



# FIRST ROUND MUTUAL EVALUATIONS - POST EVALUATION PROGRESS REPORT OF MOZAMBIQUE

Covering the period August 2016 – July 2017

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

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## **A. Introduction**

1. This is the 7<sup>th</sup> detailed review of the post evaluation progress of Mozambique was conducted by Review Group 'A' comprising of experts from Angola, Botswana, Namibia, Uganda and Zimbabwe at the 33<sup>rd</sup> ESAAMLG Task Force of Senior Officials meeting.
2. Mozambique was evaluated by ESAAMLG in 2009. The MER was adopted by the ESAAMLG Council of Ministers in August 2011. The table below indicates Recommendations on which Mozambique's compliance ratings on the FATF Core and Key Recommendations is either PC or NC:

### **Ratings of Compliance with Core Recommendations**

<b>Recommendation</b>	R.1	R.5	R.10	R.13	SR.II	SR.IV
<b>Rating</b>	PC	NC	NC	NC	NC	NC

### **Ratings of Compliance with Key Recommendations**

<b>Recommendation</b>	R.3	R.4	R.23	R.26	R.35	R.36	R.40	SR.I	SR.III	SR.V
<b>Rating</b>	PC	NC	NC	NC	PC	NC	PC	NC	NC	NC

## **B. Overview of Progress made by Mozambique**

3. Mozambique passed the new law on AML/CFT, Law No.14/2013 (AML/CFT Law) in June 2013. The new AML/CFT Law repealed the AML Law, Law No. 7/2002. The new law ushered in a legal framework which strives to address most of the recommendations made by the assessors on the Core and Key Recommendations in their MER. The AML/CFT Law among other things does the following;
  - a) Improves on the criminalization of the offence of ML and criminalizes TF.

- b) Extends the list of predicate offences to a minimum of predicate offences listed in the FATF Glossary.
  - c) Provides for supervisory authorities on ML/TF and their powers and responsibilities/duties.
  - d) Includes sellers and car dealers in AML/CFT supervision.
  - e) Provides requirements for identification and verification of beneficial owners.
  - f) Provides for record keeping measures which are in line with international standards.
  - g) Provides for MLA and extradition on ML/TF matters.
  - h) Widens the scope of the types of sanctions to include administrative and civil liability in addition to the conventional criminal sanctions.
  - i) Makes criminal sanctions more deterrent.
4. In August 2014, Law 14/2013 was further strengthened by the introduction of Decree No. 66/2014 (Regulations Law 14/2013), which introduced a framework of regulations to this new law. Pursuant to the coming into effect of the Regulations, the Bank of Mozambique in May 2015, issued guidelines, Notice 4/GBM/2015 for financial institutions on prevention and combating of money laundering and financing of terrorism. In order to complement the AML/CFT Law the authorities repealed and enacted a new Penal Code on 31 December 2014, Law 35/2014. The new Penal Code brought in a wider scope of predicate offences to the crime of ML.
  5. Mozambique has other laws that complement the AML/CFT Law and these include: Law No. 15/2012, which sets out the legal framework for protection of victims, complainants, and witnesses and creates the Witness Protection Office; and Law No. 17/2011, which provides for extradition.
  6. The AML/CFT law streamlines reporting of STRs and widens the scope of reporting institutions in line with the financial activities set out in the FATF Glossary. It further protects reporting entities and their personnel from any kind of liability for suspicious transactions reported in good faith.

7. The authorities reported that the FIU has secured support from South Africa as a sponsor for its application for membership to the EGMONT Group of FIUs. In order to strengthen its cooperation with other FIUs the Mozambique FIU has signed MoUs with the FIUs of Angola, Cape Verde, Lesotho, Namibia, Brazil, South Africa, Malawi, Uganda, Zambia and Zimbabwe.
8. Mozambique has not yet conducted a National Risk Assessment on ML/CFT.

### **C. Analysis of progress**

9. The Review Team has analyzed the progress made by Mozambique for each Core and Key Recommendation rated NC or PC in the MER, using the information provided by Authorities in their seventh progress report to determine progress made. The Reviewers in their previous review reports have already noted sufficient progress reported to have been made by Mozambique in addressing almost the Core and Key Recommendations rated NC or PC except for Recommendation 26, 40, SR III and SR V, when it presented its third progress report.
10. In the current review, Mozambique has made no further progress than reflected at the time it presented its third progress report.

## **BUILDING BLOCK 1: LEGAL FRAMEWORK-CRIMINALISATION OF ML & TF, PROVISIONAL MEASURES/CONFISCATION & FREEZING OF ASSETS**

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

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

11. The assessors had recommended that the authorities should take the necessary steps in accordance with SR III to introduce measures for the freezing of terrorist funds and assets so as to enable them to implement S/Res/1267 and S/Res/1373. Although, Article 42 of the AML/CFT Law now provides for freezing of terrorist funds and assets as required under SR III, there are still inadequacies with the provision as it does not set the timelines for the obligation to freeze such funds, goods or assets by

accountable institutions. Secondly, the Article is implemented as read with Article 23 of the same law which in article 23(1) seems to apply to all transactions where there is suspicion that the funds involved are of a criminal nature and does not necessarily apply to the UNSCRs. Further, Article 23(3) provides for the suspended operation (which is the freezing) to be set aside if the temporal freezing of the funds/assets is not confirmed by a judge within three days. This is not consistent with the requirements of implementing S/RES/1267 and its successor resolutions, which require an indefinite freeze to be made until the freeze is lifted by 1267 Sanctions Committee. This is also the same technical concern with Regulation 44 of Regulation Law 14/2013, cited by the authorities. The seizure of funds or assets provided in this Regulation makes cross – reference to Article 38(1) of Law 14/2013 and this sub-Article also gives discretion to a judge to issue a seizure order within 48 hours upon request by a public prosecutor, provided there are reasonable grounds that the funds or assets are proceeds of crime or are for any other illegal purpose (including TF). However, Article 38(2) says, “ *The judge may order the return of the seized funds, assets, rights, objects belonging to the suspect, when proved the lawfulness of the origin*” . What is not clear with the provision is whether it also applies to the sanctions list issued under S/RES/1267, where domestic courts are not supposed to have jurisdiction to determine the lawfulness or otherwise of the indefinite freezing prescribed by the listing, if there is a match until a de-listing is done by the relevant Sanctions Committee. The reviewers also note that the law has not covered other critical aspects of SR III, such as measures for unfreezing funds or assets of de-listed persons, accessing of funds frozen where there has been determination of the need to make payment of basic expenses, payment of certain types of fees, etc, following processes set out under S/RES/1452. The authorities acknowledge that they have not made progress regarding setting up an adequate framework for freezing without delay any assets related to terrorism financing. They indicated that this will be covered in the proposed drafted amendment of the Terrorism Act which is currently with the Ministry of Justice who has to submit it to Cabinet for approval. While we note the steps taken by the authorities, in terms of the procedures this is not significant progress.

