Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

February 2010

Kingdom of Swaziland

The Kingdom of Swaziland is a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). This evaluation was conducted by the ESAAMLG and was adopted as a 1st mutual evaluation by its Task Force of Senior Officials on 6 April 2011 and approved by its Council of Ministers on 8 September 2011.

Table of Contents

ACRONYMS

AFU	Asset Forfeiture Unit
AG	Attorney General
AML	Anti-Money Laundering
AML/CFT Terrorism	Anti-Money Laundering/Combating of the Financing of
AML Guide	Anti-Money Laundering Guide, 2001
BSD	Banking Supervision Department
CBS	Central Bank of Swaziland
CDD	Customer Due Diligence
CID	Criminal Investigations Department
CISNA Authorities	Committee of Insurance, Securities and Non-bank financial
CMA	Common Monetary Area
CTF	Combating the Financing of Terrorism
DCEO	Directorate on Corruption and Economic Offences
DNFBPs	Designated Non-Financial Businesses and Professions
DPP	Director of Public Prosecution
"E"	Emalangeni
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
EXCON	Exchange Control Department
FATF	Financial Action Task Force
FIA	Financial Institutions Act, 2005
FIU	Financial Intelligence Unit
FT	Financing of Terrorism

GDP	Gross Domestic Product
IAIS	International Association of Insurance Supervisors
INTERPOL	International Criminal Police Organisation
KYC	Know-Your-Client
Merida Convention	UN Convention against Corruption
ML	Money Laundering
MoU	Memorandum of Understanding
MVT	Money or value transfer
NPO	Non-Profit Organisation
OAG	Office of Attorney General
ODDP	Office of the Director of Public Prosecutions
OEM	Other Enforceable Means
Palermo Convention 2000	UN Convention against Transnational Organised Crime,
PEP	Politically Exposed Person
RILO Offices	World Customs Organisation Regional Intelligence Liaison
RIRF	Registrar of Insurance and Retirement Funds
SACU	Southern African Customs Union
SADC	Southern African Development Community
SAFAC	Southern African Forum Against Corruption
SARPCCO Organisation	Southern African Regional Police Chiefs Co-operation
STR	Suspicious Transaction Report
SWIPPS	Swaziland Inter-Bank Payment System
TF	Terrorist Financing
TF Convention Financing	International Convention for the Suppression of the

	Terrorism, 1999
UN	United Nations
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
UNSCR	United Nations Security Council Resolution
Vienna Convention	UN Convention against Illicit Traffic in Narcotic Drugs
	Psychotropic Substances, 1988
WCO	World Customs Organisation

PREFACE

Information and Methodology Used For The Evaluation of the Kingdom of Swaziland

The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of the Kingdom of Swaziland was 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 Methodology 2004[1]. The evaluation was based on the laws, regulations and other materials supplied by the Kingdom of Swaziland, and information obtained by the evaluation team during its on-site visit to the Kingdom of Swaziland from 15 – 26 February 2010, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant agencies and the private sector in the Kingdom of Swaziland. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

The evaluation was conducted by an assessment team, which consisted of members of the ESAAMLG Secretariat and ESAAMLG experts in criminal law, law enforcement and regulatory issues: Mr. Phineas R Moloto, Financial Intelligence Unit/Financial Sector Expert and Mr. Joseph Jagada, Law Enforcement Adviser from the ESAAMLG Secretariat; Ms Judy Nyamuchanja, FIU Expert**,** Financial Intelligence Inspectorate and Evaluation Unit (Zimbabwe)**;** Mr Sammy Chilunga, Financial Expert, Reserve Bank of Malawi (Malawi); Mr Selestine Some, Financial Expert, Bank of Tanzania (United Republic of Tanzania)**;** Mr Refiloe Ramoholi, Law Enforcement Expert, Directorate on Corruption and Economic Offences (The Kingdom of Lesotho), and Ms Dorcas Odour, Legal Expert, Attorney General's Office (Kenya). Ms Amina Mwenda from the ESAAMLG Secretariat provided administrative support to the team during the onsite. The experts reviewed the institutional framework, the relevant AML/CFT 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 (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in the Kingdom of Swaziland as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out the Kingdom of Swaziland's levels 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).

[1] As updated in February 2008

The ESAAMLG Secretariat and the evaluation team would like to express their gratitude to the authorities in the Kingdom of Swaziland for their cooperation and hospitality throughout the evaluation mission.

Executive Summary

1. Background Information

1. This mutual evaluation report summarises the anti-money laundering and combating of financing of terrorism (AML/CFT) measures in the Kingdom of Swaziland as observed during the onsite visit which took place on 15 – 26 February 2010 and two months thereafter. The report describes and analyses the measures in place and provides recommendations on how certain aspects of the AML/CFT system could be strengthened. It also sets out the levels of compliance obtained by the Kingdom of Swaziland with the Financial Action Task Force (FATF) 40 Recommendations on money laundering and 9 Special Recommendation on terrorist financing, (See the attached table on the Ratings of Compliance with the FATF Recommendations).

2. The Kingdom of Swaziland is a small landlocked developing country which is bordered on the north, west and south by the Republic of South Africa and on the east by the Republic of Mozambique. It has a small-export oriented diversified economy which is closely linked to the South African economy. The country is part of a monetary union with the Republic of Namibia, the Republic of South Africa and the Kingdom of Lesotho. The South African currency (the Rand) circulates freely on par with these countries' national currencies within the union.

3. The financial sector in the Kingdom of Swaziland is small and dominated by subsidiaries of South African financial institutions. The dominant financial activity is commercial banking in which three of the four banks are subsidiaries of South African banks. The economy is predominantly cash-based. In order to reduce reliance on cash transactions, the Government of Swaziland in partnership with the banking sector is putting in place policy framework and infrastructure to promote access to financial services especially by low income earners.

4. The small size and proximity of the country to major cities in Mozambique and South Africa makes it a strategic transit country for illegal operations into these countries and Southern Africa at large. The major generators of proceeds include trafficking in human beings and drugs, counterfeiting of goods and currency, fraudulent cross-border bank transfers, tax and customs evasion, forgery, and theft. Proceeds generated through corrupt activities are also a major concern. As a result of the geographical location and economic profile of the country, the major crimes generating proceeds have manifestations of organised cross-border operations with the illicit funds invested within the monetary union, also known as the Common Monetary Area (CMA).The Kingdom of Swaziland is committed to addressing these challenges through various initiatives such as the promotion of law enforcement coordination and cooperation within and

outside of the country, setting up of institutions to promote good governance and transparency in both public and private sector spheres. As for risk, money laundering is considered to be higher than terrorist financing and the authorities expect the latter to remain low for the foreseeable future.

5. Although the Kingdom of Swaziland started implementing AML measures in 2001 and later financing of terrorism in 2008, the development of these measures remain at infancy stage owing mainly to inadequate structures and resources to drive the process. The country is however making significant efforts to develop appropriate structures through changes to the national AML/CFT framework.

2 Legal Systems and Related Institutional Measures

6. The offence of money laundering is criminalised in the Kingdom of Swaziland under the Money Laundering (Prevention) Act, 2001 and the Prevention of Corruption Act, 2006. The essential elements creating the offence of money laundering provided for under the Money Laundering (Prevention) Act are largely consistent with the requirements of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) and the 2000 United Nations Convention against Transnational Organised Crime (Palermo Convention). The Money Laundering (Prevention) Act however, does not provide the purpose or motive for which the person committing the offence of money laundering will be converting or transferring the proceeds of the crime. The *Second Schedule* to the Money Laundering (Prevention) Act provides a list of predicate offences but it does not cover all the categories of offences provided under the FATF Glossary. The categories of offences not covered in the list include the acts of participating in an organised criminal group and racketeering, human trafficking and migrant smuggling, sexual exploitation including sexual exploitation of children, corruption and bribery, murder and grievous bodily harm, smuggling, piracy, insider trading and market manipulation , environmental crimes and terrorist financing. In terms of the anti-money laundering laws of the Kingdom of Swaziland, a conviction for a predicate offence is not required before charging someone with a money laundering offence and there is no distinction between the person committing the predicate offence and the one who later launders the proceeds from that crime. The ancillary offences covered under the Money Laundering (Prevention) Act are consistent with those covered under the above two conventions. The courts have extraterritorial jurisdiction on all money laundering cases. Natural and legal persons can both be charged for money laundering. Knowledge of the offence can also be proved through objective circumstantial evidence. Although the law on anti-money laundering was enacted in the Kingdom of Swaziland in 2001, up to the time of the on-site visit in February 2010, there had not been any prosecutions on money laundering, making it difficult to determine the effectiveness of the anti-money laundering regime in the

Kingdom. The Kingdom of Swaziland has not yet ratified the Palermo Convention.

7. Offences relating to the financing of terrorism are criminalised under Part III of the Suppression of Terrorism Act, 2008. Sections 6-10 of the Suppression of Terrorism Act extensively cover acts criminalised under the Convention on the Suppression of the Financing of Terrorism. The criminalisation of provision or collection or possession of any funds or property with the intention or knowledge or having reasonable grounds to believe that such funds or property may be used in full or in part to carry out a terrorist act by any person is also included. The term terrorist act is defined under the Act to cover a wide range of conduct including any acts or omissions that constitute an offence under any of the counter terrorism conventions that the Kingdom of Swaziland has acceded to. The Kingdom of Swaziland has acceded to almost all the conventions and protocols which are annexes to the Convention on the Suppression of the Financing of Terrorism. The term terrorist group is used in the Act and is defined to include an entity which one of its activities or purposes includes the committing of or facilitation of the commission of a terrorist act, or a specified entity. An entity is defined to mean a person, group, trust, partnership, fund or any unincorporated association or organization. The definition of entity used in the Suppression of Terrorism Act is broad enough to include any terrorist organization but the term person used in the definition is not defined in the Act to know whether it is being given its ordinary or legal meaning in this Act. The acts of providing funds or property are two distinct offences. Although the term property is broadly defined to include funds, the term funds is not defined to determine whether it meets the definition under the Convention for the Suppression of the Financing of Terrorism. Whereas, the term property under the Act is defined to include funds the term funds does not include property which creates difficulties since the provision of either of the two is a separate offence on its own. In proving the offence of terrorist financing it is not a requirement that the funds or property should actually have been used to carry out or attempt to carry out a terrorist act or be linked to a specific terrorist act. Under the *Second Schedule* to the Money Laundering (Prevention) Act, terrorist financing is not a predicate offence to money laundering. A wide range of ancillary offences also apply to the offence of terrorist financing. The penalty provisions for terrorist financing offences under the Suppression of Terrorism Act provide for a term of imprisonment not exceeding 15 years and the court upon conviction of the person may also order forfeiture of any property connected to the offence. At the time of the on site visit no cases had been prosecuted under the Suppression of Terrorism Act, therefore the effectiveness of the measures under the Act could not be determined.

8. Although the Suppression of Terrorism Act provides for the publishing of notices issued by the United Nations Security Council in terms of

S/RES/1267 (1999) and S/RES/1373 (2001) through Government Gazettes, at the time of the on site visit none of such notices had been gazetted neither were there any mechanisms put in place to ensure compliance with such notices.

9. The Money Laundering (Prevention) Act, the Suppression of Terrorism Act, the Criminal Procedure and Evidence Act and the Serious Offences (Confiscation of Proceeds) Act provide for provisional measures to prevent disposal, transfer or dealing in property subject to confiscation and forfeiture of property, proceeds or instruments derived from or connected to an offence. The scope of application of such measures is however limited as not all predicate offences to money laundering are criminalised. Forfeiture is conviction based and civil forfeiture is not provided for. Applications for provisional measures freezing or seizing of property to prevent its disposal, transfer or dealing under the Money Laundering Act can be made ex-parte or as urgent applications without prior notice. The Money Laundering (Prevention) Act also provides for forfeiture of property of corresponding value and protection of the rights of bona fide third parties. Although the legislation provides broad measures for the authorities to apply provisional measures and forfeiture, the effective use of these provisions could not be assessed as no proper statistics of cases were kept.

10. There is no financial intelligence unit in the Kingdom of Swaziland. Although the CBS carries out functions of a financial intelligence unit (FIU) as Supervisory Authority under the Money Laundering Act there is no specific structure with capacity to properly undertake the functions. The Suppression of Terrorism Act designates the Police and FIU to receive STRs on financing of terrorism. It does not have a direct obligation requiring the Police and FIU to analyse and disseminate such reports to other law enforcement agencies. The Kingdom of Swaziland has allocated resources to establish an FIU in anticipation of enactment of the Money Laundering and Financing of Terrorism (Prevention) Bill which makes provision for this unit.

11. The Royal Swaziland Police and the Anti-Corruption Commission are the two main agencies of law enforcement mandated to investigate the offence of money laundering. The Royal Swaziland Police is further obligated to investigate terrorist financing offences. The Royal Swaziland Police has relatively broad investigative powers including the use of special investigative techniques. Money laundering and terrorist financing investigations are the responsibility of the Fraud and Commercial Crimes Unit under the Criminal Investigations Department. Officers in the Royal Swaziland Police, according to the authorities are on average well remunerated but have not received adequate training in investigating money laundering and terrorist financing offences. This was confirmed by the low number of money laundering cases that had been investigated or whose investigations were still pending at the time of the on-site visit. Only two cases were reported to the assessors.

12. The low number of money laundering cases that had been investigated by the Royal Swaziland Police was not consistent with the period of nine years that the Money Laundering (Prevention) Act had been in existence (was enacted in 2001). In order to facilitate exchange of information and technical assistance the Government of the Kingdom of Swaziland entered into a cooperation memorandum of understanding with the Government of the Republic of South Africa. The Royal Swaziland Police has also entered into memoranda of understanding to enable cooperation with the Police Forces of the Kingdom of Lesotho and Mozambique.

3. Preventive Measures – Financial Institutions

13. The AML/CFT control measures applicable to financial institutions (referred to as "Accountable Institutions") are set out in the Money Laundering (Prevention) Act, 2001, and the Suppression of Terrorism, 2008. The Acts create scope issues as there are limited AML/CFT obligations and list of financial institutions covered which is inconsistent with the FATF Standards. In general financial institutions have taken measures to implement AML/CFT obligations albeit at different levels between the local and subsidiaries of foreign financial institutions. The latter rely on AML/CFT Group Policy guidelines.

14. The implementation of effective AML/CFT obligations by financial institutions is undermined by the strategic deficiencies resulting from the limited number of AML/CFT obligations. The following obligations are not covered: customer due diligence measures, politically exposed persons, cross-border correspondent relationships, non-face to face relationships, reliance on third parties, internal rules, wire transfers, and transactions from countries which do not or insufficiently apply the FATF Standards and branches and subsidiaries. To close these gaps, some of the uncovered AML requirements are included in the Anti-Money Laundering Guide, 2001. However, the Guide lacks the force of law and is not considered "other enforceable means", which means that the strategic deficiencies are still not addressed by the current AML/CFT framework. The provision that override secrecy in the Money Laundering (Prevention) Act subjects information held by financial institutions to secrecy provisions in any other banking law. The authorities have taken significant steps to address these deficiencies as demonstrated by the broad obligations set out in the Money Laundering and Financing of Terrorism (Prevention) Bill, 2009 which is in the final stages of enactment. It is essential that the Kingdom of Swaziland should enact this Bill as a matter of urgency and take necessary steps to effectively implement comprehensive AML/CFT obligations consistent with the FATF Standards.

15. Financial institutions are subject to recordkeeping obligations that are not enforceable as there is no offence and sanction for failure to comply. In addition, the period for which records must be kept following termination of a transaction or a relationship is inconsistent with the five years minimum required by the FATF Standards. More importantly, the

effectiveness of the record keeping requirement is severely compromised by the absence of a direct obligation in law or regulation to perform customer due diligence, including customer identification and verification, which is central to generation of necessary information to be kept and maintained by financial institutions. This deficiency has domino effect on effective implementation of a number of criteria of the FATF Recommendations. Financial institutions should be required to keep and maintain transaction or relationship records for a minimum period of five years following termination of a transaction or a relationship.

16. There is specific requirement for financial institutions to pay special attention to complex, unusual or large transactions, which is only being implemented by subsidiaries of foreign financial institutions. It does not however require financial institutions to pay special attention to transactions that have no apparent or visible economic or lawful purpose. In contrast to subsidiaries of foreign financial institutions, the local financial institutions treat all transaction the same irrespective of the nature of the transaction conducted and relationship established with a customer. This represents a potential risk for ML/TF and requires effective supervision and enforcement to ensure that money launderers and terrorist financiers do not find an opportunity to target local financial institutions.

17. The Kingdom of Swaziland has no direct obligation for financial institutions to report suspicious transactions when there is reasonable ground to suspect or know that funds are proceeds of a criminal activity. Instead, the present reporting regime requires financial institutions to only report suspicion following examination of unusual or complex transactions. It also has indirect reporting requirement whereby financial institutions are prohibited from carrying out a transaction when there is reasonable ground to suspect or know that the funds could be proceeds of a serious criminal activity until a report is transmitted to the CBS. There is a scope issue for ML/TF reporting purposes due to the inadequate list of designated predicate offences to money laundering. To rectify this deficiency, the authorities have taken steps to set up a direct STR reporting obligation under the Money Laundering and Financing (Prevention) Bill, 2009 and immediate steps should be undertaken to enact it and ensure effective implementation.

18. With the exception of banks, all financial institutions are not aware of the ML/TF reporting obligations. While local financial institutions do not have STR reporting mechanisms in place, subsidiaries of foreign financial institutions apply STR reporting guidelines of their respective AML/CFT Group Policy in addition to those provided by the CBS. The CBS STR reporting guidelines do not cover TF reporting and no such reports were submitted to the Police and FIU as required by the Suppression of Terrorism Act. In the last four years, only banks submitted STRs (127 in

total number) to the CBS. Only one STR was disseminated to the Police for investigation in 2009.

19. Financial institutions and employees, staff, directors, owners or other representatives enjoy criminal, civil and/or administrative immunity when making a report in good faith in compliance with the reporting obligations. For the reporting system to be effective, all financial institutions should be subject to AML/CFT reporting supervision for compliance and that, at minimum, all designated predicate offences to money laundering should be covered. Further, the authorities should undertake outreach programmes to familiarize all financial institutions with the reporting obligations.

20. The tipping off prohibition applies only to financial institutions in instances where there is investigation of a money laundering offence. There is no tipping off prohibition regarding suspicious transactions on terrorist financing. Financial institutions and its staff should be prohibited from tipping off to ensure the integrity of the STR reporting regime in the Kingdom of Swaziland especially at this nascent stage of its AML/CFT development.

21. Financial institutions are not expressly prohibited from entering into, or continuing, corresponding banking relationships with shell banks. In addition, no requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. However, the risk is mitigated by the licensing requirements which effectively prevent the establishment of shell banks in the Kingdom of Swaziland. Financial institutions should be directly prohibited from entering into any form of a relationship with shell banks.

22. There are no specific requirements for financial institutions to implement internal controls, compliance and audit to prevent money laundering and terrorist financing. While local financial institutions have no measures in place, subsidiaries of foreign financial institutions have developed and implemented internal control and procedures to comply with their respective AML/CFT Group Policy. It is essential that financial institutions are required to effectively implement internal control and procedures to prevent money laundering and terrorist financing.

