



Mutual Evaluation/Detailed Assessment Report

Anti Money Laundering and Combating the Financing of Terrorism

Republic of Botswana

MAIN REPORT

August, 2007

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The AML/CFT Assessment of Republic of Botswana has been undertaken by the World Bank under the FSAP. In line with agreed procedures for ESAAMLG Mutual Evaluations, the Detailed AML/CFT Report and the Executive Summary were adopted by the Task Force of Senior Officials and the Council of Ministers in August 2007.

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DETAILED ASSESSMENT REPORT
ANTI-MONEY LAUNDERING AND COMBATING THE
FINANCING OF TERRORISM

August 24th, 2007

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ABBREVIATIONS

AML/CFT	-	Anti-Money Laundering and Combating the Financing of Terrorism
BCP	-	Basel Core Principles
BoB	-	Bank of Botswana
BOCONGO	-	Botswana Council of Non-Governmental Organizations
BPS	-	Botswana Police Service
BSE	-	Botswana Stock Exchange
BURS	-	Botswana Unified Revenue Service
CDD	-	Customer Due Diligence
CECA	-	Corruption and Economic Crime Act
CEDA	-	Customs and Excise Duties Act
CPEA	-	Criminal Procedure and Evidence Act
CSP	-	Company Service Provider
DCEC	-	Directorate on Corruption and Economic Crime
DNFBP	-	Designated Non-Financial Businesses and Professions
FATF	-	Financial Action Task Force
FI	-	Financial institution
FIU	-	Financial Intelligence Unit
FSAP	-	Financial Sector Assessment Program
FSRB	-	FATF-style Regional Body
FT	-	Financing of terrorism
IAIS	-	International Association of Insurance Supervisors
IFSC	-	International Financial Services Center
KYC	-	Know your customer/client
MAMCA	-	Mutual Assistance in Criminal Matters Act
MDFP	-	Ministry of Finance and Development Planning
MFAIC	-	Ministry of Foreign Affairs and International Cooperation
MOU	-	Memorandum of Understanding
ML	-	Money laundering
MLA	-	Mutual legal assistance
NPO	-	Nonprofit organization
ODPP	-	Office of the Director of Public Prosecutions
PEP	-	Politically-exposed person
PSCA	-	Proceeds of Serious Crimes Act
ROSC	-	Report on Observance of Standards and Codes
SRO	-	Self-regulatory organization
STR	-	Suspicious Transaction Report
UN	-	United Nations Organization
UNSCR	-	United Nations Security Council Resolution

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PREFACE

This assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of the Republic of Botswana is based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT assessment Methodology 2004, as updated in June 2006. The assessment team considered all the materials supplied by the authorities, the information obtained on site during their mission from February 26, 2007 to March 12, 2007, and other verifiable information subsequently provided by the authorities. During the mission, the assessment team met with officials and representatives of all relevant government agencies and the private sector. A list of the bodies met is set out in Annex 1 to the detailed assessment report.

The assessment was conducted by a team of assessors composed of staff of the World Bank. The evaluation team consisted of: Jean Pesme (Team leader); Stuart Yikona and Mark Butler. The assessors reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter and punish money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP). The assessors also examined the capacity, implementation, and effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in the Republic of Botswana at the time of the mission or shortly thereafter. It describes and analyzes those measures, sets out Botswana's level of compliance with the FATF 40+9 Recommendations (see Table 1) and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). The report was produced by the World Bank as part of the Financial Sector Assessment Program (FSAP) of the Republic of Botswana. It was also presented to the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG) and endorsed by this organization on its plenary meeting of August 22nd, 2007.

The assessors would like to express their gratitude to the Bank of Botswana and the other authorities for their support and kind assistance throughout the assessment mission.

EXECUTIVE SUMMARY

Introduction

1. This Report on the Observance of Standards and Codes for the FATF Forty recommendations (2003) on Anti-Money Laundering and the Nine Special Recommendations (2001 and 2004) on Terrorist Financing (FATF 40 + 9) was prepared by a team composed of staff of the World Bank, using the 2004 AML/CFT Methodology.
2. This Report provides a summary of the level of compliance with the FATF 40+9, and provides recommendations to improve compliance with the prevailing context of Botswana. The views expressed in this document are those of the assessment team and do not necessarily reflect the views of the Government of Botswana or the Boards of the International Monetary Fund (IMF) and the World Bank.

Information and methodology used for the assessment

3. In preparing the detailed assessment, World Bank staff reviewed the institutional framework, the laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and designated non-financial businesses and professions (DNFBPs), as well as examined the capacity, the implementation and the effectiveness of all these systems. This Report contains a summary of the AML/CFT measures in effect in Botswana on May 31st, 2007.

Key Findings

4. Botswana has set up the key fundamental components of an AML regime, through various legislative and regulatory instruments, though there are some inconsistencies between these instruments. Notwithstanding the fact that several of these components fall short of meeting the international standards, the key challenge for Botswana is to implement effectively its current regime. The legal and regulatory instruments encompass in particular criminalization of ML, confiscation of proceeds of crime, preventive measures, and suspicious transaction reporting. However, the AML preventive regime does not cover some of the financial activities set out by FATF, nor any of the Designated Non-Financial Businesses and Professions. Transparency issues relating to legal entities, legal arrangements and non-profit organizations are also of concern.
5. Botswana has ratified the United Nations Convention on the Suppression of the Financing of Terrorism but has not criminalized the financing of terrorism. As such, it lacks a legal framework allowing it to effectively fight against terrorist financing. Botswana should expedite the criminalization of terrorism financing and set up an appropriate legal framework

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to enable it to comply with its international obligations in respect of terrorist financing. The country also suffers from some restrictions to Mutual Legal Assistance and administrative forms of international cooperation.

6. The key components of the institutional framework for AML (law enforcement, prosecution, supervisory bodies) are in place. However, only the Central Bank has been enforcing the AML requirements. All actors need more training and enhanced resources to effectively play their role in the AML regime. Fostering domestic coordination and cross-fertilization is also central to achieving greater impact.

7. The priority in the short run should be to significantly enhance the implementation of the current legal framework, which would enable it to better realize its potential. Only then will Botswana be in a better position to address the existing gaps in its AML framework and to customize it to the reality of the threat which it faces. In that respect, recent efforts by the authorities (preparation of a national strategy, set-up of a domestic coordination committee, preparation of draft AML/CFT law¹) are going in the right direction and need to be deepened and enlarged.

Legal Systems and Related Institutional Measures

8. **The Proceeds of Serious Crime Act (PSCA) enacted in 1990 criminalizes money laundering in Botswana. Botswana has ratified the Vienna and Palermo Conventions and implementation meets most of the requirements under these two Conventions.**

Although drafted in a complex way, the offence of money laundering is broadly in line with international standards. All serious crimes – i.e. punishable by imprisonment of not less than two years - are predicate offences for money laundering. The list of predicate offences in Botswana legal system falls slightly short of the list of designated offences defined by the Financial Action Task Force on Money Laundering (FATF), as it does not criminalize participation in an organized criminal group; terrorism and terrorist financing; illicit arms trafficking and environmental crime. Furthermore, a court decision is pending on whether self-laundering can be prosecuted. At present, there is no case law on whether the offence of money laundering is autonomous. The money laundering offence extends to legal persons. Criminal sanctions for money laundering are not considered effective, proportionate and dissuasive. Two prosecutions have been put forward so far though no conviction has been achieved. This raises concerns about the effectiveness of the statute considering that it has been on the books for a long time.

9. **Botswana has ratified the United Nations Convention on the Suppression of the Financing of Terrorism but not criminalized the financing of terrorism.** To comply with its international obligations, Botswana should expedite the criminalization of terrorism

¹ The assessors were informed of the existence of this draft Law, but the authorities decided not to share it with the assessment team.

financing in accordance with its international obligations. It is understood that the authorities are making efforts to implement the requirements of the Convention by enacting legislation in this regard. However, the assessors were not provided with an official copy of the draft legislation and therefore were not in a position to make informed comments on the draft.

10. **Botswana's confiscation framework, under the PSCA and the Criminal Procedure and Evidence Act (CPEA), is broadly satisfactory.** Confiscation is conviction-based, with freezing, seizing or restraining orders being provided for under the CPEA and the PSCA. Effective tools are available to identify and trace property. The confiscation regime has been used with success for offences which are not the proceeds of serious crimes. The use of the freezing, seizing and confiscation powers for the proceeds of serious crime has been limited, making it as a result premature to assess the effectiveness of the existing regime. Botswana is considering creating a civil forfeiture regime.

11. **Although Botswana does not have a legislative or regulatory framework to implement United Nations Security Council Resolutions (UNSCR) 1267 and 1373,** the authorities are disseminating the UNSCR 1267 lists to financial institutions. The authorities should establish an appropriate legislative or regulatory framework for the freezing of terrorist assets.

12. **Botswana has designated an existing agency as the *de facto* Financial Intelligence Unit, but it does not meet the international standard.** The PSCA, the Banking Act and the Banking (AML) Regulations create a suspicious activity reporting regime. The reporting regime is therefore composed of several obligations, some of which create ambiguities in the actual scope of the reporting requirement. The Directorate on Corruption and Economic Crime (DCEC) has so far been designated to receive suspicious transaction reports (STRs), together with the Bank of Botswana. The actual level of reporting remains relatively low, the analysis of STRs too limited and the dissemination is restricted to the DCEC. The DCEC publishes an annual report that includes information on the STRs, but does not provide feedback on typology and money laundering trends. The resources and AML skills of the DCEC are currently insufficient for this agency to fulfill the overall functions of a Financial Intelligence Unit (FIU). The authorities are committed to setting up a full-fledged FIU. The location of the FIU should be determined following a careful review of all the conditions required for an effective FIU (legal framework, operational autonomy, resources, technical capacity, ability to cooperate domestically and internationally).

13. **Investigation and prosecution of the money laundering offence is shared between various investigative agencies which are equipped with the key investigation tools though there is insufficient coordination between these agencies.** Investigations can be conducted by the Botswana Police Service (BPS), the DCEC, and the Botswana Unified Revenue Service (BURS). Prosecutions are led by the Office of the Director of Public Prosecution (ODPP). Law enforcement agencies are empowered with the key tools to conduct effective investigations; however, the number of investigations for money

laundering remains low as the focus of the investigative agencies remains predominately on the predicate offences. This is compounded by the fact that DCEC is currently conducting all money laundering investigations regardless of the predicate offence whereas its mandate is focused on corruption and the cheating of public revenues. This situation creates coordination issues. Money laundering related to other predicate offences needs to be more actively investigated. To this end, Botswana should clarify the mandates of law enforcement agencies to facilitate the better investigation of money laundering.

14. **The Customs and Excise Act creates a declaration of cross-border movements of currency.** However, bearer instruments are not included in this framework. There is no capacity to restrain the funds for a reasonable period of time for the purposes of establishing whether there is evidence of money laundering (ML) or terrorist financing (TF). Positive steps have been taken recently by BURS to raise awareness of the declaration requirement, the implementation of which has been too limited to date.

Preventive Measures – Financial Institutions

15. **The preventive measures are defined in the Proceeds of Serious Crimes Act as amended in 2000, as well as in the Banking Laws and Regulations, but do not cover all the relevant activities and professions.** The PSCA requires a list of entities to comply with anti-money laundering (AML) requirements, defined as designated bodies. Not all the financial activities defined by FATF and provided for in Botswana are covered. Given Botswana's economy, money lenders, money remitters and insurance agents and brokers should be brought under the AML framework as a priority.

16. **The PSCA prescribes that designated bodies should identify their clients, but is silent on the verification requirements.** No other legal instrument has been created under the PSCA to provide more specificity. The level of generality of the know-your-customer requirements, in particular for corporate entities and legal arrangements, as well as the absence of requirement regarding beneficial owners is a significant issue. There is no provision on anonymous accounts and accounts in fictitious names. The PSCA does not set obligations regarding the nature and purpose of the business relationship as well as on-going monitoring. Botswana has not adopted a risk-based approach. The PSCA does not create enhanced requirement for high risk customers, and allows too broad an exemption of all preventive measures when the client of the designated body is another designated body. It also does not provide a framework for introduced business. The absence of regulation under the PSCA, combined with the lack of enforcement by the regulatory agencies of designated bodies other than banks, has not allowed for effective implementation so far.

17. **The Banking Law and the Banking (AML) Regulation set out a more rigorous preventive framework for banks, which addresses several of the weaknesses of the PSCA.** This framework is more stringent on the identification and verification of identity of all categories of clients. Anonymous accounts and accounts in fictitious names are forbidden.

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The obligations on banks include the identification of beneficial ownership, though this concept should be further clarified. For corporate clients, banks must determine the nature and purpose of the business relationship, and monitor it on an on-going basis – a similar obligation is lacking for natural persons. The identification requirements for trusts are too limited. The Banking Act and the Banking (AML) Regulation do not set out enhanced due diligence for high-risk customers. Bank of Botswana has been more active in enforcing the preventive measures. Implementation by commercial banks is more advanced though greater attention is needed for compliance by the statutory banks (state-owned banks).

18. **There are no specific enhanced due diligence requirements on designated bodies and banks for politically exposed persons, foreign or domestic, cross-border correspondent banking relationships or relationships with countries not applying the FATF Recommendations.** Only banks are required to adopt tailored identification measures in the context of electronic banking and non face-to-face business.

19. **Banking secrecy is not an impediment to the fight against money laundering and record-keeping requirements are satisfactory though the requirements for wire transfers are insufficient.** Information is accessible to relevant authorities. The identification requirements for wire transfers services are embedded in the customer due diligence (CDD) framework and are satisfactory, but there is no requirement regarding the circulation of the originator information. In addition, all persons other than banks providing wire transfer services are not covered by the PSCA or the Banking Law and Regulation.

20. **The cornerstone of the suspicious transactions reporting requirement is laid out in the PSCA, with the Banking Act and the Banking (AML) Regulation adding other reporting requirements for banks.** The definition of the reporting requirement for suspicious transactions for banks includes some types of transactions that are of an unusual nature, but there are no explicit requirement relating to unusual transactions; an equivalent is not defined for other designated bodies. The various layers of reporting requirements need to be better articulated, especially as the awareness of the reporting obligations under the PSCA is poor across all designated bodies, including banks. Overall, the STR regime presents a lack of clarity that could be detrimental to the effectiveness of the regime. As Botswana moves towards setting up an FIU in line with international standards, the duality of the reporting obligation for banks (to DCEC and the Bank of Botswana (BoB)) will have to be removed. To date, only banks have been reporting, and the number of STRs is relatively low, given the size and diversity of the financial sector. The exemption of all preventive measures, including reporting, for designated body to designated body relationships is also a significant weakness.

21. **Provisions to forbid tipping-off and to protect the reporting agents and entities against civil and criminal proceedings exist in Botswana.** An ambiguity in the tipping-off provision needs to be lifted once an FIU mandated with the analysis of STR is set up. The confidentiality of the reporting staff should be protected by law.

22. **There is no general feed-back (beyond acknowledgement of the receipt of the report) on STRs.** Specific feed-back, mandated for banks, remains too sporadic.

23. **Designated bodies are required under the PSCA to set up internal controls relevant to AML.** These include the training of officers, managers and employees of designated bodies. The internal control requirements laid out in the Banking (AML) Regulation are more specific and comprehensive, and include the obligation to appoint a money laundering reporting officer. There are no requirements regarding the screening of employees by all designated bodies. Banks are not required to implement AML measures in their foreign subsidiaries or branches, or to report to Bank of Botswana if these face difficulty in implementing effective AML measures. At the moment, the absence of such a requirement is not a concern as Botswana banks do not have branches and subsidiaries overseas.

24. **There are no shells banks in Botswana.** Though there is no requirement for banks to verify that they do not conduct business with shell banks, or that their correspondent banking relationships do not undertake business with shell banks.

25. **Botswana is currently revamping its regulatory and supervisory framework for the financial sector, which could improve enforcement for non-bank financial institutions; the financial sector supervisors have the key legal tools to effectively supervise financial institutions..** A new Regulatory Agency for non-bank financial institutions will soon be set up that will enlarge the scope of regulated financial institutions. This will lead to a division of labor with Bank of Botswana, mainly in terms of regulation of the International Financial Services Center (IFSC). Supervisory tools include fit and proper tests, licensing and registration requirements, on-site inspections, powers of enforcement and sanction. The non-bank financial sector regulators are currently not explicitly mandated to enforce compliance with the AML requirements – as the future Non-Bank Financial Institutions (NBFI) Regulatory Authority will be. Sanctions can be of civil/administrative nature or of criminal nature. Overall, the designation of the authorities to impose these sanctions should be clarified. In addition, the sanctions are not effective, dissuasive and proportionate. The set up of the NBFI Regulatory Authority has the potential to improve the regulatory and supervisory framework, including on market entry.

26. **The overriding issue of the regulatory and supervisory framework is insufficient implementation to ensure compliance of all designated bodies with their AML obligations.** Only Bank of Botswana has taken action in that respect, and has focused on moral suasion to foster compliance. Overall, more resources should be allocated to the regulatory and supervisory authorities, and more in-depth training on AML should be provided. How the IFSC is effectively supervised but the NBFI RA will be key in that respect, as it includes sophisticated financial institutions and services.

Preventive Measures – Designated Non-Financial Businesses and Professions

27. **Designated non-financial businesses and professions are not included in the AML-CFT framework in Botswana at this stage.** The authorities should undertake a review of the ML risk for other professions.

Legal Persons and Arrangements & Non-Profit Organizations

28. **Companies are required to register in Botswana, and to provide information on their directors and shareholdings; information on beneficial ownership is overall not available.** The registration requirements for partnerships and sole proprietorships are more limited. However, the information on beneficial ownership required by law for company registration, or the information to be reported during the life of the company, is in practice not adequate, accurate and current.

29. **Lawyers and accountants are the principal company service providers, but any one can register a company in Botswana.** There are no requirements on the identification of beneficial owners by any corporate service provider.

30. **Trusts are not governed by any statute in Botswana.** Hence, there is no mandatory registration of trusts. Whilst trust deeds can be registered voluntarily, there is no obligation to identify settlors and beneficiaries. This regime does not allow access to adequate, accurate and current information on beneficial owners of trusts.

31. **There is no mandated legal form for non-profit organizations.** Most are set up as Societies, and are required to be registered with the Registrar of Societies. This registration entails due diligence on the office bearers of the society, though this does not amount to a fit and proper test. There are no requirements regarding the transparency of financial resources and funding activities of societies. Botswana has not undertaken a review of its non-profit sector to assess its vulnerability to abuse for the financing of terrorism.

National and International Co-operation

32. **National coordination should be strengthened at both the policy and operational levels.** Cooperation and coordination between the various agencies mainly takes place on a bilateral basis in relation to specific issues or cases. The National AML Committee is a positive step forward but it should have a clearer mandate for policy coordination and should enhance its coordination on policy issues, including by ensuring a better articulation and consistency across the various legal instruments relevant to AML. A significant strengthening of the statistical systems and the dissemination of such statistical data would also enable an improved review of the effectiveness of the AML regime.

33. **Botswana overall has a sound legislative framework for the provision of mutual legal assistance.** It has ratified the international Conventions relevant to terrorism, terrorism financing and money laundering. Implementation of these Conventions is uneven, in particular as far as the fight against terrorism financing is concerned. In that respect, the

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absence of criminalization of the financing of terrorism is a major concern for international cooperation.

34. **Botswana has in practice overcome some of the restrictive conditions to its provision of mutual legal assistance.** The Office of the Director of Public Prosecution has in particular used its discretion to implement with flexibility the dual criminality test for mutual legal assistance. The condition that bilateral arrangements are in place to provide MLA is a concern.

35. **Extradition is subject to a dual criminality test and the existence of bilateral arrangements or designation of countries.** Botswana does not differentiate between its nationals and non-nationals for extradition purposes. The scope of bilateral arrangements and countries designated for extradition purposes is too narrow, and does not include Botswana's non-Commonwealth trade and financial partners. Moreover, in the absence of criminalization of FT, international cooperation in this area would potentially be problematic.

36. **Overall Botswana can provide other forms of international cooperation.** However, the DCEC cannot provide international cooperation, and the Bank of Botswana can only cooperate with other Central Banks (except when it acts as the regulator of the IFSC). The frequency and scope of the provision of other forms of international cooperation seems uneven across the various agencies.

Other Issues

37. **Botswana has not undertaken an assessment of its risk and vulnerability to money laundering.** Statistical information is too fragmented to enable a sound assessment of risk at this stage. Crime seems overall to be gradually rising, with increasing evidence of the involvement of organized crime. The authorities are mobilized to address these developments, but are also confronted with a challenging environment due to its geographic location. Botswana has a good governance reputation and a low crime rate. Whilst this is advantageous, it also creates a vulnerability as criminal may seek to abuse it. Botswana's openness to international financial markets and its efforts to attract more foreign direct investment are also key opportunities for growth, as well as risks. At this juncture, the ML risk seems limited, but it is likely to increase.

38. **Despite being a middle income country, Botswana still faces significant development challenges, particularly given the HIV/AIDS situation. The overall resources and budget constraints make it even more important for Botswana to mobilize efficiently and effectively the resources it can dedicate to AML.** In this overall context, Botswana already has a good legal foundation for its fight against financial crime. The priority in the short run should be to significantly enhance the implementation of this legal framework, which would enable it to better realize its potential. This will also call for more proactive enforcement.

39. **From the results of this, Botswana will be better positioned to address the existing gaps in its AML framework and to customize it to the reality of the threat and of its economic features, in a forward-looking way.** Such a sequenced approach would also allow Botswana to amend and enlarge the scope of its AML framework based on a more informed analysis of the effectiveness of the current one, as well as to improve its overall capacity before setting up a more ambitious one.

40. **Against this background, Botswana's short term priorities, in no particular order, should be :**

- To undertake an in-depth review of the money laundering and terrorism financing risks and vulnerabilities;
- To significantly intensify the implementation of the existing AML framework from the prevention and the detection of money laundering to its prosecution. This will require more active coordination and sharing of information between all parties, as money laundering is by essence a phenomenon calling for an integrated and horizontal response;
- To criminalize terrorism financing and to set up, by law or regulations, all the domestic requirements to comply with its international obligations on terrorism financing;
- To set up, using the current legal provisions, a Financial Intelligence Unit, mandated to receive, analyze and disseminate suspicious transactions reports; and
- To enhance across-the-board the resources and skills related to AML.

41. On this basis, and building on the experience and outcomes of this more proactive implementation, Botswana will be better positioned to undertake a customized revision and a strengthening of its legal and institutional framework to fight money laundering and terrorism financing, and safeguard its reputation.

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DETAILED ASSESSMENT REPORT

1 GENERAL

1.1 General Information on Botswana

42. The Republic of Botswana is a landlocked nation in Southern Africa. Formerly the British protectorate of Bechuanaland, Botswana became independent within the Commonwealth on September 30, 1966. It is bordered by South Africa to the south and southeast, Namibia to the west, Zambia to the north, and Zimbabwe to the northeast.

43. With a per capita GDP of USA \$ 3200, the country is one of the few African states classified as a middle-income country. The economy, closely tied to South Africa's, is dominated by mining (especially diamonds, which account for most of the country's expected GDP growth²), cattle, and a growing tourism industry. Botswana's long-term growth prospects hinge on the success of the structural reform efforts—which intend to diversify the economy away from diamonds— and the combat of HIV/AIDS³.

44. HIV/AIDS infection rate in Botswana is one of the highest in the world⁴, with adult prevalence rate (15-49 age group) of 37.3% (330,000)⁵ in 2004 compared with 38% at the end of 2001. The enormous direct costs of care and treatment are accompanied by the indirect loss to the economy, as well as the devastating human and social effects⁶. It is estimated that the impact of HIV/AIDS, if unchecked, could reduce GDP growth by 1–2 percentage points over the medium term, primarily through lower labor productivity⁷.

45. As of February 2007, Botswana has an estimated population of 1.64 million, with an annual growth rate of -0.04%⁸. The largest ethnic group, Tswana (or Setswana, thus the name of country) accounts for 79% of the population. The rest is comprised by Kalanga (11%), Basarwa (3%), and others including Kgalagadi and Caucasian (7%). The country is mostly Christian (71.6%) according to the 2001 official census. 78.2% of the population speaks Setswana, while other spoken languages include Kalanga, Sekgalagadi and English (official). The capital is Gaborone.

² The Economist Intelligence Unit. *Country Risk Service. Botswana*. October 2006.

³ International Monetary Fund. *Botswana: 2005 Article IV Consultation*. 2006.

⁴ The only country with a higher rate (38.8%) is Swaziland, as of 2004. Source: The Economist Intelligence Unit. *Country Profile 2006. Botswana*.

⁵ The Economist Intelligence Unit. *Country Profile 2006. Botswana*.

⁶ Botswana's Human Development Index has fallen over the past decade from 0.675 in 1990 to 0.589 in 2002 (UN, *Human Development Report 2004*).

⁷ *IMF Country Report No. 04/212*. Available from www.imf.org

⁸ *Botswana: 2005 Article IV Consultation*.

46. Botswana is a multiparty⁹ constitutional democracy, and elections are held every five years—the last one took place in 2004. The government is a parliamentary system in which the elected National Assembly designates the President, who in turn nominates a cabinet formed with assembly members. There is an independent judiciary, as well as an appointed body denominated House of Chiefs, which has a primarily advisory role to the Assembly and no legislative authority—except in those cases dealing with tribal affairs and customary law. The current President is Festus G. MOGAE (first elected in 1998, reelected in 2004 for a second and final term). He has announced his intention to step down in 2008 ahead of the 2009 elections.

47. The 1965 Constitution provides for the protection of the fundamental rights and freedoms of the individual¹⁰. There is freedom of association, worship and expression. An independent judiciary interprets and administers the constitution and other laws. Roman-Dutch law is the common law and criminal law is based mainly on English law. The current hierarchy of Botswana Courts is as follows¹¹: Court of Appeal; High Court; and Magistrate Courts. Customary law cases, mainly in rural areas, are heard by tribal courts associated with village *kgotla* (assembly of elders), the traditional chiefs acting as court presidents. There is also a customary court of appeal. The Customary hierarchy comprises: Customary Court Commissioner; Customary Court of Appeal; and Customary Courts.

48. Botswana's political institutions enjoy broad political legitimacy. While civil society is still weak, people participate and support government structures, and are aware of their civic duties and limits. The government of Botswana enjoys wide acceptance and legitimacy and high levels of trust in key institutions of government¹² are reported. An average of 64% of a 2005 survey respondents say they can trust the following key institutions, arranged from the highest level of confidence to the lowest: army, information, and broadcasting, government press, courts of law, independent press, police, and the Electoral Commission¹³.

1.2 General Situation of Money Laundering and Financing of Terrorism.

49. Over the past five years, the total number of crimes reported within Botswana has been fluctuating around 27,000 cases per annum though this represents a 40% increase from the number of crimes reported in 2000. The predominant crimes are robberies, burglary and theft. This increase in crime is primarily as a result of the internal situation within some of its

⁹ The governing Botswana Democratic Party (BDP) has been in power since independence—currently holding a comfortable majority of the seats in the National assembly. Other political parties include the Botswana National Front (BNF) and the Botswana Congress Party (BCP). (Country Risk Service. Botswana. The Economist Intelligence Unit. October 2006).

¹⁰ *Country Profile 2006. Botswana.*

¹¹ GlobaLex. *Botswana's Legal System and Legal Research.* Available from <http://www.nyulawglobal.org/globalex/Botswana.htm>

¹² Afrobarometer Paper No. 14. *Public Attitudes toward democracy, governance, and economic development in Botswana.* October 2001.

¹³ Ibid.

neighboring countries which demonstrates that Botswana's geographical situation is a significant issue. Botswana is significantly affected by this due to the extensive length of its land borders which are difficult to effectively police and through which a large number of illegal immigrants have come into Botswana.

50. Whilst the majority of crime within Botswana does not generate significant proceeds, there has been a trend for more sophisticated and proceeds generating offences to occasionally occur. The authorities also reported an increase in the level in the organization of criminals. These offences are often cross border related and will involve the smuggling of some commodity. There is some indication of increased drug trafficking being conducted, with cannabis being the predominant drug.

51. Over the recent years, several significant frauds have occurred with the victims being, amongst others, banks and government departments. These cases have often involved collusion of an employee of the victim organization with some cases involving the organization being targeted by the criminal, rather than the offence being committed by a long-term employee.

52. The stringent institutional framework for the mining and subsequent processing of diamonds affords limited opportunity for the organized smuggling of rough diamonds. The few cases of the smuggling of diamonds which do occur, are not suspected by the authorities to be linked to the laundering of criminal proceeds or the funding of terrorism.

53. Botswana enjoys a relatively low level of corruption when compared with the rest of the region, with the number of identified large scale cases being limited. Still, there has recently been a continuing increase in the number of cases being reported and investigated by Directorate on Corruption and Economic Crime (DCEC).

54. The authorities assess that there is a low risk of terrorist activity occurring within Botswana. Nevertheless, there was recognition of the potential for terrorist funding activities to occur within the country.

1.3 Overview of the Financial Sector

55. **General:** Botswana's financial sector, which includes banks, insurance companies and a growing stock market, is one of the more advanced in sub-Saharan Africa, and is characterized by a high level of foreign participation (mainly South African). The sector is supervised by the Bank of Botswana and the Ministry of Finance. Botswana is currently revamping the regulation and supervision of its financial sector, with the creation of a new Non-Bank Financial Institutions Regulatory Authority (NBFIRA).

56. The Bank of Botswana is a member of the Eastern and Southern African Banking Supervisory Group (ESAF), which aims to align banking standards according to best international practices and the SADC Banking Association, which aims to enhance cooperation between member states¹⁴. Banks, insurance & business services constituted 10.2

¹⁴ FIRST Initiative. *General Financial Sector Overview. Botswana.*

percent of GDP in 2006, and has been growing with an average annual rate of 20% over the last decade.

57. At the date of the on-site mission, the supervisory framework was as follows (see section 3.10 of the report for a more detailed description). Bank of Botswana is the supervisor of commercial banks, merchant banks, bureaux de change and Collective Investment Undertakings. It also exercises the supervision of statutory banks (state-owned banks with specific mission and operating under specific legislative frameworks) on behalf of the Ministry of Finance. BoB is also the supervisor of all entites registered under the International Financial Services Center. The Ministry of Finance is the supervisor of insurance companies, and share supervisory responsibilities with the Botswana Stock Exchange. Many entities delivering financial services were not under any supervisory / registration framework at the time of the on-site visit.

58. In December 2006, Parliament of Botswana approved the Non-Bank Financial Institutions Regulatory Authority Bill, which will place the supervision of all non-bank financial institution under one regulatory authority, and amend the supervisory framework for institutions registered under the IFSC. At the time of the on-site visit, NBFIRA was expected to be operational in March 2008.

59. **IFSC:** The government of Botswana is committed to fashioning the country into a financial services hub. *The International Financial Services Center (IFSC)* was created in 1999 to create an environment conducive to the growth of the financial sector by supporting financial institutions and related companies. In 2006, the IFSC has registered 7 new companies, increasing the total number of companies registered to 33. Activities cover a range of sectors, including cross-border banking, investment funds, financial advisory services, ICT services and group shared services, as well as administration. The BOB supervises the activities of IFSC-registered companies. Once the NBFIRA will be set up, the authorities will adopt a new division of labor between the BoB and the NBFIRA for the regulation and supervision of the IFSC, as described in the detailed assessment report (section 3.10).

60. **Banks:** The use of banking services in Botswana, compared with other countries in the region, is high, and greater use is being made of new technologies such as Internet banking¹⁵. The commercial banking sector in Botswana is highly profitable, and there are seven banks, essentially foreign owned (UK, South Africa, India) – six commercial banks and one merchant bank. There are also two statutory banks, which are publicly-owned banks whose activities are dedicated to a specific activity entailing a public good. The public banks are the National Development Bank and the Botswana Savings Bank. There is in addition a “building society”, which is a financial institution, the Botswana Building Society. These three banks are governed by specific legislations, but supervised in practice by Bank of Botswana (see below). Barclays Bank of Botswana is the largest commercial bank in terms of capital, deposit liabilities and outstanding loans. In 2006, total assets and liabilities of commercial banks were

¹⁵ Ibid.

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P 29.3 billion (64.8 % increase compared to 2005). The total asset and liabilities of the merchant bank were P 1,1 billion in 2006, an increase of 24.9 % compared to 2005.

61. The banking sector is supervised by the Bank of Botswana for commercial banks and the Ministry of Finance for the statutory banks. BoB undertakes the examination of statutory banks on behalf of the Ministry of Finance and Development Planning, on the basis of the prudential requirements under the Banking Law (and Regulations)

62. Financial services are also provided by *microlenders*, that fall into three categories - very small informal lending, cash lending and term lending – and *non-governmental organization* that are involved in microlending and the promotion of access to financial services¹⁶. There is one micro-finance institution.

63. In addition to the “classical” micro-lender sector (which does not seem significant from an AML/CFT perspective), there is a very active sector of money lenders, which are currently outside any supervisory framework. Money lenders will be supervised by the NBFi Regulatory Authority. Micro-lenders typically provide “over-draft” services, collateralized by the customers’ wages – hence this is usually short-term lending. The information gathered by the mission indicates that the sector is very active, very competitive and very popular in Botswana. The association of money lenders indicated that 128 money lenders are members of the association, and that based on the information gathered by the association, the stock of such short term loans amounts to 800 million P per year. There is no requirement for micro-lenders to become members of the association; this information is therefore incomplete and partial.

64. There are 42 bureaux de change in Botswana, which are regulated and supervised by the Bank of Botswana. Collective Investment Undertakings are collective fund management companies, currently regulated and supervised by BoB (and will be by the NBFi RA in the future).

65. **Insurance:** Botswana has 13 insurance companies, 5 life-insurance and 8 non-life insurance. The two largest providers, Botswana Life Insurance Ltd and Metropolitan Life of Botswana Ltd, account for 90% of total life insurance premiums. The insurance sector is supervised by the Insurance Unit within the Ministry of Finance¹⁷. At the end of 2006, total assets for the life insurance industry was P 2,234m (US\$ 415m), equal to 8.8% of GDP, and total assets for the short-term (non-life) insurance industry was P 226m (US\$ 42m), 1.0% of GDP. Insurance industry has grown rapidly, but the process is hampered by a lack of investment vehicles in which the firms can manage their funds. Botswana Insurance Fund Managers, a subsidiary of Botswana Insurance Holdings (BIH), which is itself 56% owned by African Life, a South African financial services group, is one of the largest fund managers in the country. Owing to the rapid growth of the Public Officers’ Pension Fund, private pension

¹⁶ *Access to Financial Services in Botswana.*

¹⁷ FIRST Initiative. *General Financial Sector Overview. Botswana.*

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funds assets amount to of P28bn (US\$4.3bn)¹⁸, more than the total deposits held by commercial banks¹⁹.

66. **Pension funds:** Botswana's pension funds have experienced significant growth since 2001, specially the government pension scheme. There were over 100 private pension funds as of 2005²⁰. By 2006, pension fund assets had risen to P29bn – with 81 % of these assets being those of the Botswana Public Officers Pension Fund. Only 58% of these assets were invested offshore—the limit on offshore holdings is 70%—owing to the relatively high interest rates prevailing in Botswana.

67. **Capital markets:** Botswana's capital markets are small and are centered around the Botswana Stock Exchange (BSE), which started as an informal share market in 1989 with six registered companies, and was officially established in 1995, having total market capitalization of P23.8 billion, 77.2% up on end-2005. A total of 31 securities firms were listed on the Botswana Stock Exchange (BSE) as of 2006, 19 domestic and 12 foreign. As of February 2006, domestic companies index (DCI) had 18 companies listed and 8 companies were listed on the foreign index²¹. BSE liquidity is low, and most shares are owned by institutional investors. . BSE plans significant improvement of its working with the set-up of depository and clearing system. There are 3 stock brokers active on the BSE. To further develop the domestic capital market, the government introduced 2, 5, and 12 year bonds in 2003 and the government plans to float additional bonds on the local bourse in the coming year. The sector is supervised by the Botswana Stock Exchange Committee in conjunction with the Ministry of Finance's Banking and Capital Markets Unit. This supervisory arrangement will evolve with the creation of the NBFRI Regulatory Authority.

Structure of financial sector

Name (date)	Number of institutions	Total assets (US\$ million)	Authorized/ Registered and supervised by:
Bank of Botswana (Sep 2006)	1	7,611.06 (47,598.8 P)	Bank of Botswana
Commercial Banks (Sep 2006)	7	5013	Bank of Botswana
Merchant Banks (Sep 2006) <i>Investec Bank & ABC (Pty) Ltd</i>	1	140.06 (875.9 P)	Bank of Botswana
Botswana Building Society (Sep 2006)	1	1,270 mP	MFDP / Bank of Botswana
Botswana Development Corporation Ltd (March 2006)		269.14 (1,683.2 P)	MFDP / Bank of Botswana
Botswana Motor Vehicle Accident	1	197.72 (1,206.2P)	MFDP

¹⁸ 64 % of these assets – that do not include the old Government pension scheme for civil servants that didn't transfer their assets – are invested off-shore.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Botswana Stock Exchange. www.bse.co.bw

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Fund (2005)			
Botswana Savings Bank (March 2006)	1	304 mP	MFDP / Bank of Botswana
Hire Purchase Finance and Leasing Companies (June 2001)	?		
National Development Bank (march 2006)	1	753 mP	Bank of Botswana
Investment companies			
Collective investment undertakings	3	2426	Bank of Botswana
Life insurance companies & occupational pension funds	5 life insurance companies; 115 pension funds	415 (2,234 P)	MFDP
Company pension funds²²	?	655.59 (4,100 P)	MFDP
Insurance brokers and agents	120 corporate insurance agencies and 32 insurance brokers		MFDP
Foreign Exchange (bureaux de change)	43		Bank of Botswana
Money Transmitters			Not supervised
Leasing and factoring	29.28 (182.3 P) ²³	MFDP	Ministry of Trade and Industry
Postal services			

Source: Bank of Botswana. These are as at December 31, 2006.

²² As of December 2001. Source: *Access to Financial Services in Botswana*.

²³ Figure as of June 2001

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68. The following table sets out the types of financial institutions that can engage in the financial activities that are within the definition of “financial institutions” in the FATF 40+9.

FINANCIAL ACTIVITY BY TYPE OF FINANCIAL INSTITUTION			
Type of financial activity (See the Glossary of the 40 Recommendations)	Type of financial institution that performs this activity	Regulator & supervisor currently	Regulator & supervisor after the set up of the NBFI RA
1. Acceptance of deposits and other repayable funds from the public (including private banking)	1. Banks 2. Savings Institution	1. Bank of Botswana 2. Bank of Botswana	1. Bank of Botswana 2. Bank of Botswana
2. Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))	1. Banks 2. Credit cards companies 3. Factoring and finance/consumer credit companies 4. micro-lenders	1. Bank of Botswana 2. Bank of Botswana 3. 4.	1. Bank of Botswana 2. Bank of Botswana 3. 4. NBFI RA
3. Financial leasing (other than financial leasing arrangements in relation to consumer products)	1. Banks 2. Leasing companies	1. Bank of Botswana 2	1. Bank of Botswana 2
4. The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds)	1. Banks 2. Money remitters	1. Bank of Botswana 2.	1. Bank of Botswana 2. NBFI RA
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	1. Banks 2. Credit cards companies (in Botswana credit cards are issued by commercial banks only) 3. Electronic money institutions	1. Bank of Botswana 2. Bank of Botswana 3. Bank of Botswana, to the extent of commercial banks only	1. Bank of Botswana 2. Bank of Botswana 3. Bank of Botswana, to the extent of commercial banks only
6. Financial guarantees and commitments	1. Banks	1. Bank of Botswana	1. Bank of Botswana
7. Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading	1. Banks 2. Investment companies	1. Bank of Botswana 2.	1. Bank of Botswana 2. NBFI RA

FINANCIAL ACTIVITY BY TYPE OF FINANCIAL INSTITUTION			
Type of financial activity (See the Glossary of the 40 Recommendations)	Type of financial institution that performs this activity	Regulator & supervisor currently	Regulator & supervisor after the set up of the NBFIRA
8. Participation in securities issues and the provision of financial services related to such issues	1. Banks 2. Investment companies	1. Bank of Botswana 2.	1. Bank of Botswana 2. NBFIRA
9. Individual and collective portfolio management	1. Banks 2. Investment companies 3. Collective Investment Undertakings	1. Bank of Botswana 2. 3. Bank of Botswana	1. Bank of Botswana 2. NBFIRA 3. NBFIRA
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	1. Banks 2. Investment companies 3. Investment management companies.	1. Bank of Botswana 2. 3.	1. Bank of Botswana 2. NBFIRA 3. NBFIRA
11. Otherwise investing, administering or managing funds or money on behalf of other persons	1. Banks	1. Bank of Botswana	1. Bank of Botswana
12. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers))	1. Life insurance companies 2. Lateral pension funds 3. Life insurance agents and brokers	1. MFDP 2. MFDP 3. MFDP	1. NBFIRA 2. NBFIRA 3. NBFIRA
13. Money and currency changing	1. Banks 2. Foreign exchange offices	1. Bank of Botswana 2. Bank of Botswana	1. Bank of Botswana 2. Bank of Botswana

1.4 Overview of the DNFBP Sector

69. **Casinos:** Casinos in Botswana are regulated by the Department of Trade and Consumer Affairs, pursuant to the Casino Act. All casinos are required to be licensed by the Casino Control Board, which will scrutinize the applicant's background and capacity to properly run a casino. There are currently 10 licensed casinos, which had a total gross revenue of P90 million (US\$15 million) in the year ending 2006²⁴. Only two casinos operate gaming tables with the remainder operating only slot machines. Both the casinos with gaming tables are subsidiaries of South African casinos.

