

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 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**

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

comply with its international obligations, Botswana should expedite the criminalization of terrorism 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 feed-back 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. 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 NBFIRRA 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 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.