12. Mozambique has not made sufficient progress to address the deficiencies relating to SR III.

## **BUILDING BLOCK II – FINANCIAL INTELLIGENCE UNIT**

### **II.1 FIU (R. 26) (rating NC)**

#### **Essential criteria 26.1**

13. The assessors had recommended that the FIU develop Procedures Manual and Internal Regulations. The authorities indicate that the Procedures Manual and Internal Regulations have since been approved but the authorities did not provide copies of same. During the face to face meeting, the authorities explained that the delay in availing the copies to the Secretariat was due to the issue of translation. These have now been availed to the Secretariat.

#### **Essential criteria 26.2**

14. The authorities indicated that they were working on the development of the guidelines for the Real Estate sector and the Precious and semi-Precious stones sector with the assistance of IMF. They were hopeful that the guidelines would not take long as they will only have to go to Cabinet and not Parliament for them to be passed and this could be done before December 2015. There has been no progress on this issue since then.

#### **Essential criteria 26.3**

15. The assessors had recommended that the GIFiM should develop platforms to facilitate timely access to information held by law enforcement agencies to enable it to effectively carry out its functions. The authorities indicated during the face to face meeting that they have a MoU with the Attorney General's Chambers and they have linked it to the FIU GoAML system in the same way the GoAML system is connected to reporting entities. The other LEAs are members of the Task Force and the GIFiM uses that platform to facilitate timely access to information it needs from them. However, the authorities did not provide statistics to show how frequent the GIFiM accesses information from LEAs. However, under Para. 2.2 of the introduction to their current progress report, the authorities indicate that the GIFiM has entered into only one MoU with the Revenue Authority. The other LEAs are not linked to the GoAML system to allow the accessing of the information which they hold. This shows

that the GIFiM is not making enough progress in setting platforms to access information held by LEAs. The authorities need to do more to address the recommendation made by the assessors. There has been no sufficient progress made.

#### **Essential criteria 26.6**

16. The assessors had recommended that the authorities should expeditiously clarify the tenure of office and the conditions under which the Director and the Deputy Director of the GIFiM can be removed from office. The authorities indicate that Law No. 14/2007 is being amended to include the terms of hiring, termination of office of the Director and his Deputy and the amendments are now before the Cabinet for consideration. This position has not changed for the last 2 years the current update states that “(The drafting of the proposal amendment of Law No. 14/2007, of 27 June approved by the Cabinet.)”. There has been no sufficient progress made.
17. The amendments to the Law No 14/2007 of 27 June, have taken too long to come to be passed as this has been the same position for the past two years. The authorities are not making any progress to address the deficiencies. The same applies to the recommendation which was made by the assessors for the Director to have express powers to appoint his own staff which should be of high integrity and professional standard, which the authorities indicate is covered under the proposed amendments to the same law. Again there has not been progress in having the deficiency addressed.
18. In addition, the assessors had recommended that the GIFiM should have procedures which require all staff to declare their assets and income regularly not only the Director and his Deputy. The authorities indicate that all these recommended changes are provided in the proposed amendments to Law No. 14/2007. The amendments have not been passed, therefore there is no change for the past three years. It is recommended that the authorities speedily pass the proposed amendments.

#### **Essential criterion 26.7**

19. The assessors had recommended that the authorities clearly define the relevant agencies to which the FIU can disseminate information. Although, the new AML/CFT Law has provisions on exchange of information between the FIU and other institutions, the authorities still indicate the substantive provisions on this recommendation are proposed in the amendments to Law No. 14/2007, which are before Cabinet for consideration. The amendments have not been passed, therefore there is no change in position for the past three years. It is recommended that the authorities speedily pass the proposed amendments.
20. The assessors had recommended that the GIFiM should make arrangements that could facilitate exchange of information and cooperation in a proper and secure manner with other domestic stakeholders. The GIFiM indicates that in order to facilitate this, it has entered into a MoU with the Revenue Authority and utilizes the Task Force which is attended by all LEAs as a forum for facilitating exchange of information. The authorities state that the GIFiM has signed MoUs with two other domestic stakeholders being the Anti-Corruption Bureau and the Development Centre for Information System and Finance (CEDSIF), however there are still other critical stakeholders to be considered like the Police and the inconsistency of information provided by the authorities on the domestic stakeholders the GIFiM has signed MoUs with (refer to observations made in para. 15 above) should also be noted.
21. The assessors had recommended that the authorities develop and implement effective AML/CFT awareness programs for reporting entities and the general public. The authorities report that they have conducted awareness campaigns covering several arms of Government, including Ministries of Finance, Interior, Foreign Affairs, Justice, and other government agencies, including Bank of Mozambique, AG's Office, Revenue Authority, Institute for the Supervision of Insurances, General Gaming Inspectorate, GIFiM and FIs through seminars, workshops and meetings co-organized with IMF, WB and Austrac. The difficulty with the submissions by the authorities is that they do not show when the awareness was done and the numbers involved. The awareness which is being reported by the authorities does not indicate whether the authorities

developed specific programs based on any needs analysis, request by stakeholders or that they were just being done spontaneously. The authorities are encouraged to have proper awareness programs in place and retain statistics on the number of awareness programs done, the kind of awareness provided and the numbers of attending participants. The response given by the authorities is the same as they provided in previous reports.

#### **Essential criteria 26.8**

22. The assessors had recommended that the GIFiM produce annual reports. The authorities report that the GIFiM has been producing annual reports since 2012. However, they did not provide any of the reports. The authorities, during the face to face meeting indicated that they only produce reports for Government consumption. They were advised to start publicizing sanitized reports.

