

Anti-money laundering and counter-terrorist financing measures

Botswana

5th Enhanced Follow-up Report &
Technical Compliance Re-Rating

April 2021

Follow-up Report





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ESAAMLG's members and observers are committed to the effective implementation and enforcement of internationally accepted standards against money laundering and the financing of terrorism and proliferation, in particular the FATF Recommendations.

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Fax No: +255 22 2668745

Email: executivesec@esaamlg.org

BOTSWANA: 5th FOLLOW-UP REPORT & 3rd REQUEST FOR RE-RATING

I. INTRODUCTION

1. The mutual evaluation of Botswana was conducted by the ESAAMLG and the mutual evaluation report (MER) was approved by the ESAAMLG Council of Ministers in May 2017. This follow up report analyses the progress of Botswana in addressing the technical compliance (TC) deficiencies identified in its MER. Re-ratings are given where sufficient progress has been made. Overall, the expectation is that countries will have addressed most, if not all, TC deficiencies by the end of the third year from the adoption of their MER. This report does not address what progress Botswana has made to improve its effectiveness. Progress on improving effectiveness will be analysed as part of a later follow-up assessment.
2. The assessment of Botswana’s request for TC re-ratings and the preparation of this report were undertaken by the following experts (supported by the ESAAMLG Secretariat: Mofokeng Ramakhala and Tom Malikebu):
 - Wonder Kapofu (Zimbabwe)
 - Osvaldo Santos (Angola)
 - Vilho Nkandi (Namibia)
 - Julia Tloubatla (South Africa)
 - Tausi Abdallah (Tanzania).
3. Section III of this report highlights the progress made by Botswana and analysis undertaken by the Reviewers. Section IV sets out the conclusion and a table showing which Recommendations have been re-rated.

II. KEY FINDINGS OF THE MUTUAL EVALUATION REPORT

4. The MER¹ rated Botswana’s technical compliance as set out in Table 2.1 below. In the light of these results, Botswana was placed in the enhanced follow-up process².

Table 1. Technical compliance ratings³, May 2017

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
NC	PC	PC	PC	NC	NC	NC	NC	NC	NC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
N C	NC	NC	NC	NC	NC	N/A	PC	NC	PC
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
N	NC	PC	NC	NC	NC	LC	NC	NC	PC

¹ Mutual Evaluation Report (MER) on Botswana, May 2017, <https://esaamlg.org/reports/MER%20of%20Botswana%20-%20Council.pdf>

² Enhanced follow-up is based on the traditional ESAAMLG policy for members with significant shortcomings (in technical compliance or effectiveness) in their AML/CFT systems, and involves a more intense follow-up process.

³ Four technical compliance ratings are available: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

C									
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
PC	PC	NC	PC	NC	PC	LC	PC	PC	PC

III. OVERVIEW OF PROGRESS IN TECHNICAL COMPLIANCE

3.1. Progress in resolving the technical compliance deficiencies identified in the MER/FUR

- Since the adoption of its MER in May 2017, Botswana has taken measures aimed at addressing the technical compliance deficiencies identified in its MER. As a result of this progress, 21 Recommendations were re-rated (upgraded) to LC and C as highlighted in the Table 3.1 below.

Table 3.1: Technical Compliance Re-ratings

Recommendations and Corresponding Ratings													
1	2	3	4	5	6	7	8	9	10	11	12	13	14
LC	PC	C	LC	C	LC	LC	NC	PC	LC	LC	LC	PC	NC
15	16	17	18	19	20	21	22	23	24	25	26	27	28
PC	PC	N/A	PC	NC	C	LC	NC	LC	PC	PC	PC	C	PC
29	30	31	32	33	34	35	36	37	38	39	40		
LC	LC	LC	LC	PC	PC	PC	C	LC	C	LC	LC		

- This section of the report summarises further progress made by Botswana to improve its technical compliance by addressing the TC deficiencies identified in its MER.
- ESAAMLG welcomes the steps that Botswana has taken to improve its technical compliance. Following this progress, Botswana has been re-rated compliant with Recommendations 9, largely compliant with Recommendations 13, 16, 18, 22, 33 and 34. Due to moderate shortcoming identified in Recommendations 19, 25, 26, 28 and 35 the rating of partially compliant is warranted.

3.1.1. Recommendation 9- Financial Institutions Secrecy Laws (Rated from NC to PC under the 1st FUR – re-rated C)

- During its last FUR the outstanding deficiency for Botswana was to the effect that whereas FIs were expected to disseminate an STR either spontaneously or upon request, the language of the Banking Act provisions seemed to be limited to situations where the information had been requested by the FIA. Secondly, in terms of subsection 43 (2)(k) of the Banking Act, 1995 as amended, FIA did not have legal mandate to request information from any other FI apart from the one which would have submitted an STR.
- In order to address the deficiencies, Botswana has amended the Banking Act to remove the limitation which was preventing banks from making spontaneous reports to FIA due to confidentiality requirements. The Act now provides for exemption from the confidentiality provisions in cases where disclosure of information is required by the Banking Act or any other law [S.43(2)(n) of the Banking Act, 1995 as amended]. In

addition, s.3 of the Financial Intelligence Act provides that in the event of any conflict or inconsistency between the provisions of the Financial Intelligence Act, 2019 and any other law on AML/CFT matter, the provisions of this Act shall take precedence. In relation to ability of the FIA to request additional information from reporting entities, the Financial Intelligence Act was amended to give legal powers for the FIA to call for and obtain additional information from any reporting entity in connection with an STR which it has received [s. 6(2)(h) of Financial Intelligence Act 2019].