70. The authorities indicated there are no known internet casinos in Botswana.

71. **Real estate agents:** In accordance with the Real Estate Professionals Act, real estate professionals are supervised by the Real Estate Institute of Botswana. The institute was established to ensure quality standards within the industry after many instances of fraud were reported in the mid-1990's. Legislation was passed in 2003, which requires real estate agents

²⁴ Casino Control Board – Annual Report and Audited Accounts, Year Ending March 31, 2006.

to be registered by the institute and there are now over 200 registered real estate agents in Botswana. Despite regulations still needing to be issued concerning the Act, the law is currently in effect. The institute does have a code of conduct and failure to comply with the code can lead to deregistration.

72. Whilst the majority of real estate transactions conducted involve financing from banks and building societies, about one fifth are conducted using cash. The conveyancing of a property is required to be performed by a qualified legal practitioner in accordance with the Deeds Act and the financial transaction is normally conducted through the legal practitioner's trust account. However real estate agents also have trust accounts to manage any deposit which is required for the purchase. It is estimated that approximately 2% of transactions handled by real estate agents involve cash deposits.

73. **Dealers in Precious Metals and Stones** : In addition to being the world's largest producer of rough diamonds (34.3 million carats in 2006, worth over US\$3 billion) , Botswana also has significant deposits of copper, nickel, cobalt, gold, soda ash and coal.. The mining of these natural resources amounts to about 55% of the Government's revenue. Mining of minerals is regulated by the Mines and Minerals Act which is administered by the Department of Mines, under the Ministry for Minerals, Energy and Water Resources. The Mines and Minerals Act establishes licensing over the exploration and mining for precious stones and metals. There are currently 33 companies involved in both the metal and diamond exploration and mining industries in Botswana²⁵.

74. The diamonds within Botswana are kimberlitic, rather than alluvial, meaning that mining techniques need to be used to harvest them. Presently, all diamond mining is conducted by Debswana, a joint venture between the Government of Botswana and the De Beers Group. Stringent security is in place at all the diamond mines with the extraction process being automated to reduce human intervention.

75. In addition to the legislative control over the mining of the minerals, there is specific legislation concerning extracted precious metals and stones, namely the Unwrought Precious Metals Act, the Precious and Semi Precious Stones (Protection) Act and the Diamond Cutting Act. These laws require that all exports and imports conducted by licensed persons and there are offences for the possession of rough precious stones and unwrought precious metals without a permit.

76. The decision of the Government to permit the setting up of the diamond cutting and polishing industry will introduce new actors to the diamond sector which will increase the supervisory burden upon the government.

77. Botswana is one of the founding members of the Kimberley Process Certification Scheme, which is a process designed to certify the origin of diamonds from sources which are free of conflict. The scheme, which is encouraged by the United Nations, requires

²⁵ The MBendi website. <http://www.mbendi.co.za/indy/ming/af/bo/p0005.htm#10>

participating governments to ensure that each export or import of rough diamonds is strictly monitored and is accompanied by a certificate from the country of origin. In 2006, the Government of Botswana held the chair of the committee of the members of the Kimberley Process.

78. There is limited retail sale of precious metals and stones which is primarily due to the reasonably low income levels of the average citizen. There is no association for precious metal and stone retail dealers.

79. **Lawyers, notaries, and other independent legal professionals:** Lawyers within Botswana are required to be admitted as legal practitioners in accordance with the Legal Practitioners Act. Legal practitioners include advocates, attorneys, notaries and conveyancers, where notaries or conveyancers are attorneys with specific qualifications to be a notary public or a conveyancer.

80. The Law Society of Botswana is established under the Legal Practitioners Act. It administers the qualification of lawyers and recommends to the High Court of Botswana to admit a lawyer to be listed on the roll of legal practitioners. It also establishes the code of conduct and after a hearing of the disciplinary committee, it can recommend to the High Court to strike a practitioner from the roll.

81. There are presently 196 legal practitioners within Botswana, with the majority of them being associated with small law firms. In addition to doing criminal and civil work, legal practitioners provide conveyancing services as well as services relating to the creation, operation and management of trusts and companies, for which they may act as nominee shareholders or directors. They are not normally involved in management or sale and purchase of client assets, beyond real estate.

82. **Accountants:** Accountants within Botswana perform a variety of activities including auditing, provision of taxation advice, the creation, operation and management of trusts and companies, for which they may act as nominee shareholders or directors as well as traditional accounts work. A limited amount of investment advisory work is done for clients.

83. The regulatory authority for accountants is the Botswana Institute of Accountants which is established under the Accountants Act. At present, whilst there are 450 accountants who are members of the institute and which are subject to its disciplinary code. There are 40 auditors practicing within Botswana and nearly 20 accountancy firms with the big four accountancy companies being represented. The ROSC assessment of the accounting and auditing practices in 2006 identified some weaknesses in the self regulatory framework and as a consequence, a revised Accountants Act is being drafted.

84. **Trust and Company Service Providers:** There are numerous trust and company service providers within Botswana which are not associated with law or accountancy firms. There is no regulatory body for these institutions.

1.5 Overview of commercial laws and mechanisms governing legal persons and arrangements

85. The types of legal persons and legal arrangements that exist in Botswana include companies, partnerships, sole proprietorships, societies and trusts.

86. **Companies:** Companies are regulated by virtue of the Companies Act. There are three types of legal persons: a company limited by shares with the word proprietary (Pty) before limited is a private company; a company limited by guarantee in which the members agree to contribute to the assets of the company in event of winding up; and public companies. All companies must apply to the Registrar of Companies to operate in Botswana. The person registering a company must submit details of the proposed company name; type of company; registered head office; names of director and company secretary; and share structure. Companies can be owned by two or more shareholders which can be either natural or legal persons. However, directors have to be natural persons. Nominee directorship is permitted under Botswana law. As at December 2006 there were 62,000 companies registered in Botswana.

87. **Partnerships and Sole Proprietorship:** There is no requirement for their registration. The only requirement is for partners and proprietors to register their business names and there is no further registration requirement. Partnerships and Sole Proprietorships are legal arrangements.

88. **Societies:** The Societies Act requires that societies register with the Registrar of Societies. There are required to submit a copy of their constitution and rules and a list of the names, addresses and signatures of the office bearers. Non-profit organizations can be societies, trusts or companies.

89. **Trusts:** Trusts can be created and are allowed in Botswana. They can be created by any instrument such as a deed or a will. However, there is no legislative or regulatory framework governing the administration of trusts and as such, there is no mandatory registration. Registration of trust is done on a voluntary basis with the Registrar of Deeds. There are currently 664 trusts registered in Botswana.

1.6 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

90. In line with the ESAAMLG strategy for member countries to develop a national AML/CFT strategy, the National Anti-Money Laundering Committee (NAMLC), which is chaired by a representative of the Ministry of Finance and Development Planning and has members from Ministry of Foreign Affairs and International Cooperation, Bank of Botswana (BoB), Office of the Director of Public Prosecutions (ODPP), Attorney General's Chambers (AG's Chambers), Botswana Police Service (BPS), Directorate on Corruption and Economic Crime (DCEC), Botswana Unified Revenue Service (BURS) and Botswana Immigration Service, drafted a national strategy in 2005 but to date, it has not been submitted to the Cabinet for approval. The draft strategy, which is currently being revised for submission to

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Cabinet, acknowledges the absence of legislation concerning terrorist financing, the need to formally create an FIU and to generate awareness. It cites the following areas for action :

- a. Legislation
 - i. To enhance AML and develop CFT
 - ii. To develop an Asset Forfeiture (Civil Forfeiture) Act
 - iii. To develop legislation that will establish the Financial Intelligence Unit
- b. Strengthen Institutional Framework
 - i. Training of stakeholders.
- c. Awareness Raising
 - i. Establish a strong relationship with the stakeholders through public education and awareness campaign.

91. The draft strategy also raises the issue of “developing policies and procedures for AML/CFT risk identification, measurement and monitoring.”

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

92. **National Anti-Money Laundering Committee:** The NAMLC, which is chaired by the Ministry of Finance and Development Planning (MFDP), was established in 1999 and was reformed in 2004, with the current members being : MFDP; Ministry for Foreign Affairs and International Cooperation (MFAIC); BoB; DCEC; BPS; BURS; and, Botswana Immigration Service. The committee, which is not established pursuant to any legal provision, meets on a quarterly basis and seeks to address policy issues relating to Botswana’s AML/CFT framework.

93. **Ministry of Finance and Development Planning:** Within portfolio of the Ministry of Finance and Development Planning are the responsibilities for formulating policy and conducting oversight on all matters relating to the non-bank financial sector, including AML/CFT issues. The insurance, pensions and securities supervisors report to the Ministry. Furthermore, the NBFIR Regulatory Authority which is due to be formed in 2007 will also come under this Ministry.

94. **Bank of Botswana:** The BoB is established in accordance with the Bank of Botswana Act and is currently responsible for the supervision of banks, bureaux de change, collective investment undertakings and institutions operating within the International Financial Services Centre. The BoB employs a total of 580 staff with the Banking Supervision Department, which is responsible for AML/CFT matters on behalf of BoB, having an establishment of 48, though currently only 39 positions are filled. The passage of the Non-Banking Financial Institutions Act in December 2006 creates the Non-Bank Financial Institution Regulatory Authority which is intended in 2007 and will assume responsibility for supervision of insurance companies, securities companies, collective investment undertakings and Non-

Banking Financial Institutions (NBFI) operating within the International Financial Services Centre.

95. **Office of the Director of Public Prosecutions:** Pursuant to Section 51A of the Constitution and Section 7 of the CPEA, the Office of the Director of Public Prosecutions (ODPP) is responsible for the prosecution of any offence under the laws of Botswana. Prior to the establishment of the position of DPP under the Constitution in 2005, the power to appear before the courts for the prosecution was delegated in some instances, mainly in relation to minor cases, to the BPS and DCEC. The ODPP is progressively assuming the responsibility to represent the State of Botswana in court in all instances, in line with increasing staffing levels.

96. **Attorney General's Chambers:** The AG Chambers is responsible for the provision of all legal advice for the Government. As a result, no department, ministry or BoB has in-house lawyers, with the exception of MFDP and DCEC. Furthermore, none of the lawyers are specialized.

97. **Directorate on Corruption and Economic Crime:** The DCEC, which is headed by the Director who is appointed by the President, was established in 1994 in accordance with the CECA to conduct the investigation of corruption and economic crime offences. The Director reports to the Minister for Presidential Affairs and Public Administration. It currently has 144 positions, with 60 of those being assigned to the investigation department. On occasions, DCEC also prosecuted cases, when there was a capacity issue with the ODPP. The authorities stated that DCEC had been given the mandate to conduct any money laundering investigation.

98. **Botswana Police Service:** The BPS is established pursuant to the Police Act which was passed in 1974. Its duties and functions are set out in Section 6(1) which include amongst other things to prevent and detect crime, and to bring offenders to justice. It currently has approximately 7,000 staff. The headquarters investigative arm of the police, Criminal Investigations Department (CID), which is headed by the Director of CID, comes under the Deputy Commissioner Operations, and is responsible for the investigation of serious crimes within Botswana and providing support services to the divisional CID teams. The Fraud Squad, which is under the Serious Crime Squad, is the unit within BPS which conducts money laundering investigations.

99. **Botswana Unified Revenue Service:** The BURS was created in August 2004 as a semi-autonomous government body, following the commencement of the Botswana Unified Revenue Service Act, which brought together the former Customs and Excise Department and the Department of Taxes. BURS has responsibility for the assessment and collection of tax and excise duties. The work includes, amongst other activities, the performance of measures required to counteract tax fraud and other forms of tax evasion.

c. Approach concerning risk

100. Botswana does not adopt a risk based approach in relation to AML/CFT though the draft strategy raises the intention to introduce policies and procedures for AML/CFT risk identification, measurement and monitoring

d. Progress since the last IMF/WB assessment or mutual evaluation

101. Botswana has not been subject to a mutual evaluation previously.

102. Botswana received technical assistance in 2002. The technical assistance needs assessment was conducted with reference to the 2002 Methodology but was not a full fledged assessment. The authorities agreed that this confidential document be shared with the assessors.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalization of Money Laundering (R.1 & 2)

2.1.1 Description and Analysis²⁶

103. **Legal Framework:** Section 14 and 15 of the PSCA; Section 21-23 of the Penal Code; and Section 3 of the CPEA.

104. **Criminalization of Money Laundering (c. 1.1 - Physical and Material Elements of the Offence):** Under section 14 of the PSCA a person is “deemed” to commit the offence of money laundering by, (a) engaging directly or indirectly in a transaction that involves money, or any other property that is proceeds of a serious offence or “some sort of unlawful activity”; or (b) receives, possesses, conceals or brings into Botswana, any money or property that is the proceeds of a serious offence. In addition, section 15 of the PSCA complementing section 14, provides for the concealment and disposing of money or property that is the proceeds of a serious offence. Concealment under sub-section (2) of section 15 includes disguising the nature, source, location, disposition, movement, ownership or any rights with respect to money or property. Moreover sub-section (2) further stipulates that disposing of money or property includes converting, transferring or removing such money or property as well as providing counsel or assistance in relation to disposing, converting, transferring or removing such money or property. However, although the provisions in sections 14(1)²⁷ and 15(1)²⁸ contain the essential elements of a ML offence, there are drafted in such a way as to create the potential for ambiguity. For example, as discussed below under criterion 2.2 (the mental element of the ML offence), the standard articulated in the two provisions is different even though the physical elements are similar if not the same. Although the authorities attempted to provide an explanation of this dichotomy, it is not clear to the assessors whether there is any substantive difference between these two provisions, all the more as there is no difference between the sanctions for the two provisions.

105. **The Laundered Property (c. 1.2):** The offence of money laundering extends to any type of property derived directly or indirectly from a serious offence or unlawful activity. It extends to property whether located in Botswana or outside Botswana. Pursuant to section 3 of the Criminal Procedure and Evidence Act (CPEA), property includes all types of property movable or immovable,

²⁶ Note to assessors: for all Recommendations, the description and analysis section should include the analysis of effectiveness, and should contain any relevant statistical data.

²⁷ “For the purposes of this section, a person shall be deemed to engage in money laundering if he engages, directly or indirectly, in a transaction that involves money, or other property, that is the proceeds of a serious offence, whether committed in Botswana or elsewhere, or if he receives, possesses, conceals, disposes of, or brings into Botswana, any money, or other property that is the proceeds of a serious offence, whether committed in Botswana or elsewhere, and the person knows, or ought reasonably to know, that such money or other property is derived or realised, directly or indirectly, from some sort of unlawful activity”

²⁸ “Any person who receives, possesses, conceals, disposes of or brings into Botswana any money, or other property, that may reasonably be suspected of being proceeds of a serious offence, shall be guilty of an offence and liable, if he is an individual, to imprisonment for a term not exceeding three years or to a fine not exceeding P10 000, or both, or if the offender is a body of persons, then, every person who at the time of the commission of the offence was a director, manager or partner of such body, shall be liable to a fine not exceeding P25 000.”

money and extends to any proceeds acquired as a result of the conversion or exchange of the original property.

106. **Proving Property is the Proceeds of Crime (c. 1.2.1):** There is no explicit provision in the PSCA or elsewhere which would make it necessary that a person be convicted of a predicate offence to establish that the property is the proceeds of crime.

107. The authorities stated that in practice, it is not necessary for a person to be convicted of a predicate offence to prove the property is the proceeds of crime. There is currently no case law on this point.

108. **The Scope of the Predicate Offences (c. 1.3):** The predicate offences for money laundering cover offences under the Penal Code and other laws criminalizing various offences and include the majority of the designated offences as mentioned in the FATF Recommendations. These offences fall within the definition of ‘serious offences’ under the PSCA. However, the predicate offences provided for under Botswana’s law, do not cover: participation in an organized criminal group; terrorism and terrorist financing; kidnapping and hostage taking; and environmental crime.

Table: Designated Category of Offences

Designated Category of Offences	Relevant Law and Specific sections
Participation in an organized criminal group	This is not criminalized under any law.
Terrorism, including terrorism financing	This is not criminalized under any law.
Trafficking in human beings and migrant trafficking	S. 250 -262 of PC
Sexual exploitation (including of children)	S. 149, 151 & 152 of PC
Illicit trafficking in narcotic drugs	S. 16 of Drugs & Related Substances Act
Illicit Arms Trafficking	This is not criminalized under any law.
Corruption and bribery	S. 24-30, 32 of CECA, and S. 99 of PC
Illicit trafficking in stolen and other goods	S. 317-320 of PC
Fraud	S. 129, 324 of PC
Counterfeiting currency	S. 360, 362 of PC
Counterfeiting and piracy of products	Section 62 of PC
Environmental crime	This is not criminalized under any law.
Murder, grievous bodily injury	S.200-211, 230, 246-249 of PC
Kidnapping, illegal restraint and hostage taking	S. 250-262 of PC
Robbery or theft	S. 264-293 of PC
Smuggling	S. 97 of PC
Extortion	S.100, 296 of PC
Forgery	S. 341-342, 345-347 of PC
Piracy	Section 62 of PC
Insider trading and market manipulation	S. 70 of the BSE Act

109. **Threshold Approach for Predicate Offences (c. 1.4):** Botswana has adopted a threshold approach to covering predicate offences. Accordingly, serious offences are those that are punishable by

imprisonment of not less than 2 years. To convict a person, the prosecutor must show that proceeds of a serious offence were involved and that the person knew or should have known that there were proceeds of some unlawful activity. Moreover, an offender need not know that they were proceeds of a serious offence (that is conduct of 2 years or more), only that there were proceeds of an unlawful activity. Thus this drafting makes proving an offense easier and lessens the burden for the prosecutor to an element which could be very difficult to prove.

110. **Extraterritorially Committed Predicate Offences (c. 1.5):** Under section 14(1) of the PSCA, a serious offence extends to those committed outside Botswana. The offences extend to those committed overseas, that if they had occurred in Botswana would have constituted an offence under the criminal or other applicable laws of Botswana.

111. **Laundering One's Own Illicit Funds (c. 1.6):** The provisions criminalizing money laundering do not explicitly provide for prosecuting an accused person for both the predicate offence and money laundering. The authorities however advised that such a prosecution is permissible under Botswana law. In supporting this assertion, the assessors were provided with the case of the **State v. L.T. Mothusi & Others (2004)** involving two prominent lawyers who opened fictitious client files and forged cheques which were deposited in a Trust account purportedly by the fictitious clients of the two lawyers. The cheques were cleared and credited to the Trust accounts. The money was then transferred to other corporate accounts of associates and then withdrawn and shared among the syndicate, which used the money to purchase luxury cars. The two lawyers were charged with the predicate offence of forgery and money laundering. The case was brought before the court in 2004 and the charge was challenged at that time by the defence on the grounds that it was duplicative. However, a ruling on this specific subject matter is pending. No explanation was given as to why there has been such a long delay by the court.

112. It is therefore an open question of whether prosecuting someone for laundering of one's own illicit proceeds is possible especially that there is no explicit provision to this effect under the PSCA or any other law.

113. **Ancillary Offences (c. 1.7):** Sections 21-23 of the Penal Code creates ancillary offences to money laundering. Specifically, it provides for aiding, abetting, counseling or procuring another person to commit an offence. This also extends to conspiracy.

114. **Additional Element - If an act overseas which does not constitute an offence overseas, but would be a predicate offence if occurred domestically, lead to an offence of ML (c. 1.8):** There is no specific provision permitting the prosecution of money laundering for a predicate offence which if it was conducted overseas in a country that did not criminalize the act, but which would have constituted an offence had it occurred in Botswana.

115. **Liability of Natural Persons (c. 2.1):** The offence of money laundering applies to natural persons as provided for under sections 14 and 15 of the PSCA. The liability applies to a person that "knows, or ought reasonably to know, that such money or other property is derived, directly or indirectly, from some sort of unlawful activity." See above discussion concerning the criminalization of money laundering.

116. **The Mental Element of the ML Offence (c. 2.2):** The mental elements of the money laundering offence have a subjective and an objective standard. The mental element can be satisfied by proving that a person had actual knowledge or ought reasonably to have known that proceeds were proceeds of a serious offence (section 14(1)). Thus, the PSCA provides for the objective standard of “ought reasonably to know”. On the other hand under section 15(1), there are occasions at which the mental element is established by making an inference from the facts the liability of a person if the accused ‘reasonably suspected’. The standard of ‘reasonable suspicion’ is lower or appears to be lower than that required under section 14. The authorities advised that under Botswana’s criminal justice system the concept and principle of establishing the mental element is both subjective and inferential. The authorities advised this concept is applied in court on a regular basis.

117. In addition to the classical subjective and objective standards, section 15(3) of the PSCA provides for another standard for establishing the mental element. This is by way of presumption, i.e., presuming knowledge of an accused person upon the prosecution satisfying the court of that person’s guilt. It specifically provides that “where it is proved to the satisfaction of the court that a person has engaged in the act of money laundering...it shall be presumed that the person so knew or believed.” In such a case, the evidentiary burden shifts to the accused person to rebut the presumption. However, this burden unlike the burden for the prosecution, is not beyond a reasonable doubt. The authorities provided the assessors with the decision of the Court of Appeal of Botswana in **Mompoti Otlhomile v. The State (2003)** holding that “the words ‘*unless the contrary is proved*’ clearly cast some responsibility upon the opposing party to adduce evidence to the contrary but once the accused person has done so the onus of proving that the accused committed an offence under...still lies on the prosecution...what the section ...means is that proof that a person was in possession of stock...is *prima facie* evidence.”

118. From the provisions in section 14 and 15, it is the case that the standard required for the mental element is not the same. Section 14 provides a higher threshold than section 15. The requirement under section 15 is ‘may reasonably suspect’ while under section 14 the threshold is ‘ought reasonably to know’. Consequently, in choosing under which section to charge or prosecute an accused person, securing a conviction under section 15 is more likely than section 14, all the more as there is a presumption in section 15(3). As a result it is still not clear to the assessors what the ultimate goal is of section 14, given that the sanctions for both Sections 14 and 15 are the same, and that all situations captured under Section 14 would also be captured under Section 15. Notwithstanding the assessors doubt regarding the utility of Section 14, the assessors are satisfied that the mental element of the offence of money laundering complies with the international standards.

119. **Liability of Legal Persons (c. 2.3):** The offence of money laundering applies to legal persons as provided for in section 14(2) and 15(1) of the PSCA. In addition section 24 of the Penal Code provides for offences by corporations, non-profit organizations and other legal entities.²⁹ The Penal Code provides the physical and mental elements of corporate liability.

²⁹ The two provisions in the PSCA provide as follows: “a person who engages in money laundering shall be guilty of an offence and shall be liable...if a body of persons...a fine of P25,000.” Section 24 of the Penal Code provides as follows: “where an offence is committed by any company or other body corporate, or by any society, association or body of persons, every person charged with, or concerned or acting in the control or management of the affairs or activities of such company...shall be guilty of that offence and liable to be punished...”

120. **Liability of Legal Persons should not preclude possible parallel criminal, civil or administrative proceedings (c. 2.4):** The authorities advised the mission that prosecution of legal persons does not preclude other parallel civil or administrative proceedings. Section 22(4) of the Public Service Act provides that parallel proceedings are not precluded where there is a criminal proceeding against an individual.

121. **Sanctions for ML (c. 2.5):** The threshold of sanctions that can be imposed for money laundering is provided for in the PSCA only, while that for predicate offences generating proceeds of crime is created in the Penal Code and other criminal related statutes. The PSCA provides for imposition of fines ranging from P2,000 (US\$333) to P25,000 (US\$4,166) and imprisonment for a term not exceeding 3 years. From a predicate offence perspective, the Penal Code imposes prison terms of imprisonment for the designated offences of an average of 7 years.

122. In reviewing the monetary penalty and term of imprisonment imposed for ML within the context of Botswana as well as from a regional perspective, the sanctions are not adequate, proportionate and dissuasive. The authorities acknowledged the sanctions regime needs to be strengthened. It can be argued for example under the current system, there is an incentive for the authorities to prosecute a predicate offence rather than ML.

123. **Analysis of Effectiveness:** Despite the fact that the PSCA has been in existence since 1990, there have been few ML prosecutions or convictions under the PSCA. Indeed, it has only been in the very recent years that 2 cases have been brought under the PSCA. Even the 2 cases cited are in their early stages with 1 case being the subject as mentioned above of a preliminary procedural challenge. Given the fact that section 15 gives the prosecution more flexibility with the shifting of the evidentiary burden of proof to the accused person, it is not clear to the assessors why more ML prosecutions have not been brought under the PSCA especially with the long history of the statute.

124. The Botswana criminalization of ML framework is generally in line with international standards and the material elements are consistent with the Vienna and Palermo Conventions. However, there is no effective implementation and systematic enforcement of the PSCA and several predicate offences are not covered under Botswana law.

125. **Statistics (applying recommendation 32):** There is no systematic mechanism for the collection of statistics on investigations, prosecution and conviction of ML cases.

2.1.2 Recommendations and Comments

126. The authorities should consider:

- Establishing offences under Botswana law for participation in an organized criminal group; terrorism and terrorist financing; illicit arms trafficking; kidnapping and hostage taking; environmental crime; and smuggling, and making such offences predicate offences for ML.
- Ensuring, through accepted practice or procedure that property can be established as proceeds even in the absence of the conviction of some person for a predicate offence and that a person can be convicted of both a predicate offence and of ML
- Strengthening the sanction regime by increasing the monetary penalty and length of imprisonment that can be imposed.

- Providing for a systematic mechanism for the collection of on investigations, prosecution and conviction of ML cases.

2.1.3 Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating ³⁰
R.1	PC	<ul style="list-style-type: none"> ▪ The scope of offences is not wide and excludes several serious offences. ▪ No conviction for both a predicate offence and ML, nor that property can be established as proceeds even in the absence of a conviction. ▪ The ML framework has not been effectively implemented.
R.2	PC	<ul style="list-style-type: none"> ▪ The sanctioning regime is not effective, dissuasive and proportionate.

2.2 Criminalization of Terrorist Financing (SR.II)

2.2.1 Description and Analysis

127. **Legal Framework:** There is no legislative or regulatory framework for the financing of terrorism. Botswana has ratified the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism (see discussion under Section 5.2 ‘Conventions and UN Special Resolutions’) but has not implemented its requirements.

128. There are no provisions for the criminalization of financing of terrorism and the financing of terrorism being a predicate offence for money laundering. Consequently, issues pertaining to the jurisdiction for FT, the mental element of the FT, the liability of legal persons and the sanctions for FT have not been addressed.

129. However, Botswana has ratified all the 12 conventions relating to terrorism and terrorist financing.

2.2.2 Recommendations and Comments

130. The authorities should consider:

- criminalizing FT
- fully implementing all the provisions of the SFT Convention

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	NC	<ul style="list-style-type: none"> • FT has not been criminalized. • Provisions of the SFT Convention have not been implemented.

³⁰ These factors are only required to be set out when the rating is less than Compliant.

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

2.3.1 Description and Analysis

131. **Legal Framework:** Sections 3-11, 18-19 & 21 of the PSCA; Sections 56-58 & 319(2) of the Criminal Procedure and Evidence Act; Sections 37-38 of CECA; and Section 30 of the Penal Code. There is no framework for FT (see discussion under Section 1.4 'Freezing of funds used for Terrorist financing').

132. **Confiscation of Property related to ML, FT or other predicate offences including property of corresponding value (c. 3.1):** The confiscation, freezing and seizure of proceeds of serious offence is primarily covered by the PSCA and the CPEA, and secondarily by the Penal Code. The PSCA and CPEA provides for conviction based confiscation of the proceeds of serious offences. Section 3 of the PSCA provides for the confiscation of property of persons convicted of a serious offence or if a person was convicted of more than one offence in respect of all the serious offences. Confiscation covers all the proceeds of a serious offence obtained as a result of the commission of an offence or through aiding, abetting or counseling the commission of an offence. Specifically, the DPP can obtain a confiscation order or a pecuniary order.

133. With respect to a confiscation order, under section 4 of the PSCA, the court has the power to order the confiscation of property that is the proceeds from a serious offence. In addition, under section 319 of the CPEA, the confiscation power extends to an instrument that was used in the commission of an offence (see discussion below on provisional measures citing case authority on this subject). In making a confiscation order after conviction of the defendant, there is a presumption under section 4(2) of the PSCA that any property held by a defendant within a period of 5 years prior to the date of conviction may be connected to the offence for which the defendant has been convicted.

134. With regard to a pecuniary order, under section 5 of the PSCA, a defendant who has derived a benefit from proceeds of a serious offence can be ordered to pay a pecuniary penalty of an amount equal to the benefit derived from the offence. It provides for a defendant to pay to the government a penalty of an amount equal to the government's own assessment of the value of the proceeds of the offence, received by the defendant or from which he has benefited. Furthermore, the penalty can be enforced as if it were an order made by a court in civil proceedings to recover a debt due to the government.

135. The standard of proof required when making an application for confiscation is a balance of probabilities (Section 23 of the PSCA).

136. **Confiscation of Property Derived from Proceeds of Crime (c. 3.1.1 applying c. 3.1):** The scope of the property that can be confiscated extends to the proceeds of proceeds i.e. income, property and other rewards as well as property that is held indirectly by a third party both of which can be confiscated under section 4(2) of the PSCA.

137. **Provisional Measures to Prevent Dealing in Property subject to Confiscation (c. 3.2):** The freezing and seizure of assets (restraining orders under the PSCA) can be ordered under section 8(1). An application has to be supported by an affidavit of a police officer providing grounds for the reasonable belief of the defendant's probable guilt. An order is made either when a person has been

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charged with a serious offence or alternatively where a person is about to be charged with a serious offence. The order is effective for as long as the proceedings against a defendant are still ongoing.

138. In addition to the powers under the PSCA, there are provisional measures provided for in the CPEA. Sections 56-57 of the CPEA grants general powers to the police to seize anything it believes on reasonable grounds that it will afford them evidence to the commission of any offence. In the case of **Azad Hauliers (PTY) Ltd. V. AG (1985)**, the High Court in giving the interpretation to section 56 of the CPEA, held that the DPP has authority to seize and detain an instrument that was used in the commission of an offence if it is reasonably believed that it will afford the State the evidence as to the commission of an offence. The court held that "...those charged with prosecuting criminal cases must be given the authority to seize and detain property which it is reasonably believed will afford evidence as to the commission of an offence." Furthermore, the court stated that "...what is done in each case must be left initially to the discretion of the officer in whose charge the property is and ultimately ... to the discretion of the DPP." The Azad case followed the precedent set in the case of **Kably & Others v. AG (1985)**.

139. Pursuant to sections 2(5) & 8(6)(a)(ii) of the PSCA, freezing orders extend to property held by any person other than the defendant. The meaning of this provision was given effect to by the Court of Appeal in the case of **AG v. Bateng's Building Construction (PTY) Ltd. & Others (1999)** in which a director in Bateng Ltd was held to have benefited from the offence that was imputed to the company. As a result a confiscation order was held not only to apply to the person convicted of a serious offence but could be made against anyone who had received proceeds of that offence.

140. **Ex Parte Application for Provisional Measures (c. 3.3):** Applications by the DPP for freezing and seizure of property subject to confiscation are made *ex parte* before the court. Applications are made in terms of sections 8 of the PSCA and 56 of the CPEA.

141. **Identification and Tracing of Property subject to Confiscation (c. 3.4):** The PSCA provides a wide range of specific powers by which the authorities are able to identify and trace property. This includes production orders, orders to banks to produce any records in their custody and search warrants. These powers are provided for in sections 18-19 of the PSCA (production orders), and section 21 of the PSCA (search warrants). However, there is no provision for issuing of account monitoring orders.

142. Section 18(1) of the PSCA provides : "Where a person has been convicted of a serious offence, or there are reasonable grounds for suspecting that he has committed a serious offence, and there are reasonable grounds for suspecting that documents relevant to the offence, or that may assist in any way in tracking or identifying the proceeds of the serious offence, or in assessing the value of those proceeds, or in tracking, identifying or assessing the value of any property of the person convicted of the offence, or suspected of having committed the offence, are in the possession of or under the control of any person, the Director of Public Prosecutions may apply to a magistrate or a judge of the High Court for a production order in respect of those documents." The application for an order must be supported by an affidavit made a police officer of Inspector or above.

143. The production order issued under section 18(1) requires "any person to produce to a police officer any document of the kind referred to in subsection (1) that are in such person's possession or under his control, or to make such documents available to a police officer for inspection, at such time

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or place as may be specified in the order.” Under Section 18(5), a person is not excused from producing or making available a document when ordered to do so on the grounds that producing it or making it available might tend to incriminate him or make him liable to a penalty. However, the document shall not be admissible in evidence against the person producing it or making it available in any criminal proceedings except in respect of an offence under section 19, which is the offence of failing to comply with the production order.

144. A search warrant under PSCA can be obtained by virtue of Section 21 which states “Where a person has been convicted of a serious offence, or there are reasonable grounds for suspecting that a person has committed a serious offence, and there are reasonable grounds for suspecting that there is on any land, or upon any premises, any document such as is described in section 18(1) in relation to the offence, the Director of Public Prosecutions may apply to a magistrate or a judge of the High Court for a search warrant in respect of that land or those premises.”

145. A search warrant obtained under this section requires a police officer of or above the rank of Inspector to execute the warrant. A search warrant under this section may only be obtained when (a) the document involved cannot be identified or described with sufficient particularity for the purpose of obtaining a production order in respect of it; (b) a production order has been given in respect of the document and has not been complied with; (c) a production order in respect of the document would be unlikely to be effective because there are reasonable grounds to suspect that it would not be complied with; or (d) the investigation for the purposes of which the search warrant is sought might be seriously prejudiced if immediate access to the document is not obtained without prior notice to any person.”

146. **Protection of Bona Fide Third Parties (c. 3.5):** Protection of third party interest is provided for in section 8(5) of the PSCA. A notice is required to be given to a third party who is affected by a freezing order. A third party can apply under section 8(7) of the PSCA to have the court vary conditions attached to a freezing order including meeting of reasonable living and business expenses.

147. **Power to Void Actions (c. 3.6):** The power to void actions is covered under the principles of contract law dealing with illegal contracts or contracts that are contrary to public policy.

148. **Additional Elements (R. 3) – Provision for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (c. 3.7):** Where as Botswana can order confiscation of property held by a corporate entity that is conducting business legally, there is no provision for confiscation of the property from organizations principally criminal in nature. It does not have a civil forfeiture framework.

149. **Analysis of Effectiveness:** The powers provided under the PSCA and the CPEA are adequate. The system would be improved if the authorities had the ability to monitor bank accounts of individual suspected of engaging in money laundering activities. However, there has been very limited use of the powers for seizing, freezing or confiscation of proceeds of serious offence. The experience is not long enough to make a judgment as to the effectiveness of the confiscation regime. Moreover, no statistical data on freezing, seizing and confiscation cases were available to enable the assessors to make an informed assessment of the utility of the framework. Consequently assessing the ML application of these powers was not possible.

2.3.2 Recommendations and Comments

150. The authorities did advise the mission that they were considering introducing civil forfeiture regime to complement the conviction based system but no decision has been made yet at cabinet level. It was not clear to the assessors the underlying rationale for seeking to introduce a civil forfeiture based system, considering that there needs to be sufficient examples of conviction based confiscation to enable lessons to be identified in order that the civil forfeiture system can be complementary to the conviction based confiscation system. The assessors recommend to Botswana to review the experience of other countries which have adopted a civil forfeiture system.

151. The authorities should consider:

- Fully utilizing the wide range of powers available under the PSCA and CPEA for ML purposes.
- In order to strengthen the identification and tracing of proceeds of crime, to provide for account monitoring procedures.
- Maintaining a systematic mechanism for the collection of statistics on freezing, seizing and confiscation cases.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	PC	<ul style="list-style-type: none"> • There has been limited use of the PSCA and CPEA for ML, FT and predicate crime purposes

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

2.4.1 Description and Analysis

152. Botswana does not have a legislative or regulatory framework to implement United Nations Security Council Resolutions 1267 and 1373. There is no legal basis to freeze assets based on the UNSCR 1267 lists. There is neither a legislative nor regulatory framework to freeze assets based on a domestic or foreign designation of terrorists or terrorist organizations in the framework of UNSCR 1373.

153. None of the requirements under Special Recommendation III is therefore in place in Botswana.

154. Botswana has set up a National Anti-Terrorism Committee, chaired by the President’s Permanent Secretary in the Office of the President. This is additional evidence of Botswana’s commitment to the fight against terrorism and terrorism financing.

155. The lists adopted by the UN under UNSCR 1267 have been disseminated to financial institutions, which have been asked to report any name match to the authorities. When lists adopted under UNSCR 1373 were submitted to Botswana by third party countries, they were reviewed by the National Anti-Terrorism Committee. There is however no formalized mechanism for decision-making on the adoption of these lists by Botswana. The assessors were advised that these third party countries were not informed of the decision of Botswana to adopt these lists.

156. The banking sector is mobilized to following-up on the UN lists, and in practice, Botswana banks also receive these lists through their international financial networks and undertake due diligences against their customer databases.

2.4.2 Recommendations and Comments

157. The authorities should consider:

- Setting up a legal framework for the freezing of funds used for terrorists financing, in accordance with the requirements of UNSCR 1267 and 1373.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	NC	<ul style="list-style-type: none"> • Absence of a legal framework to implement the requirements on the freezing of funds used for terrorists financing

Authorities

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

2.5.1 Description and Analysis

158. Legal Framework: Proceeds of Serious Crimes Act; Banking (Anti-Money Laundering) Regulations

159. Botswana has no single national centre to receive, analyze and disseminate STRs. Institutions report STRs to both the DCEC and the BoB in accordance with Section 17(15) of the PSCA and Section 14 of the Banking (AML) Regulations. The Banking Act requires suspicious transactions to be reported only to the BoB and it appears that this requirement is not widely known.

160. STRs received by BoB are processed by the Banking Supervision Department. Upon receipt of the STRs, data from them are entered into a database. This information is used to support the supervisory duties of BoB in relation to the Banking (AML) Regulations. BoB has no policy for dissemination and it does not disseminate the reports.

161. Upon receipt by DCEC, STRs are handled by the Intelligence and Technical Support section, which also handles all corruption allegations made to DCEC. The STRs are normally submitted by courier or fax, and the reporting institutions will be notified by phone of the receipt of the reports. Data from the reports are entered into DCEC’s intelligence database which also contains intelligence on corruption cases, and checks are conducted against the existing database to determine if there is any existing entry in relation to the persons referred to in the report. A check will also be made against the Transport Department database on any vehicle registration numbers which are included in the report. The reports and the results of the checking will be passed to a review board for evaluation. The review board consists of the Director of DCEC, all Assistant Directors and the head of the Intelligence and Technical Support unit. The board will classify the report as TMP – Traceable Money Laundering Pursuable, TCP – Traceable Corruption Pursuable, TMNP – Traceable Money Laundering Not Pursuable, and TCNP – Traceable Corruption Not Pursuable.

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162. DCEC decided, without consultation with BPS, that only STRs which involve P10,000 or less, and which are not related to corruption, would be forwarded to BPS. However, to date, no STRs, regardless of amount and predicate offence, and despite some reports fitting this criteria, have been forwarded to the BPS for investigation; all STRs have been referred to the Investigations Department of DCEC for further investigation. The unit in the investigations department has then investigated all cases to determine if there is any case of money laundering. In discussions with the authorities, it was apparent that this investigation was considered to be part of the analysis of a STR.

163. It should be noted there is no specific provision within the legislation for the dissemination of STRs to domestic authorities for investigation. There would appear to be no impediment to the dissemination of ML cases from DCEC to the BPS as there is an existing framework for the transfer of other types of investigations.

164. The Banking (AML) Regulations were issued by BoB in March 2003, under Section 51 of the Banking Act, to provide some form of guidance to the banks, which are the only type of institution covered by the regulations and which currently do report STRs.

165. Section 3 of the regulations defines “suspicious transaction” and in the definition, it states the activities to be considered as suspicious are the acts listed in the First Schedule to the Banking (AML) Regulations but it is not limited to these acts. The First Schedule is an extensive list of activities, some of which appear to be of very little value in indicating possible suspicion of ML or TF.

166. Section 14 of the Banking (AML) Regulations, which creates the STR requirement, stipulates that reports will be submitted in the form set out in Schedule Two of the regulations. The form prescribes the information which should be included and it states the reports should be sent to DCEC and BoB without specifically defining the method by which report should or could be submitted i.e. by mail, courier, fax or email. It does however state that no supporting information should be attached with the report.