#### **Essential criteria 26.9**

23. The assessors had recommended that GIFiM consider making an application for membership to the EGMONT. The authorities indicate they have now secured the support of the South African FIC to be a sponsor to their application and have initiated the process for applying for the membership. The authorities indicated that they are awaiting Cabinet approval for them to be able to submit the application for membership to EGMONT.

### **BUILDING BLOCK III – PREVENTIVE MEASURES**

#### **III.1 CDD (R. 5)**

##### **Essential criteria 5.1 (Numbered accounts)**

24. The assessors had recommended that CDD requirements be applied to FIs that had not been covered under 7/2002. Article 10 of Law 14/2013 now adequately covers application of CDD measures on both FIs and DNFBPs and has broadened the scope of financial activities requiring CDD measures to include activities that had not been included in Law 7/2002. It covers almost all the financial activities described under the FATF Glossary. The authorities

indicated that they provided the guidelines on conducting CDD as well as regulating numbered accounts to the Secretariat. The guidelines given under Bank of Mozambique Notice No 4/GBM/2015, cover the outstanding FIs. We note that sufficient progress has been made.

#### **Essential criterion 5.9**

25. The reviewers, during the last review noted that the authorities had not yet issued regulations to compliment Article 15.4 of the AML/CFT Law on simplified due diligence. Article 14 of Regulation Law 14/2013 now provides for simplified identification and verification measures taking into account the evaluation of the risk of ML/TF in the specific sectors cited in the regulation.

#### **Essential criterion 5.13**

26. The reviewers, during the last review noted that the authorities had not yet issued regulations to compliment Article 10.2 of the new AML/CFT Law on identification and verification of the final beneficial owner. Article 7 and 8 of Regulation Law 14/2014, now set out requirements for identification of beneficial owners. The requirements seem to be quite comprehensive. We note that sufficient progress has been made.

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

#### **Essential criteria 4.1**

27. In the recommendation by the assessors for the authorities to amend the provisions of Art. 56 of Law 15/1999 to ensure appropriate exceptions to the confidentiality clauses that apply to the Bank of Mozambique, are introduced to enable the Bank to share information with other supervisors, the authorities indicate that they have carried out a study to come up with the provisions of the Law that need to be amended and will make representations to the Ministry of Finance for the amendments to be considered. This process is still ongoing therefore no significant progress has been made on addressing the recommendation by the assessors. The situation remains the same, no progress has been made the authorities at page 21 of their PEIP call it work “in progress”

28. The assessors had further recommended that the authorities amend the respective confidentiality clauses that apply to credit institutions, finance companies, financial intermediaries and insurance entities to enable exchange of information or collaboration with the FIU. The authorities have indicated that Decree 30/2011 now regulates access of information relating to insurance business. However, this development is only isolated to one sector, the authorities do not comment on the progress which is being made for the other institutions to enable them to collaborate and share information with the FIU. The authorities have given the same response as last year indicating that there has been no progress made with the other institutions.

## **BUILDING BLOCK IV – REGULATION AND SUPERVISION**

### **IV.I Regulation and Supervision (23)**

#### **Essential criteria 23.3.1**

29. The assessors had recommended that the requirements on “fit and proper” measures in Law 15/99 should be extended to cover beneficial owners in order to prevent criminals or their associates from gaining control of institutions. The authorities indicate that the Law is being studied to identify all areas which need amendments then thereafter make representations to the Ministry of Finance. There is no change from last year, therefore no progress as yet has been made under this recommendation.
30. The assessors had also recommended that regulatory and supervisory measures for FIs subject to the IOSCO Principles for Securities Regulations or IAIS Insurance Core Principles for prudential purposes, which are also relevant to ML, should also equally apply for AML purposes. The authorities, like in the last progress report, indicate that the Bank of Mozambique is in the process of applying for membership to IOSCO but do not say anything about membership to IAIS by the Insurance Supervisory Authority and also how far they have gone in having FIs equally apply the IOSCO Principles that are relevant to them for AML. As indicated above, there has not been progress with this

recommendation from the last report filed by the authorities. The authorities indicated that the application for membership by the BoM to IOSCO was submitted in April 2015. The authorities indicate that Mozambique is in the process of becoming a member without stating what happened to the application that was submitted in April 2015. There has been no progress on this issue.

**Essential criteria 23.7**

31. In order to address the recommendation by the assessors that the BoM and IGS should put in place measures to ensure that other FIs that are not subject to the Core Principles are effectively regulated and supervised for AML/CFT purposes, the authorities indicate that the BoM has started risk based approach on-site inspections. Through this process, the authorities are of the view that internal control measures dealing with risk compliance by FIs to prevent ML/TF can be assessed. The authorities during the face to face gave some statistics on the on-site inspections which have been done by the BoM since it started RBA onsite inspections, as 3 in 2013 and 6 in 2014. The authorities did not report on how the CDD Guidelines have assisted to put in place measures that have enabled effective regulation and supervision of FIs on AML/CFT. Now the authorities say they are conducting on-site inspection on the Risk Based Approach but do not tell how the risk is assessed in the absence of a NRA unless there has been sector specific risk assessments which guide the BoM.

**Essential criteria 23.10**

32. The authorities in response to the recommendation by the assessors that the BoM should put in place appropriate measures to ensure persons providing money or value transfer or money or currency exchange services are subject to effective monitoring and compliance with AML/CFT requirements, indicate that this deficiency is now addressed in the approved BoM CDD guidelines. After the face to face meeting authorities referred reviewers to subsections XV, XVI and XVII. Authorities were requested, again, to provide clear citations, including page and paragraph references to laws and Guidelines in future. The Guidelines seem to comply with the recommendation's requirements.

**BUILDING BLOCK V- Other Forms of International cooperation and exchange of information (R. 40, SR.V)**

33. Overall, there has been no improvement by the authorities in providing information regarding proper maintenance of records on requests for international cooperation, action taken, requests denied, requests acceded to, quality of responses received and time taken to respond to requests. The authorities have also not provided information on the mechanisms in place to ensure that information on requests attended is kept safe and confidential. The lack of adequate information supplied to determine the progress made under R. 40, also applies to SR. V. There has been no progress on this recommendation.