Weighting and Conclusion

10. Botswana has relevant legal instruments which now enable competent authorities to access information they require to properly perform their functions in combating ML/FT. **Therefore, Botswana is re-rated Compliant with Recommendation 9.**

3.1.2. Recommendation 13- Correspondent Banking (Rated from NC to PC under the 1st FUR – re-rated LC)

11. In its MER, Botswana was rated NC with R.13 and subsequently re-rated PC in April 2019⁴. During its last FUR Botswana had the following outstanding deficiencies in respect of c.13.1:
 - a) there were no requirements in relation to the quality of supervision, including whether the institution has been subject to a ML/TF investigation or regulatory action;
 - b) Lack of requirement to assess the respondent institution's AML/CFT controls;
 - c) Lack of requirement to obtain approval from senior management before establishing new correspondent relationships; and
 - d) Lack of requirement to clearly understand the respective AML/CFT responsibilities of each institution.
12. Botswana has taken steps to address the outstanding deficiencies through amendments to the Financial Intelligence Act. While s.20(b)(ii) of the Act requires FIs to determine whether a respondent bank is subject to an investigation or regulatory action [**with respect to the commission of a financial offence**], the requirement does not extend to include regulatory action against a FI for non-compliance with AML/CFT. The regulatory action is limited to a financial offence and the definition of financial offence is 'an ML or FT offence and does not include non-compliance with AML/CFT requirements. In addition, s.20(c) requires FIs to assess the controls implemented by the respondent's institution to counter the commission of financial offences. Similarly, this requirement does not include AML/CFT controls. Controls to counter an ML/TF offence do not necessarily mean AML/CFT controls. Furthermore, under s. 20(h) of FIA, the obligation to understand the responsibilities of each bank is limited to situations where FIs use "payable-through accounts". The limitation of this requirement to cases where there are 'payable through accounts' renders it inadequate.

Weighting and Conclusion

13. Botswana has made legislative amendments in order to address outstanding deficiencies highlighted in its MER and under the 1st FUR. However, the new section

⁴ 1st FUR available at: <https://esaamlg.org/reports/FUR%20Botswana-April%202019.pdf>

of the FIA still has some gaps notably: the Act does not include the action that can be taken by a supervisory authority upon non-compliance with AML/CFT requirements [c.13.1(a)]; the obligations imposed by section 20(c) of Financial Intelligence Act 2019 do not require FIs to assess the respondent institution's AML/CFT controls but the controls implemented to counter the commission of a financial offence [c.13.1(b)]; and that the obligation to understand the responsibilities of each bank is limited to "payable through" accounts. However, in view of the context of Botswana where most of the banks are subsidiaries of foreign banks and that correspondent banking relationships are established through their head offices, the remaining shortcomings are considered to be minor.

14. **Based on the forgoing, Botswana is re-rated Largely Compliant with Recommendation 13.**

3.1.3. Recommendation 16- Wire Transfers (Rated from NC to PC under the 1st FUR – re-rated LC)

15. In its MER, Botswana was rated NC for R.16 and was later re-rated PC under its 1st FUR. During the 1st FUR it was noted that FIs in Botswana were not expressly prohibited from executing a wire transfer transaction where they were unable to comply with requirements set out under c.16.1-16.7. Botswana has taken further action by introducing regulation 25 (5) of the Financial Intelligence Regulations, 2019 which prohibits a FI from undertaking a wire transfer before ensuring that the information required in terms of this Regulation is obtained. In relation to c.16.8, it is noted that C.16.1-c.16.6 is about obtaining originator and beneficiary information whereas c.16.7 is an obligation to maintain originator and beneficiary information. Since the main requirement in this Regulation relates to obtaining information only (rather than compliance with requirements of c.16.1-16.7), it does not include c.16.7 which is an obligation for the FI to maintain all originator and beneficiary information. For this purpose, **c.16.8 has been mostly met.**
16. Furthermore, it was noted that there was no requirement, in law or other enforceable means, for an intermediary FI to retain with the cross-border wire transfer all originator and beneficiary information that accompanies it. Botswana introduced regulation 26(1) of the Financial Intelligence Regulations, 2019 which requires a financial institution that undertakes wire transfer as an intermediary to ensure that all originator and beneficiary information, obtained under regulation 25 of these Regulations is retained with the transfer. Hence, **c.16.9 has been met.**
17. Moreover, it was observed that there were no requirements, in law or other enforceable means, for an intermediary FI to take reasonable measures, which were consistent with straight-through processing, to identify cross-border wire transfers that lacked required originator information or required beneficiary information. Regulations 26 (3) of the Financial Intelligence Regulations, 2019 was introduced and it requires an intermediary financial institution to take reasonable measures to identify cross-border wire transfers that lack required originator or beneficiary information under regulation 25 of these Regulations. Hence, **c.16.11 has been met.**
18. It was also observed that there was no requirement, in law or other enforceable means, for an intermediary FI to have risk-based policies and procedures for

determining: (a) when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and (b) the appropriate follow-up action. Under the current section 26 of Financial Intelligence Act 2019 there is a requirement for an intermediary FI to have risk-based policies and procedures for determining: (a) when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and (b) the appropriate follow-up action. In this regard, **c.16.12 has been met.**