167. Currently, DCEC only has access to the Transport Department’s vehicle registration database for the checking of vehicle registration numbers which are included in the reports made to it. This facility is primarily intended for the corruption allegations which are processed by the Intelligence and Technical Support Unit of DCEC.

168. DCEC is in the process of gaining access to the following government databases : Immigration Department, National Registration Department and the criminal record database of the BPS, though it is not known exactly when access will be available.

169. As BoB does not conduct analysis of the STRs other than to support its supervision duties, it does not have access to any other databases to supplement the analysis process.

170. DCEC has several authorities to get additional information from reporting institutions. Section 17(12) of the PSCA provides DCEC with the authority to require reporting institutions to furnish information or produce documents relevant to an investigation. Section 8(1)(c) and 8(1)(c) of CECA further empowers the Director of DCEC to require ‘any person to furnish, notwithstanding the provisions of any other enactment to the contrary, all information in his possession relating to the affairs of any suspected person and to produce or furnish any document or a certified true copy of any document relating to such suspected person, which is in the possession or under the control of the person required to furnish the information’ and ‘the manager of any bank, in addition to furnishing any information specified in paragraph (c), to furnish any information or the originals, or certified true copies, of the accounts or the statements of account at the bank of any suspected person.’ These

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powers can be enforced when in the course of an investigation, the director is satisfied that the information will assist or expedite an investigation.

171. In addition, under Section 7(1)(b) and 7(1)(c) of the CECA respectively, the Director of DCEC may require 'any person in writing to produce, within a specified time, all books, records relating to the functions of a public body or private body' and 'any person, within a specified time, to provide any information or to answer any question which the Director considers necessary in connection with any inquiry or investigations which the Director is empowered to conduct' under the CECA. Concerning the empowerment to conduct a money laundering investigation, there is no express provision for DCEC to conduct money laundering investigation. The functions of DCEC are set out in Section 6 of CECA and are aimed primarily at corruption and economic crime relating to a public body. However, they can investigate 'any alleged or suspected offences under this Act [CECA], or any other offence disclosed during such investigation,' and 'to investigate any conduct of any person, which in the opinion of the Director, may be connected with or conducive to corruption.' [See Section 2.6.1 of this report for further discussion of this issue]

172. In meetings with the authorities, it was not clear what the definition of an investigation was and there was confusion over the meanings of analysis and investigation in relation to STRs and money laundering. That said, the Intelligence and Technical Support unit of DCEC has never invoked the aforementioned powers under PSCA or CECA to obtain further information to assist in the analysis of STRs.

173. BoB has no specific authority to obtain further information concerning the STRs from the banks to facilitate further analysis. It does have however a general power under Section 21 of the Banking Act to call for any information from a bank which it may require for the purposes of the administration of the act, which would include the administration of the Banking (AML) Regulations.

174. As it is considered by the authorities that no FIU has been set up, there are no specific arrangements to ensure operational independence of the units which process STRs made by reporting institutions.

175. Examining the situation for the two organizations which are responsible for the units which do process the STRs, both the Governor of the BoB and the Director of DCEC are appointed by the President of Botswana, in accordance with the Bank of Botswana Act and the CECA respectively. The Governor of the BoB can only be removed under certain circumstances which are set out in the Bank of Botswana Act, but the Director of DCEC is appointed, and consequently can be dismissed, under terms which the president sets and considers fit. The DCEC has a separate budget which is funded through appropriation by Parliament from the Consolidated Fund, whilst the BoB has an independent budget.

176. There is restricted access to the information contained within the database operated by the Intelligence and Technical Support Unit of the DCEC. Furthermore, access to the offices of the Intelligence and Technical Support unit is controlled by virtue of electronic access controls. To date, STRs have not been disseminated other than to the Investigations Department of the DCEC.

177. The Banking Supervision of the BoB enters information from the submitted STRs in an Excel spreadsheet which is stored on a directory within the central bank's computer system. Other than the IT staff, only staff from the Banking Supervision Department can access this directory. In respect of the STR forms which are currently submitted on paper, these are stored within the office of the Banking Supervision Department. After some time, these are moved for storage within BoB's main

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file storage unit. There are no specific security provisions to control access to the physical copies of the STRs, especially within the main file storage unit.

178. DCEC publishes an annual report concerning its activities. It describes its activities including those relating to money laundering. In the 2005 annual report which is the most recent that is available, there is discussion of the number of money laundering reports which have been made though there is no discussion on typologies or money laundering trends.

179. BoB also publishes an annual report. This only contains general information on money laundering and does not contain any information on its role as a recipient of STRs, or the number of reports made.

180. As the authorities state that an FIU has not yet been established within Botswana, no consideration has been given to applying for membership of the Egmont Group or as to having regard to the Egmont Group Statement of Purpose and Principles of Information Exchange between FIUs.

181. The Intelligence and Technical Support unit of DCEC, which in addition to the receiving of STRs is responsible for the receipt and initial handling of all allegations of corruption, is manned with 6 staff. In 2005, the unit received a total of 1,951 reports of which 141 were STRs. It is resourced with IT facilities to conduct analysis but this is primarily designed to handle corruption reports. Its staff have not received any training on ML or TF nor any training on the analysis of STRs and the functions of a FIU.

182. BoB's Banking Supervision has 39 staff though their primary function relates to banking supervision, with the processing of STRs being one of its lesser functions. No specific IT system has been provided for the storage of STR data. Its staff have attended regional seminars and workshops on AML/CFT but no specific training has been given on the analysis of STRs and the functions of a FIU.

183. The DCEC is subject to the provisions of the Public Services Act in relation to the employment, discipline and code of conduct of its employees. Similar provisions exist for the Bank of Botswana. The Public Services Act provides for the discipline procedures for staff, which can be sanctioned in a variety of means including reduction in grade, suspension and dismissal. Both institutions have previously taken disciplinary action against staff which has included the dismissal of staff.

184. Vetting procedures are in place for the employment of staff by both BoB and DCEC.

185. The DCEC collects data on the number of STRs received on an annual basis. The annual number of STRs reported for the past four years are as follows :

Year	STRs Reported
2003	27
2004	61
2005	141
2006	99

186. BoB does not systematically maintain statistics though some statistics could be determined through the querying of the spreadsheet.

2.5.2 Recommendations and Comments

187. The authorities should consider:

- Designating a single national centre for the receipt, analysis and dissemination of STRs as Botswana’s FIU after consideration of the most appropriate location of the FIU with respect to the legislation, necessary resources, technical capacity, effectiveness, ability to fully cooperate and coordinate with other involved parties from both the public and private sectors, and to be able to conduct appropriate international cooperation.
- Ensure that the FIU receives all forms of reports made pursuant to PSCA and other AML provisions.
- Enabling the FIU to have access to financial, administrative and law enforcement data to properly perform its duties, especially in relation to the analysis of reports received by it.
- Providing the FIU with the necessary authority to request further information from the reporting institutions to facilitate it to fully conduct its functions, especially for the analysis of reports.
- Establishing dissemination policies for the STRs requiring investigation and other information derived from the reporting regime, including information required for effective supervision of the reporting entities, through consultation with all concerned authorities.
- Ensuring the FIU is sufficiently resourced to effectively perform its duties including the training of staff on the analysis of reports and the functions of a FIU. Sufficient resources should include provision for the necessary analysis tools and security measures required to adequately protect data held by the FIU. FIU data should be stored and managed independently from data held by any agency to which the FIU is a part.
- Providing for the operational independence and autonomy of the FIU, particularly concerning the employment and dismissal of the head of the FIU, the decision making process on the dissemination of reports for investigation, management reporting lines, and the funding of the FIU.
- Introducing a systematic mechanism for the collection of detailed statistics pertaining to the receipt and dissemination of STRs.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	NC	<ul style="list-style-type: none"> • A national centre for the receipt, analysis and dissemination of STRs and other reports made pursuant to AML related legislation/regulations, has not been established • Reports received by the DCEC and BoB, pursuant to PSCA or the Banking (AML) regulations, are not disseminated to other law enforcement agencies. • DCEC and BoB are not currently adequately resourced to perform the full functions of a FIU especially as no training on the analysis of STRs and

		other reports has been provided to staff which receive the reports made pursuant to AML related legislation/regulations.
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2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, & 28)

2.6.1 Description and Analysis

188. Legal Framework: PSCA; Police Act; CECA, CEDA,

189. Botswana has four agencies which either conduct the investigation and prosecution of money laundering cases or are empowered under current legislation to handle the investigation and prosecution of such cases : Office of the Director of Public Prosecutions; Botswana Police Service (BPS); the Directorate for Corruption and Economic Crime (DCEC), and the Botswana Unified Revenue Service (BURS). To date, no law enforcement agency has been specifically designated to conduct money laundering investigations.

190. **Office of the Director of Public Prosecutions:** Pursuant to Section 51A of the Constitution and Section 7 of the CPEA, the Office of the Director of Public Prosecutions (ODPP) is responsible for the prosecution of any offence under the laws of Botswana. Prior to the establishment of the position of DPP under the Constitution in 2005, the power to appear before the courts for the prosecution was delegated in some instances, mainly for minor cases, to the BPS and DCEC. The ODPP is progressively assuming the responsibility to represent the State of Botswana in court in all instances, in line with increasing staffing levels.

191. To date, the ODPP has been involved with the prosecution of 2 cases of ML.

192. **BPS:** The Botswana Police Service is established pursuant to the Police Act which was passed in 1974. Its duties and functions are set out in Section 6(1) which include amongst other things to prevent and detect crime, and to bring offenders to justice. It currently has approximately 7,000 staff. The headquarters investigative arm of the police, Criminal Investigations Department (CID), which is headed by the Director of CID, comes under the Deputy Commissioner Operations, and is responsible for the investigation of serious crimes within Botswana and providing support services to the divisional CID teams. The Fraud Squad, which is under the Serious Crime Squad, is the unit within BPS which conducts money laundering investigations.

193. To date, the Fraud Squad has been involved with one ML investigation. During the course of the investigation, it was determined that no predicate offence had occurred. Consideration has not been given by BPS to the use of the money laundering investigations to support the investigations of other predicate offences such as drug trafficking.

194. In discussion with BPS, it was stated that whilst BPS had a mandate to conduct money laundering investigations, due to limited resources and expertise in the area, the ML cases had essentially been left to DCEC to conduct.

195. **DCEC :** The DCEC was formed in 1994, pursuant to the CECA, to facilitate the investigation and prosecution of corruption and economic crime offences. It is headed by a Director who is

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appointed by the President and who reports to the Minister for Presidential Affairs and Public Administration. It currently has 144 positions, with 60 of those being assigned to the investigation department.

196. The authorities advised that DCEC had been given the mandate to conduct any money laundering investigation. DCEC's functions as set out in Section 6 of the CECA, are :

- (a) to receive and investigate any complaints alleging corruption in any public body;
- (b) to investigate any alleged or suspected offences under this Act, or any other offence disclosed during such an investigation;
- (c) to investigate any alleged or suspected contravention of any of the provisions of the fiscal and revenue laws of the country;
- (d) to investigate any conduct of any person, which in the opinion of the Director, may be connected with or conducive to corruption;
- (e) to assist any law enforcement agency of the Government in the investigation of offences involving dishonesty or cheating of the public revenue;
- (f) to examine the practices and procedures of public bodies in order to facilitate the discovery of corrupt practices and to secure the revision of methods of work or procedures which, in the opinion of the Director, may be conducive to corrupt practices;
- (g) to instruct, advise and assist any person, on the latter's request, on ways in which corrupt practices may be eliminated by such person;
- (h) to advise heads of public bodies of changes in practices or procedures compatible with the effective discharge of the duties of such public bodies which the Director thinks necessary to reduce the likelihood of the occurrence of corrupt practices;
- (i) to educate the public against the evils of corruption; and
- (j) to enlist and foster public support in combating corruption.

197. The offences under the CECA and which are referred to in their mandate, are titled :

- (a) Corruption by or of public officer;
- (b) Corruption in respect of official transaction;
- (c) Acceptance of bribe by public officer after doing an act;
- (d) Promise of bribe to public officer after doing an act;
- (e) Corrupt transactions by or with agents;
- (f) Bribery for giving assistance in regard to contracts;
- (g) Bribery for procuring withdrawal of tender;
- (h) Conflict of interest;
- (i) Cheating of public revenue; and,
- (j) Possession of Unexplained Property [This provision on relates to public servants]

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198. From an analysis of section 6 and the offences created within CECA, it is the assessors' view that DCEC's mandate is limited to corruption, cheating of public revenue and possession of unexplained property, and the money laundering related to these categories of offences. Whilst revenue is not defined under CECA, the Botswana Unified Revenue Service Act, 2003, defines revenue laws as being the Customs and Excise Duty Act (CEDA), Income Tax Act, Capital Transfer Act, Value Added Tax Act and any other legislation concerning revenue as the Minister may prescribe, and thus the assessors took the view that cheating of public revenue would relate solely to cheating relating to the aforementioned laws.

199. The above analysis is further strengthened by consideration that an investigating body for a specific offence is provided with the necessary legal powers to carry out its functions in relation to the investigation of that offence. For a law enforcement body, this would ordinarily mean that its officers were empowered to arrest persons suspected of committing that offence. For DCEC officers, they are empowered under section 10 of CECA, beyond the powers of a private citizen to arrest under Sections 31 to 35 of CPEA, to arrest a person without a warrant in the following circumstances :

- (a) if a person is reasonably suspected of having committed or is about to commit an offence under CECA, or
- (b) if during an investigation of a suspected offence under the CECA, another offence is disclosed, a person is reasonably suspected of the other offence, and it is reasonably suspected that the other offence was connected with, or that either directly or indirectly its commission was facilitated by the suspected offence under the CECA.

200. Considering these powers in relation to money laundering, a DCEC officer would only have the authority to arrest a person, beyond his powers as a private citizen, under the circumstances set out in (b), namely when the money laundering was connected with an suspected offence under the CECA.

201. The unit responsible for conducting ML investigations within DCEC has conducted the following number of investigations over the past four years:

Year	Investigations	Prosecutions
2003	27	0
2004	61	2
2005	141	0
2006	99	0

202. The investigations arise from the referral of all STRs from the Intelligence and Technical Support unit of DCEC for further investigation. In apparently all cases, the investigation involves the retrieval of bank records from the reporting institutions for analysis before approaching the account holder for an explanation of the transaction, if the transaction is found to be incompatible with the previous transactions within the account. Reporting institutions have received several complaints from customers about STRs being made concerning them. These complaints have been received after the customer has been interviewed by DCEC. It is suspected that in the course of the interviews with the account holders, the fact that a STR has been submitted to DCEC by a bank is revealed to them, which is extremely detrimental to the overall STR reporting regime.

203. In respect of the two prosecutions, the cases are still ongoing within the courts.

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204. **BURS:** The BURS was created in May 2004 as a semi-autonomous government body, following the commencement of the Botswana Unified Revenue Service Act, which brought together the former Customs and Excise Department and the Department of Taxes. BURS has responsibility for the assessment and collection of tax and this includes, amongst other activities, the performance of measures required to counteract tax fraud and other forms of tax evasion.

205. BURS operations are divided into the two principal areas of responsibility, namely Revenue, and Customs and Excise. The Inland Revenue has an Investigations Division handles the investigation of tax fraud and evasion, and the Customs and Excise have investigation teams which conduct investigations of customs and excise fraud and evasion, based upon their geographical area of responsibility.

206. BURS has not considered conducting ML investigations.

Investigative Powers

207. Law enforcement authorities have the authority to delay or waive the arrest or seizure of property for the purposes of evidence gathering or identification of other persons. This authority is implicit in the absence of any restriction on the authorities' discretion on the timing of arrest and seizure measures, and the authorities stated that the discretion is exercised frequently during their day to day operations.

208. The law enforcement agencies stated that they are able to conduct investigations in a task force approach with the task forces being multi-agency when necessary, and this had been conducted in the past. The agencies also conduct multi-national investigations. To date, these multi-agency or multi-national investigations have not involved ML or TF.

209. At present, there is no law relating to the use of special investigative techniques such as the interception of telecommunications and the use of tracking devices. However, the authorities are considering procurement of equipment to enable them to utilize such techniques.

210. There has been no review of ML trends within Botswana though the discussion of individual cases is conducted between the agencies when necessary.

211. The powers to compel production of, search, seize and obtain financial records pursuant to the PSCA is covered under Section 2.3 – Power to identify and trace property, which is discussed in section 2.3 of this Report.

212. Section 51 of the CPEA provides the power for search warrants to be issued by a judicial officer to any police officer to enter any place to seize any article which is reasonably suspected of believing it will provide evidence of the commission of an offence. The section further states that an search warrant will be executed by day unless it is specified that the warrant may be executed at night. This section can be utilized by the police to search premises and to obtain any record that would assist in any ML or TF investigation.

213. Furthermore, Section 54 of the CEPA enables a judicial officer to order the seizure of books, documents or any other things which are necessarily required in evidence in any criminal proceedings by an 'officer' [not defined in the legislation]. The order can require the seized items to be delivered to

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a person named in the order. The BPS stated this power is one normally used to require financial institutions to produce records for the purposes of an investigation.

214. Additionally, Section 250 of the CEPA provides that “Where, on application made on oath by a policeman, a magistrate or a justice who is not a member of the Botswana Police Force is satisfied that the policeman believes there are reasonable grounds to suppose that the ledgers, day-books, cash-books or other account books or other accounting devices used by a bank (including a savings bank) may afford evidence as to the commission of any offence, the magistrate or justice may issue his warrant authorizing the policeman or policemen named therein- (a) to inspect all those ledgers, day-books, cash-books and other account books and other accounting devices carrying written records and make and retain in his or their possession copies or other record of any entries therein or extracted therefrom; and (b) to have access to all those other accounting devices carrying unwritten records and retrieve therefrom any information and make and retain in his or their possession a written or other record of that information.

215. Section 43 (5) and (6) of the Banking Act provides that “(5) (a) Where a police officer, other than an officer of the Directorate on Corruption and Economic Crime acting in accordance with the provisions of subsection (2) (g) or a duly authorized representative of the Commissioner of Taxes requires any information from a bank relating to the transactions and accounts of any person, he may apply to a court of competent jurisdiction for an order of disclosure of such transactions and accounts or such part thereof as may be necessary ; (5) (b) The court shall not make an order of disclosure under this subsection unless it is satisfied that the applicant is acting in the discharge of his duties, that the information is material to any civil or criminal proceedings, whether pending or contemplated in Botswana, and that the disclosure is necessary, in all the circumstances ; (6) Notice of an application to the court made under subsection (5) shall be served on both the bank and the person in question.” The requirement under Section 6 to inform the account holder of the application for an order under this section means this provision would not be used in the course of an investigation.

216. The CECA also provides additional powers to the DCEC in relation to an investigation conducted by it which can include money laundering investigations. Section 8(1)(c) and 8(1)(d) of CECA empowers the Director of DCEC to require ‘any person to furnish, notwithstanding the provisions of any other enactment to the contrary, all information in his possession relating to the affairs of any suspected person and to produce or furnish any document or a certified true copy of any document relating to such suspected person, which is in the possession or under the control of the person required to furnish the information’ and ‘the manager of any bank, in addition to furnishing any information specified in paragraph (c), to furnish any information or the originals, or certified true copies, of the accounts or the statements of account at the bank of any suspected person.’ These powers can be enforced when in the course of an investigation, the director is satisfied that the information will assist or expedite an investigation. It was mentioned that this power is one ordinarily used to require financial institutions to produce records for the purposes of an investigation

217. Sections 7(1)(b) and 7(1)(c) of the CECA also enable the Director of DCEC to require ‘any person in writing to produce, within a specified time, all books, records relating to the functions of a public body or private body’ and ‘any person, within a specified time, to provide any information or to answers any question which the Director considers necessary in connection with any inquiry or investigations which the Director is empowered to conduct’ under the CECA, respectively.

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218. The Customs and Excise Division of BURS are enabled under Section 4 of the CEDA for the purposes of enforcing the CEDA, to enter any premises without previous notice and to require any persons in the premises to produce any records or things which the Customs officer has reasonable cause to suspect to relate to matters dealt with by CEDA. The section also provides for the use of force to enter the premises. If the execution of this power is conducted at night, a police officer is required to be in attendance at the premises.

219. Officers from the BPS, DCEC and BURS can obtain witness statements in any matter when a witness is prepared to provide a statement, but they do not have the power to compel a witness to answer questions or provide a statement.

Resources, Training and Integrity

220. **ODPP:** . As the ODPP is progressively assuming the responsibility to represent the State of Botswana in court in all instances, its staffing levels are being increased gradually. At present, the ODPP has a current establishment of 97 with 94 positions being filled. The current caseload exceeds the capacity of the present staffing levels of the ODPP. Furthermore, the staff of ODPP have not received any specific training relating to the investigation and prosecution of ML or TF cases. Training has also not been provided to judges on money laundering.

221. Under the amended Constitution, the DPP become a public office with the power to institute and undertake criminal proceedings whereas previously the power to prosecute was the AG's responsibility and the ODPP was a unit within the AG's Chambers. However, the Constitutional rearrangements provide that the AG's Chambers still maintains administrative supervision of the ODPP. These administrative arrangements, which include the financing of the ODPP, do not provide complete operational independence for the ODPP.

222. **BPS:** The Fraud Squad, which is under the Serious Crime Squad, is the unit within BPS which conducts money laundering investigations. It is also responsible to conduct complex fraud cases, which are defined as those which take a long time to investigate or involving a substantial amount of money. The Squad is staffed by 1 Superintendent, 1 Inspector, 2 Sub-Inspectors, 2 Sergeants and 9 Constables, and all are fully occupied in handling fraud cases, which on average amount to about 75 cases per annum. BPS has used external forensic accountancy services to support its investigations, when necessary. Whilst staff have received some training on financial investigations, no training in relation to ML or TF or the related investigation had been provided..

223. **DCEC:** The unit which is responsible for conducting all money laundering investigations within DCEC is manned by 6 staff: 1 Principal Anti-Corruption Officer; 1 Senior Anti-Corruption Officer and 4 Anti-Corruption Officers. In addition to being responsible for conducting money laundering investigations within DCEC, it is conducts all complex commercial investigations which takes up 60% of their time and resources. DCEC has previously utilized external forensic accountants in its investigations. Staff had attended some general AML/CFT training but had not received training in relation to the investigation of ML or TF cases.

224. **BURS:** No unit within BURS has been assigned to conduct money laundering investigations and no training on the subject had been received.

225. All the agencies involved with the investigation of ML are subject to the provisions of the Public Services Act in relation to the employment, discipline and code of conduct of its employees. The Public Services Act provides for the discipline procedures for staff, which can be sanctioned in a variety of means including reduction in grade, suspension and dismissal. The institutions have previously taken disciplinary action against staff which has included the dismissal of staff.

226. Basic vetting procedures are in place for the employment of staff by the institutions.

Statistics

227. Statistics concerning money laundering cases are not systematically maintained with only DCEC being able to produce statistics on the number of investigations conducted, namely:

Year	Investigations	Prosecutions	Convictions
2003	27	0	0
2004	61	2	0
2005	141	0	0
2006	99	0	0

228. The lack of systematic maintenance of statistics on cases is demonstrated by the confusion which exists concerning the number of ML prosecutions, convictions and acquittals which have been conducted.

Overall Analysis

229. Law enforcement agencies have sufficient powers to obtain records and to conduct investigations into allegations of money laundering.

230. The legal authority of DCEC to conduct ML investigations beyond corruption and public revenue related cases as interpreted from the CECA, is a significant issue, particularly in consideration to their power of arrest in such cases. The importance of this is considerable especially when the authorities have stated that DCEC has been given the mandate to conduct all money laundering investigations and this is what is being conducted in practice. It is the assessors' view that there is no policy rationale to exclude BPS from investigating money laundering, particularly as they have a mandate and the powers to investigate all crimes. It is also the assessors view that the current practice affects the effectiveness of the regime as i) it weakens the capacity of BPS and BURS to investigate cases; and ii) DCEC is anticipated to dedicated its resources to investigate corruption related cases only.

231. Insufficient training in the concepts of AML/CFT and the investigation of ML and TF cases has been provided to the law enforcement and prosecutorial agencies to permit consistent effective investigation and prosecution of such cases

2.6.2 Recommendations and Comments

232. The authorities should consider :

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- Conducting legal analysis on the capability of DCEC to conduct money laundering investigations where the predicate offence is not related to a case of corruption or cheating of public revenue, or the predicate offence is not known.
- Documenting which law enforcement agencies which will conduct ML cases, where the predicate offence is known, and which agency will be responsible for such cases when the predicate offence is not known or has not been determined. This should provide the basis for the dissemination of intelligence from the FIU.
- Provide significant training to all the law enforcement agencies and prosecutorial agencies on AML/CFT and the investigation of ML and TF cases to permit consistently effective investigations to be conducted.
- Ensuring there are sufficient resources to enable effective ML investigations and prosecutions to be conducted.
- Ensuring judges are trained in handling ML cases.
- Establishing a systematic process for the collection of statistics on ML investigations to permit an effective and detailed review of the types of ML cases occurring in Botswana and detailed monitoring of the progress of ML investigations and prosecutions.

2.6.3 Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	PC	<ul style="list-style-type: none">• There is an unclear legal authority for DCEC to conduct money laundering investigations beyond corruption and public revenue related cases though they are effectively conducting all money laundering investigations.• Insufficient implementation of the investigative capability in respect of money laundering.• No training has been provided to the investigative and prosecutorial agencies to enable them to effectively conduct money laundering investigations and prosecutions.
R.28	C	

2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and Analysis

233. Legal Framework: PSCA S.17(16) – Designated Bodies to Report Importation and Exportation of Physical Currency; CEDA S.14 – Persons Entering or Leaving Botswana

234. The monitoring of the cross-border physical transportation of currency is conducted by virtue of Section 14 of the CEDA which requires that any person entering or leaving Botswana shall, in a manner prescribed by the Director of Customs and Excise, declare all goods in his possession and provide details of such to a Customs officer. “Goods” are defined in S.1 of the CEDA includes currency. Form J is the form which travelers are required complete.

235. The Customs and Excise section of BURS stated that the provision required all currency be reported regardless of amount but a decision had been made to only require reporting of currency

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movements above P10,000 (US\$1,666). It was also stated that a family unit, which in aggregate is carrying in excess of P10,000 (US\$1,666), is required to make a declaration covering the whole of the family unit. The threshold was determined by Customs and Excise to be in line with BoB's threshold for banks to report to them concerning foreign currency transactions under Section 13 of the Banking (AML) Regulations. The original reason for collecting the records was for foreign exchange controls which have since been removed but the requirement has been maintained to facilitate monitoring balance of payments and capital flows. Customs and Excise is required to forward a summary of the Form J which it receives, to BoB on a monthly basis so the monitoring could be conducted.

236. There is no provision for the declaration of bearer negotiable instruments.

237. The assessors determined no notice to travelers on the requirement to make a declaration at one point of entry could be seen, nor was any form provided to travelers requiring them to report currency over P10,000 (US\$1,666).

238. The Customs and Excise section of BURS advised that notices were posted at border crossing points to notify travelers of the procedures. Furthermore, a pamphlet had been recently produced 'Customs and Excise Traveller's Guide to Botswana' which would be soon available at border crossing points and would be provided along with copies of Form J, to airlines for distribution to incoming passengers. The pamphlet sets out the Customs requirements concerning travelers into and out of Botswana such as duty-free allowances as well as stating that currency (Pula or foreign currency) exceeding P 10,000 (US\$1,666) being brought in or being taken out must be declared to Customs.

239. The pamphlet further states it is not necessary to report travelers checks and other monetary instruments. When asked about the reason for this, Customs and Excise commented that these instruments would be captured under the reporting requirement for banks under Section 13 of the Banking (AML) Regulations, when these instruments were cashed. It is noted this requirement would only come into effect if the bearer instruments being cashed at one time totaled over P10,000 (US\$1,666) and also are denominated in a foreign currency.

240. The authorities stated that section 3 of the 'Circular to Banks on Foreign Exchange Dealing : 2/99 – Abolition of Exchange Controls' which states that travelers from and to Botswana will continue to complete currency declaration forms at the point of entry or departure for amounts in excess of P 10,000 (USD1,666) report, was the legal authority requiring reporting of cross border movement of physical currency and creating the threshold. As the document was a circular issued by BoB to banks, it is the assessors' view that it has no authority with respect to the CEDA, and thus, the circular cannot be interpreted as introducing a requirement to report.

241. Section 17(16) of PSCA requires all designated bodies which intends to transfer or convey an amount of cash, exceeding the prescribed amount, into or out of Botswana will report the details to the DCEC and the BoB. To date, no amount has been prescribed and as such, no reports are being made.

242. In addition to the requirement to declare all currency, section 14 of the CEDA states in addition to the requirement to declare all currency, the person shall furnish a Customs officer with full particulars thereof. This provision enables a Customs officer to request the information if a false declaration of currency is made or a declaration is not made

243. All Form J's, which are the reports concerning the import or export of goods, including currency, that are required to be completed for the import or export of currency over P 10,000 (USD1,666), are retained for 3 years at either the border crossing point in remote areas or at a centralized storage facility for border crossing points near Gaborone. The forms can be accessed by

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law enforcement agencies, including DCEC which is the de facto FIU. Agencies request access in writing though they need to search for the individual record at the place of storage. There is no computerized database for the submitted Form J's.

244. Access to the information from the Form J's which have been made to the authorities, is controlled under the normal information access controls established by Customs, which restricts the information to Government Departments upon request to the Commissioner of Customs and Excise.

245. There is significant domestic cooperation between Customs, Immigration, BoB, and other law enforcement agencies. In respect of international cooperation, as Botswana is a member of the Southern Africa Customs Union, along with Lesotho, Namibia, South Africa, and Swaziland, there is significant liaison and cooperation between the member states. In respect of Zimbabwe and Zambia, there also is regular cooperation. However, this domestic and international liaison and cooperation is not related to the implementation of SR IX.

246. The possession and export / import of unwrought precious metals, rough diamonds, and cut and polished diamonds which are not set in jewelry, are controlled under the Unwrought Precious Metals Act, the Precious and Semi Precious Stones (Protection) Act, the Diamond Cutting Act and the Export and Import of Rough Diamonds Regulations. The import and export of diamonds require permits and as such, the source or destination and the purpose of the movement are known to the authorities. The possession of unwrought precious metals without a permit is an offence under Section 3(2) of the Unwrought Metals Act. Due to these controls, the authorities establish the source or destination of these items.

247. If there was a significant movement of precious stones or metals which have been made into jewelry, the authorities do not liaise with or notify the Customs Service or authorities from the source or destination of this jewelry.

248. Section 90 of CEDA provides where a false declaration is made pursuant to the Act, the person is liable to a sentence of imprisonment for up to two years, and a fine of P 5,000 (US\$844) or triple the amount of the currency involved, or both. Further, the currency which was required to be declared, is liable for forfeiture.

249. Restraint of currency where there is the suspicion of money laundering would be performed pursuant to Section 8 of the PSCA though this power has not been used in relation to the cross border transportation of currency. However, this provision requires that a person has been charged or is about charged with a serious offence. There is no capacity to restrain the funds for a reasonable period of time for the purposes of establishing whether there is evidence of ML or TF.

250. Section 14 and 15 of PSCA create offences involving the possession or the bringing into Botswana, of the proceeds of a serious crime. Upon conviction, a person is liable to imprisonment not exceeding three years or a fine of P10,000 (US\$1,666), or both.

251. The restraint and confiscation of currency related to ML/FT is permissible by virtue of Sections 8 and 5 respectively of the PSCA.

252. Botswana has no procedures for the confiscation of assets pursuant to UN SCRs.

253. Access to the information from the Form J's which have been made to the authorities, is controlled under the normal information access controls established by Customs, which restricts the information to Government Departments upon request to the Commissioner of Customs and Excise.

254. No consideration has been given to the implementation of the FATF best practices for SR IX.

2.7.2 Recommendations and Comments

255. The authorities should consider :

- Ensuring reasonable and effective efforts are made to notify travelers of the requirement to make a declaration.
- Expanding the current reporting mechanism to cover bearer negotiable instruments.
- Providing the legal power for currency and bearer instruments to be restrained for a reasonable time to determine if there is evidence of ML or TF.
- Ensuring that there is the authority to confiscate currency in accordance with the relevant UN SCRs relating to TF.
- Implementing the FATF best practices for SR IX

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	NC	<ul style="list-style-type: none">• The current declaration scheme does not cover bearer negotiable instruments• Ineffective implementation of the declaration scheme, particularly in making travelers aware of the requirement to make a declaration when carrying currency exceeding the threshold.• No facility to restrain currency for a reasonable time to enable authorities to establish if there is evidence of ML or TF.• No provision for the confiscation of currency in accordance with UN SCRs relating to TF.

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Customer Due Diligence & Record Keeping

3.1 Risk of money laundering or terrorist financing

256. Botswana has not adopted a risk-based approach to AML/CFT. The country has not conducted a risk or vulnerability assessment, and the legal framework does not recognize situations of low or limited risk of money laundering under which variations to the preventive measures could be accepted. It does not recognize higher risks situation, based either on a country-specific risk analysis or in application of the framework for high risk customers, transactions or business relationships mandated by FATF. The interviews with the financial sector indicate that some financial institutions have put in place “profiling” mechanisms for their customer, associated with additional customer due diligence or monitoring when warranted.

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

3.2.1 Description and Analysis

Scope of the PSCA

257. The preventive measures for all “designated bodies” (see below) are laid out in the Proceed of Serious Crimes Act 2000, in its section 17.

258. PSCA defines “designated bodies” subject to these obligations as “persons or body of persons whose business consists of or includes the provision of services involving the acceptance or holding of money or property for or on behalf of other persons or whose business appears to the Minister to be otherwise liable to be used for the purpose of committing or facilitating the commission of a serious offence under this Act, or any corresponding or similar offence under the law of any country”. The assessors were not able to determine which Minister was referred to in this Act, and therefore which government body has the lead in implementing the PSCA. Section 17 specifies these designated bodies as being

- (a) a bank licensed under the Banking Act;
- (b) a building society registered under the Building Society Act;
- (c) a collective investment undertaking established under the Collective Investment Undertakings Act;
- (d) Botswana Savings Bank established under Botswana Savings Bank Act;
- (e) a post office designated under the Post Office Act;
- (f) a registered stockbroker in terms of the Botswana Stock Exchange Act;
- (g) a long term insurance business specified under the Insurance Industry Act;
- (h) a person who transacts foreign exchange business licensed under the Bank of Botswana Act;
- (i) an international financial services centre certification committee constituted under Income Tax Act;
- (j) any other person or body as may by order be prescribed by the Minister of Finance.

259. Section 17 of the PSCA applies to “business relationships, transactions and services, of a kind specified under the Schedule”³¹ annexed to the PSCA. No further activity has been prescribed by the Minister at the time of the mission. It is noticeable that the definition set out in the PSCA considers first professions to be covered and then the activities of these professions to which the preventive measures would apply – and not the other way round as prescribed by FATF. One significant consequence is that money remittance activities, when not undertaken by banks or bureaux de change, do not fall within the scope of Section 17 of the PSCA. All the other activities set out in the FATF 40 Recommendations and relevant in the context of Botswana are identified in the PSCA.

260. The definition of the “designated bodies” presents several weaknesses. The Central Bank, Bank of Botswana, is not covered by the Act. International insurance firms (i.e. insurance companies under the IFSC), insurance brokers and agents, micro-lenders and micro-finance institutions are not subject to the AML/CFT framework. The Botswana Savings Bank is the only statutory bank covered under the PSCA. The reference to the IFSC *certification committee* among the designated bodies also raises questions, as it is the body established to consider applications and to recommend the issuance of “tax certificates” for the IFSC. The Certification Committee reviews applications submitted by the Botswana IFSC management and makes its recommendations based on a number of criteria including projected employment creation, transfer of skills and long term sustainability of a project. If the authorities’ intention was to cover the companies established under the IFSC, the terminology used in the PSCA does not achieve this objective. As a consequence, it is the assessors’ view that IFSC activities not covered under other laws (banks etc.) are not covered by the PSCA.

261. For banks and bureaux de change, these requirements are complemented by obligations set out in specific laws or regulations. This report will first present CDD obligations applicable across the board on the basis of the PSCA, before laying out the more specific requirements relevant for these professions. The NBFIA Act enacted in January 2007 (see section on regulation and supervision) does not contain provisions related to the preventive measures to be adopted by non-bank financial institutions.

Identification requirements under the PSCA

262. The PSCA does not explicitly forbid anonymous accounts or accounts in fictitious names. The identification requirements laid out in the PSCA (see below) would result in practice in forbidding anonymous accounts or accounts in fictitious names for new customers – leaving however open the situation for previously existing business relationships.

³¹ Lending; Financial leasing; Money transmission services; Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts); Guarantees and commitments; Trading for own account or for account of customers in: (a) money market instruments; (b) foreign exchange; (c) financial futures and options; (d) exchange and interest rate instruments; (e) transferrable securities; Participation in share issues and the provision of services related to such issues; Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings; Money broking; Portfolio management and advice; Safekeeping and administration of securities; Safe custody services, including: (a) consumer credit, (b) mortgage credit, (c) factoring, with or without recourse, (d) financing of commercial transactions (including forfeiting); All types of direct life assurance (including annuities, supplementary insurance carried on by life assurance undertakings, permanent health insurance, capital redemption, operations management of group pension funds, marriage assurance, birth assurance); any other activity which may be prescribed.

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263. Section 17 (5) of the PSCA prescribes that designated bodies shall not “enter into a business relationship, conclude a transaction or provide a service” defined under the Schedule “unless the proof of identity” has been obtained. It does not differentiate between establishing business relationships and carrying out occasional transactions (there is therefore no threshold for occasional transactions or customers). Section 17 (6) indicates though that the designated body shall take reasonable measures to obtain the required proof of identity if “the service is in respect of either a single transaction or a series of transactions which are or appear to be linked and amount in the aggregate to an amount prescribed in Regulations” – which could pave the way for setting a threshold for the identification of occasional customers. No such amount has been prescribed by regulation so far. Section 17 (6) sets out the same requirement when “on reasonable grounds, [the designated body] suspects that the business relationship, transaction or service is connected to the commission of a serious offence under this Act”.

264. With the caveat identified in par. 259 (absence of coverage of money remitters that are not banks), the identification requirements set out in Section 17 of the PSCA do apply to wire transfers. The CDD requirements set out in the PSCA therefore do not apply to all money or value remittance services.

265. The PSCA does not prescribe what measures should be undertaken by designated bodies to identify the customer (natural or legal persons). It does not prescribe a verification of the identity of the customer. Section 17 (26) indicates that the Minister (after consultation with the Minister of Finance and Development Planning) may issue regulation prescribing the “documents or other information that may be accepted as proof of a person's identity” and the “manner of ascertaining another person's identity”. No such regulation has been issued.

266. Section 17 (7) requires that when a designated body “knows or has reason to believe” that the customer is acting for a third party, it has to take reasonable measures “to obtain the required proof of identity of the third party and the authority of the person to conclude a transaction on behalf of the third party”.

267. There is no further requirement related to the identification of beneficial owners than the one described in the previous paragraph.

268. There is no direct requirement on information on the purpose and intended nature of the business relationship. It does not contain either direct obligations on the on-going due diligence on the business relationship. The requirement set out in the PSCA on the reporting of suspicious transactions (section 17 (15)) cannot be read as indirectly laying out requirements on the purpose and intended nature of the business relationship or on related on-going due diligence.

269. The PSCA does not prescribe any approach related to risk, in particular enhanced due diligence for high risk customers, business relationships or transactions. No provision in the PSCA allows financial institutions to determine the extent of the CDD measures on a risk sensitive basis. No guideline has therefore been issued in that respect.

270. Section 17 (4) of the PSCA provides for a complete exemption of all the CDD (identification, record-keeping) as well as transaction reporting measures when the designated body “enters into a business relationship, concludes a transaction or provides a service of a kind specified under the Schedule for another designated body or a body corresponding to a designated body in a state or

country prescribed for the time being by the Minister as not applicable”. The wording of this provision raises several ambiguities:

- it is unclear whether the “not applicable” refers to the state or country, or more broadly to the categories of designated bodies. Read together with section 17 (26), which stipulates that the Minister may issue regulation prescribing “the states or countries for the purposes of subsection 17 (4)”, the first option above seems to be the relevant one though;
- it is unclear whether the exemption covers other designated bodies (even in Botswana) when they act as the customer on their own account or on behalf of one of their clients. The terminology “enters into a business relationship, concludes a transaction or provides a service [...] for another designated body” is ambiguous in that respect.

271. The authorities indicated that this provision aimed at allowing for simplified or reduced due diligence when the customer is another financial institutions applying AML-related CDD requirements, as allowed under FATF Recommendation 5.