23. The Money Laundering (Prevention) Act and the Suppression of Terrorism Act do not designate any supervisory/regulatory institution with specific functions and powers to ensure compliance with the AML/CFT obligations. The powers of the CBS under the Money Laundering (Prevention) Act are restricted to carrying out or assisting in the investigation of a financial institution for contravention of the Act. The CBS resorts to general prudential supervision powers provided for in other laws to ensure implementation of AML/CF procedures. Due to capacity constraints, the

CBS is only focusing on supervision of banking operations at the expense of the entire financial institutions. This has led to uneven implementation of AML/CFT obligations in the financial sector of the Kingdom of Swaziland. In order to ensure that all financial institutions effectively implement AML/CFT systems, there is need to designate supervisory authorities with adequate functions, powers of AML/CFT supervision and enforcement and provide them with sufficient resources.

4. Preventive Measures – Designated Non-Financial Businesses and Professions

24. Only real estate agents are subject to AML obligations under the Money Laundering (Prevention) Act. This means that dealers in precious stones and metals, lawyers, casinos and trust and company service providers are not subject to AML/CFT obligations. In order to address the potential ML/TF risks, all DNFBPs will be subject to AML/CFT obligations under the Money Laundering and Financing of Terrorism (Prevention) Bill, 2009.

5. Legal Persons and Arrangements & Non-Profit Organisations

25. The Kingdom of Swaziland relies on a registry of companies system. A company can only be incorporated in the Kingdom of Swaziland, if it is registered in terms of the Companies Act with the Registrar of Companies. The Registrar of Companies administers the Companies Act on behalf of the Minister of Trade and Commerce. The registration is to ensure the legal protection of foreign investors and local companies against any unlawful use. Applications for registration of companies are done by legal practitioners and the use of company service providers is not common in the Kingdom of Swaziland. The companies as a condition for registration are required to furnish the Registrar's Office with information of where the company will be operating from including its registered office. The requirement applies to both local and foreign companies intending to register in the Kingdom of Swaziland. Whilst it is a requirement to keep an updated register on directors and members (shareholders), there is no restriction on who can become a shareholder, both natural and legal persons can become shareholders. The directors who manage the companies are required to be natural persons but there are no provisions restricting a body corporate becoming a director or being nominated as nominee shareholder. In circumstances where that happens the Registrar of Companies does not have an obligation under the Companies Act to obtain and keep information on the directors or shareholders or beneficial owners of the corporate body as required under the FATF standards. The legal practitioners who register companies do not do any due diligence on the information which is supplied to them by their clients to register the companies particularly on the beneficial owners, where there is representation by nominee shareholders and legal control of the companies. The Registrar of Companies also does not verify this information. The end result is that although information kept at the Registrar's Office might be

easily accessible to law enforcement authorities and other competent authorities, such information might not be accurate.

26. The use of nominee shareholders might also have the effect of distorting the investigative trail as the company's share registry will not have accurate information on the beneficial ownership. Although this was said not to be a common practice in the Kingdom of Swaziland, the possibility of issuing of share warrants to bearers also was of concern as there were real possibilities that the transfer of the share warrants could eventually obscure beneficial ownership and control, making the share warrants vulnerable to money laundering or terrorist financing.

27. Trusts are also registered with the Registrar of Companies and the requirements for such registration are the same as those for registering companies. The legal practitioners who register trusts and the office of the Registrar of Companies have got no obligation to verify the settlers, trustees, beneficiaries and protectors of trusts. Similarly with trusts like with the companies, there is no requirement for the legal practitioners to retain records of the details of the trust and the legal arrangements pertaining to the trust. Although the Registrar of Companies registers trusts it does not regulate them. The concerns which affect the information which is kept by the Registrar relating to companies equally apply to the information on trusts. At the time of the on-site visit the office of the Registrar of Companies had not been fully computerized which affected the updating of records, accuracy of the records and accessing of information by the competent authorities in a timely manner. The assessors were of the view that more steps should be taken to enhance the verification of information submitted to the Registrar of Companies, including that of beneficiary owners at the time of registering the companies or trusts and upon subsequent updating of the information.

28. There is no NPO sector legal framework in the Kingdom of Swaziland. The Coordinating Assembly of Non-Governmental Organisations (CANGO) is the only voluntary umbrella body with a number of Non-Governmental Organisations (NGOs) as members. The only control exerted on NGOs by Government is registration as section 21 companies with the Registrar of Companies. Consequently, the NPO sector is not regulated/supervised for compliance with CFT obligations and this poses a potential risk of abuse by terrorist financiers. There is no awareness of potential risks of terrorist financing by the sector and the authorities should undertake necessary measures to ensure that all NPOs are subject to and effectively implement CFT requirements.

6. National and International Co-operation

29. There is National Task Force on AML/CFT which consists of government agencies and private sector representatives. However, this structure has not

resulted in national coordination and cooperation due mainly to lack of resources and clearly defined programmes from the Ministry of Finance, which is the lead agency. Under the Money Laundering and Financing of Terrorism (Prevention) Bill, 2009 the task force will be legally mandated lead national AML/CFT policy formulation and implementation.

30. The Kingdom of Swaziland acceded to the Vienna Convention on the 10th of November 1992 and, the Convention on the Suppression of the Financing of Terrorism in 2003 and, only signed the Palermo Convention on the 14th of December 2000 but has not yet ratified it. Although Swaziland has not yet ratified the Palermo Convention, most of the measures to the Convention and under the Vienna Convention have been implemented to a large extent. The implementation of the United Nations Security Council S/RES/1267 and S/RES/1373 under the provisions of the Suppression of Terrorism Act had not yet been done at the time of the on-site visit.

31. The Criminal Matters (Mutual Assistance) Act enables a wide range of mutual legal assistance to be offered by the competent authorities of the Kingdom of Swaziland. The Minister of Justice is the Competent Authority responsible for offering mutual legal assistance but has delegated that function to the Director of Public Prosecutions' Office. The conditions under which mutual legal assistance can be provided in terms of the Criminal Matters (Mutual Assistance) Act are not overly restrictive, or unreasonable, or prohibitive as to hinder provision of such assistance. The Minister has the powers to use his discretion in assessing a request which does not meet the dual criminality requirements. The only restriction in terms of the Criminal Matters (Mutual Assistance) Act is that mutual legal assistance can only be provided to countries which have been designated in terms of the Act.

32. The Money Laundering (Prevention) Act provides for mutual legal assistance to courts and competent authorities of other jurisdictions in matters relating to identification, tracing, freezing, seizing or forfeiture of property, proceeds, or instruments connected to money laundering and also enforcing judicial orders of judgments that provide for forfeiture of such assets. It also requires the courts and other competent authorities to take appropriate measures in assisting courts or competent authorities of other jurisdictions in respect of civil, criminal, or administrative investigation, prosecution or proceedings relating to money laundering. However, such kind of assistance can only be provided to countries which have entered into mutual legal assistance treaties with the Kingdom of Swaziland.

33. Extradition is provided for under the Extradition Act, which limits extradition only to countries that have an extradition treaty with the Kingdom of Swaziland, and the Fugitive Offenders Act, which provides for extradition only to countries which have been designated under that Act. The conditions of extradition under the Fugitive Offenders Act are not

stringent and the same measures of extradition which would apply to foreign nationals also apply to Swazi nationals. Extradition under the two Acts requires that the offence be recognized in both the Kingdom of Swaziland and the requesting jurisdiction.

34. Mutual legal assistance and extradition relating to offences of financing of terrorism can be offered in terms of the Suppression of Terrorism Act. Under Part VIII of the Act, counter terrorism conventions to which the Kingdom of Swaziland is a party can be used as a basis for mutual legal assistance and extradition. That Part of the Act further provides that offences under the Act cannot be considered as political offences for purposes of extradition.

35. The effectiveness of the mutual legal assistance and extradition regimes in the Kingdom of Swaziland could not be determined as there were no proper statistics of such matters kept by the authorities and where cases were cited by the authorities there was no adequate information relating to the assistance given to enable the extent of effectiveness to be determined.

7. Resources

36. The Government of Swaziland has committed resources to implement national AML/CFT programmes. However, the resources allocated to all relevant authorities are not sufficient to ensure effective implementation of AML/CFT requirements consistent with the FATF Standards. There is urgent need for adequate provision of resources to law enforcement agencies, supervisory/regulatory bodies, formation of FIU and any other relevant body responsible for implementation of national AML/CFT programmes.

37. The authorities do not maintain comprehensive statistics useful for assessment of effectiveness of the AML/CFT system. In order to gauge the progress made to combat money laundering and terrorist financing, all relevant stakeholders should maintain detailed statistics in relation to implementation of measures against ML/TF.

Table 1: Ratings of Compliance with FATF Recommendations
Table 3: Authorities' Response to the Evaluation (if necessary)

1. GENERAL

1.1 *General information on the Kingdom of Swaziland*

1. The Kingdom of Swaziland is a developing country. It is a small landlocked country which is bordered on the north, west and south by the Republic of South Africa and on the east by the Republic of Mozambique. The total land mass of the Kingdom of Swaziland is 17,360 square kilometres. The population was approximately 1, 1 million in 2008, with about 25% in urban areas. GDP per capita was estimated at USD 4, 400.

2. The Kingdom of Swaziland is part of a monetary union with the Kingdom of Lesotho, Republic of Namibia and Republic of South Africa in which the South African Rand freely circulate on equal value with these countries' currencies. The national currency of the Kingdom of Swaziland is Lilangeni[2] (denoted "E") and is pegged to the South African Rand.

Economy

3. The country has a small export-oriented diversified economy. The economy is closely linked to that of South Africa. The Kingdom of Swaziland sources more than 90 percent of its imports from and sends about 70 percent of its exports to South Africa. Real economic growth in the Kingdom of Swaziland has lagged behind its neighbours averaging 2.8% since 2001. Unemployment was estimated at 40 percent in 2009. The Kingdom of Swaziland has concentration of economic activities by location which are based in Manzini, Mbabane and Matsapha. Most of high value tourist facilities such as hotels and airport are located in the three areas.

4. The economic structure of the country by sectoral contribution to GDP shows dominance of the service sector, followed by manufacturing. The financial sector contributes around 3.4 percent to GDP, dominated by commercial banks and insurance business.

System of Government

5. The Kingdom of Swaziland is a Kingdom with the King being the Head of State and of Government in line with the Constitution, 2005. The Prime Minister, who is appointed by the King, is the Head of the Executive. Decisions are taken by the King in Council (i*Ngwenyama*).

[2] The exchange rate was E7.5 to the US Dollar at the time of the onsite. The plural of Swazi Lilangeni is Emalangeni, denoted "E".

6. The Kingdom of Swaziland has a bicameral Parliament (Libandla) which consists of the Senate, which is the upper Chamber, and the House of Assembly. The Senate consists of 30 members, 10 of whom are appointed by the House of Assembly and the other 20 by the Head of State subject to certain requirements in the Constitution. The Senate is presided over by a President who is elected by the senators from amongst their number. The House of Assembly consists of 55 members elected by the people from the 55 constituencies (Tinkhundla) and 10 appointed by the Head of State. The House of Assembly is presided over by a Speaker who is elected by the members from amongst their number.

7. The Attorney General is an ex officio member of both Chambers. Laws come into force in the Kingdom of Swaziland once they have been passed by Parliament, assented to by the Head of State and published in the Gazette.

8. The King signed a new constitution in 2005 which encompasses a mixture of Swazi tradition (Tinkhundla) and western systems. Traditional local government structures start at the Chiefdom level with each Chiefdom headed by a Chief (Sikhulu). The appointment of a Chief is determined by the family council (Lusendvo) after which the appointment is blessed by the King. Within each constituency (Inkhundla) there are many chiefdoms. Each Inkhundla is headed by a headman (Indvuna) who is elected by the people of that constituency. Elections for members of Parliament, Councillors, Tindvuna, bucopho are held every five years.

9. The Kingdom of Swaziland is divided into four regions, namely, Hhohho, Lubombo, Manzini and Shiselweni with each region headed by a Regional Administrator appointed by the King.

10. Western style local government is effected through city councils, town councils and town boards (for smaller towns). Each local government area is divided into wards which are headed by Councillors. Each of the Councillors is elected by the people.

Legal and judiciary systems

11. The structure of the judiciary system in the Kingdom of Swaziland consists of the Supreme Court which is the highest court in the country, the High Court and the magistrates' court.

12. The Supreme Court is headed by a Chief Justice and is the highest court of appeal and also hears constitutional matters. The High Court has got inherent powers over all criminal matters in Swaziland. The High Court deals mainly with serious offences such as murder, treason and money laundering. It sits in Mbabane, with a compliment of about 11 judges headed by a Chief Justice who also sits in the Supreme Court. The magistrates' courts are spread throughout the four regions of the Kingdom of Swaziland and

have three hierarchies based on the sentencing jurisdiction. The Principal Magistrates Court have a sentencing jurisdiction of not more than ten years, followed by the Senior Magistrates Court with a sentencing jurisdiction of not more than 7 years and then the Junior Magistrates Court with a jurisdiction of not more than 2 years.

13. The Kingdom of Swaziland is a common law jurisdiction. The laws are not codified therefore its sources of law includes precedent, often referred to as case law or previous court decisions which provide guidance on matters of procedures during court proceedings and sentencing to other courts, constitutional provisions, statute law/legislation and established customary practices which form the basis of the Kingdom of Swaziland's customary law. Where there are no specific provisions of the law to enable handling of a specific matter then common law will apply.

14. The magistrates' court in the Kingdom of Swaziland have jurisdiction over most of the criminal cases except for serious cases such as murder, treason and money laundering. The Kingdom of Swaziland does not have specialised courts to handle specific crimes.

Transparency, good governance, ethics and measures against corruption

15. Discussions with government ministries and agencies revealed that there are transparency and governance concerns which are indicated by several corrupt practices across public and private sectors. Although the Kingdom of Swaziland's ranking of the Mo Ibrahim Index of African Governance[3] improved between 2009 and 2010, the country still ranked low at 25 out of 53 African countries. Furthermore, it ranked lower than the average Southern African regional ranking of 57 percent.

16. The government has taken measures to prioritise anti-corruption agenda across all spheres of government and the private sector. The Kingdom of Swaziland established an Anti-Corruption Commission as a statutory body in terms of the Prevention of Corruption Act to fight corruption and the laundering of the proceeds across the sectors of government and economy.

17. In order to promote good governance and integrity in different professions in the country, the government established statutory bodies to govern ethics and conduct. Of noteworthy are the Law Society of Swaziland and Swaziland Institute of Accountants established in terms of Legal Practitioners Act and

[3] The Mo Ibrahim Index of African Governance is funded by the Mo Ibrahim Foundation to monitor African governance levels using a number of different indicators to compile a country ranking year on year since 2007. One of the subcategory of measures is accountability and corruption which includes six indicators measuring corruption in general, transparency and the accountability of public officials, corruption among government and public officials, accountability, transparency, and corruption even in rural areas and prosecution of abuse of office.

Accountants Act, respectively. These bodies are legally mandated to regulate and promote integrity in these professions.

18. The Kingdom of Swaziland has further committed itself to implementing international measures that promote transparency, good governance, ethics and measures against corruption as evidenced by its membership to organisations such as the Eastern and Southern African Anti-Money Laundering Group and the Southern African Development Community which adopted an anti-money laundering stance to its trade and investment protocol.

19. Furthermore, the country is a state party to a number of international organisations which influenced national policy decisions that promote good governance and anti-corruption measures such as the United Nations (UN Convention Against Corruption) and the African Union (African Union Convention on Preventing and Combating Corruption).

20. Despite these initiatives, the country is still faced with a number of challenges including lack of clearly defined coordination processes amongst relevant government institutions/agencies; severe resources constraints and investigative capacity that continue to hamper effective setting up and implementation of transparency and good governance systems.

1.2 Situation of Money Laundering and Financing of Terrorism

21. The geographical location of the Kingdom of Swaziland makes it an attractive transit route for illegal trade into South Africa and the rest of Southern Africa region. Large parts of the country's borders are shared with South Africa. To the east, the country shares a relatively small border with Mozambique. The small size and proximity of the country to the commercial cities of Maputo (Mozambique) and Johannesburg (South Africa) makes it attractive to cross-border criminal activities.

22. The authorities have not undertaken ML/TF risk assessment to determine the level of vulnerability. Nonetheless, robbery, theft, fraud, drug trafficking, counterfeit currency/ goods, forgery, corruption, real estate, tax evasion and customs evasion are major sources of proceeds. In particular, fraudulent cross-border bank transfers, cheque, insurance claims and forged invoices as well as credit and debit card fraud are major crimes in the financial sector.

23. Money laundering is criminalized under the Money Laundering (Prevention) Act of 2001. The Act has not been tested due mainly to lack of technical expertise, institutional and other resources to effectively investigate money laundering related cases. Although most of the offences have some elements of money laundering, law enforcement agencies tended to opt for investigation of the predicate offences. There has only been one STR on money laundering disseminated in the past four (4) years, and is still under investigation by the Police.

24. Criminal operations in the country have manifestations of cross-border organised criminal groups. As a result, a large amount of proceeds involve cross-border transactions through banks, casinos, investment companies and savings and credit cooperatives. The proceeds are laundered through real estate, investment policies and schemes within and outside of the country.

25. A major challenge for the Kingdom of Swaziland is the lack of effective legislative and institutional framework to deal with ML/TF risks facing the country. Lack of resources, including investigative capacity as well as adequate policy direction, characterise the prevailing general money laundering and terrorist financing situation in the Kingdom of Swaziland.

26. The authorities are currently finalising the Money Laundering and Financing of Terrorism (Prevention) Bill, 2009 which will repeal the Money Laundering (Prevention) Act, 2001. Amongst others, the Bill makes provision for the establishment of a financial intelligence unit and seeks to forge closer national cooperation and coordination between government institutions involved in the fight against crime in general, money laundering and terrorist financing in particular within the Kingdom of Swaziland.

1.3 Overview of the Financial Sector and DNFBP

a) Financial sector

27. The financial sector in the Kingdom of Swaziland is small and concentrated. It is closely linked to that of South Africa. It is dominated by banking sector and distantly followed by the insurance sector.

Table 1: The structure of the financial sector, as at April 2010

Type of financial institution (*Sample table to be adapted as appropriate*)	**Number of Institutions**	**Total assets (E)**
Commercial banks	4	8,479,838,000
Life Insurance companies	5	577, 644, 000
Pension funds managers	6	10, 611, 770, 000
Money Service Businesses	-	-
Short term Insurance Companies	2	487, 264, 000

Banking

28. The banking sector consists of four commercial banks (foreign subsidiaries of South African banks and a Swazi bank). Swazi Bank is wholly-owned by Government. There is also Swaziland Building Society which offers public shares which can be used to obtain mortgage and vehicle finance facilities to its members only.

Table 2: Ownership of banks, as at April 2010, as of April 2010

Ownership	**Number owned**	**Percentage**

Foreign	1	100
State	1	100
Joint (State/Foreign)	2	40/60

29. The Central Bank of Swaziland (CBS) is the regulator/supervisor of the banking sector. This means that every financial institution wishing to carry on a business of providing financial services is licensed, regulated and supervised by the CBS, save insurance and retirement funds industry.

Table 3: Financial Activity by Financial Institution

	Financial Activity by Type of Financial Institution			
Type of Financial institutions (see the glossary of the FATF 40 Recommendations)	**Type of Financial Institution that performs this activity**	**AML Requirement (Accountable Institutions under Money Laundering Prevention Act, 2001)**	**CFT Requirement (Financial institutions under Suppression of Terrorism Act, 2008)**	**AML/CFT Supervisor/Regulator[4]**
Acceptance of deposits and other repayable funds from the public	Commercial banks Building Society bank	Yes Yes	Yes Yes	CBS CBS
Lending	Commercial banks Long term insurance companies – issue policy loans	Yes Yes	Yes Yes	CBS CBS
Financial leasing	Commercial banks Building Society bank	Yes Yes	Yes Yes	CBS CBS
Transfer of money or value	Commercial Banks Building	Yes Yes Yes	Yes Yes No	CBS CBS CBS

[4] There is no CFT designated supervisor/regulator for financial institutions.