19. The 1st FUR indicated that there was no requirement, in law or other enforceable means, for a beneficiary FI to take reasonable measures, which might include post-event monitoring or real-time monitoring where feasible, to identify cross-border wire transfers that lacked required originator information or required beneficiary information. Regulations 27 (1) (b) of the Financial Intelligence Regulations, 2019 was introduced and it requires a beneficiary financial institution to take reasonable measures, including post-event monitoring or real-time monitoring, where feasible, to identify cross border wire transfer that lack the required originator or beneficiary information. Hence, **c.16.13 has been met.**
20. For measures relevant to c16.14, it was observed that there was no requirement, in law or other enforceable means, for a beneficiary FI to verify the identity of the beneficiary, if the identity had not been previously verified, and maintain this information in accordance with Recommendation 11. To cure this deficiency Botswana introduced regulation 27(1) (a) of the Financial Intelligence Regulations, 2019 which requires FIs to verify the identity of the beneficiary before undertaking a wire transfer where such identity was not previously verified, and maintain such information in accordance with section 28 of the Financial Intelligence Act 2019. **Hence, c.16.14 has been met.**
21. Regulations 27(2) of the Financial Intelligence Regulations, 2019 was introduced to require a beneficiary FI to implement policies and procedures which have regard to risks identified to determine when to execute, reject or suspend a wire transfer which lacks originator or beneficiary information. In those circumstances, FIs are also required to take appropriate follow-up action. **This adequately addresses shortcomings noted under c.16.15.**
22. A recommendation was also made that MVTs providers should be required to comply with all of the relevant requirements of Recommendation 16 in the countries in which they operate, directly or through their agents. This recommended action has since been addressed because MVTs providers are designated as specified parties in terms of Financial Intelligence Act 2019 and as such shall comply with the obligations or requirements set forth under Recommendation 16. Hence, **c.16.16 has been met.**
23. In its 1st FUR in April 2019, it was noted that the requirement for an MVTs provider that controls both the ordering and beneficiary side of a wire transfer to take into account all the information from both sides to determine whether an STR had to be filed was not provided for. In terms of regulation 24 of the Financial Intelligence Regulations, 2019 a report by an accountable institution [MVTs provider] is filed with FIA in terms of section 37(1) of Financial Intelligence Act, 2019 if it exceeds P10,000.00. It is noted that neither Regulation 24 of the Financial Intelligence Regulations 2019 nor section 37 of the Financial Intelligence Act 2019 address the

outstanding deficiency since the particulars that are reported to the Agency would be in instances where the P10,000.00 has been exceeded and not when an MVTs provider has to determine whether an STR has to be filed.

Weighting and Conclusion

24. The new FI Act, 2019 and FI Regulations, 2019 in Botswana have addressed most of the outstanding deficiencies of Recommendation 16. Under the new provisions of the FI Act and/or FI Regulations ordering financial institutions are not allowed to execute wire transfers before ensuring that the information required is obtained. While it is noted that the Regulation covers requirements of c.16.1-c.16.6 which are about obligations to obtain information, it does not include the obligation to maintain all originator and beneficiary information in accordance with R.11. Furthermore, intermediary FIs are required to ensure that all originator and beneficiary information that accompany wire transfer are retained with them. Intermediary and beneficiary FIs are required to have risk-based policies and procedures to determine when to execute, reject or suspend a wire transfer lacking required originator or beneficiary information and to take appropriate follow-up action. Equally, the MVTs provider by virtue of being designated specified party under the Act, is required to comply with the requirements of Recommendation 16. However, the requirements of c.16.17 are not met as MVTs providers are not required to take into account all the information from both the ordering and beneficiary sides in order to determine whether and STR has to be filed.
25. **Based on the foregoing, Botswana is re-rated Largely Compliant with Recommendation 16.**

*3.1.4. Recommendation 18- Internal Controls and Foreign Branches and Subsidiaries
(Rated from NC to PC under the 1st FUR – re-rated LC)*

26. In its MER and 1st FUR, it was noted that there was no specific obligation for financial groups to include measures set out under c.18.1 and c.18.2 (a)-(c) [in group-wide programmes against ML/TF]. Furthermore, it was observed that the revised part of FATF Recommendation 18 which related to information sharing within a group had not been addressed.
27. Financial groups are required to implement group-wide programs against ML/TF applicable and appropriate to all branches and subsidiaries of the financial group [S.13(1) of FIA]. However, this obligation does not specifically include measures set out in c.18.1. In addition, Botswana introduced Section 13 (2) and (8) of the Financial Intelligence Act, 2019 which obliges financial groups to maintain throughout its group, controls and procedures to provide for sharing of information relevant for CDD and ML/TF risk management. However, there is no specific requirement for financial groups to have measures for the provision of customer, account, analysis of transactions or activities which appear to be unusual. On the other hand, financial groups are under obligation to maintain controls and procedures for the protection of personal data and safeguarding the confidentiality and use of information exchanged (s. 13(2)(a) and (c) of FIA). The shortcoming observed on this measure is to the effect that there is no specific obligation to include safeguards to prevent tipping off. **Hence, c.18.2 has been mostly met.**

28. There was another deficiency which pertained to c.18.3 and it was to the effect that there was no requirement for FIs to apply appropriate measures to manage the ML/TF risks, and inform Botswana supervisory authorities in situations where the host country would not permit foreign branches or subsidiaries to implement Botswana AML/CFT measures. This deficiency has been addressed through section 13(6) of the Financial Intelligence Act, 2019 which requires FIs to ensure that their foreign branches and majority-owned subsidiaries apply Botswana AML/CFT requirements where the requirements of the host country are less strict. In the event that the host country does not permit this, financial groups are required to inform the supervisory authorities and apply additional measure to mitigate ML/TF risks. **Hence, c.18.3 has been met.**