**Summary of progress in relation to core/key Recommendations rated NC or PC in the MER**

34. There is still no progress in relation to R. 26, R40, SRIII and SRV.

**PROGRESS REPORT ON NON-CORE AND NON-KEY RECOMMENDATIONS**

35. This is Mozambique’s second report on the non-core and non-key recommendations on which they were rated PC and NC as reflected in the table below.

**NON-CORE & NON-KEY RECOMMENDATIONS**

<b>REC</b>	2	6	7	8	9	11	12	14	15	16	17	18	19	20	21	22	24	25	27	28	29	30
<b>RATING</b>	PC	NC	PC	PC	NC	LC	NC	N/A	NC	NC	PC	PC	NC	PC								

R.31	R32	R.32	R.33	R.34	R.37	R.38	R.39
PC	NC	NC	NC	N/A	NC	NC	NC

SR	VI	VII	VIII	IX
RATING	NC	NC	NC	NC

## LEGAL FRAMEWORK

### Criminalisation of ML (R. 1 & 2)

#### Recommendation 1

##### Essential criteria 1.3 – Predicate offences to ML

36. The assessors had recommended that the authorities extend the scope of predicate offences to be consistent with the range of offences in each of the designated categories of offences under the FATF Glossary. Article 7 of Law 14/2013 has now extended the scope of predicate offences to cover all categories of predicate offences under the FATF Glossary. The recommendation by the assessors is now fully met. The Reviewers are however not clear why either the assessors or the authorities brought this Recommendation under Non-core and Non-Key Recommendations as R. 1 is one of the Core Recommendations.

##### Essential criteria 1.2.1

37. The assessors had recommended that the process of proving that property is the proceeds of crime should not rely on prior conviction for a predicate offence. Art. 8 of the Law 14/2013 provides for ML and predicate offence as two separate offences which are prosecutable independent of each other therefore proving that property is proceeds of crime does not rely on conviction for a predicate offence under the Law 13/2014. By the same vain, Article 8 as read with Art. 4, also provides for self-laundering. Art. 4(3) of Law 14/2013 now meets the recommendation by the assessors that Mozambique should have provisions which allow for prosecution of predicate offences to ML that have taken place outside Mozambique as it provides for extra- territorial jurisdiction to prosecute predicate offences that would have been committed beyond Mozambique with the conduct recognized as an offence under the Mozambican law. Sufficient progress has been made.

## **Recommendation 32**

### **Essential criteria 32.2**

38. The assessors had recommended that the authorities develop policies for the application of the Provisions of Law 7/2002 criminalizing money laundering by their prosecuting authorities and that the policies should address matters such as the approach to be followed when proving that property is the proceeds of crime (which should avoid relying on a prior conviction for a predicate offence), the applicability of the money laundering offence to foreign predicate offences and the application of the money laundering offence to situations of self-laundering which should have formed the basis for training. The authorities did not provide any information on policies and training programs on AML/CFT that have been provided to build the expertise in prosecuting ML cases as recommended by the assessors.

**Law enforcement, prosecution and other competent authorities (R. 27, 28, 30 & 32)**

## **Recommendation 30**

### **Essential criteria 30.1**

39. The assessors had recommended that law enforcement agencies be provided with sufficient human, financial and technical resources to enable them to effectively deal with predicate offences and money laundering cases. The authorities have indicated that ML/TF issues have been included in the curriculum of the Police Academy but there is no indication of the efforts which have been made to address the issue of human, financial and technical resources. Besides the submission that in terms of Art. 61 of Law 13/2014, law enforcement is now permitted to carry investigations using special investigative techniques, the authorities did not indicate the kind of human, financial and technical resources to law enforcement which came in with the new provisions introduced by Law 13/2014. It is the Reviewers' view that the aspect of resources is not well addressed by the authorities and what has been

explained does not show progress in improving availability of resources to law enforcement agencies, especially with the police. Again there is no information submitted by the authorities on whether law enforcement has developed systems to ensure that comprehensive statistics relating to investigations and prosecutions of ML and related predicate offences are kept. Under the circumstances the Reviewers can only conclude that this is still not being done. The authorities are therefore encouraged to develop systems to retain comprehensive statistics on investigations and prosecutions relating to ML and related predicate offences. No sufficient progress.

### **Essential criteria 30.3**

40. The assessors had recommended that the authorities should ensure that the officers involved in handling money laundering and other predicate offences investigations are adequately trained on an ongoing basis. The information provided by the authorities in answer to this recommendation, unfortunately does not address the recommendation. There is therefore no information provided by the authorities on how officers have been trained, in particular the kind of training, when trained and how many officers have been trained to adequately meet their obligation to investigate ML and related predicate offences. The authorities should be encouraged to meet this recommendation by the assessors. They should also be advised to use the template provided by the Secretariat to provide statistics. Statistics provided in the PEIP are in response to a different recommendation. The authorities should also properly align responses to the appropriate recommendation by the assessors.

### **Recommendations 27, 28 and 32.2**

41. The assessors had made findings that the authorities were not maintaining statistics which made it difficult for the assessors during the assessment to determine effectiveness and as a result the assessors recommended that the authorities should come up with systems which will enable them to maintain comprehensive statistics. As discussed in this report based on the information submitted by the authorities there is no indication such statistics are now being

maintained by law enforcement. The assessors had made further observations that whilst there had been investigations and prosecutions of predicate offences to ML, there was no evidence of ML cases being investigated and prosecuted. The assessors had made recommendations that the authorities should ensure that ML investigations and prosecutions are also pursued. The authorities in the current progress report have not submitted any information relating to investigation and prosecution of ML cases. The authorities are encouraged to investigate and prosecute ML cases and retain comprehensive statistics of such investigations and prosecutions. The situation has not changed during the period under review.

### **SR. IX**

42. The assessors had recommended that the authorities should as soon as possible develop the appropriate legal framework to implement the requirements under SR IX. Article 24 of Law 13/2014 and Regulations 36 and 37 of Regulation Law 14/2013 (Decree No. 66/2014) now adequately address the requirements of SR. IX. The provisions provide for declaration of currency and BNI when entering and exiting Mozambique, circumstances upon which currency and BNI instruments can be seized as well as the thresholds. Establishes an obligation for reporting of incidences relating to cross-border transportation of currency to the GIFiM. This recommendation by the assessors has been fully met by the authorities and the authorities should not continue reporting on it.