	Society Bank Postal Office			
Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	Commercial Banks Building Society Bank Postal Office	Yes Yes Yes	Yes Yes No	CBS CBS None
Financial guarantees and commitments	Commercial Banks Building Society Bank	Yes	Yes	CBS
Trading in Money market instruments (cheques, bills, CDs, derivatives etc.)	Commercial banks	Yes	Yes	CBS
Trading in Foreign exchange	Commercial Banks	Yes	Yes	CBS
Trading in Exchange, interest rate and index instruments	Commercial Banks	Yes	Yes	CBS
Trading in Transferable securities	Securities dealers	Yes	Yes	CBS
Trading in Commodities	N/A	N/A	N/A	N/A
Participation in securities issues and the provision of financial services related to such issues	Commercial banks Securities dealers	Yes Yes	Yes Yes	CBS CBS
Individual and collective portfolio management	Asset managers Savings and Credit Cooperatives	Yes	Yes	Not designated
Safekeeping and administration of cash or liquid securities on	Commercial banks Custodian/trustee of CIS	Yes Yes	Yes Yes	CBS CBS

behalf of other persons				
Otherwise investing, administering or managing funds or money on behalf of other persons	Commercial banks Pension fund managers Fund managers	Yes Yes Yes	Yes Yes No	CBS CBS CBS
Underwriting and placement of life insurance and other investment related insurance	Insurers Insurance brokers Insurance agents	Yes Yes Yes	Yes No No	CBS CBS CBS
Money and currency changing	Commercial Banks	Yes	Yes	CBS

Insurance and retirement sector

30. The Registrar of Insurance and Retirement Funds (RIRF) is the regulator/supervisor of this sector. In the past, insurance and retirement funds entities were licensed and supervised by the CBS. All registered entities which existed before the RIRF were made to register under the Insurance Act and Retirement Funds Act to carry on business, respectively. Life insurance dominates the insurance business.

Table 4: Insurance and Retirement Funds Market Players, as of March 2009

Licensed entities	Number – FY 08/09	Number – FY 07/08
Insurers	6	5
Brokers	22	9
Corporate Agents	6	0
Individual Agents	53	18
Local retirement funds	33	3
Foreign retirement funds	11	0
Investment Managers	5	0
Fund Administrators	4	1

31. The table above shows that the sector has been experiencing a steady growth in terms of number of licensed/registered entities since the RIRF came into operation. It is worth noting that the 53 individual agents represent 3 major institutions.

32. In March 2009 the total assets of retirement funds was E667.7 billion, of which 81 percent was invested abroad. Similarly, 58 percent of the total assets (E667.7 billion) of insurance sector were invested abroad. The Johannesburg Stock Exchange of South Africa is the main destination of these funds.

Securities sector

33. Swaziland Stock Exchange was inaugurated in 1999. It is still at a nascent stage of development. There is no specific legal framework for the securities sector[5]. It is regulated and supervised by the Capital Market Development Unit located in the CBS[6]. Market participants are licensed under the Financial Institutions Act, 2005 by the Unit. There are currently five listed companies, two government bonds and fourteen corporate bonds, stockbrokers (3) and approved dealers' representatives (3).

Collective Investment Schemes

34. Market participants are licensed under the Financial Institutions Act, 2005 by the CBS. Supervision is done by the Capital Market Development Unit. There is no specific legal framework for the sector. Collective Investment Guidelines issued by the CBS are applied to regularise the sector. There are nine schemes managed by two fund managers. The schemes had a total asset value of E.4.5 billion in 2009. There is one trustee or custodian approved.

Money Remitters

35. The CBS licenses all money remittance service operators. Money remittance services are offered by commercial banks and Postal Office. The CBS does not license stand-alone money remitters. Only banks are licensed to operate this service and independent money remittance provider is allowed to enter into an arrangement with a licensed bank to offer this service as part of the operations of the bank. Standard Bank and Money Gram have similar arrangement.

36. For all cross-border remittance transactions, funds must comply with the country's exchange control requirements. This however does not apply to CMA transactions.

Bureau de Change

37. Before 2009, licenses for foreign currency exchanges were issued only to commercial banks. The CBS has issued guidelines under the Exchange

[5] There is Securities Act Bill, 2009 which is still undergoing parliamentary process.

[6] under the newly passed Financial Services Regulatory Act, 2010 the Capital Market Development Unit will be

moved to Financial Services Regulatory Authority. The Authority is a super regulator/supervisor of all financial

institutions not regulated by the CBS.

Control Order to allow entry of independent operators. The CBS is considering one such application.

Savings and credit cooperatives

38. Savings and credit cooperatives are registered by the Department of Cooperatives headed by a Commissioner as required by the Cooperatives Act, 2003. There are 70 savings and credit cooperatives representing about 8 percent of the adult population. In 2010 the total monetary value of the sector was E500.000.00 million of which more than 60 percent was loaned to members. Cooperatives are required to open a bank account with a licensed commercial bank. There is no AML/CFT awareness.

b) DNFBPs

39. The Kingdom of Swaziland has a small DNFBP sector which is mainly regulated for compliance with licensing requirements. Accountants, casinos, dealers in precious stones and metals, lawyers and real estate agents operate in the country. Only real estate agents are subject to AML obligations as accountable institutions under Money Laundering (Prevention) Act, 2001.

40. All DNFBPs are not covered for CFT purposes.

41. The following table shows the types of DNFBPs operating in the Kingdom of Swaziland, the AML regime to which they are subject to and the regulator responsible for overseeing each type of DNFBP.

Table 5: Type, Size and AML/CFT Oversight of DNFBPs

Sector	Type of DNFBP in the Kingdom of Swaziland	Size of sector	AML Requirements	Licensing or Registration Oversight
Casinos (including internet casinos)	Mix of private and state-owned casinos Privately owned internet casino	4 1	No No	Both licensed by Gaming Board of Control
Real Estate Agents	Individuals and firms	30 registered members of association.	Yes	Accountable institution under the Money Laundering (Prevention)

				Act, overseen by CBS
Dealers in precious metals and Dealers in precious stones	None	None	No	Geology Department is licensing authority
Legal professionals	Advocates Attorneys Articled Clerks	431	No	Lawyers Association of Swaziland
Accountants		No figures provided by the authorities.	No	Swaziland Institute of Accountants

Casinos

42. Casino business operations are regulated by the Swaziland Gaming Board of Control in terms of Casino Act, 1963. Four casinos are licensed to operate in the country, with one of them authorised to carry on internet casino business as part of its normal licensed operations under Casino Act, 1963. Three casinos are privately owned and one is jointly owned by the state and a private entity. In terms of geographical distribution, three casinos are based in Hhohho region and one in Shiselwe region which is in the southern part of the country.

Accountants

43. Swaziland Institute of Accountants regulates accountancy profession in the country under Accountants Act, 1985. No figures were provided on chartered accountants, auditors, registered accountants, student clerks, articled clerks, and trainee accountants.

Lawyers, notaries and other independent legal professionals

44. Law Society of Swaziland regulates legal profession in the country under Legal Practitioners Act, 1964. There are 431 legal professionals comprising attorneys, notaries and conveyancers. Services offered include litigation, real estate, notarial work and advisory services.

Real estate agents

45. Real estate agents are not regulated. There is an association which is still in formative stages and has about 30 members. Individuals and companies wishing to offer real estate services obtain general trading license from the Ministry of Trade and Commerce and include real estate in their business portfolio. It is a growing business which has experienced increased attraction from foreign buyers. Large cash transactions are sometimes used to settle real estate payments, with lawyers and accountants as main facilitators.

Dealers in precious stones and metals

46. Licensing of dealers in precious stones and metals is the responsibility of the Geology Department in the Ministry of Natural Resources and Energy under Mining Act, 1958 and its Regulations. No license was issued for precious stones and metals business.

47. The Kingdom of Swaziland is a transit route for gold and diamond smuggled from neighbouring countries to unknown destinations.

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

48. Legal persons must be incorporated within the legal requirements of the Companies Act and be issued with a certificate of incorporation by the Registrar of Companies before beginning operations. This applies to both local and foreign business entities. The procedure and requirements of incorporation for companies with limited and unlimited shareholding are the same.

49. The legal framework governing to legal persons apply in the same to legal arrangements. Trusts are registered and issued with a trust deed by the Registrar of Companies under the Companies Act.

Table 6: Overview of the commercial laws and mechanism

Type of Commercial Entity	Number of Registered entities				Registering Authority
	2006	2007	2008	2009	
Private Companies	2086	1643	1582	1533	Registrar of Companies
Public companies	6	14	23	13	Registrar of Companies
Unlimited liability companies	-	-	-	-	-
Companies limited by guarantee	-	-	-	-	-
Trusts	-	-	-	-	-
Partnerships	-	-	-	-	-
Other (please specify) Non Profit Making Companies	30	36	55	31	Registrar of Companies

1.5 Overview of strategy to prevent money laundering and terrorist financing

50. The Kingdom of Swaziland is a founding member of the Eastern and Southern Africa Anti-Money Laundering Group and is committed to the objectives of the Memorandum of Understanding to implement effective AML/CFT measures in line with the Financial Action Task Force and other relevant international bodies' standards.

51. There is National Task Force on AML/CFT for coordination of programmes. It comprises several government agencies such as the Royal Swazi Police, Central Bank of Swaziland, Swaziland Revenue Authority, the Office of the Director of Public Prosecution, Immigration Department, Directorate on Corruption and Economic Offences, and Registrar of Insurance. The officials of these agencies participate in various national and international initiatives

on AML/CFT, including those organised by the Eastern and Southern Africa Anti-Money Laundering Group. The Ministry of Finance chairs the National Task Force.

52. There is Money Laundering and Financing of Terrorism (Prevention) Bill which seeks to address the deficiencies in the current AML/CFT framework. Amongst others, the Bill provides for establishment of a Financial Intelligence Unit with operational independence and autonomy and obligations for financial institutions to implement customer due diligence measures.

53. At the time of the onsite, the authorities were setting up a 'super' regulatory and supervisory body to be known as the Financial Services Regulation Authority to bring together all non-bank financial institutions to optimise coordination and resources.

54. Once the mutual evaluation report is adopted, the authorities intend to use the findings to develop a holistic post-evaluation implementation plan with specific emphasis on the so-called "*Key and Core FATF Standards*". The implementation plan will set out a 3-year AML/CFT roadmap for the Kingdom of Swaziland, with clearly stated activities, outcomes and resources needs. Further, the authorities indicated that they will use this report to complete a national AML/CFT strategy outlining national programmes on AML/CFT in the country.

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

Ministries

55. ***Ministry of Finance*** – is responsible for AML/CFT policy formulation and *implementation* of implementation programmes. The Ministry chairs the National Task Force on AML/CFT.

56. ***Ministry of Justice*** – is responsible for matters relating to all mutual legal assistance and extradition. The Director of Public Prosecution and Attorney General's Office falls under the control of the Ministry.

57. ***Ministry of Home Affairs*** – administers national population registry and immigration. With regards to combating ML/TF, the Ministry is represented by the Swazi Royal Police and Immigration Department in the National Task Force on AML/CFT. They work closely with other government agencies to combat crime in general, including presence in all national borders.

58. ***Ministry of Foreign Affairs*** – is the gateway through which foreign jurisdictions enter the country on foreign relations and international cooperation issues. It houses departments responsible for facilitating requests

made by and responses to foreign jurisdictions, including UNSCR 1267 and 1373 List, mutual legal assistance and extradition.

59. ***Ministry of Natural Resources and Energy*** – is responsible for development of policy on precious stones and metals. It houses the Geology Department which registers and licenses dealers in precious stones and metals.

60. ***Ministry of Trade and Commerce*** – houses the Registrar of Companies and the Office of Trade and Licensing which issue certificate of incorporation and trade licenses respectively. It is essentially responsible for commercial law relating to legal persons and arrangements.

61. ***Swaziland National Task Force on AML/CFT*** – it coordinates inter-agency cooperation AML/CFT. It includes various government agencies responsible for crime in general, ML/TF, supervision and regulation of financial sector, among others. It further facilitates interaction with private sector organisations involved in AML/CFT issues. In practice however, the National Task Force rarely meets owing to resources and coordination challenges.

Criminal justice and operational agencies

62. ***The Financial Intelligence Unit*** – currently there is no FIU in the Kingdom of Swaziland. Some of the functions of an FIU are undertaken by the CBS.

63. ***The Royal Swazi Police*** – is responsible for investigation of crime in general. Its ***Fraud and Commercial Crimes Unit*** investigates ML/TF cases.

64. ***The Office of the Director of Public Prosecutions*** – institutes and represents government in criminal matters, including prosecution of ML/TF cases.

65. ***The Office of the Attorney General*** – is the principal legal advisor to government.

66. ***Swaziland Revenue Authority*** – administers customs and tax matters in the country. It houses anti-smuggling and business intelligence unit of the SRA. Working together with the Immigration Department of the Ministry of Home Affairs and the Police, the SRA is responsible for movement of goods and also persons into and out of the country.

67. ***Directorate on Corruption and Economic Crimes Office***- investigates corruption and money laundering cases related to proceeds of corruption and money laundering cases.

68. Swaziland ***Intelligence Services*** – is responsible for intelligence gathering and analysis relevant to national security of the country.

Financial sector bodies

69. Ministry ***of Commerce and Trade*** – licenses and registers legal entities through the Registrar of Companies.

70. ***Central Bank of Swaziland*** – regulates and supervises all financial sector players, except the insurance sector. It is envisaged that the Bank will in future supervise only banks following the setting up of a regulator for all non-bank financial institutions.

71. ***Registrar of Insurance and Retirement Funds*** –regulates and supervises the insurance and retirement funds industry.

72. ***Department of Cooperatives*** – registers savings and credit cooperatives which are incorporated by the Registrar of Companies.

Overview of Designated Non-Financial Businesses and Professions (DNFBPs)

73. ***Swaziland Gaming Board of Control***–regulates and supervises the gaming sector and is responsible for implementation of AML/CFT measures in the gaming sector.

74. ***Swaziland Law Society***- was established through an Act of parliament to regulate legal profession in the country. The Society will play a significant role in ensuring that its members comply with AML/CFT requirements once the Bill is enacted.

75. ***Swaziland Institute of Accountants*** – is responsible for accountancy profession in the country. It is created under an Act of parliament and has been identified as a key stakeholder to ensure AML/CFT compliance by its members.

76. There is no statutory body responsible for the NPO sector in the country. The ***Coordinating of Assembly of Non-Governmental Organisations*** is a voluntary organisation dealing with members matters.

c. ***Approach concerning risk***

77. The Kingdom of Swaziland has not undertaken AML/CFT risk assessment.

d. ***Progress since the last mutual evaluation***

78. This is the first comprehensive assessment of AML/CFT systems in the Kingdom of Swaziland.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

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

2.1.1 Description and Analysis[7]

Recommendation 1

Legal framework

79. The Kingdom of Swaziland has signed and ratified the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) and has only signed the 2000 UN Convention against Transnational Organised Crime (Palermo Convention). The Money Laundering Act of 2001 which came into effect on the 13th of November 2001 is the main legislation criminalising money laundering in the Kingdom of Swaziland. The legislation adopts a list approach to predicate offences to money laundering. The schedule of prescribed offences contains a list of 13 offences. Some of the offences are the same as those listed in the schedule to the Serious Offenses (Confiscation of Proceeds) Act that commenced on the 18th of October 2001.

80. The following Acts are relevant to the criminalisation of money laundering in Swaziland:

i) The Criminal Matters (Mutual Assistance) Act, 2001;
ii) The Serious Offences (Confiscation of Proceeds) Act, 2001;
iii) The Extradition Act, 1968;
iv) The Suppression of Terrorism Act, 2008;
v) The Money Laundering (Prevention) Act; and
vi) The Prevention of Corruption Act, 2006.

Criminalisation of Money laundering (c.1.1)

81. Section 3 of the Money Laundering (Prevention) Act provides that any person who engages in money laundering after the commencement of that Act will be committing an offence. The act of ML is defined in the definition section of the Money Laundering (Prevention) Act as:

" (a) Engaging, directly or indirectly, in a transaction that involves property that is the proceeds of crime, knowing or having reasonable grounds for believing the same to be the proceeds of crime: or

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

(a) *Receiving, possessing, managing, investing, concealing, disguising, disposing of or bringing into Swaziland any property that is the proceeds of crime, knowing or having reasonable grounds for believing the same to be the proceeds of crime."*

82. The terms 'property' and 'proceeds of crime' are used in defining ML. The two terms are defined in section 2 of the Money Laundering (Prevention) Act.

"*Property' includes money, investments, holdings, possession, assets as well as all other properties whether movable or immovable regardless of where situated*."

83. The term 'Proceeds of crime' relate to any property derived or obtained directly or indirectly through the commission of a prescribed offence, whether committed in Swaziland or elsewhere and includes any property which is knowingly mingled with property that is so derived or obtained.

84. The prescribed offences for the purposes of the offence of ML are listed in the *Second Schedule* to the Money Laundering (Prevention) Act. The offence of money laundering in terms of the Money Laundering (Prevention) Act is committed when a person knowingly or having reasonable grounds to believe that property is proceeds of crime engages in an act directly or indirectly involving the property. [8]The Act however does not proceed to give the purpose or reason of the person engaging directly or indirectly, receiving, possessing, managing, investing, concealing, disguising, disposing or bringing into Swaziland property which is proceeds of crime. Whereas both the mental and the physical elements of the offence of ML are provided by the Act, the purpose of the person being involved in such acts is not provided.

85. Under Articles 3(1) (b), (c) of the Vienna Convention and 6(1) of the Palermo Convention, where the following acts are committed intentionally and are not in conflict with the fundamental principles of the legal system obtaining in that country, countries are required to establish the acts as criminal offences:

- The conversion or transfer of proceeds;
- The concealment or disguise of the true nature , source location, disposition, movement or ownership of or rights with respect to proceeds ;
- the acquisition, possession or use of proceeds; and

[8]This is now provided for in section 4 of The Money Laundering and Financing of Terrorism (Prevention) Bill, 2009.

- participation in, association with or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating and counselling the commission of any of the above described acts.

86. In general, the material elements of the offence of ML as defined in section 2 of the Money Laundering (Prevention) Act are broad and consistent with the Vienna and Palermo Conventions and cover the elements of ML offence as provided for under Articles 3(1) and 6 (1) of the Vienna and Palermo Conventions, respectively.

87. The use of the term 'engaging directly or indirectly' used in the Money Laundering (Prevention) Act is broad enough to include any kind of dealing in property that is the proceeds of crime including the acts of 'conversion or transfer of proceeds of crime' that are required to be criminalised under the two Conventions.

88. In relation to the, 'conversion or transfer of property that is proceeds of crime', Articles 3(1)(b)(i) and 6(1)(a)(i) of the Vienna and Palermo Conventions respectively, require that the person who converts or transfers the proceeds of crime will be doing it for the specific purpose of disguising or concealing the illicit origin of such proceeds or to help any person who will have committed an offence to avoid the law. In the case of the Kingdom of Swaziland as already noted above, the purpose for engaging directly or indirectly with property which is proceeds of crime is not given in the Money Laundering (Prevention) Act therefore the definition does not satisfy the requirements of both conventions in that regard. The authorities also did not assist the assessors with any court decisions of how the courts have interpreted the section criminalising ML regarding the purpose of disguising or concealing the illicit proceeds of crime. For "acquisition, possession or use", both conventions do not require that this be done for a specific purpose or objective.