272. Section 17 (8) indicates that the identification requirements (including those related to the structuring of transactions and to the identification when there is suspicion of money laundering related to the business relationship, the transaction or the service) do not apply for long term insurance business when (i) the amount of the periodic premiums to be paid in respect of the life policy in any twelve month period does not exceed the amount prescribed in Regulations³²; or (ii) a single premium to be paid in respect of a life policy does not exceed the amount prescribed for the purpose in Regulations. None of these amounts has been prescribed in regulation. Under (i), the PSCA excludes also “(i) a pension scheme taken out by virtue of a contract of employment or the occupation of the person to be insured under the life policy provided that the life policy in question does not contain a surrender clause and may not be used as collateral for a loan; or (ii) a transaction or a series of transactions taking place in the course of a long term insurance business in respect of which payment is made from an account held in the name of the other party with a designated body or a body corresponding to a designated body prescribed under section 17 (4).” (section 17 (9)). These various categories of exclusion would be in line with those described by FATF as categories “may be lower”, and acceptable for reduced due diligence. However, complete exemption of such due diligence would be excessive.

273. The PSCA does not contain any provision related to specific CDD measures for overseas residents. The exemptions set out in section 17 (4) do not foresee situations where there would be suspicion of money laundering or a specific high risk scenario.

274. The PSCA makes it clear that the establishment of the business relationship, the realization of the transaction or the provision of the service must not take place before the identification of the customer (see section 17 (5) as laid out above), without any exceptional circumstances to be provided for. It is worth noting though that section 17 (5)³³ makes a cross reference to section 17 (6) and 17 (7). As subsection (6) and (7) apply only to very specific situations (structuring of transactions, suspicion of money laundering, customer acting on behalf of a third party), a strict reading of section 17 (5)

³³ (“shall not [...] unless the proof of identity required by subsection (6) and (7) has been obtained”).

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could be that the requirement of prior identification of the customer would only apply in such narrow circumstances – leaving open the course of action under “normal circumstances” and therefore making it possible to conduct business *before* the identification of the customer. While acknowledging that such an interpretation of the Act is very restrictive, the assessors note that the quasi-absence of implementation of the PSCA has not allowed them to reach a view on the practice of designated bodies in that respect.

275. The PSCA does not impose on a designated body to consider making a suspicious transaction report when the CDD requirements cannot be fulfilled prior to entering into the business relationship, performing the transaction or rendering the service.

276. The PSCA has no provision related to existing customers at the time of entry into force of the Act – even in situation where the absence of prior CDD requirements could have led to the existence of anonymous accounts or accounts in fictitious names.

Banks

277. The preventive measures applicable to banks are set out in the Banking Act (1995) and in the Banking (Anti-money laundering) Regulations (2003). This Regulation (by the Minister of Finance and Development Planning) was issued on the basis of Section 51 of the Banking Act. The Bank of Botswana has also prepared a detailed questionnaire on Anti-money laundering (2004) that is a tool for its examiners. As no enforcement action has been taken on its basis, it is the assessors’ view that the questionnaire does not meet the criteria to be recognized for assessment purposes as “other enforceable means” as defined in the assessment methodology, but its content will be described when useful to indicate how BoB approaches its supervision of compliance with AML measures.

278. The Banking Regulation stipulates that “a bank shall not open or keep anonymous accounts or accounts in obviously fictitious names” (Section 10). The Banking supervisor indicates that banks do not keep numbered accounts.

279. Section 44 (1) of the Banking Act requires that banks “only open bank accounts and accept security deposits, or rent out safe deposit boxes, when they are satisfied, having acted with due diligence and with reasonableness, that they have established the identity of the person in whose name the funds or securities are to be credited or deposited or the identity of the lessee of the safe deposit box, as the case may be”.

280. Section 5 (1) of the Banking regulation requires that banks identify their customer when establishing a business relationship³⁴ or conducting transactions³⁵ on the basis of (i) the Omang identity card for a citizen of Botswana above the age of 16 or (ii) a valid passport for a foreign national.

³⁴ The Banking Regulations defines “opening an account” as establishing a business relationship with a bank to operate a current account, a deposit account, a savings account or a loan account, or any other obligation arising out of the contractual relationship between a bank and a customer and includes buying and selling of foreign currency to a customer by a bank, transmission of money and investment of funds

³⁵ The said Regulation defines a transaction as a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any share, stock, bond, certificate of deposit, or other

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281. Section 5 (2) prescribes that banks should renew the identification of their customer whenever they have doubts on this identity.

282. Neither the Banking Act nor the Banking regulation establishes distinction between the identification of a regular customer and of an occasional customer. There is therefore no threshold for occasional customers. The identification requirements cover occasional transactions that are wire transfers undertaken by banks. No provision specifically requires the identification of the customer when there is a suspicion of money laundering – but there is at the same time no exemption for the identification requirements based on thresholds.

283. The Banking regulation specifies (Section 6) how banks should verify the identity of their customers (natural persons), through the following methods:

- obtaining a reference from a well known professional, an employer of the customer, a known customer of the bank who, or a customary authority that, knows the applicant;
- in the case of non-residents, obtaining references from their foreign banks, where possible;
- making a credit reference agency search;
- requesting an original recent council rates or utility bill receipt;
- using one of the address validation or verification services on offer; or
- conducting a personal visit to the home of the applicant where appropriate, or possible.

284. There is no definition of the “well known professional” mentioned in this provision, and so far neither guidance nor “case law” has provided clarification to banks on what professionals would be considered acceptable – the assessors were advised that doctors, accountants, senior civil servants, lawyers would be consider as “well known professionals”.

285. As far as legal entities are concerned, banks are prescribed (Section 7) to “verify the legal existence of the corporate bodies and identify the directors, the beneficial owners and the management of that corporate body” and to obtain from the corporate body the following information and documentation:

- the certificate of incorporation or equivalent, details of the registered office and the place of business;
- details of the nature of the corporate body's business, the reason for the account being opened, an indication of the expected turnover, the source of funds, and a copy of the last available accounts, where appropriate;
- where there is more than one signatory to the account, satisfactory evidence of the identity of at least two signatories and, where necessary, two directors, one of whom shall be an executive director;
- a copy of the resolution of the Board authorizing the account signatories; and
- copies of powers of attorney, or any other authority, affecting the operation of the account, given by the directors in relation to the corporate body.

monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to, a bank, by whatever means effected

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286. The need to only identify, when there is more than one signatory, only “at least two signatories” or “two directors” is restrictive.

287. The Banking Regulation (Section 8) requires, when the customer opens a “trust account” with the bank, that the bank “shall endeavor to know and understand the structure of the trust sufficiently to determine the provider of funds and those who have control over the funds”. This Section does not require banks to satisfy themselves that they have identified the settler, the trustee or person exercising effective control over the trust, and the beneficiary. It does not either require banks to obtain information regarding the power to bind the legal arrangement. It does not either require banks to inquire whether the trust has been registered – even if the industry practice seems that no account are opened for trust absent its registration with the Registrar of Deeds (see relevant section).

288. Section 9 requires banks to “take reasonable measures to obtain information on the true identity of the person on whose behalf an account is opened or a transaction conducted if there is any doubt as to whether any customer is acting on his own behalf”. This Section does not require the full-fledged identification and verification of identity of this third party in such situations, but only “information” on its identity.

289. In two instances (Section 5 (3)³⁶ and Section 7 (1) quoted above), the Banking Regulation refers to a requirement to identify beneficial ownership. However, this Regulation does not define the beneficial owner as the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted, or those persons who exercise ultimate effective control over a legal person or arrangement. In addition, the requirement set out in Section 5 (3) does not cover all transactions that can be conducted by a bank, but only a subset of these (account, remittance and safe custody facilities). Beneficial ownership is defined in other acts than the Banking Regulation. The Collective Investment Undertaking Act for instance defines beneficial ownership as “the rights over the deposited property of a unit trust conferred by a trust deed on a unit-holder”, unit-holder being in that context equivalent to shareholder. Based on such a definition, banks will not be in position to conclude that they shall identify the beneficial owner according to the FATF requirement. The Banking Regulator indicated that it has not informed banks that the requirement to identify beneficial owners in the context of Section 5 (3) and 7 (1) extends to the identification of the natural person exercising ultimate effective control.

290. As far as corporate customers are concerned, Section 7 (2) (b) prescribes that banks gather information allowing them to determine the expected nature and purpose of the business relationship (even if the requirement is not laid out that directly). There is no direct equivalent for natural persons. However, Section 17 (2) (b) of the Banking Regulation, which refers to internal controls, requires banks to establish know-your-customer procedures, that have to include “knowing the customer's business, establishing systems that would recognize suspicious activities and having in place internal suspicious reporting procedures”. That requirement, which covers all categories of customers, amounts to a requirement to gather information on the purpose and nature of the business relationship.

³⁶ Article 5 (2) of the Banking Regulation : “A bank shall identify the beneficial owner of an account opened with it and any person using remittance and safe custody facilities, and if the bank fails to ascertain the identity of such owner or person, it shall close the account or deny the facilities concerned”.

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291. Neither the Banking Act nor the Banking Regulation contain direct requirement regarding on-going due diligence on the business relationship. Such a requirement can be inferred from the obligations related to internal controls, such as Section 17 (2) (b) (see above). There is however no requirement to maintain documents, data and information collected under the CDD process up-to-date, nor to undertake regular reviews of existing records.

292. The Banking (AML) Regulation does not define a high risk customer category, and therefore does not prescribe enhanced due diligence for such categories of customers. Some of the high categories of customers or services identified by FATF are present in Botswana, such as private banking, trusts or nominee shareholding for instance. No guidance related to risk has been issued by the Banking Supervisor.

293. The Banking Regulations does not foresee situations where simplified or reduced CDD measures could be applied.

294. As laid out in the Banking Act and the Banking (AML) Regulation – see par. 280, banks should identify and verify the identity of the customer before entering into the business relationship, providing a service or undertaking a transaction. There are no exceptional circumstances where there could be exemption in the Act or the Regulation.

295. Section 5 (3) of the Banking Regulations prescribes that “if the bank fails to ascertain the identity of such owner or person, it shall close the account or deny the facilities concerned”, in situation covering both business relationships and the provision of remittance or safe custody services. This Section does not explicitly cover the other services offered to, or transactions undertaken for, an occasional customer. Schedule I of the Banking (AML) Regulations, that describes examples of suspicious activities, contains several examples related to failures to complete CDD before or after commencing the business relationship (customer furnishes unusual or suspicious identification documents, is unwilling to provide background information, opens an account without identification, references or a local address, is reluctant to reveal details about the business activities or to provide financial statements or documents about a related business entity...). In such situations, banks are required to file a suspicious transaction report under section 14 of the Banking (AML) Regulation.

296. The identification requirements related to existing customer are laid out in the Banking Act (1995) and are as follows (Section 44 (2) and (3)):

- 44 (2) “In the case of bank accounts and security deposits which have been opened, and safe deposit boxes which have been rented out, prior to the coming into force of this Act, and where the true identity of the customer has not been satisfactorily established, the bank concerned shall, by writing to the customer in question or otherwise, take steps forthwith to establish his true identity.”
- 44 (3) “If the steps taken under subsection (2) fail to satisfy the bank concerned that they have established beyond reasonable doubt the true identity of the customer within twelve months of the coming into force of this Act, the bank shall forthwith close the account or security deposit, or terminate the lease of the safe deposit box, as the case may be, and report the matter to the Central Bank.”

Bureaux de change

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297. The CDD requirements for bureaux de change are defined in Section 12, titled “anti-money laundering measures”, of the Bank of Botswana (bureau de change) Regulations. Bureaux de change are required to establish and maintain effective AML measures. More specifically, they have to “take reasonable measures to obtain information about the true identity of the person on whose behalf a transaction with it is conducted” and have to “comply with any guidelines issued by the Bank regarding (i) the identification of customers”. This reference to BoB guidelines was not considered by the assessors as referring to the Banking (AML) Regulation, which is not a guideline.

All designated bodies

298. None of the AML related laws and regulations of Botswana (PSCA, Banking Act, Banking (AML) Regulation or any other Regulations regarding other pillars of the financial sector) contain requirements related to Politically Exposed Persons – either foreign PEPs or domestic PEPs. There are therefore no requirements regarding the establishment of the business relationship with PEPs, the extent of the customer due diligences, the decision-making procedures regarding PEPs and the on-going monitoring of such business relationships.

299. The BoB inspection questionnaire to banks, which is not “other enforceable means”, addresses this issue, by focusing on the appropriate risk management procedures to determine whether a customer is a PEP, and whether senior management approval is obtained prior to establishing the business relationship.

300. None of the the PSCA, the Banking Act, the Banking (AML) Regulation or any other sectoral law or regulation covering the financial sector contain provisions regarding cross-border correspondent accounts and similar relationships.

301. Only the BoB questionnaire for examinations addresses this issue, focusing on the adequacy of the account opening procedures, the existence of correspondent banking relationships between the respondent bank and shall banks in a bank secrecy or money laundering haven, the existence of an effective AML program in the foreign bank, the business profile of the respondent bank, the quality of its STR mechanisms and the existence of internal procedures for enhanced scrutiny of transactions involving the proceeds of corruption of foreign officials.

302. The PSCA does not contain requirements related to the misuse of new technology for money laundering, or to the risk of non face-to-face business relationships.

303. Section 41 (“methods of identification”) of the Banking Law indicates that “regulations [...] may provide for certain other methods of identification in relation to certain transactions, including transactions that are electronically processed”.

304. The Banking (AML) Regulations prescribes in its Section 11 that banks “shall establish clear procedures on how to identify a customer who applies for financial services through the internet or other electronic means, and shall not permit a customer to conduct business through this means unless the identity documents of the customer have been verified or confirmed”. In practice, the assessors were advised by BoB that at this juncture, banks in Botswana require that CDD obligations be undertaken with the physical presence of the customer, prior to the provision of such services.

Analysis

305. The PSCA sets out the fundamental obligations regarding customer due diligence. However, it remains too general, or even silent, on several key requirements. In addition, the absence at the date of the on-site mission of implementing regulations and the lack of enforcement by the supervisory authorities other than Bank of Botswana undermines the effectiveness of the PSCA regime.

306. As indicated above, the scope of coverage of the PSCA is too restrictive. The scope of designated bodies is based in the first place on professions and not activities, and several key professions or institutions are left out of the coverage of the PSCA.

307. The PSCA is silent on anonymous accounts or accounts in obviously fictitious names for business relationships established before the enactment of the PSCA. Given the lack of clear implementation of Know Your Customers measures outside the banking and bureaux de change sectors, it is the assessors' view that such accounts or business relationships could exist in Botswana.

308. The PSCA is silent on how designated bodies should identify and verify the identity of their clients, natural or legal persons. There is no requirement on the renewal or updating of the identification. It does not require the identification and verification of identity of beneficial owners. It does not require designated bodies to obtain information on the purpose and intended nature of the business relationship, nor on the on-going due diligence.

309. The exemption under Section 17 (4) of all the CDD requirement when the customer is a designated body is significantly too broad. As drafted, this provision would allow the exemption of CDD measures when the other designated body would be acting for one of its client, or in the context of correspondent banking relationship. In addition, such an exemption should not apply whenever there is suspicion of money laundering or specific higher-risk scenario. As no list of jurisdictions for which such an exemption would be acceptable has been issued, this part of the exemption is not of concern at the moment. As far as domestic designated bodies are concerned, it is the assessors' view that given the current level of implementation of AML/CFT requirements in Botswana, such an across-the-board exemption is excessive.

310. The provisions related to the timing of the verification of identity introduce an excessive carve-out by their restriction to a very limited set of circumstances. The absence of any requirement regarding existing customer, particularly in the absence of any review of the number of business relationship with potential deficient or inexistent identification of the customer, is of concern .

311. As far as banks are concerned, several of the major pitfalls of the PSCA are addressed – even if more clarity on the articulation of the framework applicable to banks and the one of general applicability would have been useful.

312. The requirements set out by the Banking Act and the Banking (AML) Regulation present nonetheless several weaknesses. One relates to trusts, where the legal requirement does not make it explicit that the banks should identify the settler, the trustee or the person exercising effective control, and the beneficiaries. Similarly, the obligations when the customer is acting for a third part do not require that reasonable steps be taken to identify that third party.

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313. As far as beneficial ownership is concerned, the main issue is whether the Regulation is clear enough on the definition of beneficial ownership. The scope of the requirement to identify the beneficial owner when the customer is a natural person is too narrow.
314. The requirements on the on-going monitoring of the business relationship do not call for regular updates of identification documents, data and information.
315. It is the assessors' view that level of awareness of financial sector institutions on their AML/CFT preventive obligations is low, particularly in designated bodies other than commercial banks and bureaux de change. The PSCA is apparently not understood by obligated parties as creating obligations, all the more as no enforcement action has been taken by the supervisors with the exception of Bank of Botswana. Even for banks and for bureaux de change, the legal references appear to be the Banking Act, the Banking Regulations and the Bureaux de change Regulation, respectively.
316. In practice, banks have set up preventive measures, both to implement Botswana requirements and respond to BoB mobilization and as a result of their obligations as members of international financial groups. Bureaux de change also appear as having taken steps on CDD. The supervisory actions undertaken by the BoB have obviously contributed to raise awareness and to support the actions already adopted by banks, and to trigger mobilization of bureaux de change. Banks presented examples of CDD measures going beyond the legal requirements set up in Botswana, on the basis of their group's own requirement (on a consolidated basis). They also described caution in dealing with corporate structure or legal arrangements raising transparency concerns, in particular when identification of the controllers or of the beneficiaries proves difficult.
317. BoB supervisory action seems to have identified overall a satisfactory level of compliance with the existing obligations under the Banking (AML) Regulation, at least for commercial banks. BoB has identified some failures in the Botswana Savings Banks, which have been reported to the oversight agency for BSB, the Ministry of Finance and Development Planning. BoB has noted these deficiencies in general terms in its annual report on Banking Supervision, which is public.
318. Outside banks and bureaux de change, steps have been taken by insurers and stockbrokers to adopt some minimal levels of CDD – largely at their initiative. In the absence of supervisory action by the Registrar of Insurances and the Registrar of the Stock Exchange on CDD obligations, the assessor team was not in position to reach any view on their adequacy and on their level of compliance with the PSCA requirements.
319. So far, as implementation of the AML/CFT requirements remains in its view relatively recent, the Central Bank has adopted a soft enforcement approach, focusing essentially on moral suasion and awareness raising. As far as statutory banks are concerned, where compliance issues have been described to the mission as more substantive, the Ministry of Finance and Development Planning is also giving priority to moral suasion.
320. Overall, and despite the welcome and positive steps taken in the banking sector, the overall effectiveness of the CDD measures remains low. Notwithstanding the weaknesses of the legal regime with regards to the international standard, the level of awareness and understanding of the money laundering risk and of the importance of rigorous customer identification mechanisms are at best very uneven, particularly for non-bank financial institutions.

321. The legal framework in Botswana does not require enhanced CDD for politically exposed persons. Even if banking institutions appear to have adopted some measures in that respect, in application of their group internal controls, the assessors were not in position to reach a judgment on their effectiveness.

322. There are no requirements on correspondent banking and similar relationships.

323. The misuse of new technological developments for ML purposes is addressed in the Banking (AML) Regulation, but at a level of generality that raises questions on its effectiveness and on the actual implementation of specific measures by banks. This is all the more of concern as anecdotal evidence was received by the assessors that banks are taking action to develop internet banking, and that other designated bodies seem to accept entering into business relationships or realize transactions for occasional customers without a face-to-face contact with the customer.

3.2.2 Recommendations and Comments

324. The authorities should consider:

- Amending the PSCA or issue regulations under the PSCA, as appropriate, to provide for
 - a. An extension of the coverage of financial activities under the PSCA, including extending CDD requirements to money remitters other than banks
 - b. a clear interdiction of anonymous accounts or accounts in fictitious names under PSCA for business relationships established prior to the PSCA
 - c. CDD requirements for money remitters other than banks
 - d. more specificity under the PSCA of the CDD requirements for the identification and verification of identity of natural persons, corporate entities and legal arrangements
 - e. requirements regarding the identification of beneficial owners under the PSCA
 - f. requirements regarding information on the nature and purpose of the business relationship, its on-going monitoring under the PSCA and the renewal of identification measures
 - g. requirement of enhanced due diligence for high risk business relationships and transactions under the PSCA
 - h. An extension of the scope of the requirement under the PSCA that CDD be undertaken before conducting business
 - i. A restriction of the exemption under the PSCA of all CDD requirements for business relations, transactions and services for another designated body, domestic or foreign
 - j. A requirement under the PSCA on the identification, on a risk-based basis, of existing customers
- Implementing more intensely the PSCA for designated bodies other than banks and bureaux de change
- Amending the Banking (AML) Regulation to provide for
 - a. a requirement, under the Banking (AML) Regulation, to identify the settler, trustee or person exercising effective control over the trust, and the beneficiary when conducting business with a trust

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- b. a requirement, under the Banking (AML) Regulation, to verify the identity of the third party when the customer is acting on behalf of a third party
 - c. a clarification, under the Banking (AML) Regulation, of the definition of beneficial ownership, and an extension of the coverage of the identification requirement when the customer is a natural person
 - d. a requirement, under the Banking (AML) Regulation, to keep identification information up-to-date and to undertake regular reviews of existing customers
 - e. a requirement of enhanced due diligence for high risk business relationships and transactions under the Banking (AML) Regulation
- A more intensive implementation of the Banking (AML) Act for statutory banks
 - Setting up requirement, for all designated bodies, regarding business relationships and transactions with foreign Politically Exposed Persons
 - Setting up requirements regarding correspondent banking relationships and similar requirements
 - Setting up, for all designated bodies other than banks and bureaux de change, requirement regarding new or developing technologies and non-face-to-face business relationships and transactions, and complement the current requirement for banks and bureaux de change

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	NC	<ul style="list-style-type: none"> • Too narrow coverage of financial activities under the PSCA • Absence of a clear forbiddance of anonymous accounts or accounts in fictitious names under PSCA for business relationships established prior to the PSCA • Absence of CDD requirements for money remitters other than banks • Lack of specificity under the PSCA of the CDD requirements for the identification and verification of identity of natural persons, corporate entities and legal arrangements • Absence of requirements regarding the identification of beneficial owners under the PSCA • Absence of requirements regarding information on the nature and purpose of the business relationship, its on-going monitoring under the PSCA and the renewal of identification measures • Absence of requirement of enhanced due diligence for high risk business relationships and transactions under the PSCA • Too narrow scope of the requirement under the PSCA that CDD be undertaken before conducting business • Excessive exemption under the PSCA of all CDD requirements for business relations, transactions and services for another designated body, domestic or foreign • Absence of requirement under the PSCA on the identification, on a risk-based basis, of existing customers

		<ul style="list-style-type: none"> • Lack of implementation for designated bodies other than banks and bureaux de change • Absence of requirement, under the Banking (AML) Regulation, to identify the settler, trustee or person exercising effective control over the trust, and the beneficiary when conducting business with a trust • Absence of requirement, under the Banking (AML) Regulation, to verify the identity of the third party when the customer is acting on behalf of a third party • Ambiguities, under the Banking (AML) Regulation, in the definition of beneficial ownership, and too narrow coverage of the identification requirement when the customer is a natural person • Absence of requirement, under the Banking (AML) Regulation, to keep identification information up-to-date and to undertake regular reviews of existing customers • Absence of requirement of enhanced due diligence for high risk business relationships and transactions under the Banking (AML) Regulation • Insufficient effectiveness for statutory banks
R.6	NC	<ul style="list-style-type: none"> • Absence of requirement regarding Politically Exposed Persons
R.7	NC	<ul style="list-style-type: none"> • Absence of requirement regarding cross-border correspondent relationships and similar arrangements
R.8	PC	<ul style="list-style-type: none"> • Absence of requirement under the PSCA regarding non face-to-face business relationships and transactions • Lack of specificity of the requirement regarding non face-to-face business relationships and transactions under the Banking (AML) Regulations

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

325. As the PSCA is silent on “introduced business”, the Botswana legal framework is considered not to cover the situation of introduced business,. The situations where the designated bodies have reasons to believe that the customer is acting for a third party are covered in the previous section, but do not encompass the “introduced business” situations.

326. For banks, Section 6 of the Banking (AML) Regulation, which deals with the verification of the identity of the customer, indicates that reference checks ought to be done through “a well known professional” or foreign banks for non-resident customers. BoB indicated that this provision is not aimed to cover the introduction of customers by third parties at the verification stage (as the Section states directly that “banks shall verify the names and addresses of its customers”), but it would seem important that there is no mis-interpretation of this provision to delegate the verification of identity. Apart from this ambiguity, it is the assessors’ conclusion that the laws and regulations relevant for the banking sector do foresee the possibility of “introduced business”.

327. On the contrary, the assessor team was unable to satisfy itself that recourse to the introduction by third parties is not a practice for non-bank financial institutions. The insurance industry clearly represents a risk in that respect, as insurance brokers and insurance agents can undertake insurance business while not being covered by the PSCA. The assessor team could not identify any legal requirement governing the respective responsibilities of the insurer and of the broker and/or agent in such situations. The securities industry is known to also have recourse to such arrangements (and the assessment team received anecdotal information that brokers use them in Botswana), and there is here again no industry-specific requirement in that respect.

3.3.2 Recommendations and Comments

328. The team was satisfied that the legal framework applicable to banks is in line with the requirements for eligible introducers, but not for other designated bodies – particularly in the insurance and securities sector. Given the respective weights and risks of the three main pillars of the financial sector, the assessors reached the conclusion that compliance with this Recommendation should be partially compliant.

329. The authorities should:

- Specify, by law or regulation, the framework governing introduction by and reliance on third parties outside the banking sector

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	PC	<ul style="list-style-type: none"> • Lack of legal framework on introduced business and reliance on third parties outside the banking sector

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

330. The PSCA states in its section 17 (12) that “for the purposes of an investigation under this Act, the Directorate may require a designated body to furnish information or produce documents relevant to the investigation” – the Directorate referring to the DCEC. It further prescribes in section 17 (18) that “No duty of secrecy or confidentiality or any other restriction on the disclosure of any information as to the affairs of a customer of a designated body, whether imposed by law, common law or an agreement, shall affect a duty imposed by subsections (14), (15) and (16)” – where section 17 (14), 17 (15) and 17 (16) relate respectively to the reporting of transactions above a given amount, the reporting of suspicious transactions and the reporting of currency transactions out or into the country above a given amount.

331. The Banking Act states that the duty of confidentiality does not apply when

- In Section 43 (2) (b) : “civil or criminal proceedings arise involving the bank and the customer or his account”

- in Section 43 (2) (e) : “the information is required by the Directorate on Corruption and Economic Crime in connection with an investigation carried out under the authority of the Director thereof in accordance with the provisions of section 7 of the Corruption and Economic Crime Act, 1994”
- in Section 43 (5) and (6) : (5) (a) Where a police officer, other than an officer of the Directorate on Corruption and Economic Crime acting in accordance with the provisions of subsection (2) (g) or a duly authorized representative of the Commissioner of Taxes requires any information from a bank relating to the transactions and accounts of any person, he may apply to a court of competent jurisdiction for an order of disclosure of such transactions and accounts or such part thereof as may be necessary ; (5) (b) The court shall not make an order of disclosure under this subsection unless it is satisfied that the applicant is acting in the discharge of his duties, that the information is material to any civil or criminal proceedings, whether pending or contemplated in Botswana, and that the disclosure is necessary, in all the circumstances ; (6) Notice of an application to the court made under subsection (5) shall be served on both the bank and the person in question.

332. As described under section 3.10, the supervisory and regulatory bodies have access to all information necessary held by financial institutions.

333. In conclusion, competent authorities can have access to the information they require to properly perform their functions in combating ML or FT.

334. There is no impediment for financial institutions to share information to implement (in theory) the requirements under R7, R9 and SR VIII.

335. As indicated in the relevant parts of the report, the assessors have concerns regarding the capacity of some competent authorities to share information domestically or internationally, but as these constraints are not directly derived from financial institution secrecy or confidentiality requirements, the assessors consider it is more appropriate to reflect these difficulties in the sections of the report dealing with the relevant Recommendations rather than under this section.

3.4.2 Recommendations and Comments

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	C	

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

3.5.1 Description and Analysis

336. The record keeping requirements for all designated bodies are laid out in section 17 (10) of the PSCA, which states that designated bodies must keep the following records:

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- in the case of the identification of a prospective customer or the third party on whose behalf the customer is acting, copies of documentation presented to identify such customer or third party and proof of authority of the customer to conclude such transaction;
- in the case of transactions, the original documents or copies of the nature of the business relationship established or transaction concluded; and
- identifying particulars of all accounts involved in such business relationship, transaction or service.

337. Section 17 (11) of the PSCA requires these records to be kept for a period of 5 years after the termination of the business relationship with the customer or completion of the transaction.

338. As indicated in the FIU section, these records must be provided to the DCEC (section 17 (12) of the PSCA), and are admissible as evidence in any proceedings (section 17 (13) of the PSCA). In addition, as described under section 3.10 of the report, information on record has to be made available to the supervisory agencies.

339. The record-keeping requirements defined in the Banking Act and in the Banking (AML) Regulation are more detailed. The Banking Act prescribes in its Section 18 (1) that “Every bank shall keep such records in Botswana as are necessary to exhibit clearly and accurately the state of its affairs and to explain its transactions and financial position so as to enable the Central Bank to determine whether the bank concerned has complied with the provisions of this Act, and it shall preserve every such record for a period of at least five years as from the date of the last entry therein” and in its Section 44 (4) that “Any records used by a bank in order to identify a customer shall be kept by the bank for at least 5 years after closure of the bank account concerned”, and, as indicated in the FIU section, that these information must be made available to the DCEC. The conservation of records ends 5 years after the last entry or the closure of the bank account.

340. The Banking (AML) Regulation lays out very detailed obligations in Section 12:

- “a bank shall keep a record of copies of identification documents presented by customers when they first establish a business relationship with it, for a period of at least five years from the date the identification documents were presented to it”
- “where the records referred to in this regulation relate to an on-going investigation or transaction, which has been the subject of a disclosure, a bank shall retain those records until, in the case of an on-going investigation, the law enforcement agencies confirm that the investigation has been closed or completed, as the case may be, or, in the case of an on-going transaction, the bank confirms that the transaction has been completed”
- “a bank shall maintain, for a period of at least five years, all records on transactions, both domestic and international, to enable it to comply expeditiously with information requests from the Financial Intelligence Agency and other competent authorities”
- The records above mentioned “shall be sufficient to permit a reconstruction of individual transactions, including the amounts and types of currency involved, if any, so as to provide, if necessary, evidence for prosecution of criminal behavior”

341. Though covering potentially a longer time period than under the PSCA when the records relate to an investigation, the Banking (AML) Regulation prescribes though a shorter timeframe in other situations, as the 5 years period begins at the presentation of the identification documents or at the

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realization of the transactions – and not five years after the termination of the business relationship. There is therefore an inconsistency between the Banking (AML) Regulation and the Banking Act (or the PSCA).

342. The record-keeping requirements for bureaux de change are laid out in Section 12 of the bureau de change Regulations, which requires bureau de change to “comply with any guideline issued by the Bank regarding [...] (ii) the record keeping of transactions”. In addition, Section 15 obliges bureaux de change to “maintain a register of the following transactions (a) cash; (b) credit cards; (c) travelers cheques; (d) bank drafts; (e) sales and purchases; and (f) daily summary and balance book”. The same Section requires that this register “be open for inspection” under the inspection tools of the BoB.

343. As indicated above, wire transfers executed by professionals outside the regulated sector are not subject to any identification requirements. In practice, the assessors were advised that international operators such as Western Union or MoneyGram implement their corporate policies relevant to customer identification. No information was gathered by the assessor team on the practices of other kinds of remittance services providers.

344. The requirement applying to customer identification under the PSCA, the Banking Act, the bureau de change Regulations and the Banking (AML) Regulations provide the relevant institutions with the necessary information on their customer for wire transfer purposes.

345. There is no requirement, set in law or regulation, imposing that the identification information travels with the wire transfer. The indications received by the assessors are that in practice, banks do fill all the related fields in the Swift message. Absent an explicit requirement, there is no compliance verification by BoB, which focuses on the compliance by banks of their obligations to submit, for balance of payments purposes, forms for each wire transfer (outgoing and incoming) above P 10.000 (“A bank shall complete such form as the Central Bank may prescribe to record an outward transfer or a foreign currency payment and such other form as the Central Bank may prescribe for any foreign currency receipts or funds from external sources where the transaction involves an amount of P10,000 or more; and shall require a customer to provide full details of the transaction including the name, identity number and full address of the customer and the beneficiary, as well as the purpose of the transaction”). There are no similar requirements for domestic transfers.

346. There are no requirements related to non-routine transactions, to the maintenance of originator information, to risk-based procedures for transfers not accompanied by the originator information. However, as banks have to report in-coming wire transfers above P 10.000 to the Central bank, they do have to receive information on the originator’s identification information.

347. Overall, the record-keeping requirements laid out in the PSCA and in the Banking Act and Regulations are satisfactory, as well as the possibilities offered to competent authorities (see also the supervision section of the report). The PSCA does not explicitly require that transaction records be sufficient to permit the reconstruction of individual transactions. The assessors have been advised that the contradiction in the Banking (AML) Regulation on how long records should be kept with the PSCA and the Banking Act is a drafting oversight. It nonetheless creates a legal uncertainty and a possible loophole in the record-keeping requirements.

348. The requirements that banks keep records of transactions having led to disclosure (STR) as long as they have not been advised by the relevant authorities that the related investigations are completed seems to impose an undue burden on banks. In addition, this provision implies that these authorities provide feed-back to banks for each reported transaction, which is also demanding for the FIU and law enforcement – see discussion of the feed-back on STRs.

349. As far as wire transfers are concerned, two different sets of issues arise. The first is the too limited coverage of the professions required to undertake the identification of their customer undertaking wire transfers. The second is the absence of requirement regarding the circulation of identification information with the wire transfers. In the latter, the information is gathered and kept by the banks.

3.5.2 Recommendations and Comments

350. The authorities should consider:

- enforcing more intensely the record-keeping requirements for designated bodies other than banks and bureaux de change, to improve implementation of the PSCA
- amend the Banking (AML) Regulation to address its inconsistency with the Banking Act and the PSCA on the timeframe for record-keeping
- enact (by law or regulation) requirements on the circulation of identification information with wire transfers

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	LC	<ul style="list-style-type: none"> • Absence of effective implementation of the record keeping requirements by designated bodies other than banks and bureaux de change • Inconsistencies in the timeframe requirement under the Banking (AML) Regulation, on record-keeping after the completion of the transaction
SR.VII	NC	<ul style="list-style-type: none"> • Absence of coverage under the PSCA of all professionals undertaking wire transfers • Absence of requirement that the identification information circulates with the wire transfer, on the handling of non-routine transactions, the maintenance of originator information, and on risk-based procedures for transfers not accompanied by the originator information

Unusual and Suspicious Transactions

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

3.6.1 Description and Analysis

351. There is no legal provision for designated bodies under the PSCA, other than banks, to monitor for complex, unusual large transactions, or unusual patters of transactions, that have no apparent or visible economic or lawful purpose for such transactions, or transactions or relationships concerning

countries which do not or insufficiently apply the FATF recommendations. In practice, they did not conduct such monitoring.

352. Legal Framework: Banking (Anti-Money Laundering) Regulations

353. There is no specific provision within the Banking (AML) Regulations for the institutions to pay special attention to complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose. BoB stated that unusual transactions are considered to be covered under the definition of suspicious transactions.

354. Suspicious transactions are defined in Section 3 of the Banking (AML) Regulations as being “a transaction which is inconsistent with a customer's known legitimate business or personal activities or with the normal business for the type of account which the customer holds, and includes, but is not limited to, the activities listed in the First Schedule [to the Banking (AML) Regulations]”. The First Schedule is an extensive list of ‘Examples of suspicious activities’. Some of the activities listed in the First Schedule would be deemed to be unusual patterns of transactions.

355. The combining of the unusual and suspicious concepts is not immediately apparent from the Banking (AML) regulations and means both are treated in the same fashion. The main provision which leads to a limited form of monitoring unusual transaction comes from Section 14 of the Banking (AML) Regulations. This requires banks to report to BoB and DCEC “any transaction involving large amounts of money or suspicious activities by its customers”. “Large amounts” is not defined in the Banking (AML) Regulations. BoB stated that ‘large amounts’ were set by the individual banks. In practice, the banks interpreted ‘large amounts’ to be large in relation to the normal transactions and they do generate exception reports for large transactions for monitoring purposes.

356. Pursuant to Section 15(4), the money laundering reporting officer is required to promptly evaluate reports from staff to determine whether or not there are reasonable grounds for believing that the customer has been engaging in illegal activities or crime. However, there is no explicit provision for the findings of the evaluation to be recorded in writing, if no report is made to BoB and DCEC, pursuant to Section 14 of the Banking (AML) Regulations.

357. Section 12 sets out the record keeping requirements under the Banking (AML) Regulations. Sub-section 3 provides that “Where the records referred to in this regulation relate to an on-going investigation or transaction, which has been the subject of a disclosure, a bank shall retain those records until, in the case of an on-going investigation, the law enforcement agencies confirm that the investigation has been closed or completed, as the case may be, or, in the case of an on-going transaction, the bank confirms that the transaction has been completed.” As this requirement relates to on-going investigation, from which it is implied that a STR has been made to the authorities, this sub-section cannot be used as a requirement for the maintenance of records relating to the findings of the evaluation of the reports submitted to the money laundering reporting officer.

358. There is no legal provision for special attention to be paid to transactions or relationships concerning countries which do not or insufficiently apply the FATF recommendations, nor for the examination of transactions with no apparent economic or visible lawful purpose from such countries. Furthermore, the activities in the First Schedule to the Banking (AML) Regulations make no reference to transactions or relationships concerning countries which do not or insufficiently apply the FATF recommendations.

359. No competent authority has the power to require banks to apply any form of countermeasures in relation to countries which do not sufficiently apply FATF Recommendations.

3.6.2 Recommendations and Comments

360. The authorities should consider ;

- Introducing the necessary provisions which require the monitoring of complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose for such transactions, by the designated bodies.
- Requiring the evaluation of unusual transaction reports submitted to the money laundering reporting officer of designated bodies to be documented in writing and to be maintained for a period of at least 5 years.
- Requiring designated bodies to pay special attention to transactions or relationships concerning countries which do not or insufficiently apply the FATF recommendations, nor for the examination of transactions with no apparent economic or visible lawful purpose from such countries.
- Providing information to the designated bodies on the countries which are considered not to or insufficiently apply the FATF recommendations.
- Establishing a mechanism by which countermeasures could be applied by the designated bodies against countries which do not sufficiently apply FATF Recommendations.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	NC	<ul style="list-style-type: none"> • There is no requirement for designated bodies to monitor for complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose for such transactions • There is no requirement for banks to document in writing the findings of the evaluation of reports from staff. • Documents concerning the evaluation of reports from staff are not required to be maintained for five years. • Non-bank designated bodies are not required to monitor for unusual transactions
R.21	NC	<ul style="list-style-type: none"> • There is no requirement for designated bodies to monitor transactions and business relationships involving countries not sufficiently applying FATF Recommendations. <ul style="list-style-type: none"> ▪ No competent authority is able to require designated bodies to implement any form of countermeasures in relation to countries which do not sufficiently apply FATF Recommendations.

3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

3.7.1 Description and Analysis

361. Legal Framework: PSCA; Banking (AML) Regulations; Banking Act

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362. Requirement to Make STRs on ML and TF to FIU (c. 13.1 & IV.1): Banks are required to report suspicious transactions pursuant to both Section 17(15) of the PSCA and Section 14 of the Banking (AML) Regulations. For Bureaux de Change, the requirement to report suspicious transactions is by virtue of Section 12 of the Bank of Botswana (Bureaux De Change) Regulations. The requirement for insurance and securities companies to report suspicious transactions is under Section 17(15) of the PSCA.

363. Section 17(15) of the PSCA states “Where a designated body that is party to a transaction in respect of which there are reasonable grounds to suspect that the transaction brings or will bring the proceeds of serious crime into its possession or it may facilitate the transfer of the proceeds of serious crime, the designated body shall, within ten days of becoming party to such a transaction, report the suspicion to the Directorate and to the Regulatory Authority.” In accordance with Section 17(3) of the act, ‘Directorate’ is the DCEC and ‘Regulatory Authority’ is the regulatory authority defined under the Collective Investment Undertakings Act, which pursuant to Section 2 of that act, is currently the BoB. It is noted that with the proposed creation of the NBFI Regulatory Authority in 2007, reports made pursuant to PSCA will no longer be made to BoB.

364. Serious crime is not specifically defined but "serious offence" means an offence for which the maximum penalty is death, or imprisonment for not less than two years. In the case Attorney General v. Bateng’s Building Construction and Others (1999), it was decided by the Court of Appeal that in respect of the PSCA, ‘serious crime’ means the same as ‘serious offence’.

365. Section 17(4) of the PSCA does create a scenario when certain accounts would be exempt from STRs. The sub-section states “This section [Section 17] shall not apply where a designated body enters into a business relationship, concludes a transaction or provides a service of a kind specified under the Schedule for another designated body or a body corresponding to a designated body in a state or country prescribed for the time being by the Minister as not applicable.” By virtue of this sub-section, once a state or country has been prescribed by the Minister, all business relationships with, transactions with, or provision of services as described in the Schedule to the Act to, institutions within that state or country which are designated bodies³⁷ in accordance with PSCA, would be exempt from all the provisions of Section 17 which set out all the AML preventative measures such as CDD, recording keeping and reporting. This means there would be no requirement to report suspicious transactions on their business relationships, transactions and services provided to them. The FATF Recommendations do not permit the exemption in respect of the reporting of suspicious transactions for any category of relationships, transactions or services. It is noted however that at present, no states or countries have been prescribed under Section 17(4).