### **Preventive Measures-Financial Institutions**

#### **Customer due diligence (R. 5 to 8)**

#### **Recommendation 6 - PEPs**

43. The assessors had recommended that the authorities should introduce enforceable requirements for financial institutions to identify PEPs and take such other CDD measures as required under Recommendation 6. The authorities indicate that these measures are now enunciated in Article 10(d) of

the Law 14/2013 and Article 16 and 17 of Regulation Law 14/2013. The authorities did not clarify how Art. 10(d) is connected to PEPs other than it relating to general application of CDD measures. Regulations 16 and 17 cited by the authorities appropriately deal with requirements of enhanced due diligence relating to PEPs. Although, it is not clear in terms of which Article of the Law 14/2013, the regulations are developed. However, Regulation 16(1) (g) sets a threshold for authorization to be sought from senior management when dealing with transactions involving PEPs, whereas under R. 6.2.1 there is a requirement for senior management approval to be sought when establishing business relationships with a PEP. The way the Reviewers understand the requirement of R. 6.2.1 is that it is of general application and does not set thresholds where senior management's approval has to be sought. According to the Reviewers, despite the other competent requirements provided in relation to PEPs, the setting of the threshold in seeking approval from senior management compromises the progress which has been made and exposes the financial sector to ML/TF risks associated with PEPs. The Reviewers recommend that the authorities remove the qualification set by the threshold in establishing business relationships with PEPs. This recommendation has not been attended to by the authorities. No progress has been made.

#### **Recommendation 7**

44. The assessors had recommended that the authorities introduce enforceable requirements in relation to cross-border correspondent banking and other similar relationships as required under Recommendation 7. Article 14 of Law 14/2013 and Regulation 22 of Regulation Law 14/2014, cited by the authorities now sufficiently address requirements pertaining to cross-border correspondent banking. Only that Article 14 of Law 14/2013, cites Article 10(8) and yet Law 14/2013 does not have Article 10(8). The authorities clarified the position as a typographical error, and the correct citation as being Article 10(5).

#### **Recommendation 8**

45. The assessors had recommended that the authorities introduce enforceable requirements needed to prevent misuse of technological developments in ML

or TF schemes and such other measures as required under Recommendation 8. The authorities have cited Articles 10 and 15 of Law 14/2014 and Regulation 23 of Regulation Law 14/2013 as providing for these requirements. The Reviewers after going through Articles 10 and 15, are of the view that both Articles do not specifically provide for measures concerned with use of new technologies. However, Regulation 23 provided by the authorities, deals with requirements relating to new technologies although based on the submissions by the authorities it is difficult to link the Regulation to Law 14/2013. It is clear that Article 10 deals with general CDD measures and Article 15 deals with electronic transfers. The authorities site Article 10 (2)(e) as making provision for the duty to identify and verify a customer when conducting online transactions but 10(2) does not have (e) this should be 10(1)(e).

#### **Recommendation 11**

46. The assessors had recommended that the authorities introduce an obligation for financial institutions to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose. The authorities have cited Law 14/2013 as providing for this obligation. However, the authorities did not cite the Article in Law 14/2014 providing for the obligation. Reviewers noted that the provisions of Law 14/2013 in Article 19(2) sufficiently cover the obligation. The recommendation by the assessors is fully met.
47. The assessors had recommended that financial institutions should keep such records obtained under the above requirement available for competent authorities and auditors for at least five years. As already explained above Article 19(3) of Law 14/2013 requires that such records obtained be maintained for at least 5 years. The recommendation by the assessors has been fully met.

#### **Recommendation 21**

48. The authorities had been required to adopt and implement measures on how financial institutions should deal with transactions and business relationships involving countries which do not sufficiently apply the FATF

Recommendations. Article 16(2) and (3) of Law 14/2013 provided by the authorities sufficiently establish measures to be implemented by FIs and Non-FIs when dealing with business relationships from countries which do not sufficiently apply FATF Recommendations. The recommendation by the assessors is fully met.

#### **Recommendation 14**

49. The assessors had recommended that legal immunity for making an STR should not apply to FIs only but also to their directors, officers and employees. Article 26 of Law 14/2013 now provides for FIs and Non-FIs or their directors, or employees who in good faith, report suspicious transactions or provide information to GIFiM not to be subject to administrative, criminal or civil liability for breach of contract or banking secrecy provisions. The recommendation by the assessors is now adequately addressed.
50. The assessors had further recommended that the authorities prohibit tipping-off when an STR or related information is being reported or provided to the FIU against financial institutions and their directors, officers and employees. Article 25 of Law 14/2013 provides measures against tipping-off and makes it a criminal offence to reveal such information to clients or other third parties. The recommendation has been sufficiently addressed.

#### **Recommendation 19**

51. The assessors had recommended that the authorities consider the feasibility and utility of implementing a system where financial institutions would report all transactions in currency above a fixed threshold to a national agency with a computerized data base. Article 18 of Law 14/2013 provides for cash threshold transactions of equal to or above 250 000 meticaïs or equivalent or all transactions of or above 750 000 meticaïs or equivalent, to be reported to the GIFiM. Further, Regulation 34 of Regulation Law 14/2013 requires that all STRs be communicated electronically to the GIFiM and only in exceptional cases upon set procedures by the GIFiM, can hard copies of documents be sent to the GIFiM. The authorities have also reported that GIFiM has also acquired

electronic software in form of GoAML to improve on the analysis of STRs and database of STRs. The authorities have sufficiently addressed the recommendation.