Weighting and Conclusion

29. The Financial Intelligence Act, 2019 in its s.13 (2) and (8) addresses most of the measures set out in criterion 18.2. In the same vein, s.13(6) of FI Act addresses measures set out in criterion 18.3. Financial groups are required to have policies and procedures for sharing information for purposes of CDD and ML/TF risk management. However, whilst financial groups are required to have controls and procedures for safeguarding confidentiality and use of information shared, this does not include safeguards to prevent tipping off.
30. **Based on this, Botswana is re-rated Largely Compliant with Recommendation 18.**

3.1.5. Recommendation 19-High Risk Countries (Originally rated NC –re-rated PC)

31. In its MER, Botswana was rated NC with R.19. The main technical deficiencies were that: No provision in the laws requiring FIs to apply enhanced due diligence to business relationships and transactions with natural and legal persons from countries for which this is called for by the FATF; does not apply countermeasures proportionate to ML/TF risks when called upon to do so by the FATF or independently of any call by the FATF to do so; no mechanism in place to ensure that financial institutions are advised of concerns about the weaknesses in the AML/CFT systems of other countries.
32. Botswana has taken action to address the deficiencies. In relation to c.19.1, financial institutions are required to use their risk management systems in conducting enhanced due diligence for business relationships or transactions established in high-risk jurisdictions or where this is called for by an international organisation or FATF (section 17(1)(b) and (h) of the FI Act). **In this regard, c.19.1 has been met.** However, the provisions of the FI Act, 2019 are silent on enabling Botswana to apply countermeasures proportionate to the risks [c.19.2] when called upon to do so by the FATF or at its own determination. **Hence, c.19.2 has not been met.**
33. The other deficiency related to c.19.3 wherein it was observed that one of the functions of the FIA was to communicate the list of high-risk countries to specified parties, accountable institutions and supervisory authorities. The definition of high-risk jurisdictions included those which had weak AML/CFT systems and those identified by the FATF as high-risk jurisdictions. However, authorities had not described the mechanisms they use to communicate the concerns to reporting entities. In the current FUR, authorities' submission in addressing this deficiency is to the

effect that in order to ensure that financial institutions are advised of concerns about weaknesses in AML/CFT systems of other countries, the procedure in Botswana is that the FIA obtains the list of high-risk jurisdictions from the FATF website, after every FATF meeting. The list is then forwarded to specified parties under cover of a letter. The list is then uploaded on the Ministry of Finance and Economic Development website. Reviewers had opportunity to check the Ministries website and noted that specified parties were indeed notified of high-risk countries at the instance of FATF publication. However, apart from what is communicated to FIs from FATF through the website Botswana has not indicated that there are also measures in place to ensure that financial institutions are advised of concerns about weaknesses in AML/CFT systems of other countries. **Hence, c.19.2 has been mostly met.**

Weighting and Conclusion

34. Section 17(1) (b), (h), and (i) of Financial Intelligence Act 2019 address measures set out in c.19.1 but for c.19.2 it was observed that the provisions of the FI Act 2019 are silent on enabling Botswana to apply counter-measures proportionate to the risks when called upon by FATF or independently of any call by FATF to do so. In respect of c.19.3, Reviewers noted that Botswana has not provided a letter, purporting to list high risk jurisdictions but rather reviewers noted that through the website of the Ministry of Finance and Economic Development a notice was posted, drawing attention to specified parties that FATF had issued a notice designating DPRK and Iran as high-risk jurisdictions.
35. **Due to the moderate shortcomings identified above, Botswana is re-rated Partially Compliant with Recommendation 19.**

3.1.6. Recommendation 22-Designated Non-Financial Businesses and Professions: Customer Due Diligence ((Originally rated from NC –Not re-rated in the 1st FUR-re-rated LC)

36. In its MER, Botswana was rated NC with R.22. The main deficiencies were: Dealers in precious metals and Trust and Company Service Providers are not designated reporting entities under the FI Act; deficiencies in recordkeeping requirements; the scope of AML/CFT legal framework in Botswana does not include obligations in relation to PEPs; DNFBPs not required to identify and assess ML/TF risks associated with new products and new business practices. Some of these deficiencies were addressed as highlighted in the 1st FUR of April 2019. This report analyses progress in relation to the remaining deficiencies.
37. Although Botswana requires all DNFBPs including dealers in precious metals and TSCPs to comply with requirements of Recommendation 10, DNFBPs cannot fully implement this due to deficiencies identified in c.10.9 and 10.10 which have a cascading effect on c.22.1 (see 3rd FUR). **Hence, c.22.1 is considered to be mostly met.** In regard to c.22.2 Botswana requires DNFBPs to comply with record keeping requirements in terms of Section 27(3)(c) of the Financial Intelligence Act 2019. It is further noted that under the April 2019 FUR, R.12 was rated LC. The deficiency was that reporting entities are not required to take reasonable measures to establish the source of wealth of a PEP or beneficial owner of a PEP (c.12.1). This has been addressed by s.18(2)(b) of FIA which reads as follows:

'Where a specified party or accountable institution determines, in accordance with its risk management systems and compliance programme, that a prospective customer with whom it engages to establish a business relationship or the beneficial owner of that prospective customer is a prominent influential person, the specified party or accountable institution shall —

(b) take reasonable measures to establish the source of wealth and source of funds of the prospective customer.'