366. It is believed that this provision was introduced under the idea that such designated bodies would have introduced AML/CFT measures by virtue of their domestic regulation and therefore

³⁷ Designated bodies are defined as : (a) a bank licensed under the Cap. 46:04 Banking Act; (b) a building society registered under the Cap. 42:03 Building Society Act; (c) a collective investment undertaking established under the Cap. 56:09 Collective Investment Undertakings Act; (d) Botswana Savings Bank established under the Cap. 65:03 Botswana Savings Bank Act; (e) a post office designated under the Cap. 72:01 Post Office Act; (f) a registered stockbroker in terms of the Cap. 56:08 Botswana Stock Exchange Act; (g) a long term insurance business specified under the Cap. 46:01 Insurance Industry Act; (h) a person who transacts foreign exchange business licensed under Cap. 55:01 the Bank of Botswana Act; (i) an international financial services centre certification committee constituted under the Cap. 52:01 Income Tax Act; (j) any other person or body as may by order be prescribed by the Minister under subsection (23) of PSCA.

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reliance could be taken from that. As such, it was intended that designated entities in Botswana would not need to perform the full range of AML preventative measures for such institutions, particularly CDD.

367. Section 14 of the Banking (AML) Regulations requires a bank to “report to both the Central Bank and the Financial Intelligence Agency, in the Form set out in the Second Schedule hereto, any transaction involving large amounts of money or suspicious activities by its customers...”.

368. There is no definition of suspicious activities but a suspicious transaction is defined in Section 3 of the Banking (AML) Regulations as being “a transaction which is inconsistent with a customer's known legitimate business or personal activities or with the normal business for the type of account which the customer holds, and includes, but is not limited to, the activities listed in the First Schedule [to the Banking (AML) Regulations]”. The First Schedule is an extensive list of ‘Examples of suspicious activities’. The authorities stated that an activity in the schedule did not automatically make the transaction suspicious but this had to be considered against the customer’s previous activity. The banks had a similar view. The authorities also considered that the term “suspicious activities” was the same as “suspicious transactions”.

369. The Banking (AML) Regulation’s STR reporting requirement is broader than the reporting requirement under the PSCA in that it does not require suspicion concerning whether the funds are the proceeds of crime, just that the activity is inconsistent with the client’s known legitimate business or personal activities. This could be considered to be similar to an unusual transaction as defined in FATF Recommendation 11.

370. Further examination of the Banking (AML) Regulations reveals another reporting obligation, namely that in Section 15. Section 15(3) of the Banking (AML) Regulations establishes the internal reporting requirements for staff to report to the anti-money laundering officer when they –

- a. “Become aware, has knowledge or suspects or has reasonable grounds to believe, that a customer has been or is involved in an illegal activity or crime;
- b. a customer in respect of whom the employee becomes aware, has knowledge or suspects or has reasonable grounds to believe, that another customer has been engaging in illegal activities or crime, deposits, transfers or seeks to invest funds or obtain credit against the security of funds obtained from such illegal activities or crime; or
- c. the bank holds funds on behalf of a customer who has been, is suspected to have been or in respect of whom there exist reasonable grounds to believe that such customer has been engaging in illegal activities or crime.”

371. Section 15(4) then requires that the anti-money laundering reporting officer evaluate the report to determine “whether or not there are reasonable grounds for believing that a customer has been engaging in illegal activities or crime, and if after such evaluation he finds that such grounds exist, he shall immediately report the case to the Central Bank and the Financial Intelligence Agency.”

372. The circumstances set out in 15(3)(a) and 15(3)(c) do not require there to be any suspected link between any funds held by the bank for the customer and the ‘illegal activities or crime’ which the customer is suspected of engaging in. It could be argued that in these circumstances, the banks would

be required to report as soon as it became known that the customer was involved with any crime regardless of it whether or not the offence could generate any proceeds e.g. assault.

373. The intention of the wording of Section 15(3)(b) is not understood. After analysis, it is believed the words ‘that another customer’ should be deleted and the word ‘funds’ should be inserted after ‘deposits’ and after ‘transfers’. In this case, Section 15(3)(b) would form the basis for the identification of a suspicious transaction.

374. Because of the different definitions used in Section 14 and 15, which are cited above, the assessors consider there is a significant difference between the reporting of ‘suspicious activities’ under Section 14 and the reporting of the circumstances set out under Section 15 when staff should raise an internal report. Reports generated under Section 14 only relate to activities which are inconsistent with the client’s previous activity, whereas the reports under Section 15 concern cases where it is suspected that the funds are the proceeds of crime. As such, it could be argued that Section 14 reports are ‘unusual transactions’ and Section 15 reports are ‘suspicious transactions’. This belies the title of Section 14 which is ‘Reporting of Suspicious Transactions’.

375. Whilst Section 15 apparently creates a reporting requirement independent of the requirement to report under Section 14, the form in Schedule Two of the regulations which the reporting institutions are required to use when submitting a report to DCEC and BoB only makes reference to Section 14 of the regulations. This does not aid the banks to understand the nature and scope of their reporting obligations.

376. In addition to the reporting required under the PSCA and the Banking (AML) Regulations, Section 21(4) of the Banking Act requires that “A bank will notify the Central Bank of any transaction by any of its customers which it suspects to be money laundering.” Failure to report such transactions can be sanctioned under Section 21(5) of the same Act. The Act does not define what is ‘money laundering’ for the purposes of making such reports.

377. In discussion with the authorities, it was stated they consider that the reporting requirements under the PSCA are not in effect and all STRs made since the requirement was introduced have been pursuant to the Banking (AML) Regulations. The authorities made no reference to the reporting requirement under the Banking Act.

378. In respect of bureaux de change, the suspicious reporting requirement is Section 12(1)(c) of the Bank of Botswana (Bureaux de Change) Regulations which states that a bureau de change will “report suspicious transactions” to the DCEC. However ‘suspicious transactions’ is not defined in these regulations. Section 12(2)(d) provides that a bureau de change “will comply with any guidelines issued by [BoB] regarding ... (iii) the filing of suspicious transactions reports” To date, no such guidelines have been issued for the bureaux de change.

379. From the above analysis, it can be seen there is a range of possible reporting requirements on suspicious transactions with no consistency as to the definition of what would constitute a ‘suspicious transaction’. This creates an unclear reporting requirement and may introduce difficulties if efforts were made to sanction an institution for failing to report.

380. To date, only banks have made STRs to the DCEC and the BoB. There was a mixed response on whether the reports were made pursuant to the PSCA or the Banking (AML) Regulations or both. The number of STRs which have been reported to in the past four years are:

Year	STRs Reported
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2003	27
2004	61
2005	141
2006	99

381. The authorities stated the reason for the drop of nearly 30% in the number of reports in 2006 when compared with 2005, was an improvement in the quality of reporting following some awareness raising which was conducted by DCEC for the banks. Whilst it is difficult to exactly gauge the expected level of reporting within Botswana, it is the assessors view that the current level of reporting is quite low, particularly when considering that the reporting regime is relatively new.

382. There was little knowledge amongst the designated bodies other than banks of the requirement to report under the PSCA. However, this could be as a result of the perception by the authorities that the reporting requirements under the PSCA were not in effect.

383. There is no provision for the reporting of funds that are suspected of being linked or related to terrorism or its financing.

384. Neither the PSCA or the Banking (AML) Regulations establishes a reporting threshold for STRs. Further, there is no explicit requirement to report attempted transactions though the First Schedule does make reference to one type of attempted transaction.

385. The PSCA and Banking (AML) Regulations are silent on the reporting of transactions which may involve tax matters. Tax evasion is an offence with a maximum sentence of two years and thus would be considered a serious crime for the purposes of the PSCA.

386. Concerning the reporting of STRs in relation to all criminal acts, Section 17(14) of the PSCA stipulates that reports are required in relation to the 'proceeds of serious crime'. As mentioned previously, 'serious crime' is the same as a "serious offence" which means an offence for which the maximum penalty is death, or imprisonment for not less than two years.

387. Section 17(23) of the PSCA provides for the protection for making STRs in that it states "No civil or criminal proceedings shall be instituted against any designated body or its directors, officers and employees, for breach of any restriction on disclosure of information imposed by contract or any legislative, regulatory or administrative provision, if they report to the Directorate or Regulatory Authority in good faith."

388. Section 16(2) of the Banking (AML) Regulations further sets out that "No person shall institute any civil or criminal proceedings against any bank which, or any director, principal officer or employee of a bank who, cooperates with the law enforcement agencies and reports any information relating to money laundering, relating to that person."

389. Both the PSCA and the Banking (AML) Regulations provide for sanction for tipping off. Under the PSCA, Section 17(23) states "Any person who, without lawful authority or reasonable excuse, discloses-

- (a) to any customer of whom information relating to him is being reported to the Directorate or to the Regulatory Authority the fact that he is subject to an investigation in respect of an offence alleged or suspected to have been committed by him under this Act; or

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(b) to any other person either the identity of any person who is subject to such an investigation or any details of an investigation, shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding one year or to a fine not exceeding P2,000 or to both.” The applicability of this section is understood to relate to STRs in that an “investigation” refers to the situation when a STR has been made to the authorities.

390. Under the Banking (AML) Regulations, Section 22 provides “No staff of a bank shall disclose to any customer that the customer is being investigated for money laundering activities.”

391. Neither the PSCA or Banking (AML) Regulations define “investigation”. It is considered ‘investigate’ refers to the situation when a STR has been made to the authorities concerning a particular customer. The authorities stated that it is derived from the action taken by DCEC upon receipt of a STR, namely the active investigation, rather than just the analysis of the STR. The use of the term ‘investigation’ in the provision is confusing and it could be interpreted that the prohibition of tipping off could be lifted once the authorities have concluded their investigations into the report.

392. There is no provision to ensure the name and personal details of a member of staff who makes a STR are kept confidential by the FIU.

393. It is noted that reporting institutions have received several complaints from customers about STRs being made concerning them. These complaints have been received after the customer has been interviewed by DCEC. It is suspected that in the course of the interviews with the account holders, the fact that a STR has been submitted to DCEC by a bank is revealed to them. Not only is this extremely detrimental to the overall STR reporting regime as it may deter reporting institutions for submitting STRs for fear of the customer finding out and threatening staff. Furthermore, an offence could be committed under the PSCA. The authorities may wish to consider providing training to the law enforcement agencies on the detrimental effect that informing the customer of the existence of a STR, may have on the overall reporting regime.

394. Threshold reporting has been introduced in Botswana by virtue of Section 17(16) of the Banking (AML) Regulations which states “Where a designated body which is party to a transaction involving the payment or receipt by it of money exceeding an amount prescribed from time to time, it shall, within five days of concluding such a transaction, report the prescribed details of the transaction to the Directorate and to the Regulatory Authority.”

395. To date, no regulation has been issued prescribing the threshold. It has been stated that the absence of a threshold means that there is no requirement to report such transactions. However, the absence of a threshold could be interpreted as meaning that all transactions should be reported. No banks are currently submitting threshold reports. Furthermore, neither DCEC or BoB are currently resourced with a computerized database to store threshold reports, and there are no guidelines prepared concerning the use of information of the threshold reports.

396. The Banking (AML) Regulations were issued by BoB in March 2003, under Section 51 of the Banking Act to provide guidelines for financial institutions concerning STR reporting and these do provide some form of guidance to the banks, which are the only type of institution covered by the regulations.

397. In addition to providing an extensive list of ‘suspicious activities for the purposes of determining what would be should be reported pursuant to Section 14, Schedule Two of the regulations prescribe the form to be used for the submission of the reports to BoB and DCEC. This form does

require the basic fields required for analysis and also contains guidance on what information should be included in the description of the suspicious activity.

398. Additionally, Schedule Two also sets out the circumstances when the report should be completed. The circumstances are : a) Inside abuse of the reporting institution; b) Transactions aggregating P10,000 (USD1,666) or more that involve potential money laundering; c) Other suspect transactions aggregating P20,000 (USD3,333) or more that are suspected to be associated with any actual or potential violation of any law or regulation. It is not clear why these circumstances were included especially when i) it would appear to create a threshold of P10,000 (USD1,666) for STRs, and ii) when the circumstances are not consistent with Section 14 and 15 of the regulations. This guidance may be confusing especially for front line staff, when they may only have access to the report forms for reference as when to report.

399. DCEC and BoB do not provide general feedback concerning the STR regime. In its annual report, DCEC does provide the number of money laundering investigations which it has conducted in the previous year and this figure is currently the number of STRs which have been made. However, reporting institutions are not aware about this correlation between the figures. BoB does not provide any feedback concerning the reports made to it.

400. Concerning specific feedback, at present and in practice, DCEC verbally acknowledges the receipt of all STRs but there is no *systematic* provision of feedback on the results of individual STR. This presents a concern as Section 12(3) of the Banking (AML) Regulations states “Where the records referred to in this regulation relate to an on-going investigation or transaction, which has been the subject of a disclosure, a bank shall retain those records until, in the case of an on-going investigation, the law enforcement agencies confirm that the investigation has been closed or completed, as the case may be, or, in the case of an on-going transaction, the bank confirms that the transaction has been completed.” Given that the term ‘investigation’ is understood to mean the situation where a STR has been made, in complying with Section 12(3) when no feedback is given, the institutions would be required to maintain the records of the account and the report indefinitely.

401. Based on the interviews conducted with the public and private sectors, the assessors understand that specific feedback on STR is provided to banks on a sporadic basis.

3.7.2 Recommendations and Comments

402. In addition to the recommendations below that aim at placing Botswana in compliance with the FATF standard, the assessor team further recommends that Botswana should consider introducing a requirement to submit threshold reports, once the agency(ies) which is designated to receive such reports are properly resourced, and an appropriate threshold has been determined, in consultation with the reporting institutions.

403. The authorities should consider :

- Reviewing and simplifying the current reporting requirements on suspicious requirements to ensure consistency between the relevant legislation and regulations, and that all reporting requirements are clearly spelled out.
- Ensuring compliance with the reporting requirements by the designated bodies other than banks

- Removing the exemption from the requirement to report suspicious transactions in certain instances
- Providing general feedback on the STR regime
- Clarifying the tipping off provisions to ensure : i) the prohibition exists once a report has been submitted and regardless of whether any investigation is conducted; and ii) the prohibition continues even after the conclusion of any investigation.
- Introducing a systematic mechanism for the collection of statistics to enable a detailed analysis of the reporting regime to be conducted.

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

	Rating	Summary of factors underlying rating
R.13	NC	<ul style="list-style-type: none"> • There is no consistency across the differing legislation and regulation as to what constitutes a suspicious transaction for reporting purposes • The requirements to report suspicious transactions across the different legislation and regulations are unclear • Only the banking industry is submitting STRs • Certain transactions and customers may be exempted from having suspicious transactions reported on them by virtue of Section 17(4) of the PSCA. • Lack of implementation of the non-bank designated bodies
R.14	LC	<ul style="list-style-type: none"> • The provision on the prohibition of tipping is unclear and may be removed once an investigation has been completed.
R.19	C	
R.25	NC	<ul style="list-style-type: none"> • Guidelines have effectively been introduced for the banking sector but these are unclear and may introduce confusion. • No general feedback is given on the reporting regime • Specific feedback which has been effectively mandated under the banking (AML) Regulations, is only sporadically being conducted.
SR.IV	NC	<ul style="list-style-type: none"> • There is no requirement to report suspicious transactions which are suspected to be related to terrorism or terrorist financing.

Internal controls and other measures

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

3.8.1 Description and Analysis

404. The PSCA sets out internal controls requirements for all designated bodies. Section 17 (19) of the Act requires that designated bodies “in relation to the carrying on of its business, adopt internal

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measures to prevent and detect the commission of a serious offence under this Act”. Section 17 (20) further specifies the minimal content of such internal controls, that must include:

- “procedures to be followed by directors, officers and employees in the conduct of the business of a designated body;
- instructions given to directors, officers and employees of a designated body on the prevention of the use of the financial system for the purpose of engaging in activities of money laundering; and
- training of directors, other officers and employees of a designated body for the purpose of enabling them to identify transactions which may relate to the commission of a serious offence under this Act.”

405. Section 17 (26) of the PSCA indicates that regulations detailing the content of such internal controls may be issued. None of these have been enacted so far under the PSCA.

406. Section 17 of the International Insurance Act requires international insurance firm to have an auditor. These auditors are required to report to the Registrar of Insurance situations where they have reasons to believe that “there are material defects [...] in the systems of control of the business and records of international insurance firms” (Section 17 (4) (b)).

407. The Banking Act requires banks to put in place internal controls, for prudential purposes, under part IV of the Act (“financial statements, audit and supervision”). This part focuses on financial audits of the banks. It also requires external auditors to report to the Central Bank any situation where they are satisfied that “there has been a serious breach of, or non-compliance with, the provisions of this Act, the Bank of Botswana Act, the Companies Act, or any regulations issued under those Acts, or any directions or guidelines issued by the Central Bank” (Section 22 (7) (a)). This provision therefore encompasses breaches to the Banking (AML) Regulations.

408. The Banking (AML) Regulation details the requirements on external auditors in its Section 24 (1) and 24 (2), as follows:

- Section 24 (1): “The Central Bank may require independent external auditors, at the expense of the concerned-bank, to conduct a special audit on the adequacy of anti-money laundering measures and practices and enforcement hereof.”
- Section 24 (2): “The external auditors [...] shall report in writing to the Central Bank any finding resulting from any audit, or contact by any person with the bank which suggests the commission of the crime of money laundering by that person in that bank; and the Central Bank shall, where such a crime has been committed, take all necessary action to prosecute the crime.”

409. In addition, the Banking Act requires the board of directors of banks to form audit committees, whose function is to “assist the boards of directors in its evaluation of the adequacy and efficiency of the internal control systems” (Section 23 (2) (a)), confirming that banks must set up internal controls.

410. Further, the Banking (AML) Regulation lays out in details the minimum content of the internal controls, as far as AML is concerned. Section 17 (1) prescribes the adoption of an internal “anti-money

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laundrying program”, defined as “the anti-money laundrying measures to be put in place and practices to be adopted in order to detect and prevent the commission of the offence of money laundrying; and shall ensure that the staff of the bank is familiar with and comply with the programme”. Section 17 (2) details the minimum content of this AML programme:

- “the development of internal policies, procedures and controls with due regard to the risks posed by money laundrying;
- the establishment of "know your customer" procedures, which shall include knowing the customer's business, establishing systems that would recognise suspicious activities and having in place internal suspicious reporting procedures;
- the appointment of the Money Laundrying Reporting Officer;
- the establishment of a sound anti-money laundrying compliance policy;
- procedures to be followed by directors, principal officers, officers and employees of a bank in the conduct of their business of the bank;
- instructions given to directors, principal officers, officers and employees of a bank on the prevention of the use of the bank for the purpose of engaging in activities of money laundrying; and
- training of directors, principal officers, officers and employees of a bank for the purpose of enabling them to identify transactions which may relate to the commission of the offence of money laundrying.”

411. Section 15 (1) further requires that the money laundrying reporting officer must be at management level, and must, inter alia, serve as the contact person between the bank, the Central Bank and the Financial Intelligence Agency. In addition, according to Section 19, the money laundrying reporting officer must prepare for the board of directors an annual compliance report, describing changes in laws and regulations on AML, AML-related compliance deficiencies and the number of internal reports received on ML and what share has been transmitted to law enforcement agencies.

412. As far as training is concerned, Section 20 requires banks to establish an AML training programme and to train all staff on money laundrying and suspicious transaction reporting requirements. Section 21 (3) calls on each bank to “tailor its training programme to suit its own needs depending on the size, the resources available and the type of business it undertakes”. Section 21 (2) mandates banks to hold “refresher courses at regular intervals of not less than annually for principal officers of a bank”. Section 21 (1) details the minimum content of such training programmes, as follows:

- “indicators that may give rise to suspicion and the procedures to be adopted when a transaction is considered to be suspicious;
- a component to train the staff of a bank on how to make a report on suspicious activities;
- the identification and prevention of money laundrying for employees of the bank who have contact with clients and compliance personnel;
- instruction, covering all aspects of money laundrying procedures, to those with the responsibility for supervising or managing staff, and
- in-depth training for the money laundrying reporting officer on all legislation relating to money laundrying and the bank's internal policies on money laundrying”

413. The Bank of Botswana (bureau de change) Regulations requires that effective AML measures be established and maintained (Section 12). The same Section stipulates that bureaux de change

comply “with any guidelines issued by the Bank regarding [...] (v) the development of internal policies, procedures, controls and adequate screening when hiring employees, and (vi) continuous training on anti money laundering”. In practice, bureau de change can therefore be considered as subject to the same requirements as commercial banks. In addition, Section 18 requires bureaux de change to submit their accounts and financial statements to audit. This Section does not refer to obligations of auditors regarding internal controls.

414. The PSCA contains no requirement on the screening of employees. Neither the Banking Act nor the Banking (AML) Regulation contains provisions requiring the screening of bank employees.

415. The PSCA contains no provision related to the application of AML measures to foreign branches and subsidiaries. The Banking Act and the Banking (AML) Regulation do not contain such requirements either. None of these Act and Regulation requires Botswana banks to inform the banking supervisor if their foreign branches and subsidiaries are unable to implement AML measures. The Banking Act in its Section 24 (1) allows the Central bank to undertake on-site examinations of foreign branches of banks established in Botswana. As Botswana’s banks do not have foreign branches or subsidiaries at the date of the on-site mission, it is the assessors’ view that this is not practically of concern for the time being.

416. No bank licensed in Botswana currently has branches or subsidiaries in foreign countries. But the explicit objective of the IFSC to attract banks to establish their holding company or head office in Botswana under that framework to undertake banking business in the region makes it likely that banks licensed in Botswana could soon begin to set up foreign branches or subsidiaries. As Botswana financial institutions did not have foreign branch or subsidiary at the time of the on-site mission, the rating under this Recommendation is Not Applicable.

417. The internal controls under the PSCA are an important step forward, all the more as the industry-specific laws and regulations governing the designated bodies do not entail obligations to set up internal controls and internal audit functions. The absence of a requirement under the PSCA to appoint an AML/CFT compliance officer is a significant weakness, as well as the absence of obligations regarding the screening of employees. As far as the actual obligations set out by the PSCA are concerned, the absence of an implementing regulation is of concern, to provide more specific indications to designated bodies on how such internal controls should be set up and what they should include (notably CDD, record keeping, detection of unusual and suspicious transactions). More guidance should also be provided to financial institutions on the content of their AML/CFT trainings to staff, as well as its regularity.

418. The absence of requirements for screening of employees by banks is a noticeable weakness. Even more so in a context where the fraud cases in banks have involved employees of these banks in several cases, thereby raising concerns on the effectiveness of current recruitment procedures and on-going monitoring of bank staff.

3.8.2 Recommendations and Comments

419. The authorities should consider:

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- Requiring the screening of employees of all designated bodies, including banks and bureaux de change
- Enacting a regulation under the PSCA, for designated bodies other than banks and bureaux de change, specifying the content of the internal controls and of the training on AML
- Intensifying the implementation of internal controls and training programs for designated bodies other than banks and bureaux de change
- Requiring that subsidiaries and branches of Botswana banks implement effective AML regimes, and that reports be made to the home supervisors in case of they are unable to implement such measures

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	PC	<ul style="list-style-type: none">• Insufficient level of specificity of the content of the internal control – particularly the appointment of a money laundering officer• Insufficient guidance on the training requirements (content, regularity) for designated bodies other than banks and bureaux de change• Lack of implementation for designated bodies other than banks and bureaux de change• Absence of employee screening requirements for all designated bodies, including banks and bureaux de change
R.22	NA	

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

420. The legal framework in Botswana does not explicitly forbid shell banks. However, the conditions set out in the Banking Act, as well as the practice of the Central Bank when granting banking licenses, make it as a result impossible for shell banks to establish themselves in Botswana. Section 11 of the Banking Act allows the Central Bank to revoke the license of any bank that would “appear to the Central Bank to be carrying on banking business in a manner which is contrary to, or detrimental to, the interests of its depositors or the public”.

421. There are no provisions regarding banks governing their business with shell banks, in particular correspondent banking relationships (prohibition of correspondent banking relationships with shell banks, requirements to satisfy that the respondent institution prohibits the use of accounts by shell banks). As indicated above, the BoB examination questionnaire addresses this issue.

3.9.2 Recommendations and Comments

422. The authorities should consider:

- Forbidding the establishment of correspondent banking relationships with shell banks
- Requiring that Botswana banks satisfy themselves that their respondent institutions do not permit their accounts to be used by shell banks

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	PC	<ul style="list-style-type: none"> • Absence of requirement regarding the establishment of correspondent banking relationships with shell banks • Absence of requirement that Botswana banks satisfy themselves that their respondent institutions do not permit their accounts to be used by shell banks

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R. 17, 23, 25 & 29)

3.10.1 Description and Analysis

423. Botswana has recently engaged into a significant reform of the regulatory / supervisory framework of financial institutions, with the enactment on January 27th, 2007 of the Non-Bank Financial Institutions Regulatory Authority Act. This Act creates a new supervisory body, the NBFIR Regulatory Authority, that will regulate and supervise non-bank financial institutions.

424. In addition to the set-up of a new regulatory body, this will entail a/ an extension of the regulatory / supervisory framework to new professions and financial institutions³⁸, b/ a modification of the framework for the securities market and the Botswana stock exchange, c/ a transfer of the regulatory / supervisory function from Bank of Botswana to the NBFIR Regulatory Agency for Collective Investment Undertakings and d/ a transfer of the supervision function of insurance from the Ministry of Finance and Development Planning (MFDP) to the NBFIR regulatory agency and e/ a transfer of some regulatory and supervisory functions from the BoB to the NBFIR RA for the IFSC.

425. The new regulatory / supervisory framework laid out in the NBFIR Act is not yet implemented, as the Government is currently working on the creation of the new agency, on identifying the changes in laws and regulations to be effected and on the new laws and regulations to be adopted. No specific date for the “shift” to the new regulatory / supervisory framework has been indicated to the mission – the Act lays out the transitional mechanisms to be followed then, that will be described below.

³⁸ The coverage of the NBFIR will be: asset manager, administrator of a pension or provident fund, a person operating a central securities depository, a collective investment undertaking that is an investment company with variable capital, a person operating a collective investment undertaking other than one described previously, a custodian, a finance or leasing company, a friendly society, an insurance agent, an insurance broker, an insurer, an international insurance firm, an investment adviser, a management company for a CIU, a member of the insurance industry, a microlender, a pension or provident fund, a securities dealer, the operator of a securities exchange, a trustee of a CIU or a pension or provident fund, a financial group, a person prescribed for the purposes of this definition

426. Against this background, the assessors have decided to describe and analyze the regulatory / supervisory framework that prevails before the commencement of the NBFIA Act, as this is the one in place at the time of the on-site visit. It has also decided to describe, on the basis of the NBFIA Act, to describe and analyze the future regulatory framework, to identify as needed how it will contribute to the AML efforts once in place (or the remaining gaps).

427. The PSCA does not explicitly mandate the regulatory/supervisory agencies of the financial sector to monitor compliance with, supervise and enforce the AML requirements. In section 17 (25), the PSCA establishes sanctions for non compliance with any section, but does not specify which agency in Botswana would be in charge of enforcing such sanction. The wording of this provision (“A person who contravenes a provision of this section shall be guilty of an offence and shall be liable on conviction, to a fine not exceeding P2,500,000 or to imprisonment for a term not exceeding three years or to both”) indicates that such sanctions (under the PSCA) would be of criminal nature – and therefore could be investigated either by the Police or the DCEC – not the regulatory bodies / agencies.

Banks

428. The Banking Act (Section 3) mandates the Central Bank of Botswana (Bank of Botswana) with the regulation and supervision of any person involved in the “banking business”, defined as “(i) the business of accepting deposits of money repayable on demand or after fixed periods or after notice, as the case may be, by cheque or otherwise; and/or (ii) the employment of deposits in the making or giving of loans, advances, overdrafts or other similar facilities and in the making of investments or engagement in other operations authorised by law or under customary banking practice, for the account of, and at the risk of, the person or persons accepting such deposits, and includes the discounting of commercial paper, securities and other negotiable instruments, for the purpose of extending loans or other credit facilities.”.

429. Banks in Botswana are mainly affiliates of foreign banks. BoB is in relations with the home supervisors of these foreign banks, but there is so far no formal agreement between BoB and these home supervisors. There is in particular at this date no arrangement for coordinated or joint supervision of these banks.

430. Section 51 of the Banking Act foresees the possibility that the Minister of Finance and Development Planning makes regulations to implement this Act.

431. Section 53 (2) of the Banking Act prescribes that all the requirements set out in the Act related to examination of banks (and more generally those related to “ensuring prudence in banking”) would apply to institutions authorized to engage into banking business under other legislation than the Banking Act. This would in particular apply to the “statutory banks”, which are governed by specific legislations.

432. The provisions on fit and proper and the prevention of criminals from controlling banks are laid out in several different Sections of the Banking Act, and part of the licensing process as well as of the on-going supervision of banks. Bank of Botswana is mandated for the licensing of banks, and on-going supervision. Section 6 of the Banking Act describes the conditions and processes for application for a banking license, in particular the documents to be provided to the Central Bank (“certified copies

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of the applicant's certificate of incorporation in Botswana, the applicant's memorandum and Sections of association, and such other corporate documents, financial documents and data”).

433. Section 7 of the Banking Act creates an “appeal mechanism” to the Minister of Finance and Development Planning when BoB has refused to grant a banking license – Section 7 (3) stating that “the Minister shall decide whether the appeal should be upheld or rejected, and his decision shall be final and not subject to review or further appeal”.

434. Section 8 of the Banking Act conditions the granting of a license to the Central Bank being “satisfied that it is a fit and proper recipient of a banking license”. No license is transferable without the prior approval of the Central Bank (Section 9 (2)). According to Section 11 of the Act, the Central Bank can revoke a license if the bank “appears to the Central Bank to be carrying on banking business in a manner which is contrary to, or detrimental to, the interests of its depositors or the public” or “has been convicted by any court of competent jurisdiction, in Botswana or elsewhere, of an offence related to the use or laundering, in any manner, of illegal proceeds, or is the affiliate or subsidiary or parent company of a bank which has so been convicted, and such conviction is not overturned on appeal”.

435. Section 29 of the Banking Act sets out the “fit and proper” conditions for the principal officer of a bank, defined as the chief executive officer, i.e. responsible for the day to day management of the bank, under the directions of the board of director. This “fit and proper” test includes “probity and competence”, as well as “diligence with which he is likely to fulfill his responsibilities” and whether the principal officer “has been guilty of any fraud or other act of dishonesty”. The same Section prescribes that directors of banks must also be subject to a fit and proper test. It also states that if “any person that, by virtue of his shareholding in a bank or otherwise is in a position to influence the principal officer, or the board of directors of the banks” is exercising this influence “in a manner which is likely to be detrimental to the interests of depositors”, the Central Bank “may request the bank to remedy the situation”. Section 30 of the Banking Act on “disqualification” extends the fit and proper test to “other officer concerned with the management of the bank”, who should cease to hold office if “convicted of an offence involving fraud or any other act of dishonesty”.

436. The BoB has indicated that in practice, it extends the fit and proper test to the beneficial owners, as defined by FATF, of banks. Security and background checks are undertaken with the support of Botswana police, and involve as appropriate Interpol queries. When applicants are foreign nationals, Bank of Botswana stated that it does not seek information from the supervisory authorities of the relevant country. As far as “controlling interests” are concerned, BoB has so far used a case by case approach, with 10 % of shares being a reference to define “control”. BoB indicated that in the future, it will refer to the threshold set by the NBFRI Regulatory Authority Act, i.e. 20 %..

437. Bank of Botswana has not issued guidelines for banks. The examination questionnaire is nonetheless an indirect guideline for banks, and as indicated in other sections of this report, goes in more details than the Banking Act or the Banking (AML) Regulation.

438. The monitoring of compliance with AML requirement is undertaken by Bank of Botswana in the general framework of banking supervision – and integrated into general prudential supervision. Section 24 of the Banking Act sets out the framework for examination of banks and their foreign branches (but not subsidiaries) as follows: “The Central Bank shall cause regular or-site examinations of the operations and affairs of every bank, and, where the Central Bank so specifies, foreign branches,

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if any, of such banks, to be made by officers of the Central Bank so appointed to conduct such examinations”. The same Section describes the objectives of such examinations: “The purpose of an examination [...] shall be to determine whether the bank concerned is in a sound financial condition, whether the requirements of this Act are being observed by the bank, and whether its business is being operated in a lawful and prudent manner”.

439. The powers of bank examiners are defined in Section 25 of the Banking Act, as follows: “Any person conducting an examination in accordance with the provisions of section 24 shall, in relation to the bank in respect of which the examination is to be conducted, be entitled to examine all books, minutes, accounts, cash, securities, vouchers and any other documents in the possession or custody of the bank or any of its affiliates, and to require such information concerning its business or that of its affiliates in Botswana or abroad, if any, as is considered necessary or desirable, and the bank concerned shall comply with all requests made pursuant to this subsection”.

440. The Central Bank of Botswana is entitled to require any information it deems necessary to undertake its supervision of banks, as set out in Section 21 of the Banking Act: “The Central Bank may, for the purpose of the administration of this Act, call for any information which it may require, from any bank, concerning its operations in Botswana or those of its affiliates in Botswana and subsidiaries abroad, if any.”. This capacity is not predicated on obtaining a court order.

441. The powers of enforcement and sanctions of the Bank of Botswana are laid out in Section 27 of the Banking Act, “powers of the Central Bank after examination”. The text of this provision focuses on the capacity of the Central Bank to require from the bank any corrective course of action (“require the bank to take such measures as it may consider necessary to rectify the situation”) and to appoint an adviser to the bank to adopt such corrective measures (“appoint a person, who in the opinion of the Central Bank has the requisite training and experience to advise the bank or affiliate concerned, on measures to be taken to rectify its situation”).

442. In addition to this general “follow-up provision”, the Banking Act sets out sanctions associated with breaches to specific provisions of the Banking Act. In particular:

- Breach of the authority to transact banking business (Section 3 (4)) – i.e. transact banking business without a valid license: “any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to fine of P2500 for each day on which the offence occurs or continues to occur, and to imprisonment for two years”
- Breach of the general conditions of a banking license (Section 9 (10)): “Any bank that contravenes or fails to comply with any of the provisions of subsections (2) to (7) shall be guilty of an offence and liable to a fine of P5000.”
- Breach of provision of information (Section 21 (5)): “Any bank that fails to supply any information called for by the Central Bank under subsection (1), or fails to supply it within the time, or extended time, stipulated by the Central Bank, or that supplies false or misleading information, or that fails to notify the Central Bank of any suspicious transaction under subsection (4), shall be guilty of an offence and liable to a fine of P 10 000.”
- Breach of requirements in the context of examinations (Section 25 (3)) : “If any bank willfully supplies information required of it in accordance with the provisions of subsection (1) which is false in any material particular or misleading, it shall be guilty of an offence and liable to a fine of P 10 000”

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- Disqualification (Section 30 (3)): “Any person who acts in breach of this section shall be guilty of an offence and liable to a fine of P 5 000 and to imprisonment for two years”
- Identification of customers (Section 44 (5)): “Any bank which acts in breach of the requirements of this section shall be guilty of an offence and liable to a fine of P10 000.”
- General penalties (Section 52): “Any person who contravenes or fails to comply with any provision of this Act, or any requirement of the Central Bank under this Act, with which it is his duty to comply, and for which no penalty has been otherwise provided, shall be guilty of an offence and liable to a fine of P3 000.”

443. In parallel, Section 26 sets out the offences and penalties related to the principal officer officers, employees, agents or representatives of a bank not abiding to key requirements of the Banking Act, as follows: “Any principal officer or any other officer, employee, agent or the representative of, a bank or affiliate who (a) in any way obstructs an auditor in the proper performance of his duties in accordance with the provisions of this Act; (b) in any way obstructs an examiner in his lawful examination of such bank or affiliate, as duty authorized by the Central Bank; or (c) with intent to deceive, makes any false or misleading statement or entry in, or omits any statement or entry that should be made in, any book, account, report or statement of such basic or affiliate, shall be guilty of an offence and liable to a fine of P 5 000 and to imprisonment for two years.” Section 32 also deals with offences by directors, principal officer, officers, employee or agent of a bank as follows: “Any person who, being a director, a principal officer, officer, employee or agent of a bank (a) with intent to deceive, makes any false or misleading statement or entry in, or omits any statement or entry from, any book, account, report or statement of the bank; (b) obstructs any audit, or examination of the affairs of the bank under this Act; (c) fails to take all reasonable steps to ensure compliance by the bank with the provisions of this Act; (d) reveals to a customer that he is being investigated for money laundering activities; or (e) is privy to any offence committed under this section and fails to report it to the board of directors, shall be guilty of an offence and liable to a fine of P 15 000 and to imprisonment for five years.”.

444. The Banking (AML) Regulation, in its Section 25, also defines sanctions for non-compliance with the more specific AML requirements for banks, as follows “ A person who contravenes the provisions of these Regulations shall be guilty of an offence and liable (a) if that person is a bank, to a fine of P10,000; (b) if that person is an employee of a bank, to a fine of P15,000 and to imprisonment for five years; or (c) if that person is a bank or an affiliate, subsidiary, or parent bank of a bank which has been convicted of the crime of money laundering and such conviction is not overturned on appeal, to revocation of a licence.”.

445. Finally, the Banking Act, as indicated above, allows the Central Bank to modify the terms of a banking license (Section 10), to temporarily manage a bank (Sections 33 and 34) and to revoke banking licenses (Sections 11 and 12 – emergency procedures).

446. All employees of the Bank of Botswana are vetted before joining the BoB and subject to a security background check. Section 19 (“Secrecy”) of the Bank of Botswana Act spells out the confidentiality requirements for all staff of the BoB (“(1) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do so by any court of competent jurisdiction or under any written law, or when so required or authorized by the Board, no member, officer or employee of the Bank, or auditor appointed under section 56(1), shall disclose to any person any information relating to the affairs of the Bank or of any bank, financial institution, business or

other person which he has acquired in the performance of his duties or the exercise of his functions”; (2) Every person appointed under or employed in carrying out the provisions of this Act, except the Minister, shall make an oath or declaration of secrecy in the manner and form prescribed; (3) Every such person who, in contravention of the true intent of the oath or declaration of secrecy made by him and without lawful excuse, reveals any matter or thing which has come to his knowledge in the performance of his duties or the exercise of his functions shall be guilty of an offence and shall be liable to a fine not exceeding P25 000 or to imprisonment for a term not exceeding five years, or to both”).

447. The Banking Act complements these requirements under Section 43 (7), which stipulates that “neither the Central Bank nor any person conducting an examination for it under this Act shall reveal any information in relation to the affairs of a customer obtained in the course of such examination to any person, unless required by a court of competent jurisdiction so to do.”

Collective Investment Undertakings

448. Collective Investment Undertakings (CIUs) are governed by the Collective Investment Undertakings Act (1999) and the Collective Investment Undertaking Regulation (2001). Collective Investment Undertakings are defined as arrangements “a/ the principal object of which is the collective investment of its funds in real or personal property of whatever kind, including securities and other liquid assets, with the aim of giving its members, or unit-holders the benefit of the result of the management of its funds and, subject to any prescribed exemptions, spreading investment risk; and b/ subject to any prescribed exemptions the units of which are, at the request of holders, purchased, directly or indirectly, out of those undertakings assets.”.

449. Section 3 (1) of the CIU Act designated Bank of Botswana as the Regulatory Agency for CIUs “to license, supervise and regulate collective investment undertakings in accordance with the provisions of this Act and shall have all the powers necessary for the purpose”. Section 4 details these powers, with Section 4 (1) generally mandating the BoB to license CIUs, and Section 4 (2) describing the powers of the BoB in that respect. In particular, BoB must approve management companies, trust deeds, credit institutions, the replacement of management companies and trustees, the appointment to the office of director of a management company, the alteration of memoranda or Sections of investment companies; satisfy itself as to the good repute, competence and experience of directors³⁹ of management companies, investment companies and trustees; collaborate with the competent authorities in other countries in order to carry out its licensing and supervision function.

450. Section 9 (1) of the CIU Act forbids a CIU to conduct business in Botswana without having been licensed by the BoB. However, Section 9 (2) states that a CIU that is “resident in another country and which has received a license from the regulatory authority of that country shall be permitted to market its units in Botswana on condition that it is in compliance with the provisions of this Act”. Section 13 of the CIU creates a right of appeal to the High Court in cases where the BoB has refused to grant a license, or has failed to make a decision within 6 months of the application. Section 83 of the

³⁹ Director is defined by the Act as “a person who, together with other directors, under the Company Act or a trust deed or a memorandum and articles of a company, represents the management company, the investment company or the trustee and who effectively determines the policy of the management company, the investment company or the trustee”.