89. The assessors were of the view that the acts of 'acquisition' and 'use' of proceeds of crime, which are [9]not specifically provided for as offences in section 2 as read with section 3 of the Money Laundering (Prevention) Act criminalising money laundering can be covered under the wide interpretation given to the term 'engaging directly or indirectly in a transaction.'

90. Section 5 of the Money Laundering (Prevention) Act criminalises the acts of attempting, aiding, abetting, counselling, procuring the commission of, or conspiring to commit the offence of ML. [3]Although the ancillary acts of participation in, association with and facilitating the commission of the offence of ML specified under Articles 3(1)(c)(iv) of the Vienna Convention

[9] This is now provided for in section 4 of The Money Laundering and Financing of Terrorism (Prevention) Bill, 2009.

and 6(1)(b)(ii) of the Palermo Convention are not specifically provided for under this section, the assessors were of the view that the interpretation of these acts, could not be in any way different from the acts of conspiring or procuring the commission of a ML offence provided for under the Act. However, the Swazi authorities did not provide any guidance or precedent which could have assisted the assessors in better appreciating these acts.

Property(c 1.2) and conviction for predicate offence(c 1.2.1)

91. In terms of section 3 and the definition of property provided for under section 2 of the Money Laundering (Prevention) Act described under c.1.1 above, the offence of ML appears to cover all property regardless of where it might be situated but the definition given to the proceeds of crime under the definition section limits the property only to the prescribed offences listed in the *Second Schedule* to the Act. In addition to the offences provided under the *Second Schedule* not meeting the list of designated categories of offences under the FATF Glossary, the proceeds generated from the crimes of robbery and theft under the schedule are restricted to the value above E10.000.00. [10]The offence of ML therefore does not extend to property directly or indirectly representing proceeds of crime arising from the crimes of robbery and theft below the value of E10.000.00.

92. On that basis the offence of ML under the Money Laundering (Prevention) Act does not cover all property which may be proceeds of crime regardless of value and is inconsistent with the definition of property in both the Vienna and Palermo Conventions as well as in the FATF Glossary.

93. According to section 3 as read with the definitions of ML provided under section 2 of the Money Laundering (Prevention) Act, it does not appear necessary that a person be convicted of a predicate offence when proving that property is proceeds of crime or for the person to be charged of a ML offence. What appears necessary however is to show evidence that proves that at the time of dealing with the property the person knew that it was proceeds of crime or that based on the circumstances at the time of dealing with the property, a reasonable person should have had grounds to believe or know that the property is proceeds of an unlawful conduct.

Scope of Predicate offences (c. 1.3)

94. The Kingdom of Swaziland has adopted a list approach. The list, which is the Second Schedule to the Money Laundering (Prevention) Act, defines 13 categories of predicate offences including terrorism, although there is no guidance as to whether the term includes terrorist financing. The definition

[10] This is now provided for in section 4 of The Money Laundering and Financing of Terrorism (Prevention) Bill, 2009.

section of the Act defines the predicate offences as prescribed offences[11]. The prescribed offences to the schedule include:

- black mail;
- counterfeiting;
- drug trafficking and related offences;
- false accounting;
- forgery;
- fraud;
- illegal deposit-taking;
- robbery involving more than E10.000.00;
- terrorism;
- thefts involving more than E10.000.00;
- arms trafficking; and
- Kidnapping.

95. The offences listed in the *Second Schedule* to the Money Laundering (Prevention) Act do not meet the minimum twenty categories of predicate offences designated by the FATF. The following predicate offences are not criminalised:

- Participation in an organised criminal group and racketeering;
- Human trafficking and migrant smuggling;
- Sexual exploitation, including sexual exploitation of children;
- Corruption and bribery;
- Murder, grievous bodily harm;
- Smuggling;
- Piracy;
- Insider trading market manipulation;
- Environmental crimes; and

[11] The First Schedule of the Money Laundering and Financing of Terrorism (Prevention) Bill, 2009 now meets the list of designated offences under the FATF Glossary

- Terrorist financing- although terrorism is included, the term has not been defined and under the Suppression of Terrorism Act.

96. The assessors noted that there was no consistence between the offences listed as prescribed offences in the second schedule to the Money Laundering (Prevention) Act and those listed as serious offences in the schedule to the Serious Offences (Confiscation of Proceeds) Act. There is no cross referencing of the term serious offence used in the Serious Offences Act to the offences listed as prescribed offences in the schedule to the Money Laundering (Prevention) Act, neither is there any other harmonisation of the offences in the schedules to the two Acts. There is therefore discord in the offences listed in the schedules to the two Acts in that some of the offences listed in the schedule to the Serious Offences Act such as murder, extortion and corruption which are quite pertinent to the Money Laundering (Prevention) Act are not part of the schedule to the Money Laundering (Prevention) Act and same is the position with the offences in the schedule to the Serious Offences Act. It was the view of the assessors that for purposes of consistence the offences in the two schedules to the two Acts should have been harmonised or at most there should have been cross-reference of the offences in the two schedules to the Acts.

Threshold approach for predicate offences (c 1.4)

97. The Kingdom of Swaziland has adopted the list or an all crimes approach therefore there is no threshold.

Extraterritorially committed predicate offences (c.1.5)

98. The wording of the definition of money laundering in section 2 of the Money Laundering (Prevention) Act, (see c.1.1 above) covers property brought into the Kingdom of Swaziland which is proceeds of crime. Such property can either be derived from a predicate offence committed in the Kingdom of Swaziland or outside of the Kingdom.

99. In addition section 9 of the Money Laundering (Prevention) Act overrides the provisions of any other law on extraterritorial jurisdiction and provides for the investigation and prosecution of any offence in Swaziland regardless of whether or not the offence occurred in Swaziland or in any other country subject to the processes not prejudicing the extradition of the person involved where applicable. However, it appears the application of this provision is affected by the dual criminality principal as it seems that for either the investigation or prosecution to happen the conduct concerned, which will have happened in the other jurisdiction, has to be an offence under the Money Laundering (Prevention) Act. Therefore for the courts to assume jurisdiction for an offence committed outside Swaziland, the offence has to be recognised under the Money Laundering (Prevention) Act.

Self laundering (c. 1.6)

100. The offence of ML created under section 3 as read with the definition of ML given under section 2 of the Money Laundering (Prevention) Act does not distinguish between the person committing the predicate offence and the person who is subsequently involved in dealing with the proceeds generated from the predicate offence. The offence of ML applies to any person who deals with the proceeds from a predicate offence. It is therefore possible to charge a person for committing both the predicate offence and the money laundering offence arising out of the proceeds from the predicate offence.

Ancillary offences (c. 1.7)

101. Ancillary offences to the offence of ML are provided for under section 5 of the Money Laundering (Prevention) Act. These cover acts of attempting or aiding, abetting, counselling, or procuring the commission of, or conspiring to commit the offence of ML. As was described in c. 1.1 above, the assessors were of the view that the non-mention of ancillary offences of participating in, associating with and facilitating the commission of the offence of ML specified under Articles 3(1)(c)(iv) of the Vienna Convention and 6(1)(b)(ii) of the Palermo Convention is covered by the other ancillary offences provided for under section 5 of the Act

Additional elements (c.1.8)

102. An unlawful conduct committed outside of Swaziland that generates proceeds of crime can form a basis of a ML offence in Swaziland provided it is a prescribed offence in Swaziland. Proceeds of crime is defined as, "*any property derived or obtained, directly or indirectly, through the commission of a prescribed offence, whether committed in Swaziland or elsewhere and shall include* **….."** The assessors were however not provided with guidance in terms of court decisions to guide them on how this provision would work in the Kingdom of Swaziland or whether this understanding of the provision is actually correct.

Recommendation 2

Liability of natural persons (c. 2.1) and legal persons (c.2.3)

103. The offences of ML described in section 2 as read with section 3 of the Money Laundering (Prevention) Act are committed by a person who after the commencement of the Act engages in such acts (see c.1.1). The term 'person' is described in section 2 of the Act to mean, '*any entity, natural or juridical, including among others, a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organisation or group, capable of acquiring rights or entering into obligations.'* Therefore, the definition of person under the Money Laundering (Prevention) Act covers both natural and legal persons.

104. Section 6 of the Money Laundering (Prevention) Act which provides the penalty for the offences of ML set out in sections 3, 4 and 5 of the Act does not appear to cover legal persons. Although the term person is still used, the sanctions provided are only those of a fine or term of imprisonment or both such fine and imprisonment. [6]The term of imprisonment in practice only applies to a natural person as a legal entity cannot physically be sentenced to a term of imprisonment but only to a fine.

The mental element of the ML offence (c.2.2)

105. In terms of the Money Laundering (Prevention) Act, a person can be charged with committing the offence of ML when it can be proved through direct evidence that the person at the time of committing the offence knew that he was dealing with property which is proceeds of crime or when it can be inferred through indirect or circumstantial evidence that the person at the time of committing the offence should have had reasonable grounds to believe that he was dealing with property which is proceeds of crime. Whereas the first situation in terms of the Money Laundering (Prevention) Act requires the intention of the person to be established through direct or a subjective test of the knowledge the person had at the time of dealing with the property which is proceeds of crime, the latter position allows the intention to be established from looking at all the objective factual circumstances of the evidence provided on the case and then applying the reasonable man's test to it to reach a decision, hence the term *'having reasonable grounds for believing the same to be proceeds of crime'* is used compared to the term *'knowing'* used in the former scenario.

106. It is therefore possible under the Money Laundering (Prevention) Act for a person to be convicted for violations of section 2 as read with sections 3, 4 and 5 relying on either direct or inferences drawn from the objective factual circumstances of the case. The authorities however did not provide the assessors with any case law where the courts had convicted a person for any of the offences under the Money Laundering (Prevention) Act relying on circumstantial evidence.

Liability of Legal Person should not preclude possible parallel criminal, civil or administrative proceedings (c.2.4)

107. The Money Laundering (Prevention) Act has no provisions allowing parallel proceedings based on civil or administrative liability where legal persons are criminally liable. It only creates criminal liability for both natural and legal persons. However, section 19(6) of the Act seems to create a 'civil' liability where the accused is discharged or conditionally discharged of the charge of ML by allowing the person to be summoned to court by a competent authority in terms of that Act and give information regarding the legitimate sources of his or her income. What is not clear from this section however is the extend of proof which will be required from the person during the

inquiry and what the court is supposed to do if it is not satisfied with the information given and it reaches the conclusion that the sources of the person's income are not legitimate. This lack of conclusiveness created a difficulty in understanding what was intended to be achieved by the provision.

Sanctions for ML (c.2.5)

108. Section 6 of Money Laundering (Prevention) Act states that:

'*6. A person who* commits *an offence under section 3, 4, and 5 of this act shall be liable and punishable on conviction, to a* fine *which shall not be less than twenty five thousand Emalangeni (E25 000) or to imprisonment for a term which shall not be less than six (6) years or to both such fine and imprisonment*'.

109. Section 4 creates ML offences against employees of legal persons who commit such offences in their official capacities, that is when they are acting on behalf of the legal person as a director, manager, secretary or in any other capacity. It appears possible that sanctions provided for under section 6 also apply to this category of persons. However, the penalty for the offences of ML set out in section 6 for offences arising from violations of the above sections (3, 4 and 5) of the Act does not appear to cover legal persons. As indicated in c.2.1 above, although the term person is still used, the sanctions provided are only those of a fine or a term of imprisonment or both such fine and imprisonment. Ordinarily a penalty of a term of imprisonment only applies to a natural person as a legal entity cannot physically be sentenced to a term of imprisonment but only to a fine. The assessors therefore were of the view that the penalty provisions in section 6 do not cover legal persons and there is no specific provision in the Act providing penalties for legal persons like is the practice with other jurisdictions within the ESAAMLG region.

110. The sanctions for ML currently provided under section 6 of the Money Laundering (Prevention) Act which set a minimum term of imprisonment of not less than 6 years, in the view of the assessors seem to be in line with penalty provisions of other countries within the Region such as Tanzania which sets a minimum term of imprisonment of not less than 5 years and a maximum of 10 years as well as Mauritius and South Africa, 30 years. However, the assessors were not guided by the authorities at the time of the on-site visit as to the terms of imprisonment which have been imposed by the courts in ML cases in order for them to determine whether the sanctions are effective, dissuasive and proportionate. The authorities informed the assessors that no prosecutions had been done for contraventions of sections 3, 4 and 5 of the Money Laundering (Prevention) Act. The assessors however noted that the Act has been in existence for fairly a long time (since 2001) to have allowed prosecutions to be done under the Act. The Money Laundering (Prevention) Act does not provide for civil or administrative sanctions.

Statistics (applying recommendation 32)

111. In relation to money laundering investigations and prosecutions, no statistics were available. The authorities cited lack of detection due to capacity constraints which included lack of training. The authorities were of the view that ML provisions were not being effectively implemented and that the absence of ML cases being investigated in the Kingdom of Swaziland did not necessarily mean that such acts were not taking place.

2.1.2 Recommendations and Comments

Recommendation 1

112. It is recommended that the Kingdom of Swaziland ratifies the Palermo Convention.

113. The Kingdom of Swaziland has adopted the list approach, it is therefore recommended that it amends its laws so that the range of predicate offences provided meet with the minimum range of predicate offences prescribed in each of the designated categories of offences under the FATF Glossary.

114. It is recommended that the authorities consider including the purpose of engaging in a Money Laundering (Prevention) Activity.

115. It is recommended that the ancillary offences of participation in, associate with and facilitate the commission of the offence of ML be provided for under ancillary offences to ML in section 5 of the Money Laundering (Prevention) Act.

116. The authorities should remove the restrictions to the value of proceeds of crime generated from the crimes of robbery and theft which can be laundered in terms of the schedule to the Money Laundering (Prevention) Act.

117. There should be consistence of terms used to define offences listed in the schedule to the Serious Offences (Confiscation of Proceeds) Act and in the Money Laundering (Prevention) Act and at most there should be efforts to have the offences in the two schedules harmonised.

118. It is recommended that the authorities record and maintain statistics of cases handled to enable the effectiveness of the ML regime in Swaziland to be determined.

Recommendation 2

119. The penalty provisions in section 6 of the Money Laundering (Prevention) Act apply only to natural persons, the authorities should have sanctions which cover legal persons for offences of ML under the Act.

120. The authorities should to consider other forms of liability such as civil and administrative liability to run parallel with criminal proceedings relating to money laundering offences. The provisions to section 19(6) of the Money

Laundering Act should also be clarified or better guidance should be provided as to what was intended to be achieved by the provisions.

121. The absence of statistics made it difficult for assessors to determine whether the sanctions provided for under the Money Laundering (Prevention) Act were effective, proportionate and dissuasive.

2.1.3 Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating[12]
R.1	**PC**	• Swaziland has not ratified the Palermo Convention. • The range of predicate offences provided under the Money Laundering (Prevention) Act does not meet with the minimum designated categories of predicate offences under the FATF Glossary which makes it difficult to successfully combat ML. • The purpose of engaging in a Money Laundering (Prevention) Activity is not included in the criminalisation of ML. • The schedule to the Money Laundering (Prevention) Act provides restrictions to the value of proceeds of crime generated from the crimes of robbery and theft which can be laundered. • Effectiveness of the ML regime in the Kingdom of Swaziland could not be determined due to the absence of statistics.
R.2	**PC**	• The penalties provided for in section 6 of the Money Laundering (Prevention) Act apply only to natural persons and employees of legal persons in their official capacity but do not apply to legal persons. • The Money Laundering (Prevention) Act does not provide for civil or administrative liability to run parallel with criminal ML proceedings. • It could not be determined whether the sanctions to ML are being effectively implemented as the authorities indicated that no cases had been prosecuted under the Money Laundering (Prevention) Act.

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and Analysis

Legal framework

122. The offences relating to acts of terrorism and financing of terrorism in the Kingdom of Swaziland are criminalised under the Suppression of Terrorism Act, 2008, which is the general legislation criminalizing terrorism and terrorist financing, and the Money Laundering Act, 2001. A 'terrorist act' is

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

also defined under the Suppression of Terrorism Act to include offences within the scope of counter terrorism conventions.

123. The Kingdom of Swaziland acceded to the Convention for the Suppression of the Financing of Terrorism in 2003. The Kingdom of Swaziland has also acceded to the following UN Conventions and Protocols which are annexes to the Convention for the Suppression of the Financing of Terrorism:

- Convention for the Suppression of Unlawful Seizure of Aircraft, the Hague, 16 December 1970 (acceded to in 1999);
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 23 September 1971 (acceded to in 1999);
- Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, General Assembly, United Nations, 14 December 1973 (acceded to in 2003);
- International Convention against the Taking of Hostages, 17 December 1979(acceded to in 2003) ;
- Convention for the Physical Protection of Nuclear Material, Vienna, 3 March 1980 (acceded to in 2003);
- Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Rome, 10 March 1988(acceded to in 2003);
- Protocol for the Suppression of Unlawful Acts against the safety of Fixed Platforms located on the Continental Shelf, Rome, 10 March 1988 (acceded to in 2003); and
- International Convention for the Suppression of Terrorist Bombings, General Assembly, United Nations, 15 December 1997 (acceded to in 2003).

124. The definition of 'counter terrorism convention' in section 2 of the Suppression of Terrorism Act, in addition to the conventions and protocols has been extended to include S/RES/1373 and any other subsequent protocols that bind the government of the Kingdom of Swaziland.

Criminalisation of financing of terrorism (c.II.1(a))

125. Financing of terrorism is criminalised under sections 6, 7, 8, 9 and 10 of Part III of the Suppression of Terrorism Act.

126. Section 6 makes it an offence for a person by any means to provide or collect *any funds* with the intention or knowledge or having reasonable grounds to believe that *such funds* may be used in full or in part to carry out *a terrorist act*.

127. Section 7 makes it an offence for any person to directly or indirectly *collect property* or provide or invite another person to provide, or make available *property* or financial or other related service:

- with the intention that the whole or part of the property or service be used for committing or facilitating the commission of *a terrorist act*, or be used to the benefit of the person committing or facilitating the commission of the *terrorist act*; or
- with the knowledge or having reason that the property or service may in whole or in part be used by, or may benefit *a terrorist group*.

128. Section 8 makes it an offence for *a person* to:

- directly or indirectly use any property whether in whole or in part for the purpose of committing or facilitating the commission of a terrorist act; or
- be in possession of property with the intention that it be used or with the knowledge that it may be used directly or indirectly in whole or in part to commit or facilitate the commission of *a terrorist act*.

129. Section 9 makes it an offence for *a person* to knowingly or having reason to know *enter into*, or *become concerned* in an arrangement, which facilitates the retention or control by or on behalf of another person of terrorist property by concealment, removal out of the jurisdiction, transfer to a nominee or in any other way.

130. Section 10 makes it an offence for any person who has knowledge or has reason to know to:

- deal directly or indirectly, in any property that is owned or controlled by or on behalf of a terrorist group;
- enter into, or facilitate, directly or indirectly, any transaction in respect of property owned or controlled by or on behalf of a terrorist group; and
- directly or indirectly provide financial or other service in respect of property owned or controlled by or on behalf of a terrorist group, or at the direction of *a terrorist group*.