38. Regarding c.22.4, Botswana had no requirements or mechanisms to identify and assess ML/TF risks that may arise in relation to the development of new products and new business practices. In addition, there was no obligation for DNFBPs to carry out risk assessment before a launch or use of such products, practices and technologies. To address this, Botswana made legislative amendments which sought to require DNFBPs [specified parties] to undertake risk assessments prior to the launch or use of products, practices and technologies. They are also obliged to take appropriate measures to manage and mitigate the risks [Section 11(1) (c) of the Financial Intelligence Act, 2019]. The new requirements under c.15.3-c.15.11 are not applicable to DNFBPs. **This criterion is therefore met.**

Weighting and Conclusion

39. Deficiencies that were previously outstanding in respect of Recommendations 10, 11, 12 and 15 had cascading effect on Recommendation 22 which is meant to apply to DNFBPs. Analysis done in the current FUR is to the effect that the said deficiencies in regard to Rec 11, 12 and 15 have been fully addressed while deficiencies in respect of R.10 have been mostly met. However, in the context of DNFBPs, the requirements of c.15.3 to c.15.11 do not apply to DNFBPs. Therefore, all criteria have been rated met except for c.22.1 which has been rated mostly met.
40. **Therefore, in view of these shortcomings Botswana is re-rated to Largely Compliant with Recommendation 22.**

3.1.7. Recommendation 25- Transparency and Beneficial Ownership of Legal Arrangements (not re-rated-PC rating is retained)

41. During its FUR in April 2019, Botswana was re-rated Partially Compliant with R.25. The main deficiencies noted were that trustees in Botswana were not obliged to obtain and hold adequate, accurate, and current information on the identity of the settlor, the trustee(s), or any other natural person exercising ultimate effective control over the trust; the legal framework in Botswana does not require that any information held pursuant to this Recommendation is kept accurate and is updated on a timely basis and no provisions were available to assist with the assessment of compliance with the criterion, including sanctions (c.25.7).
42. Botswana has taken action to address the outstanding deficiencies. Section 16A (1) of the Trust Property Control (Amendment) Act was introduced to require trustees to keep accurate and up-to-date information and records of the identity of the founder and beneficiaries. However, there is no requirement to keep, obtain and keep accurate and up-to-date information on the identity of any **natural person exercising ultimate effective control over the trust**. Furthermore, although section 16A (1) of the Trust Property Control Act is intended to provide the keeping of information and records

on trusts, it does not specify whether Botswana requires trustees to also keep basic information of the following:

- other regulated agents of trust;
- service providers to the trust including investment advisors or managers, accountants, and tax advisors.

43. In relation to c.25.2, section 16A (1) of the Trust Property Control Act requires the information and records held by trustees to be kept accurate and up to date. However, the scope of this section does not include all the information required under c.25.1(a) and (b). Another shortcoming is to the effect that there is no provision in the Act requiring that the information has to be updated on a timely basis. **Hence, c.25.2 has been partly met**
44. It is observed that section 27(3) Trust Property Control Act imposes legal liability on a trustee who fails to perform their duties relevant to section 16A (1) of Trust Property Control Act. However, given that section 16A of the Trust Property Act does not include all the requirements of c.25.1(a) and (b) and some of the requirements of c.25.2, the legal liability of trustees would only be limited to what is prescribed in the Act and falls short of obligations which should be in line with requirements of c.25.1(a) and (b) as well as, c.25.2. Hence, **c.25.7 is not fully addressed.**

Weighting and Conclusion

45. Botswana amended its Trust Property Control Act 2018 to address most of the deficiencies in R. 25. However, the following deficiencies were observed, to wit: Section 16A (1) of the Trust Property Control Act 2018, as amended does not require trustees to obtain and keep the identity of trustees and a natural person exercising ultimate effective control over the trust nor does it require trustees to keep basic information of the following: other regulated agents of trust; service providers to the trust including investment advisors or managers, accountants, and tax advisors. Furthermore, there is no requirement to have information, kept under this Recommendation, updated on a timely basis. Although there are sanctions for failure to comply with the provisions of the Act this would only be limited to what is prescribed in the Act to the exclusion of some of the requirements of c.25.1(a) and (b) as well as c.25.2. **Overall, c.25.1, c.25.2 and c.25.7 has been partly met.**
46. **Therefore, in view of the above shortcomings the PC rating of Recommendation 25 has been retained.**

3.1.8. Recommendation 26- Regulation and Supervision of Financial Institutions (not re-rated- PC is retained)

47. The MER identified the following deficiencies: MVTs and savings and credit societies were not subjected to licensing or registration requirements; the legal or regulatory requirements or measures to prevent criminals or their associates from holding (or being beneficial owners) of significant interest and management function in FIs were inadequate and Botswana had not adopted AML/CFT risk-based supervision. Botswana has since addressed some of these shortcomings as highlighted in its 1st FUR published in April 2019.