### **Recommendation 25**

52. Article 22 of Law 14/2013 requires the GIFiM to provide timely feedback to FIs and Non-FIs, supervisory authorities and monitoring teams on the results of STRs relating to ML/TF reported to it. It is the view of the Reviewers that the provision addresses the recommendation by the assessors. However, it would have been helpful if the GIFiM had provided information on the quality of the information provided as feedback and whether its feedback has been useful to reporting entities.
53. As addressed elsewhere in this report, the recommendation by the assessors for the authorities to criminalize the offence of TF is now addressed by the provisions of Article 5 of Law 14/2013 which criminalizes TF in line with the requirements of the Convention on TF. Article 18 of the same Law requires reporting entities to report suspicious transactions on TF. However, it is of concern that the authorities have put a requirement under Article 18(1) (b) of the same law that reporting entities should report suspicious transactions on TF when they *“Have evidence of those funds being used for the financing of terrorism”*. This requirement appears to set a high standard for reporting suspicious transactions on TF and might not meet the requirement of reporting suspicious transactions **being used** for TF. Under R. 13.1, it requires such reports to be made when the reporting entity, *“suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity”* not **evidence** that the **funds are being used for the financing of terrorism**. This compromises the otherwise sufficient progress and authorities are advised to align this particular provision of the law to minimum requirements of Recommendation 13.1. The higher scale they have set will effectively mean that there will be no STRs for TF reported as the reporting entities would not have *“evidence that the funds are being used for financing terrorism”*. Under the

period being reviewed, the authorities have not attended to rectifying the deficiency.

#### **Recommendation 15**

54. The assessors had recommended that financial institutions establish and maintain internal procedures, policies and controls to prevent ML and TF that cover CDD, record retention, the detection of unusual and suspicious transactions, and the reporting obligations and have a specific requirement for financial institutions to communicate these internal procedures, policies and controls to employees. Article 31 of Law 14/2013 now adequately provides for internal control programs including adoption of policies, internal control procedures which include mechanisms to verify compliance and adequate procedures when hiring employees and requirements on internal audits to verify compliance with AML/CFT requirements, appointment of a compliance officer, reporting of STRs and adopting measures taking into account the risk of ML and TF. Further, Article 33 of the same Law provides that FIs and Non-FIs must provide adequate training to managers and employees to improve their knowledge on operations and activities which may be linked to ML or TF and measures which should be taken to mitigate such situations. Sufficient progress has been made.

#### **Recommendation 22**

55. The assessors had recommended that the authorities should introduce specific requirements in relation to foreign branches and subsidiaries to ensure that they apply AML/CFT measures consistent with the FATF Recommendations and apply the higher of either domestic or Mozambican standards and inform the home supervisor, if they are unable to do so. The authorities have cited Articles 3 and 32 of Law 14/2014 as now addressing these requirements. The two Articles provided by the authorities adequately provide for foreign branches and subsidiaries to apply AML/CFT requirements of the higher standard between where they are domiciled and the Mozambican law. Recommendation is sufficiently met.

### **Recommendation 18**

56. On shell banks, the authorities submit that Article 34 of Law 14/2013, now prohibits the establishment of shell banks in Mozambique and establishing of relations with foreign FI that permit their accounts to be used by shell banks. The provisions are now in compliance with the requirements of R. 18 of the FATF Recommendations.
57. The assessors had recommended that the scope of supervisory framework be extended to cover insurance intermediaries' activities which were not yet covered under the AML law. Article 3(1) (c) of Law 14/2013 now provides for the scope of activities now covered under that law to include insurance intermediaries. Article 27(b) of Law 14/2014 provides for activities covered under Article 3(1) (c) to be supervised by the Institute of Insurance Supervision of Mozambique. These provisions bring insurance intermediaries under the AML/CFT regime of Mozambique. Sufficient progress is noted.

### **Recommendation 29**

58. The assessors had recommended that BoM and IGS develop and implement an on-site inspection programme, including the review of policies, procedures, books, records and sample testing, to ensure that financial institutions comply with AML/CFT requirements. The authorities cited Articles 27-30 of Law 14/2013 as addressing the recommendation. However, the Articles cited do not respond to the assessors' recommendation. What the authorities should have shed light on is whether the BoM and IGS as supervisors have developed and are implementing inspection programs on the entities that they to supervise. The authorities indicated that two inspections were carried out to assess compliance with provisions of AML/CFT however they do not say who conducted the inspection and on which institutions. Reviewers note some progress having been made but not sufficient as there are no programs shown.
59. The assessors had recommended that the relevant laws on AML/CFT be amended to give the BoM and IGS powers to compel production of or obtain access to all records, documents or information relevant to monitoring

compliance. Articles 27-30 of Law 14/2013 cited by the authorities do not provide for powers of supervisors, in particular the right to compel production of or obtain access to all records, documents or information relevant for monitoring compliance as recommended by the assessors. Article 29 which deals with duties/responsibilities of supervisory authorities does not go further to empower them to do the above. The authorities have cited Law 15/99 of 1 November in paragraph 2 and 3 as authorizing supervisors to demand and obtain production off records or documents, but this law was in existence at the time of the ME. Authorities to provide the law in English. No progress noted.

60. The assessors had also commented on the enforcement powers of IGS with respect to AML matters as being unclear to the assessment team. In the current progress report, the authorities have not clarified these enforcement powers. The authorities should clarify the enforcement powers of the IGS. The authorities indicate that the legal framework is being repealed. No progress.

#### **Recommendation 17**

61. The assessors recommended that the procedures, set out under Article 21 of Decree 37/04, that must be followed for the investigation of breaches of AML requirements imposed on financial institutions under the law and regulations be clarified. The provisions, Articles 66-68, 70, 73-78 of Law 14/2013 now cited by the authorities seem to be addressing conduct which is in violation of the AML/CFT law by FIs and Non-FIs, and the sanctions which can be applied against the violating entities as well as related natural persons. The sanctions regime is quite vast, ranging from criminal to administrative sanctions (under Articles 75-78). However, one should hasten to say that although the sanction measures seem to be quite adequate and in compliance with R. 17, some of the meaning seem to have been lost in translation. Despite this difficulty, the recommendation by the assessors has been adequately addressed under the cited provisions of Law 14/2013. Sufficient progress noted.

## **Recommendation 25**

62. Pursuant to requirements of R. 25, the assessors had recommended that the BoM and IGS should issue guidelines to give assistance to financial institutions to comply and implement their respective AML/CFT requirements. Article 29(2) (c) requires supervisors on AML/CFT to issue guidelines to FIs to promote compliance with their obligations. The supervisors include the BoM and the authorities indicate that it has issued guidelines to FIs to assist them to comply with their AML/CFT obligations. The authorities have provided the Guidelines Notice No 4/GBM/2015 which were issued by the BoM and are now in force. Chapter 1 provisions 2 and 3 of the Guidelines show that the scope of the Guidelines covers all financial institutions referred to in Article 3, paragraphs a, b and c as well as in Article 27 of Law No 14/2013. The IGS still has not issued guidelines as recommended.

