysis made on Paras.5.1-4 above.

Conclusion

23. The Recommendation is not fully addressed.

ON NON-KEY AND NON-CORE RECOMMENDATIONS

BUILDING BLOCK IV – NATIONAL AND INTERNATIONAL COOPERATION

6.1 Mutual legal assistance on confiscation & freezing (R.38)

24. The assessors recommended that the authorities redefine serious offences from a maximum term of imprisonment of not less than 24 months to 12 months in order to provide for the full range of predicate offences for money laundering and facilitate effective mutual legal assistance relating to the identification, freezing, seizure, or confiscation of laundered property from, proceeds from, instrumentalities used in, or instrumentalities intended for use in, the commission of any ML/FT or other predicate offences.
25. See the analysis under Paragraph 5.2. Note should be taken that the Mutual Legal Assistance Bill has not yet been passed into law.

Conclusion

26. The Recommendation is not addressed.

BUILDING BLOCK VI – SPECIAL RECOMMENDATIONS

7.1 Non-profit organisations (SR.VIII)

27. The assessors recommended that the authorities implement the requirements under SR.VIII.

28. Regulation 24(2) of the MLPC Regulations provides that non-profit organisations should not be misused by terrorist organisations posing as legitimate entities. In terms of Regulation 24(7) of the Regulations, non-profit organisations should not be misused to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations. The issues including: reviewing of the sector, conducting periodical assessments, outreaching and conducting effective oversight still remain outstanding.

Conclusion

29. The Recommendation is not fully addressed.

REVIEW OF PROGRESS ON ISSUES RAISED IN THE HIGH LEVEL MISSION REPORT

The table below highlights the progress made by Lesotho in addressing the recommended actions of the High Level Mission Report.

Recommendation	Progress	Conclusion
<i>Short Terms Actions (March - August 2017)</i>		
Promulgate regulations and guidance to Banks and other Accountable Institutions to Implement UNSCR 1267/1373. This can be done by exploring the possibility of issuing the Regulations in terms of the Money Laundering and Proceeds of Crime (as amended) Act, 2008, and the Penal Code Act, 2012 which criminalizes terrorist financing and terrorism, respectively.	Money Laundering and Proceeds of Crime Regulations 2017 incorporates provisions that largely address implementation of UNSCR 1267/1373. However, the necessary guidelines and directives have not yet been issued.	This action plan is not fully completed.
The authorities should harmonize all laws which pose dual AML/CFT obligations on financial institutions including	Though the Authorities indicated that consultation has been made to address this	This action plan is not completed.

reporting of STRs which should only be done by the FIU. The current parallel AML/CFT regimes in the Central Bank directives which are conflicting with the MLPC Act should be reviewed and amended in line with the FATF requirements.	issue, the laws have not been harmonized as required.	
Facilitate the operational independence of Lesotho's FIU by allocating sufficient human and financial resources.	The authorities indicated that this is still in the process of being done.	This action plan is still to be completed.
Accommodate the FIU offices in one location which would allow the FIU's independence in accordance with Recommendation 29 of the FATF	The authorities indicated that this is still in the process of being done.	This action plan is still to be completed.
Develop mechanisms to enable the FIU to access financial information from different AML/CFT stakeholders	The Authorities indicated that FIU has entered into MOUs with the following institutions to facilitate access to financial information: Department of Transport; Department of Immigration, Lesotho Housing Development, Land Administration Authority, and the Registrar of Companies. Information is accessed manually and automation is ongoing.	This action plan is complete.
<i>Medium Term Actions (September 2017 – August 2018)</i>		

<p>Amend the following pieces of legislation:</p> <ul style="list-style-type: none"> • Criminal Procedure and Evidence Act, • Penal Code, • Fugitives Offenders Act, • Internal Security (Arms and Ammunition) Act, • Drugs of Abuse Act, • Anti-Corruption Act. 	<p>The Authorities indicated that the Amendment processes for these pieces of legislation are in various stages. The Bills in relation to amendments to Drugs of Abuse and Anti-corruption Acts were in Parliament when it was dissolved in March, 2017.</p>	<p>This action plan is ongoing</p>
<p>Enact the Prevention and Suppression of Terrorism (Anti-Terrorism Bill) and the Mutual Legal Assistance Bills</p>	<p>The Authorities indicated that the Bills were already in Parliament when it was dissolved in March, 2017. The Sponsoring Ministry is in the process of briefing the new Minister on the Bill and reintroduce the Bill in Cabinet for approval and tabling in Parliament.</p>	<p>This action plan is ongoing</p>
<p>The authorities should improve the asset recovery regime for properly freezing, seizing and confiscating ill-gotten funds or properties (including terrorist properties) by developing mechanisms for managing those assets.</p>	<p>The Authorities indicated that this aspect is addressed by UNODC mentorship programme extended to Lesotho.</p>	<p>This action plan is ongoing.</p>
<p>Build the capacity of law enforcement agencies to undertake financial</p>	<p>The Authorities indicated that this aspect is also addressed by UNODC mentorship</p>	<p>This action plan is ongoing.</p>

investigations including the application of parallel and special investigation techniques.	programme extended to Lesotho.	
Set up efficient case management systems which will assist the authorities to collect and maintain comprehensive statistics on AML/CFT matters.	The Authorities indicated that the Ministry of Law has undertaken to address the case management system at National Level.	This action plan is ongoing
Put in place an effective framework for monitoring and supervising the NPO sector on counter financing of terrorism.	Though the authorities indicated that Money Laundering and Proceeds of Crime Regulations 2017 address deficiencies identified in this regard, the Regulations do not comprehensively cover the Sector to protect it against abuse from terrorist financiers. The authorities should take necessary measures to ensure that the NPO sector in the Kingdom of Lesotho implement effective counter-financing of terrorism programmes in a manner consistent with international standards.	Progress is noted and this action plan is ongoing and authorities should be encouraged to implement the full requirements of SR VIII.
Undertake national risk assessment (NRA) including sectoral risk assessments and	The Authorities indicated that this process has been budgeted for in the financial year 2017/2018. Consultations	This action plan is ongoing.

risk-based supervision of all reporting entities.	are also ongoing between the FIU and World Bank for technical assistance.	
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D. SUMMARY AND RECOMMENDATIONS

- 30. Lesotho has amended the Money Laundering and Proceeds of Crime (Amendment) Act, 2008 and issued the Money Laundering and Proceeds of Crime Regulations in June 2017 for implementing the requirements under the MLPC Act (as amended) and UNSC resolutions 1267 and 1373. The Act and regulations address most of recommended actions in terms of technical compliance under the Mutual Evaluation Report.
- 31. The Authorities indicated that for addressing most of the outstanding issues including the enactment of the Mutual Legal Assistance and Prevention and Suppression of Terrorism Bills as well as the amendments to Prevention of Corruption and Economic Offences Act and Drugs of Abuse Acts would require reintroduction of the Bills to a new Parliament established after the national elections held in June 2017. In light of recommended actions from the Lesotho Mutual Evaluation Report consideration is being made on how amendments to Penal Code, Fugitive Offenders, Internal Security and Drugs of Abuse would be effected. They reported that progress is underway to address the remaining outstanding issues including the amendments of the various pieces of legislation once the new Parliament commences its session in October 2017.
- 32. On the basis of the above observations, Lesotho has made some progress. Lesotho should be encouraged to implement its AML/CFT Laws including the 2017 MLPC Regulations.
- 33. It is recommended that the Kingdom continue reporting bi-annually on the remaining outstanding issues and its next report should be submitted two months before the next Task Force of Senior Officials meeting in March/April 2018.