"terrorist act" is defined under the definition section of the Suppression of Terrorism Act to mean:

"(1) an act or omission which constitutes an offence under this Act or within the scope of a counter-terrorism convention; or

(2) an act or threat of action which-

(a) causes-

(i) the death of a person;

(ii) the overthrow, by force or violence, of the lawful Government; or

(iii) by force or violence, the public or a member of the public to be in fear of death or bodily injury;

(b) involves serious bodily harm to a person;

(c) involves serious damage to property;

(d) endangers the life of a person;

(e) creates a serious risk to the health or safety of the public or a section of the public;

(f) involves the use of firearms or explosives;

(g) involves releasing into the environment or any part of the environment or distributing or exposing the public or any part of the public to-

(i) any dangerous, hazardous, radioactive or harmful substance;

(ii) any toxic chemical;

(iii) any microbial or other biological agent or toxin;

(h) is designed or intended to disrupt any computer system or provision of services directly related to communications infrastructure, banking or financial services, utilities, transportation or other essential infrastructure;

(i) is designed or intended to disrupt the provision of essential emergency services such as police, civil defence or medical services;

(j) involves prejudice to national security or public safety;

and is intended, or by its nature and context, may reasonably be regarded as being intended to-

(k) intimidate the public or a section of the public; or

(l) compel the Government, a government or an international organisation to do, or refrain from doing, any act.

(3) Notwithstanding the provisions of subsection (2), an act which-

(a) disrupts any services; and

(b) is committed in pursuance of a protest, demonstration or stoppage of work,

shall be deemed not to be a terrorist act within the meaning of this definition, so long as the act is not intended to result in any harm referred to in paragraphs, (a),(b),(c),(d) or (e) of subsection(2)."

131. The definition of a 'terrorist act' as can be seen from the above, covers a wide range of offences including all acts or omissions that constitute an offence under any counter terrorism convention that the Kingdom of Swaziland has acceded to. The Kingdom of Swaziland has acceded to all the conventions and protocols which are annexes to the Convention for the Suppression of the Financing of Terrorism.

132. An alternative term of a 'terrorist group' to that of a 'terrorist organisation' is used in the Suppression of Terrorism Act. 'Terrorist group' is defined under section 2 of the Act to mean:

- an entity that has one of its activities and purposes, the committing of, or the facilitation of the commission of, a terrorist act; or
- a specified entity.

133. Under the same section an *'entity'* is defined to mean *'a person, group, trust, partnership, fund or an unincorporated association or organisation.'* The definition of the term *'entity'* is broad to include any organisation including a terrorist organisation or group.

134. Sections 6-10 of the Suppression of Terrorism Act criminalising the offences of financing of terrorism use the term *'a person'* and the term is also used in the definition of an *'entity'* above, the term however is not defined under the Act. The assessors were advised by the authorities during the on-site visit to give the term the meaning given to it under the Interpretation Act. Under section 2 of this Act the term *'person'* is defined to include:

- a local authority;
- a company incorporated or registered as such under the law; and
- any body of persons corporate or incorporate.

135. The assessors observed that the Interpretation Act in its definition of 'person' does not explicitly include a natural person[13]. The assessors however took note that the expression *'is defined to include'* is used but in the absence of case law to guide the assessors as to whether the legal understanding of this expression in the Kingdom of Swaziland would in the primary instance include a natural person, it became difficult for the assessors to conclusively say whether an individual terrorist was sufficiently covered under the Suppression of Terrorism Act as required under the FATF standard. In general it was observed that the Suppression of Terrorism Act in its criminalisation of terrorist financing offences covered the three scenarios described under the Convention for the Suppression of the Financing of Terrorism for which funds may be used.

Criminalisation of financing of terrorism (c.II.1(b))

136. Section 6 of the Suppression of Terrorism Act makes it an offence for a person to collect or provide funds for purposes of carrying out a terrorist act but the term *'funds'* is not defined in the Act.

137. Sections 7, 8, 9 and 10 of the Suppression of Terrorism Act criminalises various acts described in c.II.1(a) above relating to property associated in any way with a terrorist act. The term *'property'* is defined under section 2 of the Act to mean, *"any movable or immovable property of any description and deeds and instruments relating to or evidencing the title or right to property, or giving a right to recover or receive money or goods, and includes any funds, financial assets or economic resources."*

138. The definition of funds under the Convention for the Suppression of the Financing of Terrorism is as follows:

"assets of every kind, whether tangible or intangible, movable or immovable, however, acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit."

[13] [7]Now provided for under the Money Laundering and Financing of Terrorism (Prevention) Bill, 2009

139. Although the term funds is included in the definition of property under the Act and the definition of property under the_Act is broad enough to include almost every aspect of the definition of funds provided under the Convention, the two acts of providing funds and property are criminalised as separate acts under sections 6 and 7. Given that the definition of property under the Act is defined to include funds and not the other way round, as is the position under the Convention, the term funds used in section 6 can only be given its literal meaning which in the view of the assessors is not extensive enough to cover the meaning of funds under the Convention. As the two are distinct offences on their own it would have been necessary to define the term funds used in the Act. In the absence of the definition, the assessors could not determine whether the term funds used under section 6 of the Act meets the definition provided in the Convention for the Suppression of the Financing of Terrorism.

Criminalisation of financing of terrorism (c.II.1(c))

140. Section 6 of the Suppression of Terrorism Act provides that it is an offence if the funds were intended to be or with the knowledge that the funds would be or having reasonable grounds to believe that the funds would be used in full or in part to carry out a terrorist act. In terms of the provisions to this section the offence is committed if there is evidence to show that the person committing the offence had the intention or knowledge or reasonable grounds to believe that the funds would be used for a terrorist act, whether the funds are actually used for the act or not is not relevant to prove the intended use of the funds. In the view of the assessors this satisfies the requirements of the Convention for the Suppression of the Financing of Terrorism which requires that for the elements of the terrorist financing offence to be satisfied the funds need not necessarily:

- have been actually used to carry out or attempt to carry out a terrorist act; or
- be linked to a specific terrorist act.

Criminalisation of financing of terrorism (c.II.1(d))

141. Section 21(b) of the Suppression of Terrorism Act makes it an offence for a person to attempt to commit an offence in terms of the Act.

Criminalisation of financing of terrorism (c.II.1(e))

142. Any person who aids and abets, procures or counsels the commission of or conspires to commit an offence criminalised under the Suppression of Terrorism Act will be committing an offence in terms of section 21 of the Act.

143. In addition, several sections in Part III of the Suppression of Terrorism Act provide for the criminalization of certain conduct in line with the requirements of Article 2(5) of the TF Convention.

144. Section 7 provides for the offence of collecting or providing property or services to facilitate the commission of a terrorist act or to the benefit of a terrorist group.

145. Section 8 provides for the offence of use or possession of property to be used in a terrorist act.

146. Section 9 provides for the offence of being involved in an arrangement to facilitate the retention or control of terrorist property by concealment, removal from a jurisdiction, transfer to a nominee or any other way.

147. Section 10 provides for the offence of dealing in property owned or controlled by a terrorist group.

148. Section 11 provides for the offence of soliciting and giving support to a terrorist group. "Support'' in the context of this section is not defined but the word itself is wide enough to include financial support.

149. Section 13 provides for the offence of providing weapons to a terrorist group, a member of a terrorist group or to any person for the benefit of a terrorist group or member of a terrorist group.

150. Section 16 (f) and (g) provides for the offence of giving or soliciting money or performing or soliciting services for the purposes of promoting or supporting a terrorist act in a foreign State.

Predicate offence for money laundering (c.II.2)

151. The offence of terrorism is listed in the *Second Schedule* of the Money Laundering (Prevention) Act as a prescribed offence but the offence is not one of the offences provided for under the Suppression of Terrorism Act and neither is it defined under the same Act for one to be guided as to whether the offence also applies to the offence of terrorist financing[14]. Under the circumstances, it cannot be said with certainty that the offence of terrorist financing is a predicate offence for money laundering.

Jurisdiction for Terrorist Financing Offence (c.II.3)

152. Although section 3(2) of the Suppression of Terrorism Act appears to create extraterritorial jurisdiction for the High Court to deal with terrorist acts in terms of the Act, note[15] has to be taken that the jurisdiction is only limited to:

- Where the person committing the act or omission is a citizen of Swaziland or is not a citizen but is ordinarily resident in Swaziland;

[14] Now provided in Schedule 1 of the Money Laundering and Financing of Terrorism (Prevention) Bill, 2009.

[15] This limitation has now been removed under section 4(1)(c)(ii) of the Money Laundering and Financing of Terrorism (Prevention) Bill, 2009.

- The act or omission is committed to compel the Government of Swaziland to do or refrain from doing an act or certain act;
- The act or omission is committed against a citizen of Swaziland or a person under the protection of the Government of Swaziland;
- The act or omission is committed against property belonging to the Government of Swaziland outside Swaziland; or
- The person who commits the act or omission is, after its commission, present in Swaziland.

The mental element of the TF offence (applying c.2.2 in R2)

153. Sections 6, 7, 8, 9 and 10 of the Suppression of Terrorism Act which criminalise 'terrorist acts' provide for the intentional element of a terrorist financing offence to be drawn from objective factual circumstances. The words 'having reasonable grounds to believe' or 'having reason to know' are used interchangeably to create the intention of the offences criminalised under the sections.

Liability of legal persons (applying c.2.3 & c.2.4 in R2)

154. The sections criminalising the offence of terrorist financing in the Suppression of Terrorism Act use the term, 'a person', however the term person is not defined under the Act. In the absence of such definition then the general meaning given to the term person under the Interpretation Act of 1920 has to be relied on. The term person is defined to include:

- a local authority;
- a company incorporated or registered as such under any law; or
- any body of persons corporate or incorporate.

155. The definition appears to satisfy the requirement for legal persons to be liable under the Suppression of Terrorism Act. It does not appear that subjecting legal persons to criminal liability to a limited extend precludes parallel civil proceedings to take place against legal entities, although this is limited to charities only. Section 39 of the Suppression of Terrorism Act provides for refusal and revocation of registration of charities linked to terrorists through civil process.

Sanctions for TF (applying c.2.5 in R2)

156. The penalty provisions to sections 6, 7, 8, 9 and 10 of the Suppression of Terrorism Act which criminalise acts related to terrorist financing all provide for a term of imprisonment not exceeding 15 years. The term of

imprisonment seem to be in line with the penalty provisions of similar legislations within the region, in particular Tanzania (not less than 15 years but not more than 20 years) and South Africa (not more than 15 years).

157. In addition to the penalty provisions, in terms of section 31 of the Suppression of Terrorism Act, the court upon conviction of the accused person may order forfeiture of any 'property used for or in connection with or received as payment or reward for the commission of an offence in terms of the Act.'

Statistics

158. According to the information provided by the authorities no cases of terrorist financing had been investigated or prosecuted in Swaziland.

2.2.2 Recommendations and Comments

159. The meaning of 'person' under the FATF standards and the Convention for the Suppression of the Financing of Terrorism require criminal acts relating to terrorist financing carried out by an individual terrorist to be covered under the domestic laws criminalising terrorist financing. The term 'person' is not defined under the Suppression of Terrorism Act and the definition provided under the Interpretation Act cannot be extended to cover an individual terrorist as required under the international and FATF standards. The Authorities explained that although the definition of person given under the Interpretation Act does not mention specifically a natural person in practice the legal understanding of the term extends to a natural person. It is therefore recommended that criminal acts committed by an individual terrorist be *specifically* criminalised under the Suppression of Terrorism Act.

160. The term 'funds' used in section 6 of the Suppression of Terrorism Act is not defined, which made it difficult for the assessors to determine whether the term as used under this section of the Act meets the definition under the Convention for the Suppression of the Financing of Terrorism.

161. The offence of terrorism provided for as a predicate offence to ML is not defined under the Suppression of Terrorism Act to enable one to know whether it also includes the offence of terrorist financing. The authorities should consider defining the term 'terrorism' in the Act to include the offence of terrorist financing so that it meets the requirement of being a predicate offence to ML.

162. It is recommended that the limitations to extraterritorial jurisdiction created under section 3(2) of the Suppression of Terrorism Act be removed to enable the inclusion of all offences described under section 3(1) of the Act.

163. The authorities are encouraged to consider enhancing compliance with the FATF standards by providing for civil and, or administrative proceedings to

run parallel with criminal proceedings where legal persons are criminally liable for terrorist financing offences.

164. The absence of cases investigated and, or prosecuted under the Suppression of Terrorism Act made it difficult for the assessors to determine the effectiveness of the Act as it has not yet been tested in courts of law in the Kingdom of Swaziland.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**NC**	• The term 'person' is not defined under the Suppression of Terrorism Act and the definition provided under the Interpretation Act cannot be extended to cover an individual terrorist as required under the international and FATF standards. • The term terrorism is not defined in order to know whether it includes the offence of terrorist financing as a predicate offence for ML. • The term funds used in section 6 of the Suppression of Terrorism Act is not defined which made it difficult for the assessors to determine whether it meets the standard under the TF Convention. • The extent to which parallel actions can be used against legal persons is only limited to charities. • The overall effectiveness of the Suppression of Terrorism Act could not be determined.

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

Legal framework

2.3.1 Description and Analysis

165. The following laws make up the asset forfeiture regime in the Kingdom of Swaziland, the Prevention of Corruption Act, the Serious Offences (Confiscation of Proceeds) Act, 2001, the Money Laundering (Prevention) Act, 2001 and the Suppression of Terrorism Act, 2008. The term forfeiture is used in all the legislation and forfeiture is conviction based. Whilst the forfeiture provisions in the Money Laundering (Prevention) Act and the Suppression of Terrorism Act relate to property, proceeds or instruments

derived from or connected or related to a money laundering offence, and property used for or in connection with or received as payment or reward for the commission of offences set out in the Act, respectively, forfeiture provisions in the Serious Offences (Confiscation of Proceeds) Act seem to be of a general nature applying to proceeds derived from all serious offences. The seizure, freezing and forfeiture provisions in the above acts apply to a wide range of property and the term 'property' has a broad definition in all the four acts which in general includes money, movable or immovable property, corporeal or incorporeal thing, rights, privileges, claims, securities and any interests therein and all proceeds thereof, financial assets, economic resources, investments and holdings.

Confiscation of property related to ML, TF or other predicate offences including property of corresponding value (c.3.1)

166. Confiscation or forfeiture of property related to money laundering, terrorist financing or other predicate offences including property of corresponding value is provided for in the laws cited in paragraph 2.3.1 above.

167. Section 19 of the Money Laundering (Prevention) Act states that where a person is convicted of a money laundering offence, the court shall order that the property, proceeds or instruments derived from or connected or related to such an offence be forfeited and disposed of in such manner as the court may direct.

168. Subsection (2) of the section provides the court with powers to forfeit any other property of the convicted person for an equivalent value or order the person convicted to pay a fine of such value in circumstances where the court as a result of any act or omission, any of the property, proceeds or instruments of the convicted person cannot be forfeited.

169. Under the same section, the court in determining whether or not any property is derived from or connected or related to a money laundering offence, shall apply the standard of proof used in civil proceedings.

170. Forfeiture is described in section 2 of the Money Laundering (Prevention) Act as follows:

''*the permanent deprivation of property by order of a court*''

171. The term 'property' is defined under the same Act to include money, investments, holdings, possessions, assets and all other properties whether movable or immovable wherever situated.

172. Under section 2 of the Money Laundering (Prevention) Act, the term 'instrument' is defined as something that is used in or intended for use in any manner in the commission of a money laundering offence.

173. The term 'proceeds of crime' is also defined in section 2 of the Money Laundering (Prevention) Act to mean:

'' any property derived or obtained, directly or indirectly, through the commission of a prescribed offence, whether committed in Swaziland or elsewhere and shall include any property which is knowingly mingled with property that is so derived or obtained''

174. Section 31 of the Suppression of the Terrorism Act provides that where a person is convicted of an offence under that Act, the court may order that any property used in connection with the offence be forfeited to the State. Again, section 33 (1) of the Suppression of Terrorism Act provides that the Attorney-General may apply to a judge of the High Court for an order of forfeiture in respect of terrorist property. Section 33 (4) provides that the Court shall make its ruling on an application made in terms of section 33(1) based on a balance of probabilities. Section 33 (11) provides that an application under section 33 shall not affect any other provision relating to forfeiture in the Act. In the view of the assessors section 33 provides for civil forfeiture although it does not specifically use that term.

175. The definition of the term 'property' as used in the Suppression of the Terrorism Act is discussed under c.II.1(b) above.

176. 'Terrorist property is defined under section 2 of the Suppression of the Terrorism Act as follows:

''(a) proceeds from the commission of a terrorist offence,

(b) money or other property which has been, or is likely to be used to commit a terrorist act, or

(c) money or other property which has been, is being, or is likely to be used by a terrorist group''

177. Section 3 (1) of the Serious Offences (Confiscation of Proceeds) Act 2001, states that when a person has been convicted of a serious offence, the Director of Public Prosecutions may, subject to subsection (2), apply to the Court convicting that person not later than 6 months after that person's conviction for a forfeiture order in respect of a particular property. However, it is not clear if the *'particular property'* is restricted only to the serious offence which the accused will have been convicted of as the provision does not seem to link the two.

178. Although the Serious Offences (Confiscation of Proceeds) Act does not define the term 'forfeiture', the type of property which can be forfeited and the

types of offences against which forfeiture can be applied are defined. Under section 2 of the Serious Offences (Confiscation of Proceeds) Act, 'property' is defined to mean real or personal property of every description wherever situated, whether tangible or intangible and it also means any interest in any such real or personal property. A 'serious offence' under the same section of the Act is defined to mean any offence specified in the Schedule to the Act.

179. The 'proceeds of serious offence' are defined under section 2 of the Serious Offences (Confiscation of Proceeds) Act to mean:

> *''any property used in or in connection with the commission of serious offence or any property that is derived or realised directly or indirectly by any person from the commission of any offence or from any act or omission which had it occurred in Swaziland would have constituted a serious offence''.*

Confiscation of property that has been laundered or which constitutes proceeds from the commission of any ML, FT or other predicate offences (c.3.1(a))

180. Section 19 of the Money Laundering (Prevention) Act, sections 31 and 33 of the Suppression of Terrorism Act and section 3 of the Serious Offences (Confiscation of Proceeds) Act provide for such forfeiture of property that has been laundered or constitute proceeds from the commission of any ML/FT or other predicate offences.

Confiscation of property that constitutes instrumentalities used in or intended to be used in the commission of any ML, FT or other predicate offences (c.3.1(b) & c.3.1(c))

181. S19 of the Money Laundering (Prevention) Act, sections 31 and 33 of the Suppression of Terrorism Act and section 3 of the Serious Offences (Confiscation of Proceeds) Act provide for such forfeiture of property.

Confiscation of property that constitutes instrumentalities used in or intended to be used in the commission of any ML, FT or other predicate offences (c.3.1(b) & c.3.1(c))

182. Section 19 of the Money Laundering (Prevention) Act provides for forfeiture of instrumentalities derived from, or connected or related to an offence. In the view of the assessors the provision was wide enough to include the forfeiture of instrumentalities used or intended to be used in the commission of ML offence.

183. The Suppression of Terrorism Act has no provisions dealing with the forfeiture of instrumentalities used or intended to be used in the commission of FT offences16. Section 31 of the Act which provides for forfeiture is only

[16] Now provided for under section 57 of the Money Laundering and Financing of Terrorism (Prevention) Bill,

limited to property and the definition of property in section 2 of the Act does not include instrumentalities used or intended to be used in the commission of a FT offence.