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Act, which governs these appeals, states that the “High Court shall confirm the decision of the Regulatory Authority unless it satisfied that the procedures laid down by or the requirement of, this Act have not been complied with in any material respect”. If the High Court sets aside the BoB decision, it must “remit the matter to the Regulatory Authority which shall thereupon reconsider the matter and make a decision in accordance with such procedures and requirements”. Non-resident CIU can, according to Section 14, appeal of decisions of the BoB not to allow them to market their units in Botswana or to prohibit further marketing.

451. A firm allowed to provide administration services to a CIU not licensed by BoB is required to provide to the BoB information on its contractual relationship with the CIU on its operations (Section 21 of the CIU Regulation). Non-resident CIU operating in Botswana are required to provide the BoB with information allowing BoB “to effectively perform its role as supervisor of service providers in Botswana” (Section 22 of the CIU Regulations) – without such request implying any regulatory / supervisory role for BoB. Similar requirements are laid out in the CIU Regulation (Section 44) for trustees and custodian providing trustee or custodian services to CIUs not licensed by BoB.

452. As far as unit trusts are concerned, they can only be licensed if the BoB “has approved the management company, the trust deed, the choice of trustees [...]”, according to Section 15 (1). Section 18 (2) further states that “a trustee shall (a) be a licensed bank as required under the Banking Act [...], (b) be a company that is wholly-owned by such a licensed bank [...], (c) be a company incorporated in Botswana which (i) is wholly owned by a credit institution approved by the Regulatory Authority [...], (ii) is wholly owned by an institution in another country which is deemed by the Regulatory Authority to be the equivalent of such a credit institution [...], (iii) is wholly owned by an institution or company in another country which is deemed by the Regulatory Authority to be a company which provides unit-holders with protection equivalent to that provided by the trustees referred to in par. (a), (b) and (c) (i) and (ii) [...]”. Section 18 (3) requires that a “trustee shall satisfy the Regulatory Authority that it has the appropriate expertise and experience to carry out its functions under this Act”. The conditions for licensing of trustees also apply to a custodian (Section 33 of the Act).

453. Section 10 requires that the BoB shall satisfy itself that “the directors of the management company, the investment company and of the trustee are of sufficiently good repute and have the competence and experience required for the performance of their duties”. Appointments to the office of director of the management company or of the investment company must be approved by BoB.

454. Section 16 (4) of the CIU Regulation states that “directors and managers of a firm shall be persons of integrity and have appropriate level of knowledge and experience in management or administration of unit trust undertakings or investment companies”.

455. Section 86 of the Act prescribes that prior approval of the Regulatory Agency is required to replace the management company, investment company, trustee or custodian of a CIU, and the trust deed or the memorandum or Sections of an investment company cannot be altered. It further allows the Regulatory Agency to take replacement measures for CIUs (replacement of the management company, investment company or trustee for a CIU). Section 17 (1) of the CIU Regulation specifies that “the regulatory agency shall approve any proposed change in ownership or significant shareholding of a firm”.

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456. Part XII of the CIU Act sets out the inspection and enforcement powers of the Regulatory Authority. Section 78 (3) lays out its capacity to inspect, take copies or extracts from and make such enquiries as it may consider appropriate of books and records and any other documents related to the business of the CIU, and enter any office of the CIU or any other place where such books, records and documents it reasonably believes are kept. Section 79 further requires that CIUs furnish to the Regulatory Agency any information that it deems necessary to the performance of its functions.

457. According to Section 80, the Regulatory agency can revoke the license of a CIU if it appears that “any of the requirements for the licensing of the CIU is no longer satisfied”, “the management company, investment company, trustee or custodian has contravened any provision of this Act or has furnished the Regulatory Agency with false, inaccurate or misleading information or has contravened any prohibition or requirement under this Act”.

458. Finally, part XIV of the CIU Act defines the offences related to breaches of the requirements of the Act. Section 87 (1) states that “an investment company, management company, trustee or custodian which has contravened any provision of this Act shall be guilty of an offence”. Section 87 (6) indicates that “a reference to a contravention includes a reference to a failure to comply”. The associated sanctions are defined in Section 87 (4) which states that “a person guilty of an offence [...] shall be liable on conviction to a fine not exceeding P 2 500 000 or, in the case of an individual, to imprisonment for a term not exceeding three years or to both”. If there is continuing contravention despite this conviction, “that person [...] shall be guilty of a further offence [...] and liable on conviction of a fine not exceeding P 5 000 for every day on which the offence is so continued”.

Bureaux de change

459. Bureaux de change are governed by the Bank of Botswana (bureau de change) Regulation, enacted in 2004, adopted under the Bank of Botswana Act. Bureau de change are defined as “a person licensed under Section 30 of the Bank of Botswana Act to transact foreign exchange business”.

460. Section 3 of the Bureau de Change Regulation defines the conditions for application for a license. The applicant must provide an affidavit that he “has never been convicted within or outside Botswana, of a criminal offence involving fraud, money laundering or tax evasion”. Principal officer, owner or partner of the bureau de change are required to provide personal information to BoB in the application for license. Section 5 (2) (e) states that changes in the composition the shareholders or principal officers of a bureau de change requires prior approval of BoB. A license is not transferable (Section 8). Form 2 “bureau de change license” requires information on the beneficial owner of the applicant.

461. License for bureau de change can be suspended if the bureau de change is in its breach of its obligation under the Bank of Botswana Act or the bureau de change Regulation, with the suspension continuing as long as remedial action satisfactory to BoB has not been taken. License for bureau de change can be revoked, according to Section 10, if “the bureau de change has failed to take remedial action”, if “the owner of the bureau de change has been convicted of a criminal offence within or outside Botswana”, or if “the Bank is satisfied that the license was issued based on an application that contained information that is misleading or in concealment of material facts”.

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462. Section 19 of the bureau de change Regulations describes the power of inspection of the Central Bank. Section 19 (1) allows inspection of the bureau de change premises and allows the Central Bank to require production of any book or document.

463. When a bureau de change is deemed to contravene to the bureau de change Regulation, the Central Bank, under Section 19 (3), can a/ caution the bureau in writing, b/ impose a fine, c/ suspend the license, d/ revoke the license. A sanctioned bureau de change can appeal of the BoB decision to the Minister of Finance and Development Planning.

464. Section 23 of the bureau de change Regulation mainly focuses on breaches of the licensing requirements. As far as non-compliance with the bureau de change Regulation is concerned, and unless “the act or omission was done without the bureau de change knowledge, consent or connivance” and unless “all reasonable steps were taken by the bureau de change to prevent the act or omission”, bureau de change are liable for penalties “where a manager, agent or servant of a bureau de change does or omits to do anything which, if done or omitted to be done by the bureau de change, would be in contravention of any of the provisions of these Regulations”. In addition, Section 22 on corporate body responsibility prescribes that “where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the content or connivance of, or to be attributable to any neglect on the part of the director, manager, secretary or other similar officer of the body corporate, or any person who was purporting acting to act in such capacity, he, as well as the body corporate, shall be guilty of an offence and liable to a fine not exceeding P 1 000.”.

Insurance sector

465. The insurance sector in Botswana is governed by two different Acts (the Insurance Industry Act, amended 2003, and the International Insurance Act, 2005), the second applying to depending on whether the insurance company is registered in the IFSC – and then subject to the International Insurance Act. The Insurance Industry Acts covers insurers, insurance brokers and insurance agents – whereas the International Insurance Act focuses on international insurance firms. Insurance industry Regulations were issued on 1992, under the Insurance Industry Act.

466. The NBFRI Regulatory Act introduces in addition several amendments to the Insurance Industry Act, to the Botswana Stock Exchange and to the International Insurance Act, particularly a move from registration systems to licensing ones for the first two regimes, and from an authorization system to a licensing one for the third. At the date of the mission, the NBFRI RA Act was not yet in force, and the previous regimes are therefore still prevailing.

467. The Insurance Industry Act defines the Registrar of Insurance as the regulatory and supervisory authority (Section 4 – registration and superintendence, formulation and enforcement of standards of business conduct, formulation of guidance to the industry). Section 3 of the International Insurance Act mandates the same Registrar of Insurance to be the Regulatory Authority for international insurance firms, with the objective of promoting “the maintenance of a proper and orderly regulation and supervision of international insurance firms”.

468. Insurers and brokers have to be registered under the Insurance Industry Act (see below for agents). International insurance firms have to be authorized to conduct insurance business. Section 24 of the Insurance Industry Act covers the situations of amalgamations, sales and transfers of insurer, which

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require prior approval the Registrar of Insurance. Section 10 (3) of the International Insurance Act gives the Registrar of Insurance authority to impose conditions on the notification to and prior approval by the Registrar for any change in ownership of international insurance firms. Section 18 of the International Insurance Act submits to prior notification and approval by the Registrar of transactions involving transfers of shares of an international insurance firm above 10 %.

469. The Insurance Industry Act sets out the registration requirements for insurers in Section 16, which stipulates that “its controller, manager and principal officer are persons with sufficient business and insurance knowledge and experience”. In addition, Section 17 lays out on-going restrictions on the officers of insurer, with the requirement that controllers, managers and principal officers of insurers have not “been convicted by any court in any country of an offence involving dishonesty” and are not “in the opinion of the Registrar an unfit person to hold the office”.

470. The International Insurance Act sets out conditions for authorization to undertake international insurance business in its Part III (“authorization for international insurance firms”). Conditions for such an authorization include requirements on “the probity, competence and management skills of each of its controllers and managers”, “the suitability of each of its shareholders” and “adequate levels of staff and expertise [to be] employed to carry out its proposed activities and business”.

471. Part VII of the Insurance Industry Act sets out the registration requirements for insurance brokers, insurance agents and agents for brokers. Registration is a pre-condition for undertaking any of these business activities. On an on-going basis, the controller, manager and principal officer of an insurance broker must not “have been convicted by any court in any country of an offence involving dishonesty” or be “in the opinion of the registrar, an unfit person to hold the office”. In addition, upon registration, an insurance broker must, inter alia, satisfy the Registrar that “its controller, manager and principal officer are persons with sufficient business and insurance knowledge and experience”.

472. As far as insurance agents are concerned, Section 49 of the Act opens the possibility for the Minister to issue regulations “setting down the minimum qualifications required of any persons to whom an agency agreement and certificate may be issued by an insurer or insurance broker”. This same Section also stipulates that “the Registrar may refuse to register or may cancel the registration of any agent who, in his opinion, does not possess the qualifications set down by the Minister”. The insurance Industry Regulations define in section 13 the minimum qualification for agents, that include not having been convicted in any court in any court of an offence involving dishonesty or any other crime of a serious nature.

473. Section 112 of the Insurance Industry Act sets out the powers of the Registrar of Insurance in terms of production of documents and information, section (1) allowing the Registrar to require “the production of any document or information relating to or concerning the insurance business of any insurer, broker or agent or of any applicant for registration”. Copies can be made of these documents or information, and further information may be required from the principal officer of the insurer, broker or agent (section 4).

474. Section 112 (5) allows access to the premises of any insurer, broker, agent or applicant for registration, “if there are reasonable grounds for suspecting that there is at the premises of such person any document or information relating to or concerning the insurance business of such person”, provided an offence has been committed or there are reasonable ground to believe that it is intended to

be used for an offence. Section 112 (2) indicates that the Registrar may “institute an investigation into the activities of any insurer, broker or agent or of any applicant for registration”, and Section 120 states that when an investigation has been opened by the Registrar, it “shall be deemed to be a Commissioner under the Commissions of Inquiry Act”.

475. The International Insurance Act, in its Section 22, defines the supervisory powers of the Registrar towards international insurance firms and their agents (in a broad sense, i.e. including its bankers, accountants, solicitors, auditors and its financial and other advisers). The Registrar, to obtain information, may enter, seal up and search premises; remove any books, records and documents from those premises; inspect and take copies of or extract from books, records and documents and require further information from any international insurance firm, or any of its controller, officer, employee, agent or shareholder. The capacity for any authorized officer of the Registrar to search premises is predicated on the “application on oath to a magistrate for a warrant to search such premises”. Section 24 provides an exemption for such a warrant in special circumstances.

476. Section 128 of the Insurance Industry Act lays out the offences punishable by the Registrar and Section 129 those punishable by court. Most requirements under the Act are associated with specific administrative/civil and/or criminal sanctions, which are complemented, by “general penalties”, covering “contravention of any of the provisions of this Act [...], where no punishment has been stipulated by any other provision of this Act for that offence”, with the associated fine to be imposed by the Registrar. In that later case, where the offence has been committed by a body of persons, every director, controller or principal officer of that company and every partner, manager or principal officer of the partnership is deemed guilty of the offence – except if he can satisfy the Registrar that he was not aware of the offence and could not with reasonable diligence be aware. Both Section 128 and 129 open the possibility, for certain offences, to impose sanctions on the directors, managers, controllers and principal officers of insurers or brokers (except, for the offences punishable by court, when they can satisfy the court that they were not aware and had taken all reasonable steps to keep themselves aware of any possibility of such contravention to the Act).

477. In addition, the Act opens the possibility for the Registrar of Insurance to cancel the registration of insurer (Section 20) or of insurance brokers (Section 59), if the Registrar satisfies itself that the insurer or insurance broker does not act in accordance with sound insurance principles or is acting or has acted in contravention with any of the provisions of the Act.

478. Under the International Insurance Act, offences punishable by the Registrar are defined under Section 30 and offences punishable by court under Section 29. Additional offences related to the enforcement powers of the Registrar and to the production of documents are respectively defined in Section 27 and 28 of the Act. Both Sections 29 and 30 open the possibility to impose sanctions on the controller of a corporate entity, unless he can satisfy the court or the regulatory authority that he was not aware of the contravention and could not have become aware with reasonable diligence.

Securities markets

479. The securities market of Botswana is governed by the Botswana Stock Exchange Act, 1994. This Act establishes (Section 3) the Botswana Stock Exchange, which is a body corporate managed and controlled by the committee of the BSE. It also requires the Minister to appoint a public officer

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known as the Registrar of the Stock Exchange. The regulation and supervision of the BSE is in practice a joint responsibility of the Committee of the BSE and of the Registrar of the Stock Exchange.

480. The functions of the Committee are inter alia to (Section 15): manage and control the affairs of the exchange; regulate the transactions of business on the exchange; do all things required to be done by the Committee necessary for ensuring a fair and efficient dealing in listed securities and that the competence and conduct of registered stockbrokers are of a standard sufficiently high for the protection of the public.

481. The process to register stockbrokers follows, as described in part IV of the Act, a two step process. The Committee reviews the application for registration, and once “satisfied that the applicant is a suitable person for registration, the Committee shall, in writing, recommend to the Registrar that the applicant be registered” (Section 29). The Committee must forward the application with a negative recommendation when it is not satisfied that the applicant is a suitable person (or does not meet the criteria for registration). The Registrar may refuse to register an applicant recommended by the Committee, provided it gives the reasons for such refusal to the applicant and offers the applicant with the opportunity of making his case before the Registrar.

482. Conditions for registration do not include fit and proper test of the applicant as such. However, Section 33 of the Act (cancellation of registration and disciplinary powers of the committee) opens the possibility for the Committee to suspend (definitively, Section 33, or for a given period of time, Section 34) the registration and to notify such suspension to the Registrar. Basis for suspension of registration include that the stockbroker is not a suitable person to remain registered (definitive suspension only) or has been “guilty of disgraceful conduct, or of a negligence in his capacity as stockbroker” or “has contravened any provision of this Act with which it is a duty to comply” (suspension or revocation). Section 36 also stipulates that when a registered stockbrokers “has been convicted by a court, within or outside Botswana, of an offence which, in the opinion of the Registrar or the Committee, as the case may be, may deal with the stockbroker in terms of section 33 (3) or in terms of section 34”. When the Committee suspends a registration indefinitely, the Registrar retains discretion to cancel the registration.

483. According to Section 25 of the Act, the Registrar can “call for the production of, and examine or cause to be examined by a person authorized thereto by him in writing, any books, documents or other records” related to the affairs of the Exchange or a member of the Exchange”.

484. Investigation on the affairs of the Exchange or of any stockbroker are initiated by the Minister, based on failures to provide required returns, information held by the Registrar which the Minister deems deserving further investigation, application by no less than two registered stockbrokers or a complaint of alleged conduct lodged by a third party. The Minister must consult the Committee before initiating an investigation. He can then appoint an investigator who has the same power as conferred to a Commissioner under the Commissions of Inquiry Act. Based on the investigator’s report, and if there are reasonable grounds to suspect that an offence has been committed, the Minister shall refer the case to the DPP.

485. Section 91 of the Act defines the sanction for contravention to the Act as a fine of P 10.000 and to imprisonment for three years (notwithstanding any other sanction set out in a specific provision of the Act).

Money and Value Transfer Service Providers

486. Money and value transfer services can be offered in Botswana by commercial banks, the post office as well as companies or individuals outside of the regulated financial sector. In those cases, these professional are not subject to any licensing or registration requirements. They are therefore not subject to monitoring and/or subject, except for balance of payment reporting purposes if they undertake international money or value transfers.

487. MoneyGram and Western Union provide money transfer services in Botswana. As far as the assessors understood, neither MoneyGram nor Western Union operates under specific registration or licensing framework. In practice, MoneyGram is undertaking this business under agreements with the Post Office and some commercial banks.

The International Financial Services Center

488. The International Financial Service Center is established under Part XVI of the Income Tax (Amendment) Law. IFSC provides tax incentives to “certified” institutions, i.e. authorized to conduct business under the IFSC umbrella. The criteria to be granted such a “tax certificate” are the following:

- Projects must provide financial services, as set out in Part XVI of the Income Tax (Amendment) Act 1999. These are:
 - a. Banking and financing operations transacted in foreign currency
 - b. The broking and trading of securities denominated in foreign currency
 - c. Investment advice
 - d. Management and custodial functions in relation to Collective Investment Schemes
 - e. Insurance and related activities
 - f. Registrars and transfer agency services
 - g. Exploitation of intellectual property
 - h. Development and supply of computer software for use in the provision of services described above
 - i. Accounting and financial administration activities
 - j. Other operations that the Minister may declare by order from time to time to be approved operations for the purposes of this section.
- The services must be provided to/for clients outside Botswana and in currencies other than the Pula.
- The promoters of the project must be able to satisfy the regulatory requirements of the Botswana authorities.

489. At the date of the mission, Bank of Botswana is the regulator for all activities, except insurance – which are governed by the International Insurance Act, and regulated by the Registrar of Insurance (see above). Bank of Botswana’s powers to regulate the IFSC companies are set out in part VIII of the Bank of Botswana Act – and cover application, exemptions, supervisory and inspection powers, power to inspect, recommendations of the Bank, disclosure of information, offences, penalties.

490. The licensing under the IFSC follows a two-prongs process. One track relates to the issuance of the “tax certificate”, which is undertaken under the aegis of the “certification committee” of the

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IFSC. The Certification Committee's role is governed by the Certification Committee Order, issued in 2005. Section 5 of the Order stipulates that the Committee shall

- (a) determine the procedures to be followed in the assessment of the applications for tax certificates;
- (b) review all applications for a tax certificate referred to it by the Botswana IFSC; and
- (c) make recommendations to the Minister in relation to the grant and revocation of tax certificates including any conditions to be attached thereto.

491. Section 7 of the Order defines the information to be provided by the applicant, as follows: "A company applying for a tax certificate shall prepare the application for such certificate in conjunction with the Botswana International Financial Services Centre and the application shall be supported by a business plan for a three to five year period including the following (a) general information on the promoting company, outlining its activities, size, history, performance and principal shareholders, as well as its profit and loss accounts and balance sheets for the past three years; (b) detailed particulars of the activity in respect of which the tax certificate is sought; and (c) a summary of the plans to market and promote the proposed service together with an assessment of the potential employment creation in Botswana"

492. In parallel to the processing of the application by the Certification committee, BoB reviews the application process (in particular to assess whether any existing regulatory framework would already apply to this company under Botswana law – Section 45 of Bank of Botswana Act "other than a company which is subject to supervision or is capable of being inspected by virtue of an enactment which for the time being is specified by regulation under section 46, and shall be without prejudice to any power granted to the Bank in relation to banks and other companies").

493. The assessors were advised that the Minister's decision to grant a "tax certificate" is based on the outcome of these two processes – and that in practice, a negative recommendation from BoB would lead to the "tax certificate" not to be granted. In this context, Section 49 of the BoB Act permits BoB to recommend to the Minister to revoke the "tax certificate" if "a person purporting to act on behalf of the company is convicted by a court of a competent jurisdiction, in Botswana or elsewhere, of an offence related to the proceeds of serious crime", or to recommend to the appropriate body having issued a license in favor of this IFSC company to revoke this license in accordance with the Act under which the license was issued.

494. The NBFi Regulatory Authority Act will modify this framework, and amends this section of the Bank of Botswana Act. The NBFi RA Act modifies Section 45 of the Bank of Botswana Act (scope of application), by transferring to the NBFi Regulatory Authority the regulatory / supervisory framework for NBFi being issued a "tax certificate". Part VIII of the NBFi RA Act defines the powers of the NBFi RA relating to the IFSC. Section 83 extends the powers and functions of the NBFi RA to any NBFi established under the IFSC. The NBFi Regulatory Authority can recommend to the Minister that a "tax certificate" be repealed – but there is no detailed provision related to conviction (contrary to the framework for the BoB supervision), only general references to the compliance with the conditions of the tax certificate and to the general conditions of licensing under a financial services law.

495. Sections 47 and 48 of the BoB Act empower BoB to regulate, inspect and supervise an IFSC company, to undertake on-site inspections (including of any foreign office of the company), to examine

all relevant documents and to require any such information deemed necessary or desirable for the inspection purposes.

496. Section 52 sets out the possibility to prosecute directors, managers, secretaries, members of a committee of management or other controlling authority when an offence has been committed by a company or a person purporting to act on behalf of a company operating in the IFSC framework. Section 53 makes it an offence to contravene to any requirement or condition of the BoB Act (with a level of fine significantly higher than fines provided for in other financial sector laws except the CIU Act – P 2,500,000 (US\$416,666), or imprisonment for a term not exceeding 3 years).

Non-Bank Financial Institutions

497. The NBFi Regulatory Authority Act (NBFi RA Act) mandates the NBFi Regulatory Authority (Section 7) to be the regulatory authority for all NBFi defined by the Act, with an additional explicit reference in Section 8 to the objective of fostering the reduction and deterrence of financial crime, with includes money laundering and the financing of terrorist activities (Section 2).

498. Sections 58 to 64 allow the Minister to recognize persons or bodies as self-regulatory organizations for classes of NBFis, provided the NBFi RA has concluded an agreement with this person or body on the arrangements governing the sharing of regulatory / supervisory authority, which can include delegation of powers from the NBFi RA to that self-regulatory body. The Act clearly indicates that the NBFi RA can modify or terminate the agreement if it is not satisfied of the performance of the self-regulatory body, and can recommend to the Minister that his recognition of the self-regulatory organization be repealed.

499. Part III of the NBFi RA Act stipulates the licensing requirements for NBFi. Section 43 (2) conditions the granting of a license to the NBFi RA being satisfied that the applicant “will carry on the activities to be covered by the license with integrity, prudence and professional skills”. According to Section 50 (2), the NBFi may in addition impose requirements dealing with “the fit and proper person requirements for controllers and managers of prudentially regulated NBFi” and “the standard of business conduct”. Section 65 of the Act also covers the prior approval by the NBFi RA of the controller (see section 4 of the Act) of a prudentially regulated non-bank financial institution, and the related sanctions in case of non-compliance.

500. Section 55 of the NBFi RA Act defines the inspection and investigation powers of the NBFi RA, which can “at any time inspect the affairs or any part of the affairs of a person who is, or at any time has been, a licensed non-bank financial institution”. Section 55 (2) allows the inspector to enter any premises and inspect and make copies, or take extracts from, any relevant record, document or things in those premises. Under Section 56, when the inspector⁴⁰ suspects, or has reasonable grounds to believe that an offence under a financial services law has been or may have been committed, or that an NBFi is not complying, or has not complied with, a financial services law, s/he may in addition “search for any record, document or other things” (Section 56 (2) (a)), “where necessary in an appropriate case to take possession of, such records, documents or things” (Section 56 (2) (b)). However, Section 56 (7) conditions the search of the premises under Section 56 (2) (a) to “the consent of the person”, or “in

⁴⁰ The NBFi RA Act uses the terminology of inspector and investigator, to be appointed, in writing, by the Regulatory Authority, under Article 54 (1).

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accordance with a warrant” to be issued by a magistrate on application by an investigator” (Section 56 (7)). The need for a warrant may be waived (Section 56 (9)) “only if there are reasonable grounds to suspect that it is necessary to do so to prevent loss or destruction of, or damage to, relevant evidence”.

501. The sanction framework under the NBFIRA Act is defined under Part X of the Act, and lays out various penalties in case of breaches of the Act’s provisions (requirement to answer questions, to comply with directions, provisions of false and misleading statements, offence of holding out as licensed, destruction of documents, hindering the Regulatory Authority, hindering compliance). In addition, sanctions are defined within the key Sections of the Act (absence of license, refusal to produce documents etc.), leading to either administrative/civil sanctions or criminal ones. Section 102 sets out the liability of directors in case of offence committed by a corporate body (“each director of the corporate body also commits the offence and on conviction is liable to the same penalty unless the director establishes that he or she took reasonable precautions and exercised due diligence to avoid the commission of the offence”).

502. In addition, the NBFIRA can modify and restrict the license of a NBFI, impose a “statutory management” (Section 73 to 75) of a NBFI as well as suspend or revoke the license of an NBFI (Section 47).

Resources / training/ statistics / guidelines

503. The Banking Supervision Department of the BoB is mandated to monitor compliance of banks with all relevant legal and regulatory provisions. It is also in charge of the supervision by BoB of companies established under the IFSC. The Banking Supervision Department has recently been restructured. It is currently staffed with 39 professionals – against a theoretical need of 48. Thirteen are dedicated to the licensing and regulatory functions. Twenty on the prudential (on-site and off-site supervision), with nine on non-bank institutions.

504. The supervision cycle of BoB is of [two] years.

505. BoB staff has received general training on AML issues, but not yet more specific training on the exercise of banking supervision on AML issues – in particular on-site examination.

506. The MFDP has 16 staff dedicated to regulation and supervision of insurance companies and the securities market – seven being focused on insurance, four on pension funds and two on capital markets. Out of the seven on insurance issues, two are on-site examiners, not specialized. On-site examinations are unusual, and only take place when the Ministry has been informed of a difficulty with an insurance company (often through customers’ referrals).

507. Only BoB has issued guidelines, annexed to the Banking (AML) Regulation (on the criteria for suspicious reporting and on the form to report).

508. There are no publicly available statistics on the exercise of its supervisory powers by the BoB, and no formalized statistical data gathering system is in place at the moment (including for BoB purposes). The BoB publishes an annual report that contains some information of the activities of the Banking supervision department, but not in details. The Banking Supervision department of BoB

issues an annual report, which contains specific information, including on the outcome of examinations.

509. There are no publicly available statistics on the exercise of its supervisory powers by the Registrar of Insurance or the Registrar of the Stock Exchange. The Registrar of Insurance publishes an annual report that contains general information on the insurance sector, with few information the exercise of the supervisory / regulatory functions.

General analysis

510. Overall, the regulatory and supervisory framework in Botswana is comprehensive and all the fundamental tools are available to the authorities.

511. As indicated in other sections of the report, the scope of the regulatory and supervisory framework applying to financial institutions is too narrow, even taking into consideration the industry-specific laws and regulations. Money remittance is not covered when not undertaken by banks, bureaux de change or the post office. Money lenders are not registered or licensed, and their activities do not fall under any oversight. The absence of some statutory banks in the AML framework is also a weakness.

512. The mechanisms put forward for the statutory banks entail positive elements, notably the fact that the BoB is undertaking on-site supervision and examination against the regulations applying to commercial banks. The fact that its findings are then put forward to the oversight ministry, i.e. the Ministry of Finance and Development Planning, is not an issue in itself. It is the assessors' view that the lack of systematic follow-up by the Ministry, beyond moral suasion, is of concern. As the Ministry is in potential conflict of interest position, being both regulator/supervisor and shareholder, this lack of visible and transparent enforcement action is worrying. The assessors are concerned by this lack of compliance.

513. The enactment of the NBFI Regulatory Authority Act will significantly contribute to improve this situation. At the same time, lots of preparatory work remains to be done for this new regulatory framework to be ready for implementation – with a risk in the meantime of diversion of attention to the implementation of the existing mechanisms. Further, the current scarce skills and resources base will add to the extension of the regulatory and supervisory net resulting in a significant challenge for the NBFI RA, all the more as the diversity of the “population” of NBFI (from insurance to micro-lending) will require a strategic and sequenced approach from the NBFI.

514. As Botswana is striving to attract more foreign investment, with the IFSC being an important tool in that respect, there are natural tensions between offering attractive investment conditions to investors and the need for a sound supervision. The autonomy granted to the NBFI is a welcome step forward, as it will externalize from the Ministry of Finance and Development Planning the management of this tension. It is the assessors' understanding that past experience illustrates that such situations are not purely theoretical. At the same time, this will constitute a formidable challenge for the NBFI RA, all the more as the business undertaken in the IFSC is potentially a rather sophisticated one.

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515. How the AML framework is articulated with the regular regulation and supervision of non-bank financial institutions deserves to be clarified. The PSCA does not explicitly mandate the regulators / supervisors to integrate AML requirements in their supervision. As indicated in other section, the lack of awareness to the PSCA, and the lack of enforcement of its provisions by the supervisors, is perceived by the assessors as reinforcing this ambiguity. In addition, the sanctions for breaches to the PSCA requirements is often of a criminal nature (see below), which is likely to reinforce the perception that law enforcement authorities and prosecution are in fact in charge of ensuring compliance. The implementation of the NBFIRA Act is expected to bring improvements to this situation, as the Act explicitly incorporate the fight against the abuse of the financial sector for criminal purposes in the remit of the new Authority.

516. Taken as a whole, the regulatory framework contains the key requirements from an AML perspective: fit and proper tests, licensing and structure, on-going supervision (on site inspections, access to records), powers of enforcement and sanction – including against directors and senior management. When analyzed in more details, it nonetheless presents some weaknesses from a legal standpoint.

517. As indicated earlier, all natural and legal persons providing money or value transfer services are not subject to systems for monitoring and ensuring compliance.

518. The requirements to prevent criminals or their associates from holding or being the beneficial owners or controllers of financial institutions are broadly in place. Legally, the requirements for banking institutions do not explicitly refer to controllers, or only in an indirect way. However, the practice by the BoB is to undertake such fit and proper tests on the beneficial owners of commercial banks and bureaux de change. The variations across the various financial sector laws in the definition of controllers are not in and of themselves a concern; however, the extent of these variations may create legal uncertainties and does not provide for a level-playing field.

519. The sanctioning mechanisms raise several concerns, of different intensity across the financial sector.

520. First are concerns related to the nature of these sanctions and accordingly the designation of the authority empowered to apply them. Some Acts explicitly distinguish between the sanctions of civil/administrative nature and those of criminal nature, with explicit distinction between the related processes. Others are silent on this difference of process, and simply mention that breaches to the provisions of the Acts are offences and liable of fine or imprisonment. A strict reading of several provisions would lead to the conclusion that any situation of non-compliance is of criminal nature, and that the supervisory authority cannot impose fines.

521. The level of the sanctions is overall very low (of an order of magnitude of P 10.000), particularly when administrative sanctions (fines) are concerned. There are also inconsistencies, as the IFSC and the CIU sanction regime allow for fines up to P 2.500.000. The capacity of the financial sector supervisors to vary, suspend or withdraw a license is positive and constitutes a credible deterrent, all the more as it has been used (outside of AML).

522. Against this background, the legal framework only creates criminal sanctions for failures to comply. The assessors were not advised of any precedent of recourse to courts to sanction a financial institution. This does not meet the requirement of effective, proportionate and dissuasive.

523. Overall, the range of sanction is not effective, proportionate and dissuasive.

524. Notwithstanding the weaknesses described above in the legal framework, it is the assessors' view that the lack of effective implementation is the overriding issue, and that the differences between the various supervisors in terms of actual implementation create a significant vulnerability. Valuable steps have been taken by Bank of Botswana, both towards banks and bureaux de change. As far as the assessors understood, less so towards Collective Investment Undertakings. But overall, As the set up and progressive launch of the NBFIRA is likely to take time, in a context of scarcity of expertise and skills, this challenge is likely to remain with Botswana for quite some time, calling for a very prioritized and sequenced approach to enforcement of compliance.

525. The resources allocated to the regulation and supervision of AML in the financial sector are insufficient, and not commensurate with the task at hand. At the time of the on-site mission, only the Bank of Botswana had in practice allocated resources and trained its staff to enforce the AML requirements, but those efforts remained insufficient to the task at hand. The other supervisors had not taken similar steps. In addition, despite efforts to train some of the staff, more remains to be done both on general education on AML and on building skills on the role of examiners and regulators in fostering compliance with AML requirements, given Botswana's financial markets size and level of sophistication. The set up of the NBFIRA and the enlargement of the scope of supervision represent a challenge in that respect, so that its creation results in a net improvement in the resources and skills dedicated to the regulation and supervision of Botswana's financial sector.

3.10.2 Recommendations and Comments

526. As indicated above, the various terminologies regarding the control of financial institutions (directors, controllers) as well as the differences in the "thresholds" to define "effective control" are not in themselves a hurdle from the AML perspective. However, they have the potential to introduce legal uncertainties – or an absence of level playing field for different types of institutions providing similar services but regulated under different statutes.

527. The authorities should consider:

- Significantly enhancing the sanctioning regime to make it effective, proportionate and dissuasive – particularly by increasing the amounts of the fines as administrative/civil sanctions
- Clearly designating an authority empowered to apply sanctions
- More intensely implementing the sanctioning regimes, beyond moral suasion
- Clearly designating the competent authorities having responsibility to ensure that designated bodies, other than banks and bureaux de change, comply with the PSCA
- Clarifying that, for designated bodies subject to the core principles other than banks and bureaux de change, the regulatory and supervisory measures applying for prudential purposes should apply in a same manner for AML

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- Setting up a licensing requirement for insurance companies
- Setting up a registration or licensing requirement for all money or value transfer services
- Setting up monitoring and compliance checking mechanisms for all money or value transfer services
- Issuing guidelines for designated bodies other than banks
- More intensely enforcing the AML regime, particularly for designated bodies other than banks and bureaux de change
- Increasing the resources allocated to regulation and supervision and step up the training on AML

3.10.3 Compliance with Recommendations 17, 23, 25 & 29

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	NC	<ul style="list-style-type: none">• Absence of effective, proportionate and dissuasive sanctions• Lack of clear designation of an authority empowered to apply sanctions• Insufficient implementation
R.23	NC	<ul style="list-style-type: none">• Lack of clarity on the designation of competent authorities having responsibility to ensure that designated bodies, other than banks and bureaux de change, comply with the PSCA• Lack of clarity that, for designated bodies subject to the core principles other than banks and bureaux de change, the regulatory and supervisory measures applying for prudential purposes should apply in a same manner for AML• Absence of licensing requirements for insurance companies• Absence of registration or licensing for all money or value transfer services• Absence of monitoring and compliance checking for all money or value transfer services
R.25	NC	Section-specific rating would be: PC <ul style="list-style-type: none">• Absence of guidelines for designated bodies other than banks
R.29	LC	<ul style="list-style-type: none">• Lack of implementation and of enforcement action, particularly for designated bodies other than banks and bureaux de change

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis (summary)

528. There is no specific legal framework applying to money/value transfer service operator as a single category of financial services providers. When they are offered by institutions regulated under another financial services law, the requirements set out in the latter apply to money/value transmission

business. It is however possible for operators to provide money/value transfer services without any registration or licensing requirement.

529. Once in force, the NBFIRule Authority Act will improve this situation, as money remitters will explicitly be under the scope of this authority, and subject to the associated licensing / registration requirements.

530. The relevant FATF Recommendations (R.4-11, 13-15 & 21-23, & SRI-IX) only apply insofar as the service provider is a designated body. There is no across-the-board monitoring of value transfer service operators.

531. Even for designated bodies undertaking value transfers, the FATF best practice paper is not a reference used so far by the authorities.

3.11.2 Recommendations and Comments

532. The authorities should consider:

- Requiring the registration/licensing of all natural and legal persons providing money or value transfer services
- Extending the coverage of the relevant AML requirements to all natural and legal persons providing money or value transfer services
- Setting up a system to monitor all natural and legal persons providing money or value transfer services and ensure compliance with the AML requirements
- Setting up a sanctions regime for all natural and legal persons providing money or value transfer services

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	NC	<ul style="list-style-type: none">• Absence of registration/licensing of all natural and legal persons providing money or value transfer services• Absence of coverage of all natural and legal persons providing money or value transfer services• Absence of system to monitor all natural and legal persons providing money or value transfer services and ensure compliance with the AML requirements• Absence of sanctions for all natural and legal persons providing money or value transfer services

4 PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1 Customer due diligence and record-keeping (R.12)

(applying R.5, 6, and 8 to 11)

4.1.1 Description and Analysis

533. DNFBPs are not subject any of the AML/CFT preventative measures set out in Recommendation 12. No other element of Botswana’s legal framework provides for requirements relevant for AML/CFT purposes.

4.1.2 Recommendations and Comments

534. The authorities should consider :

- Introducing AML/CFT preventative measures for the various professions / industries within DNFBPs in a sequenced manner with due regard to the ML/TF risk which each of these businesses and professions present.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	NC	<ul style="list-style-type: none"> • DNFBPs are not subject any of the AML/CFT preventative measures set out in Recommendation 12.

4.2 Suspicious transaction reporting (R.16)

(applying R.13 to 15 & 21)

4.2.1 Description and Analysis

535. DNFBPs are not subject any of the AML/CFT preventative measures set out in Recommendation 16.

4.2.2 Recommendations and Comments

536. The authorities should consider :

- Introducing suspicious transaction reporting for the various professions / industries within DNFBPs in a sequenced manner with due regard to the ML/TF risk which each of these businesses and professions present.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	NC	<ul style="list-style-type: none"> • DNFBPs are not subject any of the AML/CFT preventative measures set out in Recommendation 16.

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

4.3.1 Description and Analysis

537. Legal Framework: Casinos Act; Real Estate Practitioners Act; Legal Practitioners Act; Accountants Act; Mines and Minerals Act; Precious and Semi-Precious Stones (Protection) Act; Unwrought Precious Metals Act

538. Regulation and Supervision of Casinos (c. 24.1, 24.1.1, 24.1.2 & 24.1.3): Casinos in Botswana are regulated by the Department of Trade and Consumer Affairs, pursuant to the Casino Act though there is no requirement for AML/CFT measures to be introduced. Consideration concerning the introduction of a requirement to report suspicious transactions was first raised in December 2002 in the 'Gaming and Gambling Policy for Botswana.' The bill which will incorporate some of the requirements arising from the 'Gaming and Gambling Policy for Botswana' is presently being drafted by the AG's Chambers and it is hoped it will be introduced to Parliament by the end of 2007.

539. There are currently 10 licensed casinos with only two of these operating gaming tables. The remainder only have slot machines. There is no provision concerning the regulation of internet casinos though the authorities indicate that at present, there are no internet casinos within Botswana.

540. Casinos are required to be licensed by the Casino Control Board. There are no requirements concerned with the financial transactions performed by the casino with a customer, other than to restrict transactions to being by means of cash, travelers checks or credit cards. In practice, casinos have introduced transaction restrictions and identification procedures as both the casinos with gaming tables are subsidiaries of South African casinos and their internal controls have been implemented with Botswana.

541. Only by means of specific conditions being attached to individual licenses are the gaming operations within the casino currently regulated. However, there are plans to introduce the supervision of gaming within the near future though the new bill.

542. In determining the suitability of a licensee, the applicant will be subjected to a vetting procedure which will include criminal record checks. The board will also assess the experience and financial status of the applicant. In accordance with Section 9 of the Casino (Control) Regulations, all persons involved in an 'administrative, clerical, technical, security and gaming capacity' are required to be authorized by the Casino Control Board. Certification for employment requires undergoing vetting.

543. With the exception of trust and company service providers which are not lawyers and accountants, the other DNFBPs are subject to regulation of the respective sector's activities. Real estate agents, accountants and lawyers are governed by the Real Estate Professionals Act, the Accountants Act and the Legal Practitioners Act respectively. However, there is no provision for AML/CFT measures to be applicable to DNFBPs.

544. Wholesale dealers in precious stones and metals are governed by the Mines and Mineral Act, Precious and Semi-Precious Stones (Protection) Act; Unwrought Precious Metals Act. There is no regulation of retail precious stone and metal dealers.

545. As there is no provision for AML/CFT preventative measures to be applicable to DNFBPs, there are no guidelines to aid in their implementation.

4.3.2 Recommendations and Comments

546. The authorities should consider :

- Introducing AML/CFT measures for each of the businesses and professions in a sequenced manner and with due regard to the ML/TF risk which each of these businesses and professions present.
- Developing guidelines for each of the businesses and professions to aid the implementation of the AML/CFT measures.