48. It was previously noted that MVTS providers in Botswana were not being licensed or registered by any regulator. The country introduced regulation 4 of the Electronic Payment Services Regulations, 2019 which was issued under the Bank of Botswana Act 1995 as amended to ensure that MVTS providers are licensed. The 1st FUR report determined that the regulation and supervision of core principles institutions under BoB and NBFIRA are in line with the core principles, except the application of consolidated group supervision for AML/CFT purposes. However, this was considered a minor shortcoming considering that the institutions in Botswana do not have foreign subsidiaries. This deficiency remains outstanding. In relation to all other FIs, including MVTS providers and money changers, they are regulated and subject to supervision to ensure compliance with the AML/CFT Act. The nature and scope of supervision takes into account the ML/TF risks in the sectors. [ss. 11 and 44(1)(a) of FIA]. **Hence, c.26.4 has been mostly met.**
49. In order to address deficiencies identified in c.26.5 it is noted that supervisors determine the frequency and intensity of onsite and offsite risk-based supervision of financial institutions based on preliminary risk assessment (PRA) in the case of banks. All FIs Supervisors are guided by AML/CFT Examination Manual 2018, in the case of FIs under the Bank of Botswana; Risk Based Supervisory Manual 2019, in the case of FIs under NBFIRA and DCD Risk-Based Supervisory Manual 2019 in the case of FIs under Department of Cooperatives Development. Botswana indicated that inspections have accordingly been conducted since 2017 and are continuing. However, the manuals for addressing frequency for the onsite and offsite supervision do not appear to cover the characteristics of the financial institutions or groups, in particular the diversity and number of financial institutions and the degree of discretion allowed to them under the risk-based approach [c.25.5(c)]. **Hence, c.26.5 has been mostly met.**
50. During its first FUR in April 2019, it was noted that the outstanding deficiency for c.26.6 was that there was no requirement for supervisors to review the risk profiles at regular intervals and also when there are major events or developments that may alter the ML/TF risk relevant to the FIs. This deficiency has not been addressed either in law or regulation. Furthermore, there is no indication (with supporting evidence) that FIs supervisors have reviewed the assessment of the ML/TF risk profile of a financial institution (including the risks of non-compliance) periodically, and when there are major events or developments in the management and operations of the financial institution under their purview. Nevertheless, Reviewers note that, in relation to Bank Botswana, the RBS includes review of quarterly progress reports of previous AML/CFT examinations which show the status of compliance. In addition, BoB also reviews institutions' internal risk assessments and factors the information into its RBS framework. However, this covers some and not all elements required under this Criterion. **Hence, c.26.6 has not been met.**

Weighting and conclusion

51. Although supervisory authorities have made efforts to adopt AML/CFT risk-based supervision, there are still deficiencies. FIs are not subjected to consolidated supervision for AML/CFT purposes. In addition, there is no specific requirement for supervisory authorities to review the risk profile of the FIs or financial groups

periodically, and when there are major events and/or developments in the management and operations of the FIs or group. Further, the manuals for addressing frequency for the onsite and offsite supervision do not appear to cover the characteristics of the financial institutions or groups, in particular the diversity and number of financial institutions and the degree of discretion allowed to them under the risk-based approach. Overall, the combined shortcomings noted under c.26.4, c.26.5 and c.26.6 are considered moderate. The total existing ratings of all the criteria are: c.26.1 met, c.26.2- c.26.5 mostly met and c.26.6 not met.

52. Therefore, in view of these shortcomings **the rating of PC has been retained for Recommendation 26.**

3.1.9. Recommendation 28-Regulation and Supervision of DNFBPS (not re-rated- PC is retained)

53. The MER identified the following deficiencies: With the exception of casinos, there were no provisions enabling competent authorities to take legal and regulatory measures to prevent criminals or their associates from holding a significant or controlling interest or from operating a DNFBP; supervisors had not yet started monitoring the licencees for compliance with AML/CFT requirements; authorities had not carried out a risk assessment of the DNFBP sector to inform development and implementation of AML/CFT risk-based supervision.

54. It was noted in the previous FUR that dealers in precious stones and trust and company service providers did not have a designated supervisor. This has since been addressed as Botswana has indicated that in the absence of designated supervisory authority to supervise dealers in precious metals and TCSPs the responsibility rests with Financial Intelligence Agency in terms of section 2 read with section 6(2)(d) of the Financial Intelligence Act 2019. **Hence, c.28.2 has been met.**

55. There are minor changes made since the previous 1st FUR on c. 28.4(b). The following observations have been made under the current FUR:

Legal practitioners

56. Among other requirements in section 4 of the Legal Practitioners Act, the person applying for a licence must be a fit and proper person. The authorities have submitted that at practical level there is a vetting process at entry level where a petition is served on the AG who can file a notice of opposition if there is any known criminality.

Real estate

57. Section 7 of the Real Estate Professionals Act refers to the tenure of office for Council members, a body responsible for regulating the activities and conduct of registered real estate professionals. Reviewers have failed to find relevance of section 7 of the Real Estate Professionals Act 2003 to c.28.4(b).

Dealers in Precious Stones

58. Section 8 (2) of the Semi-Precious Stones (Protection) Act provides that the Minister may refuse to issue a precious stone dealer's licence if he is satisfied that the applicant is not a fit and proper person to hold the licence applied for. However, the term 'fit and proper' is not defined in the Act. In addition, the authorities did not provide the application form cited in s.8 of the Precious and Semi-Precious Stones (Protection) Act

so that Reviewers can confirm whether or not it requires information related to criminal background.