184. Forfeiture of property connected to a serious offence is provided for under section 3 of the Serious Offences (Confiscation of Proceeds) but from the definition of property provided in section 2 of the Act, it is not clear whether the definition is wide enough to include instrumentalities used or intended to be used in the commission of predicate offences.

Property of corresponding value

185. Section 19(2) of the Money Laundering (Prevention) Act provides as follows:

> *''(2) If, as a result of any act or omission of the person convicted, any of the property, proceeds or instruments cannot be forfeited, the court shall order the forfeiture of any other property of the person convicted, for an equivalent value, or shall order the person convicted to pay a fine of such value''*

186. This provision, although it does not specifically use the term 'property of corresponding value', it was the view of the assessors that the provision is broad enough to enable the forfeiture of such property.

Confiscation of property derived from proceeds of crime (c.3.1.1 applying c.3.1)

187. Section 19 of the Money Laundering Act states that where a person is convicted of a money laundering offence, the court shall order that the property, proceeds or instruments derived from or connected or related to such an offence be forfeited and disposed of in such manner as the court may direct. The provision specifically provide for forfeiture of proceeds derived from or connected or related to the commission of an offence. 'Proceeds of crime' as already indicated elsewhere in this report relate to any *property derived or obtained, directly or indirectly* through the commission of a prescribed offence regardless of where the offence was committed. The property should also include property knowingly mingled with such proceeds.

188. Section 31 of the Suppression of the Terrorism Act provides that where a person is convicted of an offence under that Act, the court may order that any property used for or in connection with or received as payment or reward for the commission of the offence be forfeited to the State. This provision does not seem to provide for forfeiture of property derived from proceeds of crime but the forfeiture seems to be only limited to property used for or in connection with or received as payment or reward for the actual commission of the offence not forfeiture of property later acquired from the proceeds

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2009.

generated from the offence. The Act again does not define proceeds of crime[17].

189. The definition of 'proceeds of serious offence' provided in section 2 of the Serious Offences (Confiscation of Proceeds) Act does not appear broad enough to include property derived from proceeds of crime. It is not clear whether the forfeiture provisions under sections 3 and 4 of the same Act actually provide for forfeiture of property derived from proceeds of crime. The forfeiture provisions limit the forfeiture provided for under the provisions only to proceeds obtained from the commission of a particular offence not property later generated or derived from such proceeds. The term "proceeds of serious offence" is defined to mean: *''any property used in or in connection with the commission of a serious offence or any property that is derived or realised directly or indirectly by any person from the commission of any offence or from any act or omission which had it occurred in Swaziland would have constituted a serious offence''*

190. Section 3 as read with section 4 of the Act provides as follows: *''3.(1)When a person has been convicted of a serious offence, the Director of Public Prosecutions may, subject to subsection (2), apply to the Court convicting that person not later than 6 months after that person's conviction for either or both of the following orders:*

(a) a forfeiture order in respect of particular property;
(b) a pecuniary penalty.
(2) The Director of Public Prosecutions shall not, except with leave of the Court, make an application under subsection (1) —
(a) if any application has previously been made under that subsection or any other law; and
(b) the application has been finally determined.

Forfeiture orders

4. (1) When an application is made to a Court under section 3 the Court may, if it considers it appropriate, order that the property be forfeited to the Government if it is satisfied that the property was the proceeds of a serious offence.''

Provisional measures to prevent dealing in property subject to confiscation (c.3.2)

191. Forfeiture in the Kingdom of Swaziland, as already highlighted in paragraph 2.3.1 above is conviction based and the laws allow various measures to be taken provisionally by the authorities to protect and prevent property which might be subject to forfeiture at the end of the criminal proceedings from being dealt with or disposed.

Restraining (Freezing) Orders

192. Section 18(1) of the Money Laundering Act states that where a person has been charged or is about to be charged with a money laundering offence, the competent authority may make an application to the Court freezing the

[17] Now provided for under section 2 of the Money Laundering and Financing of Terrorism (Prevention) Bill, 2009

property of or in possession or under the control of that person, regardless of wherever such property might be.

193. Under subsection (3) of the same section, the judge if satisfied that there are reasonable grounds to believe that there is property in respect of which an order of forfeiture may be made under the Act may make an order:

> *''(a) prohibiting any person from disposing of, or otherwise dealing with property specified in the order otherwise than in such manner as may be specified in the order; and*
>
> *(b) at the request of the competent authority, and where the judge is of the opinion that the circumstances so require, appoint a person to take control of or to manage or otherwise deal with property.''*

194. Section 32(1) of the Suppression of the Terrorism Act provides that where an application is made and the judge is satisfied that there are reasonable grounds to believe that there is in any building, motor vehicle, aircraft, place or vessel, any property in respect of which an order of forfeiture may be made:

> *''(b) a restraint order prohibiting any person from disposing of, or otherwise dealing with any interest in, that property other than as may be specified in the order.''*

195. Section 11(1) of the Serious Offences (Confiscation of Proceeds) provides as follows:

> *''11(1) If a person has been, or is about to be charged with a serious offence, the Director of Public Prosecutions may apply to the Court for a restraining order under this section in respect of —*
> *(a) specified property of that person;*
> *(b) all the property of that person, including property acquired by that person after the making of the order; or*
> *(c) specified property of any other person which was used in, or in connection with, the commission of the offence or was derived or realised, directly or indirectly, by that other person, as a result of the commission of the offence.''*

196. In terms of section 11(7) of the same Act, if the Court is satisfied that there are reasonable grounds in support of the application made by the Director of Public Prosecutions it may:

- direct that the property specified in the order is not to be disposed of or otherwise dealt with by any person, except in such manner and in such circumstances (if any) as specified in the order; or
- direct a trustee to take control and custody of the property.

Seizure Orders

197. In terms of section 13(1) of the Prevention of Corruption Act, an investigator or officer who reasonably suspects that an offence has been committed under the Act upon being authorised by the Commissioner of the Anti-Corruption and being granted an order by a judge in terms of subsection (2) of the same section, can search and seize any property in any premises or in the possession of any person which he or she reasonably believe to be connected with the offence. The assessors however were of the view that the requirement in subsection (3) of the section which requires the officer or investigator in his application for the search and seizure order during investigations, to establish a *prima facie* case is limiting. In the view of the assessors, this condition might be difficult to fulfil given that the matter would still be under investigation with much of the evidence still in the process of being gathered at that stage, perhaps a requirement for the officer or investigator to show facts which would establish a reasonable suspicion at that stage would make the process of making such an application less complicated and at the same time ensure that the rights of citizens are protected.

198. Section 30 of the Suppression of Terrorism Act provides that the Commissioner of Police may seize any property which the Commissioner has reason to believe has been or is about to be used in the commission of a terrorist act regardless of whether any person has been charged and subject to the obtaining of a detention order thereafter.

199. Further section 32(1) of the Suppression of Terrorism Act, 2008 states as follows:

> *''32(1) Where a judge of the High Court is satisfied, on an ex parte application made to the judge in chambers, that there are reasonable grounds to believe that there is in any building, motor vehicle, aircraft, place or vessel, any property in respect of which an order of forfeiture may be made under section 33, the judge may issue-*
>
> *(a) a warrant authorising a police officer to search the building, motor vehicle, aircraft, place or vessel for that property and to seize that property if found and any other property in respect of which that police officer believes, on reasonable grounds, that an order of forfeiture may be made under section 33''*

Ex-parte application for provisional measures (c.3.3)

200. Section 18(2) of the Money Laundering (Prevention) Act gives the discretion to a competent authority to apply to a judge *ex-parte* for a restraining order freezing the property of, or in the possession or under the control of a person who has been charged or about to be charged with a money laundering offence.

201. The Commissioner of Police in terms of section 30(3) of the Suppression of Terrorism Act in circumstances where he will have seized property on reasonable grounds for believing that such property is being used or has

been used to commit an offence under that Act, to apply *ex parte* to a Judge of the High Court for a detention order in respect of that property.

202. Section 32(1) of the Suppression of Terrorism Act allows a police officer to make an *ex parte* application to a judge of the High Court for an order for the search and seizure of any property upon which an order of forfeiture may be made or a restraining order prohibiting any person from disposing of, or dealing with an interest in that property other than as may be specified in the order.

Identification and tracing of property subject to confiscation (c.3.4)

203. Section 15 of the Money Laundering (Prevention) Act empowers a competent authority or any other law enforcement authority, where there are reasonable grounds to believe that a person is committing, has committed or is about to commit a money laundering offence to apply for an order from the courts requiring that the person bring to the Supervisory Authority, competent authority or law enforcement authority any document necessary to identifying, locating or quantifying any property or identifying or locating any document relevant for the transfer of any property belonging to, or in the possession or under the control of the person. A competent authority, Supervisory Authority or law enforcement authority can also obtain an order compelling an accountable institution to produce to it all information obtained by the institution about any business transaction conducted by or for that person with the institution during such period before or after the date of the court order.

Protection of bona fide third parties (c.3.5)

204. In terms of section 6 of the Serious Offences (Confiscation of Proceeds) Act , where the court is satisfied that the person claiming interest in property which is subject to forfeiture and has made an application to the court, was not in any way involved in the commission of the serious offence in relation to which the forfeiture order was made, that the person acquired interest in the property in good faith and for value or without knowing or in circumstances such as not to arouse a reasonable suspicion of the unlawful source of the property, the court shall make an order declaring the nature, extent and value of the applicant's interest in the property subject to the forfeiture order and the transfer of the property to the person.

205. Section 20(1) of the Money Laundering (Prevention) Act, provides for the rights of bona fide third parties against measures and sanctions imposed in terms of sections 18 and 19 of the same Act which deal with restrain and forfeiture orders. The court subject to being satisfied that the claimant has a legitimate legal interest in the property, proceeds or instruments or that the claimant did not participate, collude or involve himself or herself with the commission of the ML offence which is subject of the forfeiture order or that the claimant lacked knowledge and was not intentionally ignorant of the

illegal use of the property, proceeds or instruments or that the claimant did not acquire any rights in the property, proceeds or instruments from the person being charged, shall make an order declaring the interest of the applicant in the property.

206. Sections 30(4), 31(2) and 33(6)-(8) of the Suppression of Terrorism Act provide for the rights of bona fide third parties when the Commissioner of Police has reasonable grounds to believe that such property has been used, or is being used in the commission of terrorist acts and has to be seized, or when an order for forfeiture is applied for after the conviction of any person for the commission of terrorist act.

Power to void actions (c.3.6)

207. Under the current laws of the Kingdom of Swaziland, it does not appear there is authority to take steps to prevent or to void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation[18].

Additional elements (c.3.7)

208. The laws in the Kingdom of Swaziland do not provide for confiscation of the property of organisations that are found to be primarily criminal in nature, including organisations whose principal function is to perform or assist in the performance of illegal activities. Proceeds, property and instrumentalities of crime can only be forfeited in the Kingdom of Swaziland upon conviction of the accused person. Such property cannot be forfeited following a civil process in the absence of a criminal conviction. Civil forfeiture therefore is not provided for.

Statistics (applying recommendation 32)

209. The authorities informed the assessment team that there had not been any money laundering cases prosecuted yet in the Kingdom of Swaziland and as a result the authorities could not provide any statistics on freezing, seizing and confiscation of proceeds, property or instrumentalities related to both money laundering and terrorist financing cases.

2.3.2 Recommendations and Comments

210. Although the Money Laundering (Prevention) Act provides for seizure, freezing and forfeiture of proceeds and instrumentalities used or intended to be used in the commission of a money laundering or a predicate offence, not all predicate offences as per the Glossary to the FATF Recommendations are covered. Orders for seizure, freezing and forfeiture only apply to predicate

[18] Now provided for under section 62 of the Money Laundering and Financing of Terrorism (Prevention) Bill, 2009

offences prescribed under the schedule to the Act. The assessors observed that the minimum predicate offences as per the FATF requirements are now covered under the Money Laundering and Financing of Terrorism Bill of 2009. It is therefore important that the Bill be passed and enacted into law as soon as possible.

211. The Suppression of Terrorism Act does not provide for forfeiture of instrumentalities used or intended to be used in the commission of an offence. This also now covered under the new Bill.

212. The Money Laundering (Prevention) Act does not provide for steps to be taken to void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation. (The new Bill now provides for such steps to be taken.)

213. There is need to consider broadening the forfeiture regime in the Kingdom of Swaziland by providing for the civil forfeiture regime.

214. The Authorities should consider coming up with more effective means of recording and maintaining of statistics relating to search and seizure, freezing, and forfeiture of proceeds and instrumentalities used in or intended to be used in the commission of money laundering, terrorist financing and the listed prescribed predicate offences.

215. The Suppression of Terrorism Act does not provide for identification and tracing of proceeds of crime that may become subject to forfeiture. It is recommended that the authorities consider having specific provisions allowing identification and tracing of proceeds that may become subject to forfeiture under the terrorist financing provisions. (The Bill of 2009 does not have specific provisions dealing with identification and tracing of proceeds of crime which might become subject to confiscation.)

2.3.3 Compliance with Recommendations 3

	Rating	Summary of factors underlying rating
R.3	**PC**	• The list of prescribed offences does not cover all designated categories of offences which affect the scope of offences against which provisional measures and forfeiture can be applied. • There is no authority to take steps to void actions. • Absence of specific provisions allowing identification and tracing of proceeds which may be subject to forfeiture. • The absence of statistics made it difficult to determine overall effectiveness.

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

2.4.1 Description and Analysis

Legal framework

216. The Suppression of Terrorism Act has general provisions dealing with the implementation of the UN Security Council Resolutions.

Freezing assets under S/Res/1267 (c.III.1)

217. In terms of section 28(1) of the Suppression of Terrorism Act where the Attorney General, the Commissioner of Police or any other person responsible for the prevention of corruption, or any other investigative body has reasonable suspicion that:-

- an entity has knowingly committed, attempted to commit, participated in committing or facilitated the commission of, a terrorist act, or,
- an entity is knowingly acting on behalf of, at the direction of or in association with, an entity mentioned above, the Attorney General or any other person mentioned above in consultation with the Attorney General, may recommend to the Minister responsible for national security that the Minister publish a notice in the Gazette declaring the entity in respect of which the recommendation has been made to be a specified entity.

218. The section however, requires the Minister before publishing the notice to be satisfied that there is material to support the recommendation.

219. In terms of section 29 of the Suppression of Terrorism Act, upon receipt of measures issued by the UN Security Council for Governments to apply from the Ministry of Foreign Affairs through which the measures are sent to the Kingdom of Swaziland, the Minister responsible for national security after consultation as may be required by the law, is empowered to give effect to the measures through such provisions as may appear to the Minister necessary or expedient to enable the measures to be applied in an effective manner. In order to give the measures effect, the Minister is required in terms of the section to have the measures published in the Gazette.

220. Subsection (4) to the above section further provides that, *'where a notice under section 28(2) makes provision to the effect that there are reasonable grounds to believe that an entity specified in the notice is engaged in terrorist activity that entity shall be deemed with effect from the date of the notice to have been declared a specified entity.'*

221. The provisions under sections 28 and 29 of the Suppression of Terrorism Act described above appear to give the Minister responsible for national security wide powers including the freezing of terrorist funds or other assets of persons designated by the UN Security Council Sanctions Committee under

S/Res/1267 without delay and prior notice to the designated persons. However, at the time of the on site visit it was not possible to establish as to which provisions the Minister might rely on to enable the measures to be effectively implemented as such measures had not been applied.

Freezing assets under S/Res/1373 and freezing actions taken by other countries (c.III.2 & c.III.3)

222. The procedures described under c.III.1 above seem to cover all measures or resolutions issued under the UN Security Council Sanctions Committee, UNSCR 1373 and actions initiated under the freezing mechanisms of another country. In terms of section 2 of the Suppression of Terrorism Act under definition of 'counter terrorism convention', the UNSCR 1373 is recognised as binding the Government of Swaziland. In addition section 36 of the Suppression of Terrorism Act provides as follows:

'36(1) Where Swaziland becomes a party to a counter-terrorism convention and there is in force an arrangement for mutual assistance in criminal matters between the Government of Swaziland and another State which is a party to that counter-terrorism convention, that arrangement shall be deemed, for the purposes of the Mutual Assistance In Criminal Matters Act, to include provision for mutual assistance in criminal matters in respect of offences falling within the scope of that counter terrorism convention.

(2) Where Swaziland becomes a party to a counter-terrorism convention and there is no arrangement for mutual assistance in criminal matters between the Government of Swaziland and another State which is a party to that counter-terrorism convention, the Minister may, by notice published in the Gazette, treat that counter-terrorism convention as an arrangement between the Government of Swaziland and that other State provided for mutual assistance in criminal matters in respect of offences falling within the scope of that counter-terrorism convention.'

223. It was again not possible to determine how in practical terms the implementation of notices under S/Res/1373 and freezing actions taken by other countries would be done as the authorities in Swaziland indicated that they had not yet received such requests, neither did it seem to the assessors that there were systems in place to implement the freezing requests. The provisions relied on by the Minister as already indicated above, were also not explained to the assessors nor was it demonstrated to them as to how such provisions would enable the freezing of the assets.

Extension of c.III.1-III.3 to funds or assets controlled by designated persons (c.III.4)

224. It is not clear whether the powers the Minister responsible for national security has in terms of section 29 of the Suppression of Terrorism Act extend to freezing funds or other assets wholly or jointly owned or controlled, directly or indirectly by designated persons, terrorists, those who finance

terrorism or terrorist organisations, and funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by persons, terrorists, those who finance terrorism or terrorist organisations or such powers are only limited to freezing funds and other assets of persons designated.

Communication to the financial sector (c.III.5)

225. Although section 29 of the Suppression of Terrorism Act empowers the Minister responsible for national security to publish measures issued by the UN Security Council in the Gazette, it was not clear to the assessors as to what information would be gazetted and the mechanisms in place for the measures to be communicated to the financial sector. From the discussions the assessors had with the financial sector in the Kingdom of Swaziland, although some of it like banks seemed to be aware of the list or notices issued under S/RES/1267, it was not aware of the provisions under section 29 described above. There were no effective systems in place for communicating actions under the freezing mechanisms referred to in criteria III.1-III.3 to the financial sector immediately upon such action being taken.

Guidance to financial institutions (c.III.6)

226. Most of the financial institutions were not aware of the existence of the Suppression of Terrorism Act and the implications of section 29 of this Act to them. No guidance on the provisions to this section had been given to financial institutions. In addition, the authorities had not given guidance to the financial institutions that could be holding targeted funds or assets as to their obligations in handling such funds or assets under the freezing mechanisms.

De-listing requests and unfreezing funds of de-listed persons (c.III.7)

227. Section 29 of the Suppression of Terrorism Act, which empowers the Minister responsible for internal affairs to implement measures issued by the UN Security Council, does not proceed to provide for de-listing requests and unfreezing of funds of de-listed persons. However, section 28(3) – (8) provide in general, the procedures which can be followed by an entity, whose specification has been done domestically, in applying for the revocation of the notice published by the Minister in the Government Gazette in terms of that section (see c.III.1 above). Although section 29 describes the procedures which have to be followed when implementing measures issued under the UNSC Resolutions, the section is not clear as to whether the same procedures would also apply when the UNSC has reversed such measures and has de-listed certain persons from its list. Section 29 is also not clear as to whether the procedures described in section 28 for de-specifying persons whose specification has been done locally can also apply to de-listing requests to measures issued under the UN Security Council Resolutions provided for in

section 29. The lack of specificity on procedures to be followed when de-listing requests are received by the authorities create difficulties with regards to the de-listing of persons/entities listed under S/RES/1267 as they can only be de-listed following their de-listing by the UNSC and there has to be a framework in place for such de-listing.