## **SR. VI**

63. i. The assessors had made several recommendations to the authorities to enable them to comply with the requirements of SR. VI. Included in these recommendations were the following:
- Requiring all independent MVTS to be licensed and/or registered by a competent authority.
  - Subjecting all MVTS operators to AML/CFT obligations and putting in place effective measures to monitor compliance.
  - Requiring licensed or registered MVTS providers to maintain a current list of their agents which must be available to a designated competent authority, i.e. Bank of Mozambique.
  - Ensuring that sanctions for non-compliance under FATF Recommendation 17 are applicable to independent MVTS.
- ii. The authorities indicate that MVTS are licensed by the BoM under Law 15/99 as amended by Law 9/2004. The authorities did not provide these laws to enable the reviewers to verify the submissions made and whether they apply to independent

MVTS as the cited laws should have been in existence when Mozambique was assessed in 2009. The situation has not changed the laws have not been provided. The authorities should provide the relevant laws in English.

- iii. Apart from independent MVTS, the authorities explain that some MVTS like Western Union and Money Gram can only operate under a commercial bank which they have entered into a contract with. The contract between the commercial bank and the MVTS is approved by the BoM. Under this arrangement, the obligation of the MVTS to comply with the AML/CFT requirements rests with the commercial bank and the sanctions on violation of the AML/CFT obligations by the MVTS are imposed on the commercial bank. The sanctions imposed will be like for any other violation, as provided under Chap. VIII of Law 14/2013. The sufficiency of the progress made cannot be fully assessed without an assessment of the relevant law.

#### **Recommendation 12**

64. The scope of AML/CFT obligations has been extended under Articles 3 of Law 14/2013 to cover all the DNFBPs and under Article 12 to provide for thresholds of plus/minus 90 000 and 450 000 meticaais for casinos and dealers in precious metals and stones, respectively. Casinos and dealers in precious stones and metals now have an obligation to identify and verify the identity of clients involved in such transactions.
65. **The way the assessors phrased this recommendation, “Shortcomings identified in section 3 of this report regarding recommendations 5, 6, and 8 to 11 should be remedied as recommended” made it difficult for the Reviewers to know what exactly they wanted the authorities to address under R. 5, 6, and 8-11 as these Recommendations cover various aspects on preventive measures. The measures cited by the authorities as now provided under Law 14/2013 and the Regulations in Decree 66/2014 on anonymous accounts, enhanced due diligence and period to maintain records cure some of the deficiencies relating to these Recommendations. However, the Review Group gave guidance to the authorities on how to address the recommendation by the assessors.**

## **Recommendation 16**

66. The authorities have addressed shortcomings identified under R. 16 in that Article 3 of Law No 14/2013 of August broadens the scope of application of AML/CFT law to all “FIs and non-financial entities.”

## **Recommendations 33 & 34**

67. On beneficial ownership the assessors had commented as follows, *“There are limited measures in place to ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. Mozambique should broaden the requirements on beneficial ownership so that information on ownership/control is readily available in a timely manner. This could include, for example, requiring legal persons to record full information on beneficial ownership and control in its register which would be available to law enforcement and regulatory/supervisory agencies”*. The authorities have cited Articles 10(2)(b) and (d), 35 and 36 of Law 14/2013 as read with Regulations 7 and 8 of Decree 66/2014(Regulation Law 14/2014) as now adequately providing identification of beneficial owners and availing of such information in an accurate and timely fashion to competent authorities. Article 10(b) and (d) set requirements for FIs and DNFBPs to identify the beneficial owner and take appropriate measures to verify the identity and establish risk management systems which can determine whether clients or beneficial owners are PEPs. Secondly, in terms of Regulation 7, FIs and DNFBPs are required when identifying beneficial ownership to request for documents of identification and do verification of the identity in line with the requirements of Regulation 4 and 5 of the same Regulations. Regulations 4 and 5 set out rigorous requirements for identification and verification as well as the lists of supporting documents during CDD. Regulation 8 requires types of legal persons (including non-profit organizations) listed therein to keep up-to-date information of identity of share owners and voting rights of 20% and above, identification of the management staff, attorneys and representatives, and documents confirming these requirements such as minutes of meetings, certificates of registration or any

other supporting document in the possession of the legal person. The regulation further provides that this information be made available upon request and without delay to judicial authorities, AG's Office, the supervisory authorities and the GIFiM. Article 36 of Law 14/2013 provides for legal persons within Mozambique to keep appropriate accurate and updated information of beneficial owners. It further provides for competent authorities to have access to this information in good time/without delay. The reviewers are of the view that the above summarized provisions satisfy the requirements of R. 33 and partly R. 34. There has been no change in the position of the authorities therefore the assessment remains the same.

### **SR. VIII**

68. Article 35 of Law 14/2013, adequately enables the regulation of the NPO sector subject to the Ministry of Finance having issued regulations governing the sector. The authorities have now provided the reviewers with Article 31 and 32 as covering the issues raised in the recommendation concerning registration, transparency, accountability, integrity, public confidence and monitoring of the sector. The provisions do not cover all the issues in full specifically relating to registration integrity, public confidence and monitoring, therefore full progress has not been made.

### **Recommendation 31**

69. The assessors had recommended that the GIFiM should actively engage with law enforcement and supervisory authorities and put into place appropriate mechanisms to ensure effective operational cooperation and where appropriate, coordination with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing. The authorities cite Article 3 of Law 14/2007 and Article 20 of Law 14/2013 as providing the framework for coordination. As much as the two articles provide the legal framework to enable cooperation, the authorities have not demonstrated how the GIFiM is actively engaging other law enforcement agencies as well as supervisory authorities and putting in place appropriate mechanisms to enable effective coordination. The authorities have

not provided information on bilateral or multi-lateral engagements of law enforcement agencies or with supervisors at the initiation/instigation of the GIFiM to facilitate coordination. No statistics on meetings which have been held by the other agencies even to discuss results of analysis, trends and methods arising from the work done by the GIFiM has been submitted by the authorities. Further, no mechanisms have been put in place by the authorities to facilitate consultation with competent authorities, the financial sector and other sectors (including DNFBPs) that are subject to AML/CFT laws. The authorities have given the same response that they gave last year it is therefore the view of the assessors that the authorities are not making any progress in effectively addressing the recommendations by the assessors in this part.