BICA

59. Section 30(4)(c) of the Accountants Act provides that the Institute shall register the applicant as a professional accountant and enter his or her name and such particulars as the Institute considers relevant, in the Register of Professional Accountants, where the applicant is of good character and has not been convicted of an offence involving fraud or dishonesty in any country. The authorities provided evidence that the Institute applies fit and proper requirements on an ongoing basis. **Overall, c.28.4(b) has been partly met.**
60. In respect of criterion 28.5 it is noted that supervision of DNFBPs is required to be taken on a risk sensitive basis (s.44(1)(e) of the Financial Intelligence Act, 2019). However, all DNFBP supervisory authorities have not developed appropriate frameworks to support implementation of risk-based supervision. There is no indication that the frequency and intensity of the AML/CFT supervision of the DNFBPs is determined on the basis of their understanding of the ML/TF risks which takes into account characteristics of the DNFBPs and their diversity. The NRA report found that ML vulnerability of all DNFBPs was high. However, there is no indication that they received priority intervention. In addition, the NRA ranked casinos, lawyers and dealers of precious metals as having high ML risk. While supervisors of some sectors have started to develop risk-based supervisory frameworks, no action has been taken in relation to lawyers.
61. While some DNFBP supervisors indicated that they conducted ML/TF risk assessment, the authorities did not provide the reports. For this reason, it was not possible to determine whether they risk profiled and ranked the entities to show which ones are of high ML risk and require increased focus. So it is not possible to determine that supervision of DNFBPs is performed taking into account ML/TF risk profile of DNFBPs and that there is the degree of discretion allowed to them under the risk-based approach, when assessing the adequacy of the AML/CFT internal controls, policies and procedures of DNFBPs. **On the basis of the foregoing, c.28.5 is partly met.**

Weighting and conclusion

62. There is no definition of '*fit and proper*' under the law regulating dealers in precious stones. The requirement for fit and proper is also not stated in the law regulating real estate agents. Although there is a legal obligation to supervise DNFBPs on a risk sensitive basis, it is not clear that the intensity and frequency of AML/CFT supervision is based on their understanding on ML/TF risks of the individual DNFBPs and characteristics of the DNFBPs.
63. In view of the above observed shortcomings ***PC rating of Recommendation 28 has been retained.***

3.1.10. Recommendation 33- Statistics (Originally rated NC – re-rated to PC in 1st FUR-re-rated LC)

64. Botswana was rated NC in the MER. The key deficiency identified in the MER is that Botswana did not have the appropriate legal and institutional frameworks to enable

the authorities to maintain comprehensive statistics on STRs received and disseminated, ML/TF investigations done and convicted cases, confiscations, types of court applications handled and the types of MLA requests handled. This deficiency was addressed in the 1st FUR through a legislative amendment and provision of statistics. However, no statistics were provided on prosecutions, convictions, property frozen and confiscated. On this basis, Botswana was re-rated PC.

65. Botswana has provided the information and the country has also indicated that with the introduction of goCASE system all information required in Rec. 33 should automatically be generated. The extract of cases generated for 2019 was submitted to support this position though these are mostly corruption related cases. The DCEC referred 3 cases to DPP for prosecution and only one of these cases mentions ML as one of the offences investigated. There is no information indicating when these cases were referred to DPP. In regard to prosecutions made by DPP Botswana has not categorically stated the number of cases prosecuted nor convictions obtained for Money Laundering or Terrorist Financing nor has it demonstrated the status of types of cases allocated to prosecutors based on the DPP case management system. Furthermore, Botswana has provided Statistics on Confiscations, Civil Penalty and Forfeiture Applications as well as, Restraints and seizures made. But on the 49 cases of money laundering indicated Reviewers could not establish the period within which these applications were made. The extract of goCASE system provided little assistance to Reviewers to determine how it can interlink with DPP and the courts. The extract only depicts a four-column table with the headings indicating the year, the initial case type, the workflow transition and the total by status. It is noted that the DPP also has its own case management system. It is not clear whether other LEAs have similar arrangements. Thus, these statistics are not sufficiently maintained in a comprehensive manner to enable Botswana to monitor the effectiveness and efficiency of its AML/CFT regime. **Hence, c.33.1 has been mostly met.**

Weighting and conclusion

66. In the last FUR it was noted that statistics on prosecutions, convictions, property frozen and confiscated was not provided. The information has been provided and the country has gone further to indicate that with the introduction of goCASE system all information required in Rec. 33 should automatically be generated. The extract of cases generated for 2019 was submitted to support this position. However due to the shortcoming noted in the analysis of c.33.1 above reviewers have concluded that Botswana does not keep and maintain comprehensive statistics on ML/TF prosecutions, convictions as well as on provisional measures and confiscations. They are not sufficiently maintained in a comprehensive manner to enable Botswana to monitor the effectiveness and efficiency of its AML/CFT regime.
67. In view of the forgoing Reviewers propose that the **Botswana is re-rated Largely Compliant with Recommendation 33.**

3.1.11. Recommendation 34- Guidance and Feedback (Rated from NC to PC under the 1st FUR – re-rated LC)

68. The MER identified the following deficiencies: With the exception of NBFIRA, all supervisory authorities have not yet provided any meaningful guidance and

feedback to their supervised entities. Botswana reported progress in addressing these deficiencies under its 1st FUR. However, it was recommended in the 1st FUR that guidelines should be enhanced to provide more information on the implementation of the goAML system as all reporting entities raised concerns regarding the challenges in implementing some of the requirements of the goAML reporting tool and that more guidance was also required on ML/TF risk assessment, detection of unusual and suspicious transactions. Furthermore, there was a significant need for FIA's guidance in sensitising all other supervisors especially DNFBP sector supervisors on their AML/CFT supervisory obligations.