Unfreezing procedures of funds of persons inadvertently affected by freezing mechanism (c.III.8)

228. The explanation given in c.III.7 above also applies to this criterion.

Access to frozen funds for expenses and other purposes (c.III.9)

229. There are no procedures authorising access to frozen funds for expenses and for other determined services.

Review of freezing decisions (c.III.10)

230. Section 28 of the Suppression of Terrorism Act provides procedures for reviewing of decisions made to specify persons/entities. In terms of section 28(4), where a specified entity has applied to the Attorney General asking him or her to recommend to the Minister the revocation of the notice specifying the entity and if it appears to the Attorney General after consultation with the Commissioner of Police or with any other person that there are reasonable grounds to support the application, he or she will make the necessary recommendations to the Minister. In the event that the Attorney General does not accede to the application, he or she will have to notify the applicant of his decision after which the applicant in terms of section 28(5) may apply for a review by the High Court. Although the section does not specifically provide for review of freezing decisions, the assessors were of the view that the effect of specifying an entity/person would extend to among other things freezing the specified entity/person's access to funds. However, in regards to funds frozen under section 29 pursuant to the entities/persons being listed in terms of the UNSC Resolutions, the same difficulties explained in c.III.7 would still arise.

Freezing, seizing and confiscation in other circumstances (applying c.3.1-3.4 and 3.6 in R.3 (c.III.11)

231. The Suppression of Terrorism Act provides for freezing, seizing and confiscation in other circumstances (for more detail refer to section 2.3 above).

Protection of rights of third parties (c.III.12)

232. The Suppression of Terrorism Act does not specifically provide for the protection of rights of third parties relating to freezing measures issued

under the UNSC Resolutions. The only measures which provide for protection of rights of third parties relate to criminal proceedings and in circumstances when the Attorney General makes an application for civil forfeiture of terrorist property, as described in section 2.3 of this report.

Enforcing the obligations under SR III (c.III.13)

233. Section 5(1) of the Suppression of Terrorism Act criminalises all conduct which falls under the definition of terrorist act (see definition of a terrorist act under criminalisation of financing of terrorism [c.II.1(a)] above). The definition of a terrorist act also includes offences covered under the counter-terrorism conventions. The definition of a counter terrorism convention in section 2 of the Suppression of Terrorism Act includes the UNSC Resolution 1373. The Minister responsible for national security in terms of section 29 of the same Act is empowered to publish the notices issued in terms of the Resolution in the Gazette for implementation. Any person who commits any offence in terms of section 5(1) of the Act, upon conviction shall be sentenced to a term of imprisonment not exceeding twenty five years or to such life sentences as the court may impose. In addition section 5(5) provides that a court convicting a person under subsection (1) to the same section shall not impose a punishment of payment of a fine unless there are compelling reasons for so doing.

234. In terms of section 5(6) of the Suppression of Terrorism Act, a person who commits a terrorist act or contravenes any other provision of the Act, whether by commission or omission will be committing an offence and if convicted will be liable to a penalty as provided under section 5 or any other provision of the Act.

Additional element

Implementation of measures in best practices paper for SR III (c.III.14)

235. Although section 29 of the Suppression of Terrorism Act provides in general procedures in implementing measures in best practices paper for SR III without necessarily mentioning the paper, such measures at the time of the on-site visit had not been tested in the Kingdom of Swaziland as they had not yet been applied in practice.

Implementation of procedures to access frozen funds (c.III.15)

236. The Suppression of Terrorism Act does not have provisions setting out procedures authorising access to funds or other terrorist assets that would have been frozen.

2.4.2 Recommendations and Comments

237. It was difficult to determine whether the powers the Minister responsible for national security has in terms of section 29 of the Suppression of Terrorism Act can be extended to freezing of funds or assets wholly or jointly owned or controlled, directly or indirectly by designated persons, terrorists, those who support terrorism or terrorist organisations.

238. The authorities need to provide for an effective framework to communicate actions made under the UNSC freezing mechanisms to the financial sector immediately upon such action being taken.

239. It is recommended that the authorities give guidance to financial institutions which could be holding targeted funds or assets under the freezing mechanisms.

240. The authorities should consider putting in place clear publicly known procedures for considering de-listing requests and for unfreezing of funds or assets of de-listed persons in a timely manner.

241. The authorities should consider having clear procedures for unfreezing of funds or assets of persons inadvertently affected by freezing mechanism upon verification that the person is not a designated person.

242. It is recommended that the authorities put in place a legal framework providing procedures for authorising access to frozen funds or assets for basic expenses and for other determined services.

243. It is recommended that the authorities should put in place a legal framework clearly providing for review of freezing decisions made under the freezing mechanisms of the UNSC Resolutions.

244. The authorities should consider providing a legal framework consistent with the TF Convention on the protection of the rights of *bona fide* third parties.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**NC**	• The extent of the powers of the Minister responsible for national security in freezing funds or assets of persons associated with financing of terrorism could not be determined. • There is no effective framework to communicate actions made under the UNSC freezing mechanisms to the financial sector immediately upon such action being taken. • The authorities have not issued guidelines to financial institutions that might be holding targeted funds on their obligations in handling such funds under the freezing mechanisms.

		• There are no effective and publicly known procedures for processing de-listing requests and unfreezing of funds or assets of de-listed persons. • There is no legal framework for unfreezing funds or assets of persons inadvertently affected by freezing mechanisms upon verification that the person is not a designated person. • There is no legal framework to allow access to frozen funds or assets for basic expenses and other services. • There are no procedures in place enabling the review or challenging of the freezing decisions. • There are no procedures in place consistent with the TF Convention to protect the rights of *bona fide* third parties.

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

2.5.1 Description and Analysis

Legal framework

245. The Money Laundering (Prevention) Act, 2001 and the Financial Institutions Act, 2005 designate the CBS as competent authority to receive STRs from accountable institutions. The Anti-Money Laundering Guidelines, 2001, provides guidance to accountable institutions to prevent, detect and report money laundering activities. Suppression of Terrorism Act, 2008 designate the Royal Swazi Police and a Financial Intelligence Unit to receive STRs related to financing of terrorism.

Establishment of FIU as National centre (c.26.1)

246. There is no FIU in the Kingdom of Swaziland[19]. There is a Supervisory Authority to receive ML suspicious transactions reports from accountable institutions pursuant to s11 of the Money Laundering (Prevention) Act, 2001. S2 of the same Act defines Supervisory Authority as "*the Governor of the Central Bank of Swaziland, or any person acting in that capacity*". In practice, the CBS is the Supervisory Authority referred to in s2 of the Act.

247. Exchange Control Department within the CBS received 129 STRs in the last four years. It conducts basic analysis of the STRs. Only banks submitted STRs.

248. In terms of s27(1) of the Suppression of Terrorism, the Police and FIU should receive STRs related to TF. There is no STR received by the Police and FIU

[19] Authorities are setting up an FIU in anticipation of the passing into law of the Money Laundering and Financing

of Terrorism (Prevention) Bill, 2009 which makes a provision for establishment of a financial intelligence unit.

pursuant to this section. There is no structure within the Police to give effect to s27(1).

Guidelines to financial institutions on reporting STR (c.26.2)

249. The manner, form and procedure for reporting STR is laid out in Appendix 2 of Paragraphs 117 & 118 of the AML Guide, 2001. The guidelines are however primarily known to and used by the banking sector. STRs are sent to the CBS via post or facsimile. The banking sector also hand-delivered STRs to the CBS. The STR form is primarily designed for the banking sector, and is therefore not sector-specific.

250. There are no guidelines for STRs related to TF.

Access to information on timely basis by FIU (c.26.3)

251. The CBS does not directly or indirectly have access to information held by law enforcement agencies for analysis of STRs. Internet is used to access open source information to analyse STRs.

252. The authorities indicated that they have already engaged relevant law enforcement agencies and other useful sources of information to have access to their databases for the FIU being set up under the Money Laundering and Financing of Terrorism (Prevention) Bill, 2009.

Additional information from reporting parties (c.26.4)

253. There is no legal authority for the CBS or through another competent authority to request additional information from accountable institutions required in order to undertake its functions properly.

Dissemination of information (c.26.5)

254. In terms of s11(b) of the Money Laundering (Prevention) Act, 2001 the CBS is authorised to disseminate financial information on suspicion of money laundering to law enforcement authorities where there are grounds to suspect money laundering. One STR out of 129 was disseminated to the Police in the last four years

255. There is no authority for dissemination of TF reports by the Police and FIU. There are no reports received for dissemination.

Operational independence (c.26.6)

256. The Money Laundering (Prevention) Act does not have any specific provision on operational independence and autonomy of the CBS in relation to implementation of anti-money laundering measures in the country. The authorities apply same measures as those implemented for the general operation of the CBS as discussed in c.30.2 of Recommendation 30. The

Suppression of Terrorism Act is silent in this regard and the assessors could not determine operational independence and autonomy in the absence of a designated structure within the Police for this purpose.

Protection of information held by FIU (c.26.7)

257. There is no express provision in the Money Laundering (Prevention) Act and Suppression of Terrorism Act on protection of information held by the CBS pursuant to the provisions of the Money Laundering (Prevention) Act. STRs are stored in secured filing cabinets and computers at the CBS. The banks raised concerns about the confidentiality of the information submitted to the CBS under this Act in relation to the manner of reporting and the lack of a direct obligation to protect STR information

Publication of annual reports (c.26.8)

258. No annual report in relation to anti-money laundering activities was published by the CBS.

Membership of Egmont Group (c.26.9 & c.10)

259. The Kingdom of Swaziland does not have an FIU to consider joining Egmont Group of FIUs.

Recommendation 30

Structure, funding, staffing ***and other resources (c.30.1)***

260. The EXCON Department is a division within the Financial Regulation Department of the CBS. Three officers of the EXCON ensure compliance with the obligations of the Money Laundering (Prevention) Act and the Financial Institutions Act by accountable institutions. The Government of Swaziland through the Ministry of Finance allocated E8 million to set up an independent FIU which will only report directly to the Governor of the CBS. A Director was appointed to head up the process in February 2009 and works closely with the Office of the Governor. Plans were underway to have study tours to other countries with operational FIUs. The authorities are receiving FIU technical assistance from a number of providers.

Integrity and confidentiality standards (c.30.2)

261. The Money Laundering (Prevention) Act does not contain any specific requirement on maintenance of high professional standards, including standards concerning confidentiality, and high integrity. Officers within the EXCON and those involved in the formation of FIU are recruited in terms of the CBS recruitment procedures and must comply with the provisions of the Officials Secrecy Act, 1968.

Training (c.30.3)

262. The EXCON manager and two AML inspection officers and the Director appointed to set up the FIU are trained AML/CFT assessors and regularly attend ESAAMLG programmes. The staff of the FIU will need training in various areas including analysis, compliance and other technical skills to ensure that once set up the FIU will be able to properly execute its functions.

Recommendation 32

Statistics and effectiveness

263. There is no comprehensive statistics to determine effectiveness.

2.5.2 Recommendations and Comments

264. The EXCON Department is not adequately structured, lacks well defined procedures and adequate resources to serve as a national centre to receive, analyse and disseminate financial intelligence to law enforcement agencies in a manner consistent with the FATF Recommendation 26. The assessors noted the efforts by the authorities to set up an FIU as provided for in the Money Laundering and Financing of Terrorism (Prevention) Bill, 2009.

265. As a matter of urgency, it is recommended that the Kingdom of Swaziland should enact the Bill and set up an effective FIU consistent with the standards of the Egmont Group of FIUs as required by the FATF Recommendation 26. In addition, the authorities should undertake effective awareness raising programmes to ensure that all stakeholders including reporting entities and law enforcement agencies become aware of the functions and value of the FIU to combat crime, money laundering and terrorist financing.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**NC**	- The requirements for effective FIU have not been implemented.

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

Recommendation 27

The Legal Framework

266. The powers of law enforcement authorities are derived from the following laws:

(a) The Constitution of the Kingdom of Swaziland Act 2005
(b) The Money Laundering (Prevention) Act 12/ 2001
(c) The Prevention of Corruption Act 3/ 2006
(d) The Suppression of Terrorism Act 2008
(e) The Criminal Procedure and Evidence Act 1938
(f) Serious Offences (Confiscation of Proceeds) Act 2001
(g) The Extradition Act 1968
(h) Electronics Records (Evidence) Act 2009
(i) Royal Swazi Police Act, 1957

Designation of authorities ML/FT Investigations (c.27.1)

267. In terms of s57 of the Constitution of the Kingdom of Swaziland, law enforcement authorities have an obligation to serve the community by protecting all persons against illegal acts, to respect and protect human dignity and maintain and uphold human rights of every person. The law enforcement officials are not supposed to inflict, instigate or tolerate an act of torture or other cruel, inhuman or degrading treatment or punishment and there will be no circumstances when such acts done by law enforcement officials can be justified and by the same token the officials cannot act corruptly and are supposed to guard against such acts.

268. The Royal Swaziland Police, which is established and constituted in terms of s189 of the Constitution and s3 of the Police Act, is one of the two main bodies that are mandated to investigate money laundering and terrorist financing in the Kingdom of Swaziland. In terms of s7 of the Police Act, the Royal Swaziland Police has the responsibility to preserve peace, to prevent and detect crime and apprehend the offenders in the Kingdom of Swaziland. The responsibility to investigate money laundering and financing of terrorism within the Royal Swaziland Police is bestowed on the Fraud and Commercial Unit which is part of the Criminal Investigation Department.

269. The Anti-Corruption Commission, which is established in terms of s3 of the Prevention of Corruption Act, is the second main institution which is mandated to investigate money laundering in terms of the laws of the Kingdom of Swaziland. In terms of s10(1)(c) of the Prevention of Corruption Act, the Commission can, " investigate any alleged or suspected offences under this Act, or any other offence disclosed during such an investigation". Money laundering is provided for as any offence in terms of s41 of the Prevention of Corruption Act, making it one of the offences which can be investigated by the Anti- Corruption Commission.

270. The Office of the Director of Public Prosecutions is created in terms of section 162 of the Constitution of the Kingdom of Swaziland. Amongst the functions of the DPP's Office is the instigation of criminal proceedings against any

person before any court other than a court martial for any offence which the person might be alleged to have committed in contravention of the laws of Swaziland. Such offences would include money laundering and financing of terrorism. However it was observed by the assessors that sections 77(5) and 162(7) of the Constitution and sections 3, 4 and 9 of the Criminal Procedure and Evidence Act created inconsistencies relating to the exact jurisdictions of the AG and the DPP when it comes to prosecution. Section 4 and 9 of the Criminal Procedure and Evidence Act seem to be suggesting that whoever prosecutes in Swaziland's courts does so upon delegation of such mandate by the AG whereas section 162 of the Constitution sets the impression that the DPP can independently instigate criminal proceedings on his/her own but is only obliged to consult with the AG if such proceedings might involve matters of national security [s162 (7)]. The Authorities informed the assessors that the provisions creating the inconsistencies relating to the powers, duties and functions of the DPP had since been repealed by the Director of Public Prosecutions Order of 1973.Section 3 of the Order provides that powers, duties and functions relating to criminal proceedings shall be vested in the DPP from the date of coming into force of the order.

Ability to postpone/waive arrest of suspects or seizure of property (c.27.2)

271. The law enforcement authorities of the Kingdom of Swaziland do have the ability to postpone or waive the arrest of suspects or the seizure of the property in order to ascertain or identify any person involved in the commission of the offence or for evidence gathering. The practice however is based on the administrative powers vested in the police. In terms of the administrative powers the competent authorities can use their discretion to postpone or waive arrest of suspects or seizure of property on a case by case basis.

Additional element-Ability to use special investigative techniques (c.27.3 & 27.4)

272. The law enforcement authorities in the Kingdom of Swaziland in practice do apply the special investigative techniques in their investigation of cases. This is done through s25 of the Suppression of Terrorism Act which allows the Royal Swaziland Police to apply to a High Court Judge to obtain an order "…(a)*requiring a communications service provider to intercept and retain a specified communication or communications of a specified description received, transmitted by that service provider;"* or any order to authorize them *" (b)…… to enter any premises and to install on those premises a device for the interception and retention of a specified communication or communications of a specified description and to remove and retain that device".*

273. Although specific provisions for the use of special investigative techniques are limited only to the above provisions excluding other techniques like controlled delivery of proceeds of crime or funds intended for use in the

financing of terrorism or laundering and other undercover operations, the assessors were informed that administratively the law enforcement authorities on a daily basis apply undercover operation techniques such as surveillance and monitoring of suspects. Depending on the circumstances of the case being investigated and activities of the suspects, sometimes entrapment techniques are used

274. The assessors were further informed that undercover operations were often used in investigations involving the counterfeiting of currency and smuggling of cigarettes. The authorities briefed the assessors on four (4) cases under investigation where special investigative techniques had been used.

Additional element- Specialised investigation groups and conducting multi-national cooperative investigations (c.27.5)

275. The authorities informed the assessors that the law enforcement authorities in the Kingdom of Swaziland had incidences where they formed a Multi Task Force as inter agencies within the country with the aim of effectively investigating certain predicate offences. To date the authorities said that this task force had not been involved in any money laundering and terrorist financing investigations. The team is usually composed of members from the Police Force, the Anti- Corruption Commission, Customs and Prosecution.

276. The Royal Swaziland Police has entered into Memoranda of Understanding with the police forces of other neighbouring countries, like South Africa. It is also a member of regional organisations such as INTERPOL, SARPCCO and the SAFAC which is an anti-corruption agency. The assessors were advised by the authorities that these organisations within the member states enable adequate flow of information to the Royal Swaziland Police and also exchange information with the other member states.

277. The assessors were informed that the Police had successfully investigated two cases involving fraud and corruption with the assistance of the Asset Forfeiture Unit of the Republic of South Africa. Of the two cases, one had been completed and the assets recovered in South Africa had been forfeited to the Kingdom of Swaziland. The other case was still pending in court. Of the completed case the South African authorities did not request for asset sharing of the proceeds of the offence with the Kingdom of Swaziland. The case was prosecuted in the South African Courts as the authorities in Swaziland were of the view that the asset forfeiture regime in South Africa was much more developed and there was no prejudice to them and the accused person, as the case covered both jurisdictions.

278. Section 22 of Part V of the Money Laundering (Prevention) Act provides for international cooperation. It provides for the Competent Authority to cooperate with the competent authorities of other countries by providing assistance in civil, criminal or administrative investigation or in the prosecution of ML offences.

279. However this provision has been limited in application by s22 (6) of the same Act, which provides that this assistance applies only to those countries with whom Swaziland has entered into mutual assistance treaties on a bilateral or multilateral basis, and that such assistance will be subject to the terms of these treaties.

280. The Extradition Act in s7 also provides for cooperation with other states. The section provides that the Minister upon receiving the request for assistance by another state notifies the magistrate who then issues the warrant of arrest against any suspected person in the Kingdom of Swaziland. The warrant empowers the police officer also to search and seize the property which may be required as evidence at the trial of the person to be surrendered.

Additional element- review of ML and FT trends by law enforcement authorities (c. 27.6)

281. ML/TF methods and trends have not been reviewed but when necessary discussions on methods and trends used in individual cases have been held by the concerned law enforcement agencies. The authorities however did not provide specific information on the actual cases.

282. Although there is no legal requirement for reviews on ML/TF methods, techniques or trends to be done, there are internal arrangements for stakeholder meetings where such matters can be discussed. The meetings are chaired by a Judge of the High Court and the members therein are drawn from the Police, the DPP's office, the Anti-Corruption Commission, the Attorney General's office and the Registrar's office.