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

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	NC	<ul style="list-style-type: none"> • There is no provision for AML/CFT measures to be applicable to DNFBPs.
R.25	NC	Section-specific rating would be: NC <ul style="list-style-type: none"> • No guidelines have been provided for DNFBPs

4.4 Other non-financial businesses and professions & Modern-secure transaction techniques (R.20)

4.4.1 Description and Analysis

547. No assessment has been conducted to determine the ML/TF risk presented by other non-banking financial businesses and professions. Further, there has been no consideration on whether to apply AML/CFT preventative measures to these businesses or professions to reduce the risk of them being abused for ML or TF

548. The BoB has made efforts to encourage the use of modern techniques for conducting financial transactions including promoting the use of Automatic Teller Machines and other secure payment systems.

4.4.2 Recommendations and Comments

549. The authorities should consider :

- Conducting an assessment of the risks that other non-banking financial business and professions are likely to be misused for ML or TF.
- Maintaining efforts to promote the use of modern and secure financial transactions.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	PC	<ul style="list-style-type: none">• No consideration has been given to identifying other non-financial businesses that are at risk of being abused for ML or TF

5 LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

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

5.1.1 Description and Analysis

550. **Legal Framework:** The Companies Act, 1959 as amended; and Registration of Business Names Act (RBNA) 1977 as amended regulate the incorporation and registration of a legal entity in Botswana. There is a revised Companies Act of 2003 but it is not in effect. The revised Act was not provided to the assessors.

551. The Companies Act creates three types of legal persons: a company limited by shares with the word proprietary (Pty) before limited is a private company; a company limited by guarantee in which the members agree to contribute to the assets of the company in event of winding up; and public companies. In addition, partnerships and sole proprietors are also forms of legal entities that can do business in Botswana. As at December 2006 there were 62,000 companies registered in Botswana.

552. Companies are registered under the Companies Act, while partnerships although not required to be registered have to apply for a partnership business name under the Registration of Business names Act. The same applies to sole proprietorships.

553. **Measures to Prevent Unlawful Use of Legal Persons (c. 33.1):** There is no obligation in the Companies Act or any regulation that requires the authorities to verify the integrity of the persons forming a company or registering a business name as a sole proprietorship or partnership or the accuracy of the information provided by a person filing registration documents. If the information required complies with the Companies Act or the RBNA then the Registrar has to register the legal entity.

554. Registration of companies is usually done by lawyers and accountants acting as company service providers. There are under no obligation to undertake any CDD check on the beneficial owners of domestic or foreign companies being formed. Moreover, any person particularly, lawyers and accountants can act as nominee directors and shareholders. The current practice is a major loophole in the system and subject to abuse by criminals.

555. Section 143 of the Companies Act prohibits the appointment of a legal person as a director of a company.

556. **Access to Information on Beneficial Owners of Legal Persons (c. 33.2):** The Register of Companies is maintained by the Registrar of Companies and any person including law enforcement agencies can inspect the records of a company upon paying a search fee. A search is done in the presence of an officer from the Registrar's office. This register is kept manually and includes relevant information on companies and undertakings: legal status, date of establishment, company capital, and powers of representation, etc.). It also includes details about changes in the status of the company (changes in board membership, address, etc.). Full details of the company's managers are mentioned, including name and number of shares held. Companies are also required to maintain at their registered office a register of members. The information kept is similar to that maintained by the Registrar (Sections 87 and 152 of Companies Act).

557. The Company Secretary is responsible to ensure that changes in the directorship and shareholding of a company is kept up to date.

558. Under section 79A of the Companies Act, a company is supposed to indicate upon the sale, transfer or disposal of shares the name of the new shareholder. Where the person to whom the shares have been sold is not the beneficial shareholder then the company is required under this section to provide the details of the actual beneficial shareholder. However, there is no evidence that this provision is enforced by the Registrar. Moreover the sanctioning regime is outdated with penalties of only P4 (US\$0.60) in some cases or P10 (US\$1.66).

559. The information kept by the Registrar is maintained manually and the authorities stated that only 60% of the information kept is accurate and updated. The assessors were advised of similar concern regarding the accuracy of records kept by company secretaries. The storage facilities are a source of concern to the authorities. On the other hand, the government has already approved the computerization plan for the Registrar's office. The design of the system for this project has been approved. Plans are also underway to make the office semi-autonomous on the expectation that this will improve the efficiency of the office.

560. **Prevention of Misuse of Bearer Shares (c. 33.3):** There is no explicit prohibition on issuing of bearer shares under the Companies Act, and there are no measures, if and when such bearer shares are issued, to prevent them from being abused for money laundering purposes.

561. **Additional Element - Access to Information on Beneficial Owners of Legal Persons by Financial Institutions)(c. 33.4):** Banks do require corporate entities seeking to open accounts to provide information on who the directors and shareholders are. This is done by requiring submission of Forms 2 and 4 on names of directors and shareholder respectively.

562. **Analysis of Effectiveness:** The transparency mechanisms in place are not adequate. The information kept on the register is not up to date. There is no enforcement of the requirement for companies to file their annual returns in a timely manner. The absence of CDD obligations on company service providers to ensure that they know their clients interested in registering a company in Botswana is a major weakness in the system. Additionally, lack of appropriate controls on nominee directorships and shareholding is vulnerable to abuse by criminal elements.

5.1.2 Recommendations and Comments

563. The authorities should consider :

- Enhancing the mechanism for keeping the information accurate and up to date and do so in a timely manner.
- Enforcing the requirement for companies to file their returns in a timely manner and for company secretaries to keep the information up to date.
- Strengthening the enforcement framework including the fines that can be imposed for violation of provisions of the Companies Act.
- Restricting the use of nominee directors and shareholders and impose obligations on company service providers to undertake CDD on clients interested in registering a company.

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	NC	<ul style="list-style-type: none"> Information maintained in the registry is not up to date No enforcement of requirements of the Companies Act Possibility of use of nominee directors and shareholders.

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

564. **Legal Framework:** There is no legal framework for creation or registration of trusts in Botswana. Trusts can be created by will, deed or through some other mechanisms of the settlors choosing. There is no mandatory registration of trusts.

565. It is possible to voluntarily register trusts with the Deeds Registry. According to the Registrar of Deeds, there are presently 664 registered trusts in Botswana. Trusts in Botswana like in other common law jurisdictions are not separate legal entities. The trustee is the person responsible for the trust property and exercises his authority on behalf of a beneficiary (ies).

566. **Measures to Prevent Unlawful Use of Legal Arrangements (c. 34.1):** There are no measures to prevent unlawful use of legal arrangements such as trusts. Trusts are created by a simple will, some agreement or deed.

567. **Access to Information on Beneficial Owners of Legal Arrangements (c. 34.2):** There are no requirements to obtain, verify or retain information on the beneficial ownership and control of trusts. Specifically because of the absence of regulation of trusts, information of the settlor, trustee and beneficiary of a trust are not recorded anywhere.

568. **Additional Element - Access to Information on Beneficial Owners of Legal Arrangements by Financial Institutions)(c. 34.3):** Where a trustee wants to open an account with a bank, the practice is to require the trustee to submit a notarized copy of a registered trust deed. However, even with this practice, banks only identify the trustee and not the beneficiary.

569. **Analysis of effectiveness:** The overall mechanism for maintaining and accessing beneficial ownership and control of trusts is deficient. There is need to establish an appropriate regulatory mechanism for the administration of trusts in Botswana.

570. As the standard does not call for the set-up of a registry of trusts, the assessors have assessed Botswana's against the transparency requirements laid out in Recommendation 34, without prejudice of the tools mobilized to achieve the required level of transparency. However, as Botswana already has a registry available for trusts (on a voluntary basis), the assessors reached the conclusion that building on the already institutional framework would

5.2.2 Recommendations and Comments

571. The authorities should consider:

- Creating mechanisms to ensure that beneficial ownership information is accessible in a timely fashion and is accurate and current. One option could be to require the registration of trusts
- Establishing a comprehensive mechanism for the registration and maintenance of trust information.
- Ensuring that the mechanism established is accessible to competent authorities.
- Ensuring that information on beneficial ownership and control is included in the records to be maintained at the central registry.

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	NC	<ul style="list-style-type: none"> • Information on beneficial ownership is not accurate and current • Information on beneficial ownership of trusts is not accessible in a timely fashion

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and Analysis

572. **Legal Framework:** There is no requirement on the legal form to be adopted by a NPO, foreign or domestic. Most NPOs are created as Societies under the Societies Act. In addition, there is a National Policy on Non-Governmental Organizations (NGO) approved by Cabinet on March 3, 2004 (Presidential Directive Cab 8(b)/2004).

573. There is a voluntary umbrella organization for NPOs called the Botswana Council of Non-Governmental Organizations (BOCONGO). It comprises some 80 members from 11 sectoral areas including arts, health, microcredit and human rights among others. The main goal of BOCONGO is to strive to build the capacity of its members to enable them to manage their organizations in an effective and transparent manner. In addition, in light of Botswana being an upper middle income country, many donors have left the country thus creating a financing gap. Consequently, BOCONGO's role is to provide support to its members to solicit for financial assistance domestically and internationally to finance their projects.

574. According to the Registrar of Societies, there are approximately 3000 NPOs registered and operating in Botswana. The assessors could not verify this number, despite requesting confirmation of this figure. They include religious organizations, clubs, societies such as the law society, charities and associations. Registration is mandatory and applicants are required to submit a copy of the constitution and rules of the society, a list of office bearers of the society including their addresses and signatures, and the name the society proposes to be called by. Background checks on the office bearers is undertaken and their identity. However, the check done is not analogous to the fit and proper test.

575. The Registrar of Societies under section 7 of the Societies Act can reject an application to register a society inter alia if it appears to the Registrar that any of the objects of the society is likely to be used for unlawful purposes or prejudicial to good order in Botswana.

576. For the other forms, please see discussion on companies and trusts.
577. **Review of Adequacy of Laws & Regulations of NPOs (c. VIII.1):** The authorities have not reviewed the adequacy of the law governing NPOs in the context of FT. However, the authorities advised the assessors that they have been reviewing the Societies Act to strengthen the monitoring provisions. But this was not done for FT purposes. The assessors could not confirm the nature and scope of such a review process. On the other hand, the National Policy document of 2004 was an attempt to provide a framework for government-NPO relations and collaboration, and establish structures and processes to operationalize and guide the collaboration. However, this policy document does not include a review of the existing legal framework.
578. Further, neither the authorities nor BOCONGO has conducted an assessment to determine the risk and vulnerability of NPOs in Botswana from being used for terrorist financing purposes.
579. **Preventative Measures Against Illegitimate NPOs (c. VIII.2):** There are no general AML/CFT measures generally against illegitimate NPOs. The Registrar of Societies does not conduct any oversight of the NPO sector besides registering the NPO. There are no financial reporting obligations on NPOs. Thus no auditing process is undertaken with respect to the activities of NPOs to among other things establish that funds are being used for the purpose for which they were intended.
580. **Diversion of Funds for Terrorists Purposes (c. VIII.3):** There is no mechanism for monitoring the manner in which financial resources are utilized by NPOs. Moreover, there are no restrictions on raising funds whether domestically or internationally. However, discussions with the authorities indicated that a number of external donors demand that a recipient of their funds sign a contract to ensure financial accountability. But there is no regulatory requirement for such a practice. The potential exists for NPOs being used to divert funds for terrorist purposes in the absence of appropriate mechanisms to enhance transparency and monitoring of activities of NPOs.
581. Law enforcement agencies have access to information maintained by the Registrar of Societies. However, there is no requirement for NPOs to maintain information for at least 5 years.
582. **Investigate and gather information on NPOs (c. VIII.4):** There is no effective domestic cooperation, coordination and information sharing with respect to NPO matters.
583. Law enforcement authorities through the search powers under sections 28 and 29 of the Societies Act have access to and can obtain information on the management of an NPO where there is an investigation.
584. **Analysis of Effectiveness:** From an AML/CFT perspective, the current legislative and regulatory framework for the NPO sector is not effective. The authorities have not been able to monitor the activities of nor track the manner in which the funds received by NPOs are used. The National Policy on NPOs meant to strengthen the collaboration between the government and the NPO sector has not been implemented. Furthermore, the enforcement powers under the law have not been effectively used. There are no appropriate, dissuasive and proportionate sanctions for NPOs that do not comply with the law or regulation. The only remedy currently available to the Registrar of Societies which can have an impact is the cancellation of registration, a remedy that should be used as a last resort. The

finances are very low and not commensurate with the prevailing economic environment. Other sanctions such as warnings, removal of office bearers and censures should be made available to the Registrar.

5.3.2 Recommendations and Comments

585. The authorities should consider:

- Establishing an appropriate monitoring and enhance the enforcement regime of NPOs including the possibility of using the BOCONGO framework.
- Conducting a risk assessment of FT vulnerability of Botswana and in this context undertake a review of the adequacy of the laws and regulations as they relate to AML/CFT.
- Establishing appropriate mechanisms and practical guidelines to enhance transparency in NPOs including raising and accounting of funds by NPOs.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	NC	<ul style="list-style-type: none">• No effective monitoring and enforcement regime of NPOs for AML/CFT purposes• No review of adequacy of laws and regulations for FT purposes• No risk assessment of FT vulnerability• No appropriate transparency mechanisms in place.

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and coordination (R.31)

6.1.1 Description and Analysis

586. **Legal Framework:** The PSCA does not provide for the establishment of a body that is responsible for coordinating AML/CFT policies in Botswana.

587. **Mechanisms for Domestic Cooperation and Coordination in AML/CFT (c. 31.1):** There is no agency or institution that has been mandated to coordinate the Government's AML/CFT policies. There is however, a National Anti-Money Laundering Committee on AML/CFT chaired by the Ministry of Finance, whose role is to assist government develop appropriate AML/CFT measures. The Committee was established in 1999 and was reformed in 2004, with early members being the AGC, DCEC, BoB, the Police and the Ministry of Finance. In January 2007 the Customs department of BURS was invited to join the Committee. In 2005, the Committee was responsible in preparing a draft National Strategy on AML/CFT though this has yet to be endorsed by cabinet. Although it provides advice to government at a policy making level it nevertheless has no statutory mandate.

588. Further, based on discussions with the authorities and the inconsistencies across the laws identified in previous sections of the report, it is the assessors view, that there has been no coordination in the drafting of AML related laws and regulations to ensure consistency across all agencies. This has resulted in legal uncertainty and at times inconsistencies within laws and regulation. In order to avoid conflicts between different legal instruments it is important for the authorities that in the drafting stages they ensure that all relevant stakeholders are involved in a consistent and transparent manner throughout the process. Consultation is key both for the buy in as well as an efficient and effective implementation of the law or regulation.

589. In terms of operational coordination, there is a close working relationship among law enforcement agencies. Close coordination in exchanging information between the DCEC and Customs, the DCEC and the Police, and the Customs and Police is good. The BoB and the Police have a liaison forum meant to deal with issues related to fraud in the banking sector. Through this forum, the BoB and Police worked closely in finding ways to provide security to banking institutions particularly in the wake of robberies and fraud perpetrated against the banks in the recent past.

590. **Additional Element - Mechanisms for Consultation between Competent Authorities and Regulated Institutions (c. 31.2):** With the exception of BoB and the banking institutions, there is very little consultation between competent authorities and other regulated institutions such as the securities and insurance sectors. This is especially the case with regard to critical AML/CFT issues that pertain to the obligations of the regulated institutions under the PSCA. Additionally, the assessors' view is that there is limited understanding of AML/CFT matters.

591. **Analysis of Effectiveness:** The coordination at the policy level is ad hoc and there is no effective mechanism to ensure that issues discussed at this forum receive the attention of decision makers. The absence of a regulatory or cabinet mandate can have a bearing on the weight to be given to its decisions. For instance, one of the concerns expressed by the mission was the lack of ownership by any agency or Ministry of the PSCA. Discussions with the authorities failed to identify which

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agency was responsible for the PSCA and therefore its full implementation including issuing regulations required under the PSCA. Moreover, the Committee could not resolve this issue. There is room to further enhance the role of the Committee which is a critical ingredient to creating a robust AML/CFT system.

592. On the operational side, while there is coordination among a number of law enforcement agencies, there is no comprehensive and systematic cross-agency mechanism. The mechanism should include the better use of financial intelligence and related operational information among all agencies. With respect to the private sector, there is a general lack of adequate communication to the industry on trends, developments and policy direction the authorities are taking on AML/CFT matters.

6.1.2 Recommendations and Comments

593. In addition to the recommendations below to improve compliance with Recommendation 31, the authorities should consider creating an appropriate private-public sector mechanism to facilitate communication with the private sector.

594. The authorities should consider :

- Giving a clear mandate to the Committee on its policy making responsibility.
- Clarifying the Ministry responsible for the implementation of the PSCA.
- Creating a comprehensive cross-agency mechanism to deepen coordination among all relevant agencies in relation to AML/CFT and gathering information on effectiveness of the AML/CFT system.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	PC	<ul style="list-style-type: none">• No effective cross-agency mechanism for coordination among relevant agencies

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

595. **Legal Framework:** The implementation of many of the provisions of the Vienna and Palermo Conventions are found in the PSCA, MACMA, CPEA, Drugs and Related Substances Act and the Extradition Act. There is however, no legislative or regulatory framework for the implementation of any of the provisions of the SFT Convention. The process of ratification in Botswana is by executive decision and does not require parliamentary approval.

596. **Ratification of AML Related UN Conventions (c. 35.1):** Botswana became a party to the Vienna Convention in August 1996. It ratified the Palermo Convention in August 2002.

597. **Ratification of CFT Related UN Conventions (c. I.1):** As for the SFT Convention, it was ratified in September 2000.

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598. **Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19, c. 35.1):** Botswana has adopted legislative provisions to implement the provisions in Article 3 (on offences and sanctions related to narcotics and psychotropic substances); Article 4 (on establishing jurisdiction over offences related to narcotics and psychotropic substances); Article 5 (on confiscation of instrumentalities); and Articles 6 and 7 (on extradition and mutual legal assistance). The articles are implemented pursuant to the PSCA, the CPEA, the Drug Related Substances Act, the MACMA and the Extradition Act.

599. **Implementation of SFT Convention (Articles 2-18, c. 35.1 & c. I.1):** Botswana has not adopted legislative provisions to implement any of the provisions of the SFT Convention.

600. **Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c. 35.1):** Botswana has adopted legislative provisions to implement the provision in Articles 6, 10, 11, 12-16, 18, 20 (on criminalization of the laundering of proceeds of crime; liability of legal persons; prosecution, adjudication and sanctions for ML; confiscation and seizure of instrumentalities of crime; providing international cooperation for purposes of confiscation; asset sharing; establishing jurisdiction over ML offences; extradition and mutual legal assistance; and use of special investigative techniques or controlled delivery). These provisions have been implemented in the PSCA, CPEA, the MACMA and Extradition Act.

601. With respect to, Article 5 (on criminalization of participation in an organized criminal group); Article 7 (on establishing the FIU and introducing measures to detect and monitor the movement of cash across borders); Article 24-27 (on protection of witnesses and enhancing law enforcement cooperation); and Article 31 (on establishing and promoting best practices to deter transnational organized crime), Botswana has not implemented the requirements of these provisions.

602. **Implementation of UN SCRs relating to Prevention and Suppression of FT (c. I.2):** As discussed in Section 1.4 (Freezing of funds used for terrorist), Botswana has not implemented the UNSCRs.

603. **Additional Element - Ratification or Implementation of Other relevant international conventions (c. 35.2):** In addition to the SFT Convention, Botswana has ratified all the 11 other conventions related to terrorism. Botswana has signed and ratification several regional protocols related to AML/CFT including:

- Protocol against Corruption in the SADC Region (September 2001);
- Protocol on Combating Illicit Drug Trafficking in the SADC Region (October 1997);
- Protocol on Wildlife Conservation and Law Enforcement in the SADC Region (January 2000);
- Protocol on Extradition in the SADC Region (August 2004);
- Protocol on Firearms, Ammunition and Other related materials in the SADC Region (August 2001); and
- Protocol on Mutual Legal Assistance in Criminal Matters in the SADC Region (August 2004).

6.2.2 Recommendations and Comments

604. Botswana has implemented most of the requirements of the Vienna and Palermo Conventions. However, international requirements related to the financing of terrorism have not been implemented. The authorities should consider :

- Implementing the provisions of the SFT Convention and the UNSCRs
- Implementing the provisions of the Palermo Convention as discussed above

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	PC	<ul style="list-style-type: none"> • Insufficient implementation of criminal organization provisions of the Palermo, monitoring of cross border movement of cash and lack of an FIU.
SR.I	NC	<ul style="list-style-type: none"> • The SFT Conventions and UN Special Resolutions have not been implemented.

6.3 Mutual Legal Assistance (R.36-38, SR.V)

6.3.1 Description and Analysis

605. **Legal Framework:** The MACMA. However, there is no provision to provide MLA for FT purposes.

606. The legal framework for MLA requires that Botswana enters into bilateral or multilateral agreements with other countries as pre-condition to provide MLA. The authorities did not provide the assessors with a list of countries with which Botswana has an agreement. However, as discussed below in paragraph 594, the ODPP has discretionary power to provide MLA to a requesting country with which there is no treaty or arrangement.

607. Botswana’s mutual legal assistance framework is provided for in the MACMA and is executed under the aegis of the DPP. The MoFA serves as a facilitator for purposes of transmission of MLA documents to and from Botswana through the diplomatic channels. In the MLA requests executed by the authorities, the use of MoFA has not impeded the assistance provided.

608. **Widest Possible Range of Mutual Assistance (c. 36.1):** Under the MACMA, Botswana does provide the widest possible range of MLA. The assistance includes:

- production, search and seizure of information, documents or evidence (including financial records) from financial institutions, or other natural or legal persons. Requests for production orders are provided for in sections 10 and 32 of the MACMA; search and seizure of documents are provided for in section 12 of the MACMA;
- taking of evidence or statements from persons is provided for in section 10 of the MACMA
- providing originals or copies of relevant documents is provided for in section 36 of the MACMA;
- the DPP has authority under section 33 of the MACMA to give effect to service of documents in Botswana;

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- facilitating the voluntary appearance of witnesses in a criminal proceeding in a foreign country is provided for in sections 21-22 of the MACMA; and
- freezing, seizure or confiscation of proceeds of serious offence is provided for in sections 29-31 of the MACMA.

609. **Provision of Assistance in Timely, Constructive and Effective Manner (c. 36.1.1):** In discussions with the authorities, it was stated that assistance is provided in a timely, constructive and effective manner. Depending on the nature of a case, it was further stated that the process reportedly takes about a month to comply with a request. The figures of MLA requests provided to the assessors were those that were executed by the authorities and the files have since been closed.

610. **No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance (c. 36.2):** MLA is subject to conditions that can restrict its provision and therefore the effectiveness of the regime. Specifically, two grounds could potentially and one has in the past been an impediment to Botswana receiving MLA from a foreign jurisdiction. Firstly, the DPP *may* refuse to provide MLA to a foreign country on the principle of dual criminality. In particular, section 5(2)(a) provides that a request can be refused if “the request relates to the prosecution or punishment of a person in respect of an act or omission that, if it had occurred, or is alleged to have occurred, *would not* have constituted an offence against the laws of Botswana.” Secondly, under section 3 of the MACMA, the provision of MLA is conditioned on “an arrangement” (i.e. a treaty, protocol, agreement, scheme, or convention) being made with a foreign country for mutual assistance in criminal matters. There is no provision for providing MLA on a reciprocal basis as is the case in a number of jurisdictions within the region. Indeed, in one case, a foreign jurisdiction had refused to assist Botswana in a criminal matter on the grounds that it did not have an arrangement with Botswana. The assessors expressed concern that because ‘dual criminality’ is provided for in the MACMA albeit not in absolute terms, this could undermine the effectiveness of the MLA. On the other hand, the authorities advised the assessors that while the provisions in the MACMA do have the potential of being restrictive, the ODPP has used its discretionary power to provide MLA even where dual criminality could have been an impediment. Botswana has also received assistance in numerous cases.

611. **Efficiency of Processes (c. 36.3):** Requests for assistance are dealt with directly by the DPP. It is only when the assistance requested has been satisfied that the DPP seeks the assistance of the MoFA for purposes of transmitting MLA related documentation. Within the DPPs office, there are about 4 staff that are responsible for processing of requests.

612. **Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 36.4):** Assistance is not refused on the sole ground that the offence involves fiscal matters. Indeed, section 2 of the MACMA defines an offence as including “an offence against a law relating to taxation, customs duties or other revenue matters or relating to foreign exchange control”.

613. **Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 36.5):** Secrecy or confidentiality is not an impediment to providing MLA (see Section 2.4 – Financial Institution Secrecy or Confidentiality).

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614. **Availability of Powers of Competent Authorities (applying R.28, c. 36.6):** Competent authorities have the power when authorized under section 30 and 32 of the MACMA to do so by the DPP to search and seize documents obtained through the CDD process.
615. **Avoiding Conflicts of Jurisdiction (c. 36.7):** There are no formal mechanisms in respect of MLA for avoiding conflicts of jurisdiction and determining the best venue for prosecution of defendants.
616. **Additional Element – Availability of Powers of Competent Authorities Required under R28 (c. 36.8):** All requests have to be channeled through the DPP.
617. **International Cooperation under SR V (applying c. 36.1-36.6 in R. 36, c. V.1):** As discussed earlier in sections 1.2 – Criminalization of terrorist financing, and section 1.4 – Freezing of funds used for terrorist financing, there is no legislative or regulatory framework for facilitating MLA for matters related to FTAs discussed earlier in sections 1.2 – Criminalization of terrorist financing, and section 1.4 – Freezing of funds used for terrorist financing, there is no legislative or regulatory framework for facilitating MLA for matters related to FT
618. **Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):** As discussed above under criterion 36.2, dual criminality can be a basis for refusing MLA. Technical differences between Botswana’s legal or criminal system and that of countries that have requested assistance have not been an impediment to rendering MLA.
619. **Timeliness to Requests for Provisional Measures including Confiscation (c. 38.1):** Requests for enforcement of foreign orders are enforced as if there were orders made by a court in Botswana under the PSCA. The provisions under the MACMA, PSCA and CPEA apply. Consequently, it would be possible to obtain the enforcement of foreign forfeiture orders, restraining orders, production orders, and search warrants, to identify and seize property. On the other hand, in discussions with the authorities concerning the nature of the MLA requests executed, only one dealt with confiscation of assets. It is therefore not possible based on just this one case to make an informed assessment of whether Botswana is effectively implementing its obligation with regard to confiscation.
620. **Property of Corresponding Value (c. 38.2):** Botswana is able to give effect to requests in respect of foreign orders dealing with property of corresponding value as provided for under section 29 of MACMA.
621. **Coordination of Seizure and Confiscation Actions (c. 38.3):** The authorities advise that seizures and confiscations are done in a coordinated fashion with other jurisdictions. However, there is no provision in the MACMA and no authority was provided to the assessors to support this assertion. The MACMA under section 29 only deals with the registration and enforcement of foreign restraint and confiscation orders and not coordination of seizure and confiscation actions with other jurisdictions.
622. **Asset Forfeiture Fund (c. 38.4):** The authorities have not considered establishing an asset forfeiture fund.

623. **Sharing of Confiscated Assets (c. 38.5):** Botswana has no mechanism for considering asset sharing requests.

624. **Additional Element (R 38):** Recognition of Foreign Orders for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (applying c. 3.7 in R.3, c. 38.6): As discussed above, under the MACMA, Botswana is able to enforce foreign confiscation order whether obtained as a result of a criminal or civil process.

625. **Statistics (applying R.32):** There have been a total of 21 executed requests made to Botswana seeking assistance in, providing evidence; taking of a statement; tax evasion; murder; unlawful detention; confiscation; gathering evidence; and request for immunity. The countries involved were France (1), Greece (1), Japan (2), Namibia (1), Singapore (1), South Africa (7), United Kingdom (3), United States of America (2), and Zimbabwe (3).

626. There were a total of 9 executed requests made by Botswana to other jurisdictions seeking assistance in, repatriation of exhibits; gathering evidence; bank evidence; and general criminal investigations. The countries involved were Japan (1), Kenya (1), Northern Ireland (1), South Africa (5), and United Kingdom (1).

627. However, the period during which these requests were made was not provided to the mission. There are no statistics for that maintained on MLA.

628. Despite the potential impediments that exist in the MACMA Botswana, as evidenced from the requests cited above, has provided a wide range of assistance to other jurisdictions. The system has been used and has enabled Botswana to fulfil its international obligation to cooperate in criminal matters. However, the framework does not apply to terrorism and financing of terrorism matters. This is a significant lacuna in the framework for MLA, and the authorities did not provide sufficient evidence to the assessment team that they have provided MLA on terrorism financing on a discretionary basis, even without having criminalized it. Further, the provision for dual criminality and requirement for other jurisdiction to enter into an agreement for purposes of MLA has the possibility of creating impediments in the effective provision of assistance.

6.3.2 Recommendations and Comments

629. The authorities should consider:

- Providing for the ability to provide MLA on a reciprocal basis in the absence of treaty or an arrangement with another jurisdiction.
- Considering entering into agreements for coordination of asset sharing.
- Establishing a comprehensive database on MLA requests.
- Criminalizing financing of terrorism to remove any impediments on ground of dual criminality.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	LC	• There are potential impediments to providing MLA

		<ul style="list-style-type: none"> • No mechanism for determining the best venue for prosecuting a defendant.
R.37	LC	<ul style="list-style-type: none"> • Dual criminality can be a ground for refusing to provide MLA.
R.38	LC	<ul style="list-style-type: none"> • Insufficient implementation of the provisions relating to ML cases • No consideration for asset sharing and asset forfeiture fund.
SR.V	NC	<ul style="list-style-type: none"> • FT is not criminalized and therefore will be a potential impediment to MLA.

6.4 Extradition (R.37, 39, SR.V)

6.4.1 Description and Analysis

630. **Legal Framework:** The Extradition Act. There is no provision for terrorism including financing of terrorism. The DPP is the central authority for processing extradition requests with diplomatic support from the MoFA.

631. As in the case of MLA, there is a requirement that a jurisdiction enters into an arrangement (see above on meaning of arrangement) with Botswana in order for Botswana to extradite a person to the jurisdiction. Consequently, Botswana either enters into an arrangement with another jurisdiction or it designates a jurisdiction to which extradition can apply without an arrangement. In this regard, pursuant to section 4(1), all Commonwealth member countries have been designated for purposes of application of the Extradition Act. Outside the realm of the Commonwealth, only one country has entered into an arrangement with Botswana, namely Portugal. The Extradition treaty was entered into in 1970 and is part of the Schedule to the Extradition Act.

632. **Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):** Sections 6 and 7 of the Extradition Act provides for a foreign national to be extradited to a requesting country. Extradition is granted when the offence forming the basis of the request is punished under Botswana law. Dual criminality is a requirement for extradition purposes. There are other restrictions upon which a fugitive cannot be surrendered to another jurisdiction including offences of a political character; likelihood of abuse of due process; where offence is of a trivial nature or a misdemeanour; and an offence is punishable by death in the requesting country but not in Botswana.

633. **Money Laundering as Extraditable Offence (c. 39.1):** Section 2(2) defines an extradition offence as one that is punishable for a term of not less than 2 years and includes an offence of fiscal character. Therefore, money laundering is an extraditable offence as it is punishable for a term of not less than 3 years.

634. **Extradition and Cooperation for Prosecution of Nationals (c. 39.2):** Botswana under the Extradition Act does not distinguish between a national or non national with respect to extradition. Any person (including a Botswana national) who is accused or convicted of an extradition crime can be extradited from Botswana. Consequently, the issue of prosecution of a Botswana national in lieu of extradition does not arise.

635. **Cooperation for Prosecution of Nationals (applying c. 39.2(b), c. 39.3):** The Extradition Act does not contain any provision requiring the prosecution of a Botswana national in lieu of extradition. Application of the principle of ‘extradite or prosecute’ should be provided in order to ensure that

fugitive Botswana nationals do not use this loophole as a ground to frustrate the course of justice in relation to transnational crimes.

636. **Efficiency of Extradition Process (c. 39.4):** There is no length of time within which an extradition request may be processed. In the case of Botswana the authorities confirmed that unlike MLA cases, processing extradition cases may take up to 2 years. As indicated below, the assessors were provided with 12 extradition requests executed by the authorities, and as in the case of MLA requests, these files are now closed. However, this is in line with the practice internationally and is not unique to Botswana. The reason for this is that there is an elaborate process in practice involving numerous procedural issues including appeals and reviews brought by the person subject to extradition. Extradition requests (warrants) once received by the DPP have to be transmitted to a magistrate for endorsement (sections 9 and 11 of Extradition Act). There is minimal flexibility in adhering to the extradition requirements. Even in the case of emergency situations extradition procedures are required and expected to be observed. For instance, under section 12 of the Extradition Act a provisional warrant for the apprehension of a fugitive can be endorsed by a magistrate but an original warrant has to be produced by the requesting country otherwise, the magistrate is required to release the fugitive.

637. **Additional Element – Existence of Simplified Procedures relating to Extradition (c. 39.5):** There is no provision whether in law or practice for simplified procedures relating to extradition. The only time this is applicable is when a fugitive criminal waives his right to committal proceedings. However, the magistrate even in such a waiver case has to satisfy himself that the fugitive did so voluntarily and with an understanding of the implications of the waiver (section 19 of the Extradition Act).

638. Notwithstanding, as a general matter, Botswana's extradition process works fairly well and has enabled the country to fulfill its international cooperation obligation.

Statistics

639. There were a total of 26 extradition requests made by Botswana to foreign jurisdictions. The requests involved fraud; theft; armed robbery; corruption; extortion; unlawful possession of arms of war; and murder. The countries involved were South Africa (20) and Zimbabwe (6).

640. There were a total of 12 requests made to Botswana by foreign jurisdictions. The requests involved theft; unlawful wounding; murder; and embezzlement of public funds. The countries involved were, Cameroon (1); Malawi (1); Namibia (2); South Africa (5); and Zimbabwe (3).

641. As discussed under section 6.3 on mutual legal assistance, the period during which these requests were made was not provided to the mission. The majority of the requests made were from Commonwealth member countries. The exception was the request from Cameroon. There is no evidence to suggest that extradition was denied on account of a country not being a member of the Commonwealth. However, efforts could be made in reaching out to non-Commonwealth countries particularly those with whom Botswana has strong economic relationship.

642. Notwithstanding, as a general matter, Botswana's extradition process works fairly well and has enabled the country to fulfill its international cooperation obligation.

6.4.2 Recommendations and Comments

643. The authorities should consider:

- Creating a flexible mechanism by which the time frame within which requests are processed is reduced
- Expanding the scope of arrangements to cover important trading partners outside the Commonwealth Organization.
- A mechanism for maintaining in a systematic manner statistics on extradition

6.4.3 Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	PC	<ul style="list-style-type: none"> • No flexible mechanism to expedite extradition requests • Scope of countries with arrangements with Botswana is limited.
R.37	LC	<ul style="list-style-type: none"> • Restrictions maybe a practical impediment
SR.V	NC	<ul style="list-style-type: none"> • FT is not criminalized and dual criminality is required so extradition for FT is not possible.

6.5 Other Forms of International Co-operation (R.40 & SR.V)

6.5.1 Description and Analysis

644. **Botswana Police Service:** The BPS is able to cooperate through normal police-to-police information exchange channels. There is an Interpol unit within the Criminal Investigations Department. The unit handles requests from overseas jurisdictions with the majority of the requests involving Botswana’s neighbors, South Africa, Zimbabwe, Namibia and Zambia. There are no figures available to indicate the normal time taken to provide assistance in relation to a request for information.

645. In addition, Botswana is a member of the Southern Africa Regional Police Chiefs Cooperation Organization. The other members include Angola, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. One of the objectives of the organization is “To promote, strengthen and perpetuate co-operation and foster joint strategies for the management of all forms of cross border and related crimes with regional implications.” In practice, BPS has close liaison with its regional counterparts and frequently conduct cross-border investigations and operations.

646. **Department on Corruption and Economic Crime:** Currently DCEC seeks assistance from the BPS to conduct enquiries through Interpol should it need to liaise with international counterparts. However, there is no provision in the CECA enabling DCEC to provide information to international law enforcement agencies.

647. **Botswana Unified Revenue Service:** Botswana is a member of the Southern Africa Customs Union (SACU) which creates a common customs areas amongst the member countries, namely Botswana, Lesotho, Namibia, South Africa and Swaziland. As such, BURS maintains close liaison with the other Customs services within the other respective member countries. Botswana is also a member of the World Customs Organization which seeks to encourage cooperation between member countries in Customs matters especially trade security and the fight against fraud. Through these

mechanisms, Customs and Excise of BURS is able to initiate and receive requests concerning Customs matters.

648. The above mechanisms permit law enforcement authorities to cooperate broadly with their foreign counterparts. This includes responding to specific enquiries and conducting joint operations.

649. Exchange of information between law enforcement authorities and their counterparts is not subject to any legislative conditions, other than information pertaining to fiscal matters. Pursuant to Section 5 of the Income Tax Act, information arising for the implementation of the Act cannot be disclosed unless in accordance with the Act or by a court order. The provision for the release of information to the Government of another country is only permissible when there is a double taxation agreement in place. This restriction is in line with domestic requirements for information on fiscal matter and only relates to the release of information. It would not prevent other enquiries being conducted even if the matter is solely related to fiscal matters.

650. There is no clear framework that governs the handling of information. Information received in the context of investigations is governed by the standard internal procedures of the respective agencies. Exchange of information between competent authorities domestically is seemingly unrestricted.

651. **Financial Intelligence Unit:** Whilst there is no FIU in Botswana, DCEC and BoB do perform some of the functions of a FIU. They do not however perform any international cooperation in relation to the information obtained from STRs.

Financial Sector

652. The industry-specific laws and regulations relevant to the financial sector set out the legal framework for international cooperation.

653. **Bank of Botswana.** Section 50 of the Bank of Botswana Act allows BoB to share information with foreign regulators and supervisors as far as companies established under the IFSC are concerned (“The Bank may, under conditions of confidentiality, disclose information to regulatory authorities in foreign jurisdictions for the purpose of assisting them to exercise functions corresponding to those of the Bank under this Part”). As this provision explicitly refers to “this part”, which is titled “regulation of companies which have applied for or been issued a tax certificate”, it only covers IFSC companies. The Banking Act, in Section 43 (10), stipulates that “nothing in this section shall preclude the disclosure of information by the Central Bank, under conditions of confidentiality, to a central bank in a foreign country for the purpose of assisting it in exercising functions corresponding to those of the Central Bank under this Act”. This provision restricts the exchange of information with Central banks, whereas some countries have established their banking regulatory agencies outside of Central banks.

654. It is also worth noting that these two provisions put the emphasis on the BoB providing assistance to the benefit of foreign agencies; the importance for BoB to seek international assistance did not appear to the assessors as being emphasized enough.

655. **Registrar of Insurance.** There is no provision related to international cooperation in the Insurance Industry Act. Section 6 of the Insurance Industry Act stipulates that “notwithstanding the other provisions of this Act, or any other written law, the regulatory authority [...] may cooperate with equivalent regulatory authorities in other States in respect to international insurance business so that the responsibilities of the regulatory authority may be more effectively discharged”.

656. **Registrar of the Stock Exchange.** There is no provision related to international cooperation in this Act.

657. **NBFI Regulatory Authority Act.** Section 40 of the Act sets out the conditions for domestic and international cooperation for the NBFI Regulatory Authority. Section 40 (3) states that “without limiting what those arrangements may deal with, they may make provisions for (a) the exchange of information between the Regulatory Authority and the other agencies, with due regard to the need to protect appropriately personal information about persons; (b) consultation between the Regulatory Authority and the other agencies; (c) enforcement of financial services laws and assistance with enforcement of other laws; and (d) the conduct of examinations and investigations on a joint basis.” This provisions deals in the first instance with cooperation between the NBFI Regulatory Authorities and other Botswana agencies. But Section 40 (4) extents it to cooperation with foreign counterparts as follows: “the Regulatory Authority may enter into similar arrangements with organizations outside Botswana in carrying out its regulatory and supervisory functions under the financial services laws”.

658. The assessors were informed that in practice, the BoB and the Insurance Registrar have contacts, at the policy level, with foreign counterparts, mainly the South African regulatory authorities. The BoB also indicated that it exchanges information with other Central banks on individual cases. The assessors are not in position to form a view on the extent of these instances of cooperation.

659. As far as financial sector supervisors are concerned, the capital structure of banks and insurance companies, with a dominance of foreign owned institutions, makes the capacity of supervisors to participate in international cooperation even more important. Neither the BoB not the Registrar of Insurance conduct joint supervision with the home supervisors of countries hosting their “mother companies”. Based on the information during the on-site mission, the assessors are of the view that the policy drive towards international cooperation and exchange of information could be stronger, and are not in position to reach a view on the effectiveness of these cooperation mechanisms. Based on the feed-back received from ESAAMLG countries, no information was provided to the assessors that could indicate difficulties of international cooperation between financial supervisors.