69. To address the above recommendations, the FIA conducted training on the use of goAML since 2018. Although there is no indication that there is a written guidance on goAML, FIA has so far trained the following identified specified parties:
 - Bureau de change; MVTs; casino; insurance brokers; banks; Revenue Authority and dealers in precious and semi-precious stones.
70. In addition to this, the FIA issued a Directive and Guidance Note to car dealers, semi-precious stones and reporting entities under the supervision of the FIA on how to conduct risk assessment. FIA has also provided guidance on ML/TF risk assessment to NPOs, dealers in precious metals, legal practitioners and real estate agents. Furthermore, FIA also reviews and provides comments on AML/CFT policies developed by supervised entities. In recognition of the need for risk-based supervision knowledge among the different AML/CFT supervisors, in particular, the DNFBP supervisors, the FIA facilitated an in-country training on risk-based supervision in May 2019. The training was conducted by a consultant. Furthermore, FIA has been reviewing and providing comments on RBS manuals developed by DNFBP supervisors. However, the deficiency in relation to lack of guidance on detection of unusual and suspicious transactions has not been addressed.

Weighting and conclusion

71. The authorities have addressed the outstanding deficiencies for c.34.1 save that the deficiency in relation to lack of guidance on detection of unusual and suspicious transactions has not been addressed. Botswana has not also indicated whether there is a written guidance on goAML.
72. Botswana is re-rated **Largely Compliant with Recommendation 34**.

3.1.12. Recommendation 35- Sanctions (Rated from NC to PC under the 1st FUR – no re-rating)

73. In its MER Botswana was rated NC with R. 35 and re-rated to PC under 1st FUR. The main deficiencies were: Botswana's current legal framework did not provide for sanctions for violations of R. 6 and R. 8 as the legal framework to implement these Recommendations is not yet in place and sanctions on preventive measures provided in the FI Act did not cover violations by directors and senior management of reporting entities and some of the sanctions are not dissuasive and proportionate. Although Botswana amended its laws to address the deficiency, it was noted under 1st FUR that the amendment did not sufficiently address the shortcoming.
74. Among outstanding deficiencies for c.35.1 was that the legal and regulatory framework for implementation of requirements of R.6 did not provide for sanctions

for non-compliance with the obligation to freeze funds without delay. Botswana has not amended its Counter-Terrorism Act or Regulations implementing targeted financial sanctions to introduce a specific sanction for this violation. In relation to Recommendation 8, Botswana has not provided information which could assist in determining whether or not NPOs are liable to effective, proportionate, and dissuasive sanctions for failure to comply AML/CFT requirements.

75. As regards applicability of criminal sanctions against a reporting entity, Reviewers examined the provision of sections 11, 12, 14, 15, 16, 17, 21, 22, 23, 25, 31, 33, 34, 35, 37,41, 43,46, 51, 53, of the Financial Intelligence Act, 2019 and noted that the sanctions therein are applicable for failure to comply with AML/CFT requirements of Recommendations 9-23. However, sanctions applicable against a reporting entity are administrative in nature as they are imposed by a supervisory authority. Thus, the identified deficiency on criminal sanctions has not been addressed. As regards applicability of the above sanctions to directors and senior managers, it appears that only a person responsible for ensuring compliance by a specified party or accountable institution can be sanctioned should he or she negligently fail to take such measures as are reasonably necessary to ensure such compliance. Such failure or negligence attracts a criminal penalty for a fine not exceeding P250 000, or imprisonment for a term not exceeding five years, or to both [s.43 of the FIA]. Other than the compliance officer the above cited provisions do not appear to apply to senior managers or directors of FIs or DNFBPs who may have breached or contravened provisions cited herein. **Hence, c.35.2 has been partly met.**

Weighting and conclusion

76. There are outstanding shortcomings on how the country is able to sanction failure to freeze without delay and without notice in relation to requirements of Recommendation 6 as well as, to sanction NPOs that fail to comply with AML/CFT requirements of Recommendation 8. In addition, there are no criminal sanctions against a reporting entity and that the above cited sanctions are not applicable against senior managers or directors of FIs and DNFBPs save that only section 43 of FI Act 2019 provides sanctions that can be applicable against a person responsible for ensuring compliance with obligations in the Act [c.35.2]. Deficiencies relating to R. 6 and R.8 have been given a significant weighting when considering the overall rating of R.35.
77. Due to these shortcomings **PC rating of Recommendation 35 is retained.**

IV. CONCLUSION

78. Overall, Botswana has made progress in addressing deficiencies in technical compliance identified in its MER to justify re-rating of Recommendations 9 (re-rated PC in the 1st FUR) to Compliant, Recommendations 13 (re-rated PC in the 1st FUR), 16 (re-rated PC in the 1st FUR), 18 (originally rated PC), 22 (originally rated NC), 33 and 34 (initially rated PC) to Largely Compliant. Due to moderate shortcomings in Recommendations 19, 25, 26 28 and 35 a partially complaint (PC) rating was warranted.

79. Considering progress made by Botswana since the adoption of its 4th FUR in November 2020, its technical compliance with the FATF Recommendations has been revised as shown in Table 4.1 below.

Table 4.1. Technical Compliance ratings, April 2021

Recommendations and Corresponding Ratings													
1	2	3	4	5	6	7	8	9	10	11	12	13	14
LC	PC	C	LC	C	LC	LC	NC	PC C	LC	LC	LC	PC LC	NC
15	16	17	18	19	20	21	22	23	24	25	26	27	28
PC	PC LC	N/A	PC LC	NC PC	C	LC	NC LC	LC	PC	PC PC	PC PC	C	PC PC
29	30	31	32	33	34	35	36	37	38	39	40		
LC	LC	LC	LC	PC LC	PC LC	PC PC	C	LC	C	LC	LC		

Note: Four technical compliance ratings are available: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

80. Botswana will remain in enhanced follow-up and will continue to inform the ESAAMLG of the progress made in improving and implementing its AML/CFT measures.