### **Recommendation 38**

70. The authorities have cited Articles 51 and 52 of Law 14/2014 as providing for MLA. The cited provisions indeed provide for provision of MLA but they still have a deficiency in that the MLA provided is only limited to ML/TF matters and they do not provide a general framework for MLA requests as recommended by the assessors. The authorities have made progress in putting in place such a framework for MLA but they still need to address in full, the recommendation by the assessors that they should put in place a framework which enables MLA at a wider scale, beyond ML/TF cases to take place. The authorities to provide Resolution 31/2006 and cite specific provisions of the law being relied on.

### **Recommendation 39**

71. The assessors had recommended that the authorities should urgently consider coming up with a legal framework which would make ML an extraditable offence. The authorities cite provisions of Articles 55-58 of Law 14/2013 as now providing for ML and TF as extraditable offences. Article 55 makes conditional the extradition for ML/TF. Extradition is only applicable in terms of this Article, if it meets the provisions applicable to Mozambican extradition treaties and Law 17/2011. The AML law does not directly provide for ML/TF to be

extraditable offences under that law but makes cross reference for such extradition to the normal requirements for extradition set out under Law 17/2011, which is the Extradition Act, and extradition treaties. The cross-reference to another law creates a complication in that Criteria 39.1 specifically requires ML to be an extraditable offence and further requires that there should be laws and procedures to extradite individuals charged with a ML offence. What is clear is that Law 14/2013 does not provide that ML is an extraditable offence and neither does it set procedures for extraditing individuals charged with ML but subjects procedures relating to such a request to procedures similar to any other request made under the Extradition Act. The question which arises is does Article 55 of Law 14/2013 meet the requirements of R. 39.1. It is the view of the Reviewers that in as far as the individual might in the end be extradited, it does. However, the process which is provided by the authorities might not be what was envisaged under R. 39.1 which in our view was to have specific procedures under the AML law relating to individuals who commit offences criminalized under that law which have dual/extra-territorial jurisdiction and therefore subject to extradition. This is not the case under the current law. In our view, R. 39.1 was meant to speed up the process of extradition relating to ML cases so that it does not go through the usual bottlenecks associated with other normal requests for extradition.

## **OTHER ISSUES**

### **Recommendation 30 &32 (Resources & Statistics)**

#### **Recommendation 30**

72. The assessors had recommended that the GIFiM should become operational and have adequate staff to enable it to carry out its functions. The authorities report that the GIFiM has been operational since 2011 and that its staff has undergone various training in AML/CFT suspicious transactions analysis, compliance and information technology. The authorities did not address the second part of the recommendation by the assessors on adequate staff, which should have disclosed the number the establishment is supposed to have and the current staff employed and how effective the current number is managing

to carry out the functions expected under an FIU. On the training, the authorities only indicate that the FIU officers have received training. The information is not very informative as it does not give the number which has been trained, when trained and future training programs. The authorities should provide the outstanding information which will help the Reviewers to determine whether they are making progress or not on the recommendations made by the assessors. The authorities have given statistics on STRs, EFTs, CTRs and Financial Intelligence reports disseminated this does not answer the issue of adequate staffing, staff training and capacity.

73. On the recommendation for officers from the Police and Customs being trained on AML/CFT, the authorities indicate that there are training programs currently under way and some planned for the future. These programs are not disclosed. The kind of training and the number which is being trained is all information which could have been helpful to arrive at a decision as to whether the authorities are making progress or not, which information has not been provided by the authorities. The authorities have to be asked to provide the information to enable a determination to be made on whether there has been progress in addressing the recommendation by the assessors. No progress made, the authorities did not provide adequate information to enable the Reviewers to determine the progress which has been made.

74. The assessors had recommended that the authorities ensure that the BoM and IGS are adequately funded and staffed to undertake AML/CFT supervision of FIs. The authorities did not provide any comments on the recommendation made by the assessors. Therefore, the Reviewers could not determine the progress made in addressing the recommendation made by the assessors.

## **REVIEWERS COMMENTS AND RECOMMENDATIONS**

### **General Comments**

75. In general the authorities have to be commended for the progress they are making. The authorities should however be encouraged to be more attentive to the recommendations made by the assessors and respond by providing the

information addressing the recommendation. Particularly for R. 30 and 32, the authorities could have provided more specific information to help the Reviewers determine whether they were making progress or not.

### **Recommendations to the Task Force**

1. The reviewers are extremely concerned with the slow progress made by the Mozambican authorities; especially with regard to SR III and therefore at the previous Council of Minister's meeting of Aug/Sept 2016 held in Victoria Falls, the Reviewers recommended that a letter be written to the Authorities by the President of the Council to emphasize the concerns of ESAAMLG and the importance of expediting the amendment of the law in order to fully comply with the provisions of SR III, and all other outstanding recommendations.
2. The letter by the President of the Council was dispatched giving Mozambique a **deadline of 31 July 2017** to pass to the amendments to the relevant laws in order to fully comply with the provisions of SR III, and all other outstanding recommendations. The letter also confirmed the recommendation by the Reviewers adopted by the Task Force Plenary that failure by Mozambique to make the necessary amendments by the due date, there will be a High Level Mission sent to Mozambique before the next Council of Minister's meeting in Aug/Sept 2017 to express the same concerns contained in the letter by the President of Council.
3. The High Level Mission took place during the month of August 2017, the report of the Mission is still to be adopted by the Plenary of this Task Force.
4. The Reviewers pointed out to the Authorities that not all outstanding action items are dependent upon the outstanding laws or the action items in the HLM Report, and as such, the Authorities had no good reason not to have made progress in some of the areas recommended by the assessors.

The Mozambican authorities will continue to report bi-annually and only on those recommendations for which they have not made sufficient progress in terms of this report.