6.5.2 Recommendations and Comments

660. The authorities should consider :

- Establishing guidelines on the handling of information received from international counterparts.
- Enabling DCEC to be able to share information and intelligence within international law enforcement agencies.
- Ensuring STR related information can be shared with other FIUs provided proper safeguards are in place for the use and release of information by the other FIU
- Ensuring information relating to TF can be shared with appropriate international counterparts.
- Allowing BoB to participate in international cooperation with foreign banking supervisors that are not Central Banks.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	PC	<ul style="list-style-type: none">• There is no provision for DCEC to be able to exchange information with international law enforcement agencies.• Incapacity of the BoB to engage in international cooperation with foreign supervisors that are not Central banks• Incapacity of the Registrar of the Stock Exchange to engage in international cooperation
SR.V	NC	<ul style="list-style-type: none">• International cooperation outside the mutual legal assistance framework in respect to terrorist financing matters has not been conducted.

7 OTHER ISSUES

7.1 Resources and statistics

661. At present, no regular detailed review has been conducted of the AML regime within Botswana to determine the effectiveness of the regime and to establish any weaknesses so that remedial action can be taken to address the issue.

662. There is no systematic mechanism for the collection of detailed statistics across the AML framework. The collection of such data would enable NAMLC to be able to effectively review the framework to identify weaknesses.

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
R.30	NC	<ul style="list-style-type: none"> • Insufficient AML/CFT Training has been provided to MFDP, BoB, ODPP, DCEC, BPS and BURS. • No STR analysis has been provided to staff of BoB, DCEC and BPS • No training on the investigating of ML cases has been provided to BPS; DCEC and BURS. • Insufficient resources are available to DCEC and BoB to permit the secure and effective handling and processing of STR data • Other workloads significantly restrict the capacity of investigating and prosecuting authorities to handle ML cases
R.32	NC	<ul style="list-style-type: none"> • There is no systematic collection of detailed statistics in respect of : <ol style="list-style-type: none"> a) Investigation, prosecution and conviction of ML cases b) The receipt and dissemination of STRs c) Mutual Legal Assistance Requests d) Extradition requests e) Other forms of international cooperation • No detailed review has been conducted on the effectiveness of the AML/CFT regime within Botswana

7.2 Other relevant AML/CFT measures or issues

663. From discussions conducted during the assessment, it is apparent the judiciary faces significant challenges and there are long delays in conducting prosecutions, not least due to the insufficient number of judges available.

664. For that sector as well as some other parts of government, the assessors noted anecdotal evidence, press articles and public statements by DCEC relating to governance issues.

7.3 General framework for AML/CFT system
(see also section 1.1)

Table 1. Ratings of Compliance with FATF Recommendations

Forty Recommendations	Rating	Summary of factors underlying rating ⁴¹
Legal systems		
1. ML offense	PC	<ul style="list-style-type: none"> • The scope of offences is not wide and excludes several serious offences. • No conviction for both a predicate offence and ML, nor that property can be established as proceeds even in the absence of a conviction. • The ML framework has not been effectively implemented.
2. ML offense—mental element and corporate liability	PC	<ul style="list-style-type: none"> • The sanctioning regime is not effective, dissuasive and proportionate.
3. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> • There has been limited use of the PSCA and CPEA for ML, FT and predicate crime purposes
Preventive measures		
4. Secrecy laws consistent with the Recommendations	C	
5. Customer due diligence	NC	<ul style="list-style-type: none"> • Too narrow coverage of financial activities under the PSCA • Absence of a clear forbiddance of anonymous accounts or accounts in fictitious names under PSCA for business relationships established prior to the PSCA • Absence of CDD requirements for money remitters other than banks • Lack of specificity under the PSCA of the CDD requirements for the identification and verification of identity of natural persons, corporate entities and legal arrangements • Absence of requirements regarding the identification of beneficial owners under the PSCA • Absence of requirements regarding information on the nature and purpose of the business relationship, its on-going monitoring under the PSCA and the renewal of identification measures

⁴¹ These factors are only required to be set out when the rating is less than Compliant.

		<ul style="list-style-type: none"> • Absence of requirement of enhanced due diligence for high risk business relationships and transactions under the PSCA • Too narrow scope of the requirement under the PSCA that CDD be undertaken before conducting business • Excessive exemption under the PSCA of all CDD requirements for business relations, transactions and services for another designated body, domestic or foreign • Absence of requirement under the PSCA on the identification, on a risk-based basis, of existing customers • Lack of implementation for designated bodies other than banks and bureaux de change • Absence of requirement, under the Banking (AML) Regulation, to identify the settler, trustee or person exercising effective control over the trust, and the beneficiary when conducting business with a trust • Absence of requirement, under the Banking (AML) Regulation, to verify the identity of the third party when the customer is acting on behalf of a third party • Ambiguities, under the Banking (AML) Regulation, in the definition of beneficial ownership, and too narrow coverage of the identification requirement when the customer is a natural person • Absence of requirement, under the Banking (AML) Regulation, to keep identification information up-to-date and to undertake regular reviews of existing customers • Absence of requirement of enhanced due diligence for high risk business relationships and transactions under the Banking (AML) Regulation • Insufficient effectiveness for statutory banks
6. Politically exposed persons	NC	<ul style="list-style-type: none"> • Absence of requirement regarding Politically Exposed Persons
7. Correspondent banking	NC	<ul style="list-style-type: none"> • Absence of requirement regarding cross-border correspondent relationships and similar arrangements

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8. New technologies & non face-to-face business	PC	<ul style="list-style-type: none"> • Absence of requirement under the PSCA regarding non face-to-face business relationships and transactions • Lack of specificity of the requirement regarding non face-to-face business relationships and transactions under the Banking (AML) Regulations
9. Third parties and introducers	PC	<ul style="list-style-type: none"> • Lack of legal framework on introduced business and reliance on third parties outside the banking sector
10. Record-keeping	LC	<ul style="list-style-type: none"> • Absence of effective implementation of the record keeping requirements by designated bodies other than banks and bureaux de change • Inconsistencies in the timeframe requirement under the Banking (AML) Regulation, on record-keeping after the completion of the transaction
11. Unusual transactions	NC	<ul style="list-style-type: none"> • There is no requirement for designated bodies to monitor for complex, unusual large transactions, or unusual patters of transactions, that have no apparent or visible economic or lawful purpose for such transactions • There is no requirement for banks to document in writing the findings of the evaluation of reports from staff. • Documents concerning the evaluation of reports from staff are not required to be maintained for five years. • Non-bank designated bodies are not required to monitor for unusual transactions
12. DNFBP–R.5, 6, 8–11	NC	<ul style="list-style-type: none"> • DNFBPs are not subject any of the AML/CFT preventative measures set out in Recommendation 12.
13. Suspicious transaction reporting	NC	<ul style="list-style-type: none"> • There is no consistency across the differing legislation and regulation as to what constitutes a suspicious transaction for reporting purposes • The requirements to report suspicious transactions across the different legislation and regulations are unclear • Only the banking industry is submitting STRs • Certain transactions and customers may be exempted from having suspicious transactions reported on them by virtue of Section 17(4) of the PSCA. • Lack of implementation of the non-bank

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		designated bodies
14. Protection & no tipping-off	LC	<ul style="list-style-type: none"> The provision on the prohibition of tipping is unclear and may be removed once an investigation has been completed.
15. Internal controls, compliance & audit	PC	<ul style="list-style-type: none"> Insufficient level of specificity of the content of the internal control – particularly the appointment of a money laundering officer Insufficient guidance on the training requirements (content, regularity) for designated bodies other than banks and bureaux de change Lack of implementation for designated bodies other than banks and bureaux de change Absence of employee screening requirements for all designated bodies, including banks and bureaux de change
16. DNFBP–R.13–15 & 21	NC	<ul style="list-style-type: none"> DNFBPs are not subject any of the AML/CFT preventative measures set out in Recommendation 16.
17. Sanctions	NC	<ul style="list-style-type: none"> Absence of effective, proportionate and dissuasive sanctions Lack of clear designation of an authority empowered to apply sanctions Insufficient implementation
18. Shell banks	PC	<ul style="list-style-type: none"> Absence of requirement regarding the establishment of correspondent banking relationships with shell banks Absence of requirement that Botswana banks satisfy themselves that their respondent institutions do not permit their accounts to be used by shell banks
19. Other forms of reporting	C	
20. Other NFBP & secure transaction techniques	PC	<ul style="list-style-type: none"> No consideration has been given to identifying other non-financial businesses that are at risk of being abused for ML or TF
21. Special attention for higher risk countries	NC	<ul style="list-style-type: none"> There is no requirement for designated bodies to monitor transactions and business relationships involving countries not sufficiently applying FATF Recommendations. No competent authority is able to require designated bodies to implement any form of countermeasures in relation to countries which do not sufficiently apply FATF Recommendations.
22. Foreign branches & subsidiaries	NA	

<p>23. Regulation, supervision and monitoring</p>	<p>NC</p>	<ul style="list-style-type: none"> • Lack of clarity on the designation of competent authorities having responsibility to ensure that designated bodies, other than banks and bureaux de change, comply with the PSCA • Lack of clarity that, for designated bodies subject to the core principles other than banks and bureaux de change, the regulatory and supervisory measures applying for prudential purposes should apply in a same manner for AML • Absence of licensing requirements for insurance companies • Absence of registration or licensing for all money or value transfer services • Absence of monitoring and compliance checking for all money or value transfer services
<p>24. DNFBP—regulation, supervision and monitoring</p>	<p>NC</p>	<ul style="list-style-type: none"> • There is no provision for AML/CFT measures to be applicable to DNFBPs.
<p>25. Guidelines & Feedback</p>	<p>NC</p>	<ul style="list-style-type: none"> • Guidelines have effectively been introduced for the banking sector but these are unclear and may introduce confusion. • No general feedback is given on the reporting regime • Specific feedback which has been effectively mandated under the banking (AML) Regulations, is only sporadically being conducted. • Absence of guidelines for designated bodies other than banks • No guidelines have been provided for DNFBPs
<p>Institutional and other measures</p>		
<p>26. The FIU</p>	<p>NC</p>	<ul style="list-style-type: none"> • A national centre for the receipt, analysis and dissemination of STRs and other reports made pursuant to AML related legislation/regulations, has not been established • Reports received by the DCEC and BoB, pursuant to PSCA or the Banking (AML) regulations, are not disseminated to other law enforcement agencies. • DCEC and BoB are not currently adequately resourced to perform the full functions of a FIU especially as no training on the analysis of STRs and other reports has been provided to staff which receive the reports made pursuant to AML

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		related legislation/regulations.
27. Law enforcement authorities	PC	<ul style="list-style-type: none"> • There is an unclear legal authority for DCEC to conduct money laundering investigations beyond corruption and public revenue related cases though they are effectively conducting all money laundering investigations. • Insufficient implementation of the investigative capability in respect of money laundering. • No training has been provided to the investigative and prosecutorial agencies to enable them to effectively conduct money laundering investigations and prosecutions.
28. Powers of competent authorities	C	
29. Supervisors	LC	<ul style="list-style-type: none"> • Lack of implementation and of enforcement action, particularly for designated bodies other than banks and bureaux de change
30. Resources, integrity, and training	NC	<ul style="list-style-type: none"> • Insufficient AML/CFT Training has been provided to MFDP, BoB, ODPP, DCEC, BPS and BURS. • No STR analysis has been provided to staff of BoB, DCEC and BPS • No training on the investigating of ML cases has been provided to BPS; DCEC and BURS. • Insufficient resources are available to DCEC and BoB to permit the secure and effective handling and processing of STR data • Other workloads significantly restrict the capacity of investigating and prosecuting authorities to handle ML cases
31. National co-operation	PC	<ul style="list-style-type: none"> • No effective cross-agency mechanism for coordination among relevant agencies
32. Statistics	NC	<ul style="list-style-type: none"> • There is no systematic collection of detailed statistics in respect of : <ul style="list-style-type: none"> • Investigation, prosecution and conviction of ML cases • The receipt and dissemination of STRs • Mutual Legal Assistance Requests • Extradition requests • Other forms of international cooperation • No detailed review has been conducted on the effectiveness of the AML/CFT regime within Botswana
33. Legal persons–beneficial owners	NC	<ul style="list-style-type: none"> • Information maintained in the registry is not

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		<p>up to date</p> <ul style="list-style-type: none"> • No enforcement of requirements of the Companies Act • Possibility of use of nominee directors and shareholders.
34. Legal arrangements – beneficial owners	NC	<ul style="list-style-type: none"> • Information on beneficial ownership is not accurate and current • Information on beneficial ownership of trusts is not accessible in a timely fashion
International Cooperation		
35. Conventions	PC	<ul style="list-style-type: none"> • Insufficient implementation of criminal organization provisions of the Palermo, monitoring of cross border movement of cash and lack of an FIU.
36. Mutual legal assistance (MLA)	LC	<ul style="list-style-type: none"> • There are potential impediments to providing MLA • No mechanism for determining the best venue for prosecuting a defendant.
37. Dual criminality	LC	<ul style="list-style-type: none"> • Dual criminality can be a ground for refusing to provide MLA. • Restrictions maybe a practical impediment
38. MLA on confiscation and freezing	LC	<ul style="list-style-type: none"> • Insufficient implementation of the provisions relating to ML cases • No consideration for asset sharing and asset forfeiture fund.
39. Extradition	PC	<ul style="list-style-type: none"> • No flexible mechanism to expedite extradition requests • Scope of countries with arrangements with Botswana is limited.
40. Other forms of co-operation	PC	<ul style="list-style-type: none"> • There is no provision for DCEC to be able to exchange information with international law enforcement agencies. • Incapacity of the BoB to engage in international cooperation with foreign supervisors that are not Central banks • Incapacity of the Registrar of the Stock Exchange to engage in international cooperation
Nine Special Recommendations		
SR.I Implement UN instruments	NC	<ul style="list-style-type: none"> • The SFT Conventions and UN Special Resolutions have not been implemented.
SR.II Criminalize terrorist financing	NC	<ul style="list-style-type: none"> • FT has not been criminalized. • Provisions of the SFT Convention have not been implemented.

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SR.III	Freeze and confiscate terrorist assets	NC	<ul style="list-style-type: none"> • Absence of a legal framework to implement the requirements on the freezing of funds used for terrorists financing
SR.IV	Suspicious transaction reporting	NC	<ul style="list-style-type: none"> • There is no requirement to report suspicious transactions which are suspected to be related to terrorism or terrorist financing.
SR.V	International cooperation	NC	<ul style="list-style-type: none"> • FT is not criminalized and therefore will be a potential impediment to MLA. • FT is not criminalized and dual criminality is required so extradition for FT is not possible. • International cooperation outside the mutual legal assistance framework in respect to terrorist financing matters has not been conducted.
SR.VI	AML/CFT requirements for money/value transfer services	NC	<ul style="list-style-type: none"> • Absence of registration/licensing of all natural and legal persons providing money or value transfer services • Absence of coverage of all natural and legal persons providing money or value transfer services • Absence of system to monitor all natural and legal persons providing money or value transfer services and ensure compliance with the AML requirements • Absence of sanctions for all natural and legal persons providing money or value transfer services
SR.VII	Wire transfer rules	NC	<ul style="list-style-type: none"> • Absence of coverage under the PSCA of all professionals undertaking wire transfers • Absence of requirement that the identification information circulates with the wire transfer, on the handling of non-routine transactions, the maintenance of originator information, and on risk-based procedures for transfers not accompanied by the originator information
SR.VIII	Nonprofit organizations	NC	<ul style="list-style-type: none"> • No effective monitoring and enforcement regime of NPOs for AML/CFT purposes • No review of adequacy of laws and regulations for FT purposes • No risk assessment of FT vulnerability • No appropriate transparency mechanisms in place.
SR.IX	Cash Border Declaration & Disclosure	NC	<ul style="list-style-type: none"> • The current declaration scheme does not cover bearer negotiable instruments • Ineffective implementation of the declaration

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		<p>scheme, particularly in making travelers aware of the requirement to make a declaration when carrying currency exceeding the threshold.</p> <ul style="list-style-type: none">• No facility to restrain currency for a reasonable time to enable authorities to establish if there is evidence of ML or TF.• No provision for the confiscation of currency in accordance with UN SCRs relating to TF.
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Table 2. Recommended Action Plan to Improve the AML/CFT System

<i>FATF 40+9 Recommendations</i>	Recommended Action (in order of priority within each section)
<i>1. General</i>	<p>Botswana’s short term priorities, in no particular order, should be :</p> <ul style="list-style-type: none"> ▪ To undertake an in-depth review of the money laundering and terrorism financing risks and vulnerabilities; ▪ To significantly intensify the implementation of the existing AML framework from the prevention and the detection of money laundering to its prosecution. This will require more active coordination and sharing of information between all parties, as money laundering is by essence a phenomenon calling for an integrated and horizontal response; ▪ To criminalize terrorism financing and to set up, by law or regulations, all the domestic requirements to comply with its international obligations on terrorism financing; ▪ To set up, using the current legal provisions, a Financial Intelligence Unit, mandated to receive, analyze and disseminate suspicious transactions reports; and ▪ To enhance across-the-board the resources and skills related to AML.
<i>2. Legal System and Related Institutional Measures</i>	
<i>Criminalization of Money Laundering (R.1, 2, & 32)</i>	<ul style="list-style-type: none"> • Establishing offences under Botswana law for participation in an organized criminal group; terrorism and terrorist financing; illicit arms trafficking; kidnapping and hostage taking; environmental crime; and smuggling, and making such offences predicate offences for ML. • Ensuring, through accepted practice or procedure that property can be established as proceeds even in the absence of the conviction of some person for a predicate offence and that a person can be convicted of both a predicate offence and of ML • Strengthening the sanction regime by increasing the monetary penalty and length of imprisonment that can be imposed. • Providing for a systematic mechanism for the collection of

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	on investigations, prosecution and conviction of ML cases.
<i>Criminalization of Terrorist Financing (SR.II & R.32)</i>	<ul style="list-style-type: none">• Criminalizing FT• Fully implementing all the provisions of the SFT Convention
<i>Confiscation, freezing, and seizing of proceeds of crime (R.3 & 32)</i>	<ul style="list-style-type: none">• Fully utilizing the wide range of powers available under the PSCA and CPEA for ML purposes.• In order to strengthen the identification and tracing of proceeds of crime, providing for account monitoring procedures.• Maintaining a systematic mechanism for the collection of statistics on freezing, seizing and confiscation cases.
<i>Freezing of funds used for terrorist financing (SR.III & R.32)</i>	<ul style="list-style-type: none">• Setting up a legal framework for the freezing of funds used for terrorists financing, in accordance with the requirements of UNSCR 1267 and 1373.
<i>The Financial Intelligence Unit and its functions (R.26, 30 & 32)</i>	<ul style="list-style-type: none">• Designating a single national centre for the receipt, analysis and dissemination of STRs as Botswana's FIU after consideration of the most appropriate location of the FIU with respect to the legislation, necessary resources, technical capacity, effectiveness, ability to fully cooperate and coordinate with other involved parties from both the public and private sectors, and to be able to conduct appropriate international cooperation.• Ensuring that the FIU receives all forms of reports made pursuant to PSCA and other AML provisions.• Enabling the FIU to have access to financial, administrative and law enforcement data to properly perform its duties, especially in relation to the analysis of reports received by it.• Providing the FIU with the necessary authority to request further information from the reporting institutions to facilitate it to fully conduct its functions, especially for the

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	<p>analysis of reports.</p> <ul style="list-style-type: none">• Establishing dissemination policies for the STRs requiring investigation and other information derived from the reporting regime, including information required for effective supervision of the reporting entities, through consultation with all concerned authorities.• Ensuring the FIU is adequately resourced to effectively perform its duties including the training of staff on the analysis of reports and the functions of a FIU. Adequate resourcing should include provision for the necessary analysis tools and security measures required to adequately protect data held by the FIU. FIU data should be stored and managed independently from data held by any agency to which the FIU is a part.• Providing for the operational independence and autonomy of the FIU, particularly concerning the employment and dismissal of the head of the FIU, the decision making process on the dissemination of reports for investigation, management reporting lines, and the funding of the FIU.• Introducing a systematic mechanism for the collection of detailed statistics pertaining to the receipt and dissemination of STRs.
<p><i>Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)</i></p>	<ul style="list-style-type: none">• Conducting legal analysis on the capability of DCEC to conduct money laundering investigations where the predicate offence is not related to a case of corruption or cheating of public revenue, or the predicate offence is not known.• Documenting which law enforcement agencies which will conduct ML cases, where the predicate offence is known, and which agency will be responsible for such cases when the predicate offence is not known or has not been determined. This should provide the basis for the dissemination of intelligence from the FIU.• Providing significant training to all the law enforcement agencies and prosecutorial agencies on AML/CFT and the investigation of ML and TF cases to permit consistently effective investigations to be conducted.• Ensuring there are sufficient resources to enable effective

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	<p>ML investigations and prosecutions to be conducted.</p> <ul style="list-style-type: none">• Ensuring judges are trained in handling ML cases.• Establishing a systematic process for the collection of statistics on ML investigations to permit an effective and detailed review of the types of ML cases occurring in Botswana and detailed monitoring of the progress of ML investigations and prosecutions.
<i>3. Preventive Measures–Financial Institutions</i>	
<i>Risk of money laundering or terrorist financing</i>	
<i>Customer due diligence, including enhanced or reduced measures (R.5–8)</i>	<ul style="list-style-type: none">• Amending the PSCA or issue regulations under the PSCA, as appropriate, to provide for<ul style="list-style-type: none">f. An extension of the coverage of financial activities under the PSCA, including extending CDD requirements to money remitters other than banksg. a clear interdiction of anonymous accounts or accounts in fictitious names under PSCA for business relationships established prior to the PSCAh. CDD requirements for money remitters other than banksi. more specificity under the PSCA of the CDD requirements for the identification and verification of identity of natural persons, corporate entities and legal arrangementsj. requirements regarding the identification of beneficial owners under the PSCAk. requirements regarding information on the nature and purpose of the business relationship, its on-going monitoring under the PSCA and the renewal of identification measuresl. requirement of enhanced due diligence for high risk business relationships and transactions under the PSCAm. An extension of the scope of the requirement under the PSCA that CDD be undertaken before conducting businessn. A restriction of the exemption under the PSCA of all CDD requirements for business relations,

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	<p>transactions and services for another designated body, domestic or foreign</p> <p>o. A requirement under the PSCA on the identification, on a risk-based basis, of existing customers</p> <ul style="list-style-type: none">• Implementing more intensely the PSCA for designated bodies other than banks and bureaux de change• Amending the Banking (AML) Regulation to provide for<ul style="list-style-type: none">a. a requirement, under the Banking (AML) Regulation, to identify the settler, trustee or person exercising effective control over the trust, and the beneficiary when conducting business with a trustb. a requirement, under the Banking (AML) Regulation, to verify the identity of the third party when the customer is acting on behalf of a third partyc. a clarification, under the Banking (AML) Regulation, of the definition of beneficial ownership, and an extension of the coverage of the identification requirement when the customer is a natural persond. a requirement, under the Banking (AML) Regulation, to keep identification information up-to-date and to undertake regular reviews of existing customerse. a requirement of enhanced due diligence for high risk business relationships and transactions under the Banking (AML) Regulation• Providing for a more intensive implementation of the Banking (AML) Act for statutory banks• Setting up requirement, for all designated bodies, regarding business relationships and transactions with foreign Politically Exposed Persons• Setting up requirements regarding correspondent banking relationships and similar requirements• Setting up, for all designated bodies other than banks and bureaux de change, requirement regarding new or developing technologies and non-face-to-face business relationships and transactions, and complement the current requirement for banks and bureaux de change
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<i>Third parties and introduced business (R.9)</i>	<ul style="list-style-type: none">• Specifying, by law or regulation, the framework governing introduction by and reliance on third parties outside the banking sector
<i>Financial institution secrecy or confidentiality (R.4)</i>	
<i>Record keeping and wire transfer rules (R.10 & SR.VII)</i>	<ul style="list-style-type: none">• Enforcing more intensely the record-keeping requirements for designated bodies other than banks and bureaux de change, to improve implementation of the PSCA• Amending the Banking (AML) Regulation to address its inconsistency with the Banking Act and the PSCA on the timeframe for record-keeping• Enacting (by law or regulation) requirements on the circulation of identification information with wire transfers
<i>Monitoring of transactions and relationships (R.11 & 21)</i>	<ul style="list-style-type: none">• Introducing the necessary provisions which require the monitoring of complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose for such transactions, by the designated bodies.• Requiring the evaluation of unusual transaction reports submitted to the money laundering reporting officer of designated bodies to be documented in writing and to be maintained for a period of at least 5 years.• Requiring designated bodies to pay special attention to transactions or relationships concerning countries which do not or insufficiently apply the FATF recommendations, nor for the examination of transactions with no apparent economic or visible lawful purpose from such countries.• Providing information to the designated bodies on the countries which are considered not to or insufficiently apply the FATF recommendations.• Establishing a mechanism by which countermeasures

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	<p>could be applied by the designated bodies against countries which do not sufficiently apply FATF Recommendations.</p>
<p><i>Suspicious transaction reports and other reporting (R.13, 14, 19, 25, & SR.IV)</i></p>	<ul style="list-style-type: none">• Reviewing and simplifying the current reporting requirements on suspicious requirements to ensure consistency between the relevant legislation and regulations, and that all reporting requirements are clearly spelled out.• Ensuring compliance with the reporting requirements by the designated bodies other than banks• Removing the exemption from the requirement to report suspicious transactions in certain instances• Providing general feedback on the STR regime• Clarifying the tipping off provisions to ensure : i) the prohibition exists once a report has been submitted and regardless of whether any investigation is conducted; and ii) the prohibition continues even after the conclusion of any investigation.• Introducing a systematic mechanism for the collection of statistics to enable a detailed analysis of the reporting regime to be conducted.
<p><i>Cross Border Declaration or disclosure (SR IX)</i></p>	<ul style="list-style-type: none">• Ensuring reasonable and effective efforts are made to notify travelers of the requirement to make a declaration.• Expanding the current reporting mechanism to cover bearer negotiable instruments.• Providing the legal power for currency and bearer instruments to be restrained for a reasonable time to determine if there is evidence of ML or TF.• Ensuring that there is the authority to confiscate currency in accordance with the relevant UN SCRs relating to TF.
<p><i>Internal controls, compliance, audit and foreign branches (R.15 & 22)</i></p>	<ul style="list-style-type: none">• Requiring the screening of employees of all designated

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	<p>bodies, including banks and bureaux de change</p> <ul style="list-style-type: none">• Enacting a regulation under the PSCA, for designated bodies other than banks and bureaux de change, specifying the content of the internal controls and of the training on AML• Intensifying the implementation of internal controls and training programs for designated bodies other than banks and bureaux de change• Requiring that subsidiaries and branches of Botswana banks implement effective AML regimes, and that reports be made to the home supervisors in case of they are unable to implement such measures
<p><i>Shell banks (R.18)</i></p>	<ul style="list-style-type: none">• Forbidding the establishment of correspondent banking relationships with shell banks• Requiring that Botswana banks satisfy themselves that their respondent institutions do not permit their accounts to be used by shell banks
<p><i>The supervisory and oversight system—competent authorities and SROs</i> <i>Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 25, & 32)</i></p>	<ul style="list-style-type: none">• Significantly enhancing the sanctioning regime to make it effective, proportionate and dissuasive – particularly by increasing the amounts of the fines as administrative/civil sanctions• Clearly designating an authority empowered to apply sanctions• More intensely implementing the sanctioning regimes, beyond moral suasion• Clearly designating the competent authorities having responsibility to ensure that designated bodies, other than banks and bureaux de change, comply with the PSCA• Clarifying that, for designated bodies subject to the core principles other than banks and bureaux de change, the regulatory and supervisory measures applying for prudential purposes should apply in a same manner for AML• Setting up a licensing requirement for insurance

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	<p>companies</p> <ul style="list-style-type: none"> • Setting up a registration or licensing requirement for all money or value transfer services • Setting up monitoring and compliance checking mechanisms for all money or value transfer services • Issuing guidelines for designated bodies other than banks • More intensely enforcing the AML regime, particularly for designated bodies other than banks and bureaux de change • Increasing the resources allocated to regulation and supervision and step up the training on AML
<p><i>Money value transfer services (SR.VI)</i></p>	<ul style="list-style-type: none"> • Requiring the registration/licensing of all natural and legal persons providing money or value transfer services • Extending the coverage of the relevant AML requirements to all natural and legal persons providing money or value transfer services • Setting up a system to monitor all natural and legal persons providing money or value transfer services and ensure compliance with the AML requirements • Setting up a sanctions regime for all natural and legal persons providing money or value transfer services
<p><i>4.Preventive Measures– Nonfinancial Businesses and Professions</i></p>	
<p><i>Customer due diligence and record-keeping (R.12)</i></p>	<ul style="list-style-type: none"> • Introducing AML/CFT preventative measures for the various professions / industries within DNFBPs in a sequenced manner with due regard to the ML/TF risk which each of these businesses and professions present.
<p><i>Suspicious transaction reporting (R.16)</i></p>	<ul style="list-style-type: none"> • Introducing suspicious transaction reporting for the various professions / industries within DNFBPs in a sequenced manner with due regard to the ML/TF risk which each of these businesses and professions present.
<p><i>Regulation, supervision, monitoring, and sanctions (R.17, 24, & 25)</i></p>	<ul style="list-style-type: none"> • Introducing AML/CFT measures for each of the businesses and professions in a sequenced manner and with due regard to the ML/TF risk which each of these businesses and

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	<p>professions present.</p> <ul style="list-style-type: none">• Developing guidelines for each of the businesses and professions to aid the implementation of the AML/CFT measures.
<i>Other designated non-financial businesses and professions (R.20)</i>	<ul style="list-style-type: none">• Conducting an assessment of the risks that other non-banking financial business and professions are likely to be misused for ML or TF.• Maintaining efforts to promote the use of modern and secure financial transactions.
<i>5. Legal Persons and Arrangements & Nonprofit Organizations</i>	
<i>Legal Persons–Access to beneficial ownership and control information (R.33)</i>	<ul style="list-style-type: none">• Enhancing the mechanism for keeping the information accurate and up to date and do so in a timely manner.• Enforcing the requirement for companies to file their returns in a timely manner and for company secretaries to keep the information up to date.• Strengthening the enforcement framework including the fines that can be imposed for violation of provisions of the Companies Act.• Restricting the use of nominee directors and shareholders and impose obligations on company service providers to undertake CDD on clients interested in registering a company.
<i>Legal Arrangements–Access to beneficial ownership and control information (R.34)</i>	<ul style="list-style-type: none">• Creating mechanisms to ensure that beneficial ownership information is accessible in a timely fashion and is accurate and current. One option could be to require the registration of trusts• Establishing a comprehensive mechanism for the registration and maintenance of trust information.• Ensuring that the mechanism established is accessible to competent authorities.• Ensuring that information on beneficial ownership and control is included in the records to be maintained at the central registry.

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<i>Nonprofit organizations (SR.VIII)</i>	<ul style="list-style-type: none">• Establishing an appropriate monitoring and enhance the enforcement regime of NPOs including the possibility of using the BOCONGO framework.• Conducting a risk assessment of FT vulnerability of Botswana and in this context undertake a review of the adequacy of the laws and regulations as they relate to AML/CFT.• Establishing appropriate mechanisms and practical guidelines to enhance transparency in NPOs including raising and accounting of funds by NPOs.
<i>6. National and International Cooperation</i>	
<i>National cooperation and coordination (R.31 & 32)</i>	<ul style="list-style-type: none">• Giving a clear mandate to the Committee on its policy making responsibility.• Clarifying the Ministry responsible for the implementation of the PSCA.• Creating a comprehensive cross-agency mechanism to deepen coordination among all relevant agencies in relation to AML/CFT and gathering information on effectiveness of the AML/CFT system.
<i>The Conventions and UN Special Resolutions (R.35 & SR.I)</i>	<ul style="list-style-type: none">• Implementing the provisions of the SFT Convention and the UNSCRs• Implementing the provisions of the Palermo Convention
<i>Mutual Legal Assistance (R.36, 37, 38, SR.V & 32)</i>	<ul style="list-style-type: none">• Providing for the ability to provide MLA on a reciprocal basis in the absence of treaty or an arrangement with another jurisdiction.• Considering entering into agreements for coordination of asset sharing.• Establishing a comprehensive database on MLA requests.• Criminalizing financing of terrorism to remove any impediments on ground of dual criminality.
<i>Extradition (R. 39, 37, SR.V & R.32)</i>	<ul style="list-style-type: none">• Creating a flexible mechanism by which the time frame within which requests are processed is reduced• Expanding the scope of arrangements to cover important

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	trading partners outside the Commonwealth Organization. <ul style="list-style-type: none">• A mechanism for maintaining in a systematic manner statistics on extradition
<i>Other Forms of Cooperation (R. 40, SR.V & R.32)</i>	<ul style="list-style-type: none">• Establishing guidelines on the handling of information received from international counterparts.• Enabling DCEC to be able to share information and intelligence within international law enforcement agencies.• Ensuring STR related information can be shared with other FIUs provided proper safeguards are in place for the use and release of information by the other FIU• Ensuring information relating to TF can be shared with appropriate international counterparts.• Allowing BoB to participate in international cooperation with foreign banking supervisors that are not Central Banks.
<i>7. Other Issues</i>	
<i>Other relevant AML/CFT measures or issues</i>	

Table 3. Authorities' Response to the Assessment

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ANNEXES

- Annex 1: Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others.**
- Annex 2: List of all laws, regulations and other material received**
- Annex 3: Copies of key laws, regulations and other measures**

**Annex 1: Details of all bodies met on the on-site mission
- Ministries, other government authorities or bodies, private sector institutions
and others.**

Permanent Secretary, Ministry of Finance and Development Planning
Permanent Secretary, Ministry of Foreign Affairs
Permanent Secretary, Ministry of Trade and Industry
Permanent Secretary, Ministry of Minerals, Energy and Water Affairs
Secretary for Financial Affairs

National Anti-Money Laundering Committee
National Counter-Terrorism Committee (Secretary : Permanent Secretary, Political Affairs,
Office of the President)

Governor, Bank of Botswana,
Banking Supervision Dept., Bank of Botswana
Ministry of Finance and Development Planning (insurance regulator, securities)

Botswana Stock Exchange
International Financial Services Centre

Attorney General
Director of Public Prosecution

Botswana Police Service
Directorate on Corruption and Economic Crime
Botswana Unified Revenue Service
Botswana Defence Force

Registrar of Companies
Registrar of Societies
Deeds Registry

Bankers Association of Botswana
Botswana Institute of Accountants
Real Estate Institute of Botswana
Law Society of Botswana
Botswana Council of Non-Governmental Organizations

Barclays Bank of Botswana Ltd
First National Bank of Botswana Ltd.
ASA Bureau de Change
Prosper Bureau de Change
Rennies Bureau de Change
Micro Lenders Association
Stock Brokers Botswana

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Botswana Life Insurance Ltd.
PriceWaterhouseCoopers
Gaborone Sun Casino
Debswana Diamond Company

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Annex 2: List of all laws, regulations and other material received

Laws	
1.	Accountants Act
2.	Arms and Ammunition Act
3.	Bank of Botswana Act
4.	Banking Act 1995
5.	Botswana Stock Exchange Act
6.	Botswana Unified Revenue Service Act
7.	Casino Act
8.	Collective Investment Undertakings Act
9.	Companies Act
10.	Constitution of Botswana Act
11.	Corruption and Economic Crime Act
12.	Credit Unions Act
13.	Criminal Procedure and Evidence Act
14.	Customs and Excise Duty Act
15.	Diamond Cutting Act
16.	Drugs and Related Substances Act
17.	Extradition Act
18.	Income Tax Act
19.	Insurance Act
20.	International Insurance Act
21.	Interpretation Act
22.	Land Control Act
23.	Legal Practitioners Act
24.	Local Police Act
25.	Mines and Minerals Act
26.	Mutual Assistance in Criminal Matters Act
27.	National Clearance and Settlement Systems Act
28.	NBFI Regulatory Act
29.	Penal Code
30.	Police Act
31.	Precious and Semi Precious Stones (Protection) Act
32.	Proceeds of Serious Crimes Act
33.	Public Service Act
34.	Real Estate Professionals Act
35.	Securities Act
36.	Societies Act
37.	Unwrought Precious Metals Act

Regulations	
1.	Bank of Botswana (Bureaux de Change) Regulations 1993
2.	Banking (Anti-Money Laundering) Regulations

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3.	Collective Investment Undertakings Regulation 2001
4.	Exports and Import of Rough Diamonds Regulations 2004

Other Documents		
	Subject	Description
1.	Access to Finance	Access to Financial Services in Botswana – Genesis Analytics (March 2003) for FinMark Trust
2.	AML/CFT Assessment – Botswana’s Response	Response to the Detailed Assessment Questionnaire
3.	Anti-Corruption	Public Attitudes towards Democracy, Governance and Economic Development in Botswana – AfroBarometer Paper No. 14
4.	Anti-Corruption	Transparency International Corruption Perceptions Index 2006
5.	Bank of Botswana	Banking Supervision Annual Report 2005
6.	Bank of Botswana	Annual Report 2005
7.	Bank of Botswana	Public Notice – Kingdom Bank of Africa
8.	Bank of Botswana	Internal Banking Supervision Department Circular No. 1/2007 – Departmental Reorganization and Associated Staff Changes
9.	Bank of Botswana	Circular to Banks on Foreign Exchange Dealing No. 2/99 – Abolition of Exchange Controls
10.	Bank of Botswana	Directive No : BOBA 1/99 Foreign Currency Exposure
11.	Botswana International Financial Services Centre	Annual Report 2005
12.	Botswana International Financial Services Centre	Annual Report 2006
13.	Botswana International Financial Services Centre	Botswana IFSC Bulletin – Issue 2 – July to Sept 2006
14.	Botswana International Financial Services Centre	Information Pack
15.	Botswana Police Service	Corporate Development Strategy - 2003-2009
16.	Botswana Police Service	Senior Divisional Organisation and Structure – Dec 2005
17.	Botswana Police Service	Target Offences - Statistics - 1997 – 2006
18.	Botswana Unified Revenue Service	Customs and Excise – Traveler’s Guide to Botswana – Dec 2006
19.	Case Reports	Case Judgments (11 Cases)
20.	Case Reports	Forfeiture Order (2 Cases)
21.	Case Reports	Restraint Order (1 Case)
22.	Casino Control Board	Annual Report and Audited Accounts – Year Ending March 2006
23.	Deeds Registry	Deeds Registry Handbook
24.	Department of Customs and	Notice to All Travellers – Transportation of Bank Notes

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	Excise	and Other Monetary Instruments
25.	Department of Mines	Annual Report 2005
26.	Directorate on Corruption and Economic Crime	'A Concerted Efforts Towards the Fight Against Money Laundering – Botswana's Legislative Capacity and International Regulatory Regimes to Curb Money Laundering - Anti-Money Laundering Seminar – February 2007 – Supt J. Madzima, Botswana Police Service
27.	Directorate on Corruption and Economic Crime	Annual Report 2005
28.	Directorate on Corruption and Economic Crime	Anti-Money Laundering Handbook – Dec 2006
29.	Directorate on Corruption and Economic Crime	Staff Compliment for DCEC
30.	Economist Intelligence Unit	Botswana - Country Profile
31.	Economist Intelligence Unit	Botswana -Country Report
32.	IMF	2005 Article IV Consultation Documents
33.	IMF	Banking Supervision and Arrangements for Anti-Money Laundering and Combating the Financing of Terrorism – Volumes 1 & 2
34.	Ministry of Trade and Industry	Gaming and Gambling Policy for Botswana – Dec 2002 – Government Paper No. 6 of 2002
35.	Real Estate Institute of Botswana	Constitution
36.	Real Estate Institute of Botswana	Rules and Regulations
37.	Remittances	Facilitating South African Remittance Networks – Issue Paper for the 2006 SDAC Commonwealth Secretariat Workshop on Remittances
38.	United Nations Security Council Reports	United Nations Security Council Reports – 2001
39.	United Nations Security Council Reports	United Nations Security Council Reports – 2004
40.	US State Department - Bureau for International Narcotics and Law Enforcement Affairs,	International Narcotics Control Strategy Report – 2006 – Botswana
41.	US State Department – Bureau of Democracy, Human Rights and Labor	Country Reports on Human Rights Practices – Botswana – 2005
42.	News Articles	<i>Number of Human Trafficking Suspects Swells – The Reporter (Dec 8, 2006)</i>
43.	News Articles	<i>Panel Discussion on NIA Convened – The Reporter (Dec 8, 2006)</i>
44.	News Articles	<i>Stakeholders Not Aware of Eavesdropping Equipment – The Reporter (Dec 8, 2006)</i>

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45.	News Articles	<i>Panel Discussion on NIA Convened</i> – The Reporter (Dec 8, 2006)
46.	News Articles	<i>Diamond Production Increases</i> – The Daily News (Mar 9, 2007)
47.	News Articles	<i>Zimbabwe Crisis Affects Neighbours</i> – The Daily News (Mar 9, 2007)
48.	News Articles	<i>Police Nab ATM Robbers</i> – The Daily News (Mar 9, 2007)

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