283. There is also a Fraud Liaising Committee meeting held each month, whose mandate is to discuss banking issues, the risks involved and the modus of the criminals affecting the banking sector. The police, banks, insurance and Exchange Control section of the Central Bank of the Kingdom of Swaziland are members of the Committee. However the authorities informed the assessors that matters relating to ML/TF have not been an issue for discussion by this Committee.

Recommendation 28

Ability to compel production of and searches for documents and information (c.28.1)

284. The law enforcement authorities derive their powers to compel production of, search persons and premises for, and seize and obtain documents and information from the Criminal Procedure and Evidence Act, the Money Laundering (Prevention) Act, the Serious Offences Act, the Prevention of Corruption Act, the Extradition Act and the Suppression of Terrorism Act.

285. S14 of the Money Laundering (Prevention) Act empowers the law enforcement authorities to apply to court for a warrant of search and seizure at the premises of the accountable institution or under the control of the accountable institution or any officer or employee of the accountable institution of any document, material or other thing they need for their work. The Judge may only grant a warrant applied for if satisfied that there are reasonable grounds to believe that an accountable institution:

- Has failed to keep business transaction records for a period of 5 years after termination of the business transaction;
- Has failed to report any suspicious business transaction that could be related to money laundering; and
- Has an officer or employee who is committing, has committed or is about to commit a money laundering offence.

286. In view of the above provision, the powers only go as far as the accountable institution and its employees are concerned but do not apply to any other person who is not in the employee of the accountable institution. This limits the scope of the law enforcement agencies if the documents, information or material required relating to an accountable institution is in the possession of a third party.

287. S15 of the Money Laundering (Prevention) Act empowers the Supervisory Authority (i.e. the CBS), the competent authority or the law enforcement authority to apply to court for an order to compel a person who is reasonably suspected to be committing, has committed or is about to commit a money laundering offence to deliver document(s) identifying, locating or quantifying any property belonging to him/her or in his/her possession or under his/her control, or if such information or document is in the possession of an accountable institution to deliver it to the Supervisory Authority, competent authority or law enforcement authority.

288. Under s30 of the Suppression of Terrorism Act, the Commissioner of Police or any other police officer authorised by him may seize any property which he believes on reasonable grounds to have been used or is being used to commit an offence in terms of the Act. The police as soon as practicable after seizing the property will have to apply for a detention order of the property to a Judge of the High Court. S32 of the same Act empowers the police upon obtaining a warrant from a Judge of the High Court to enter and search a building, motor vehicle, aircraft or any other place or vessel and seize property in respect of which an order for forfeiture may be issued under the provisions of the same Act.

289. In terms of s16 of the Serious Offences (Confiscation of Proceeds) Act, a magistrate upon application by a police officer and being satisfied on

reasonable grounds that there is in the premises property which is connected to the commission of a serious offence, or property derived as a result of the commission of a serious offence may issue a search warrant.

290. In cases of urgency where a police officer believes on reasonable grounds that proceeds of a serious offence may be disposed of, concealed, lost or destroyed, the police officer in terms of s17 of the Serious Offences Act after obtaining the approval of the Commissioner General of Police, may enter and search any premises, search any person in or on the premises and seize any proceeds of the serious offence without a search warrant.

291. Pursuant to the provisions of s22 of the Serious Offences Act, upon conviction of a person or suspicion of a person having committed a serious offence, if a police officer has reasonable grounds of suspecting such a person of being in possession, control or custody of any document regarding property connected to the offence committed or the person is suspected to have committed, the police officer may apply to the court for an order directing that person to produce to the Commissioner of Police the document described in the order.

292. In terms of s7(3) of the Extradition Act, any magistrate is empowered where a warrant for the arrest of a person for purposes of extradition has been issued to issue a warrant empowering a police officer to search and seize property which may be required as evidence at the trial of the person to be extradited for the offence.

293. The police are generally empowered to enter, search and seize any documents, information and other related materials to be used for purposes of investigations or as evidence at a criminal trial under s46 of the Criminal Procedure and Evidence Act. In exceptional circumstances the police in terms of s47 of the Criminal Procedure &Evidence Act, are allowed to search and seize without a warrant. The provisions allow for the search and seizure of stolen property or anything with respect to which an offence has been committed or is suspected on reasonable grounds to have been committed, anything as to which there are reasonable grounds for believing that it will afford evidence as to the commission of an offence or anything upon reasonable grounds is believed that it is intended to be used for the commission of an offence.

294. The police pursuant to s49 of the Criminal Procedure &Evidence Act can apply to the court for an order for the production of any books of accounts, documents, records or thing in the possession of any person which also includes companies, banks or financial institutions. The books of account, documents, records or thing have to be required by the police in connection with a criminal investigation.

295. In terms of the Prevention of Corruption Act, ss11 and 13 provide for investigators and officers where there is reasonable suspicion that an offence has been committed in terms of the Act with the authority of the Commissioner for the Anti-Corruption Authority and after obtaining a court order to search, enter and search any premises or to seize any property in any premises or in the possession of any person reasonably believed to be connected to the offence.

296. The only restrictive factor under s13(3)(c) of the Act is that, in order for the investigator or officer to succeed in applying for any order to search and seize any property as provided for under subsection (1) of the same section, he has to establish a *prima facie* case to a Judge of the High Court in chambers. The application is not based on the officer or investigator establishing a case based on reasonable suspicion at that stage of investigation. This in the view of the assessors could adversely affect investigations as at that stage of investigation the officer might not have gathered enough evidence to establish a *prime facie* case but could have reasonable grounds to support the basis of the application.

Power to take witnesses' statement (c.28.2)

297. The power to take witnesses' statements which is generally used by the police in the Kingdom of Swaziland during the course of their criminal investigations is derived from the mandate ascribed to it by the Constitution to prevent and detect crime (s189, Constitution of the Kingdom of Swaziland Act) and the powers and duties conferred and imposed upon it in terms of any other law in force in the Kingdom (s7, Police Act).

298. The Anti-Corruption Commission also has general powers in terms of the Prevention of Corruption Act to take witnesses' statements when carrying out an inquiry or investigation of any offence committed under the Act (s11, Prevention of Corruption Act). Pursuant to s12(1)(f) of the Prevention of Corruption Act, an investigating officer from the Commission can ask a person who is under investigation to furnish him with a sworn statement regarding specific information provided for under s12(1)(a),(b) of the Act. In terms of s12(5) of the same Act such information shall be admissible as evidence at the trial of the person and where such a person becomes a witness such information can be used for purposes of cross-examining him or for impeaching the credibility of the person.

Recommendation 30

Structure, funding, staffing and other resources of law enforcement and other AML/CFT investigative and prosecutorial agencies (c.30.1)

The Royal Swaziland Police
Structure, staffing, funding and other resources

299. The Royal Swaziland Police is established in terms of the Constitution of the Kingdom of Swaziland and is empowered in terms of the Police Act to prevent and detect crime and to exercise all powers and duties conferred and imposed on it by the laws in force in the Kingdom of Swaziland.

300. The Royal Swaziland Police is composed of the senior ranks of the Commissioner of the Force who is the head of the force, Deputy Commissioners, Assistant Commissioners, Senior Superintendents, Superintendents, Assistant Superintendents and Inspectors, Sergeants and Constables in the lower ranks. At the time of the on site visit there were two Deputy Commissioners, one for administration and the other for operations and six Assistant Commissioners.

301. The force has six departments. Each department is headed by an Assistant Commissioner. The six departments are:

i. The Criminal Investigations;

ii. Cooperation;

iii. Legal;

iv. Intelligence;

v. Administration; and

vi. Training.

302. The Assistant Commissioner who heads the CID is deputized by a Director and a Deputy Director. The department is mandated to investigate ML and TF offences. It has the following units:

i. Fraud and Commercial Crimes Unit;
ii. Serious Crimes Unit
iii. Organised Crime Unit
iv. Stock Theft Unit
v. Domestic Violence Child Protection and Sexual Offences Unit
vi. Drugs Unit
vii. Criminal Intelligence Services Unit
viii. Criminal Investigations Bureau
ix. Anti-Car Theft Unit
x. Forensic Unit.

303. The assessors were however informed that the Organized Crime Unit had just been started.

304. The country has four (4) regions. Each region is headed by a Senior Superintendent. Each region has about eight (8) stations. Manzini and the Lubombo were cited as specific regions with eight stations. However, the

authorities informed the assessors that some of the technical units like the commercial and fraud units were not represented at all station levels and officers from CID head office attended to crime scenes in these areas whenever there was need.

Staffing & recruitment

305. Recruitment for the Royal Swaziland Police officers is done through placing of advertisements in the local newspapers for members of the public to apply. The advertisement will list the kind of qualifications required including a birth certificate, integrity requirements and a form five certificate (Grade 12). Successful candidates are required to undergo vetting to ensure that only fit and proper candidates are employed.

306. The CID recruits its officers from the police service through the Police College. The recruitment is based on the needs of the department at that particular time. Apart from qualifications which might be needed at that particular time, discipline is also considered. This is done through checking of the officer's disciplinary conduct record from the time of employment in the Royal Swazi Police. In circumstances where the CID requires recruitment from outside, it writes to the Public Service Commission to carry out the recruitment. The CID in most of the cases will then be given the names by the Public Service Commission in order for it to conduct its own vetting processes.

307. The Criminal Investigations Department comprises of 490 officers.

Funding

308. The Royal Swazi Police receives its funding from government. The authorities indicated the need for financial, technical and human resources assistance. Added also was the requirement for resources such as vehicles, personnel and IT equipment to enable its force to combat crime. The authorities indicated that financial assistance would be used to among other things capacitate the police with more specialized investigative techniques. The budget allocation for the year 2009/2010 was E104, 538,000 for the implementation of capital projects and an annual recurrent budget of E525, 368.055 with a sum of E132, 777,438 being the released budget for the Second Quarter.

***Integrity standards* (c.30.2)**

309. Matters of indiscipline relating to senior officers in the force from the rank of inspector and above are dealt with in terms of the laws relating to public officers. Officers under the rank of inspector are liable to trial by a senior officer to whom they report to or to his deputy. Depending on the gravity of the case, the senior officer may refer the matter for guidance to the

Commissioner, who may order that the officer be tried before a senior officer, or a board or a court (s.12, Police Act).

310. The authorities reported cases of indiscipline by members of the police to be on the low side. The figures of police officers charged with indiscipline were reported to be insignificant. The Police Act requires the Commissioner when appointing members of the police force below the commissioned rank of inspector to appoint fit and proper persons (s.5, Police Act). As described above in this report, the officers when being recruited are subjected to vetting, and screening and those who fail are not recruited. The authorities informed the assessors that this was one of the ways they were using to maintain the dignity and integrity of the police force.

311. The assessors were informed that most of the police officers with a legal background have been taken to become prosecutors because they are found to be disciplined, attend court on time and prepare and read the cases they present in court.

312. The police officers have to abide by confidentiality clauses provided under the Official Secrets Act.

Training **(c.30.3)**

313. Training of the police officers is mostly done through the Police College. The officers have to familiarise themselves with the legal manual book, CID basic manual, force orders and circulars issued by the office of the Commissioner.

314. On the regional and international scale, training of the police officers is done by INTERPOL and SARPCCO.

315. The authorities were concerned that the specialised units which are supposed to investigate cases of ML/FT, such as the Fraud and Commercial Crimes Unit which investigates cases of ML and the Organised Crimes Unit which investigates cases of TF have very few trained officers. Assessors were informed that only six officers in the four regions had been trained. The authorities expressed the view that an ideal number was four trained officers per region.

316. The authorities were of the view that since issues of ML/TF were new to them there was a need to raise awareness so that more police officers would be exposed to the trends involved when the offences are committed.

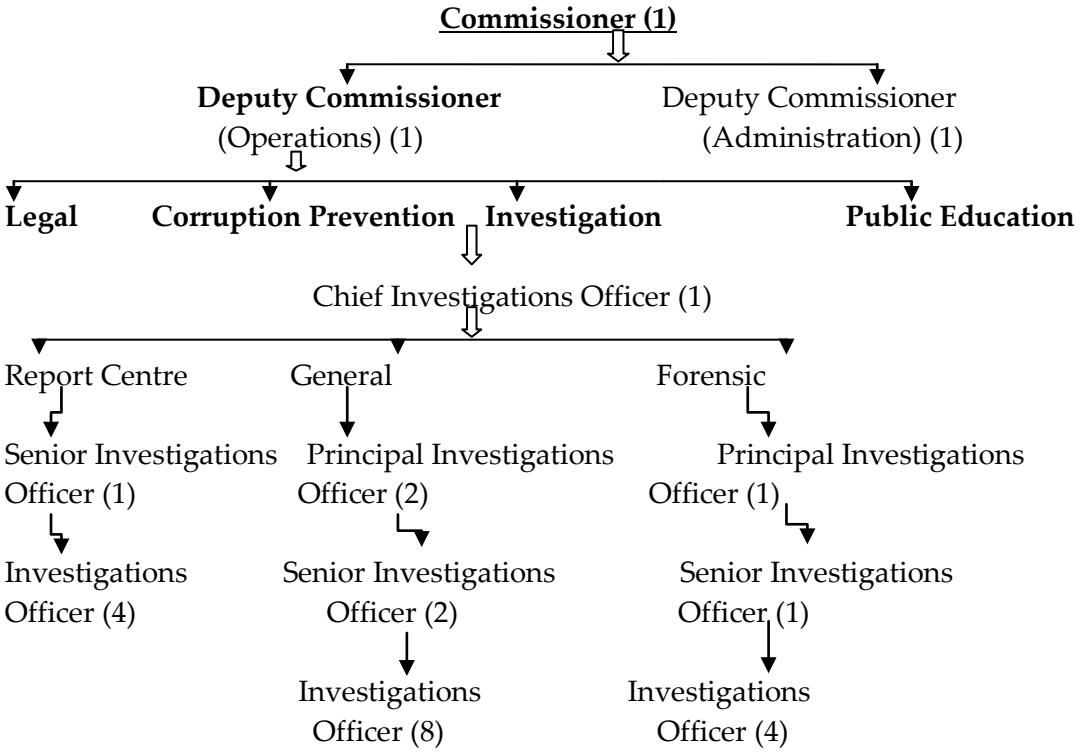
Anti-Corruption Commission

Structure, staffing, funding and other resources **(c.30.1)**

317. The Commission is an investigative authority which is headed by the Commissioner appointed by the King on the advice of the Judicial Service Commission. The Commission has two Deputy Commissioners who are also

appointed by the King on the advice of the Judicial Service Commission. The two Deputy Commissioners are responsible for the administration and operations of the Commission, respectively. At the time of the on site visit the Commission had thirty operational staff.

318. The structure of the investigative arm of the Commission is set up as follows:



Staffing

319. The Anti-Corruption Commission has a staff compliment of ninety (90) employees but according to the authorities it faces challenges in recruiting and retaining staff particularly for senior management positions. At the time of the on site visit the Commission had thirty operational staff.

Funding

320. The Anti-Corruption Commission's budget is fully provided for by the government. The Commission according to the authorities prepares a budget which it forwards to the Minister of Justice for presentation in Parliament. The authorities were of the view that the Commission was to some extent adequately funded.

Integrity (c.30.2)

321. The law in the Kingdom of Swaziland set high standards for a person to be appointed as Commissioner of the Anti-Corruption Commission. The person, among other things has to qualify to be a Judge of the High Court (s.5, Anti-Corruption Act). The assessors were informed that for one to qualify be a

Judge of the High Court, he or she has to be a person of unquestionable integrity. As for the Deputy Commissioners, they have to be of high moral character and proven integrity (s.5, Anti-Corruption Act). The officers of the Commission are subject to laws and regulations which govern the conduct of pubic officers.

322. The officers are vetted and screened for any criminal record before being employed by the Commission.

Training (c.30.3)

323. Apart from a capacity building seminar which was hosted for the officers by the United Nations Office on Drugs and Crime (UNODC) in 2009, most of the training they have received is in-house through internal workshops and a few external ones. At the time of the on-site visit one of the officers was being trained in South Africa. The officers indicated that they needed more capacity building in conducting investigations. The assessors were informed that the Commission had done a staff skills survey and the report was still to be out.

DPP/AG's Offices

Structure, staffing, funding and other resources (c.30.1)

Structure

324. The Constitution of Swaziland establishes the Office of the DPP and that of the AG. The Office of the DPP is headed by the Director of Public Prosecutions and that of the Attorney General by the AG. Both the DPP and the AG are appointed by the King on the advice of the Judicial Services Commission.

325. The AG's Office's functions are to:

- act as the principal advisor to the Government;
- draft and sign all Government Bills to be presented in Parliament; and
- draw or peruse agreements, contracts, treaties, conventions and documents to which the Government is a party or in respect of which Government has an interest.

326. The Office of the DPP has four specialised units. Each one of the units is headed by a principal crown counsel. The units are as follows:

a) Anti-Corruption Unit;
b) Fraud and Drugs Unit;
c) Domestic and Sexual Offences Violence Unit; and
d) General Offences Unit.

327. In addition to the four principal crown counsels heading each one of the units, each unit also has senior crown counsels, crown counsels and

prosecutors. The crown counsels have to have a law degree, be admitted to the bar and have legal experience varying from a year to seven years. The Prosecutors have law degrees but are not necessarily admitted to the bar. The crown counsels can appear in any of the courts in the Kingdom of Swaziland, including the High Court and Supreme Court, whereas the prosecutors can only appear in the lower courts. The units work with law enforcement in the course of criminal investigations to gather evidence to be used in the courts. The DPP may from time to time appoint police officers to prosecute cases on his or her behalf in the lower courts. At the time of the on-site visit there were three police prosecutors attached to the DPP's Office.

328. At the time of the on-site visit, the DPP's Office did not have a specialised unit that dealt with ML/TF matters. However, the assessors were informed that if ever such a need was to arise it would be within the DPP's prerogative to set up a team from the four units to prosecute such an offence.

329. The Kingdom of Swaziland is divided into four regions. Each region has magistrates' courts manned by about four to five judicial officers. Of these courts, the Principal Magistrates Court would be the highest court with jurisdiction to pass custodial sentences of up to ten years, followed by the Senior Magistrates Court with the jurisdiction to pass custodial sentences of up to seven years and lastly the Junior Magistrates Court with jurisdiction to pass custodial sentences of up to two years. The assessors were informed that the High Court had inherent jurisdiction on all criminal matters in the Kingdom of Swaziland It mainly dealt with serious offences such as murder, treason and money laundering. It has a compliment of about eleven judges headed by the Chief Justice who also presides over Supreme Court matters.

Staffing

330. The DPP's Office at the time of the on site visit had a staff compliment of 48 officers including the DPP and the Deputy DPP. The Principal Crown Counsels apart from prosecution work also handle administrative duties.

331. The authorities expressed the view that the staff compliment was not adequate which is why the office had to have police officers seconded to it to prosecute in the lower courts.

Funding

332. The DPP and the AG's Offices are wholly funded by Treasury. The offices expressed the view that they would do better with more funding as the current budget was not adequate.

Integrity (c.30.2)

333. The DPP and AG must be persons of high integrity and qualified to be a judge of the High Court, have ten years experience in the legal profession

and must be admitted to the bar. The same requirements apply to their Deputies.

334. The crown counsels for both the DPP and the AG's Offices are recruited through the Civil Service Commission. The Civil Service Commission invites the candidates for interviews, conducts the interviews and does the vetting and screening of the new recruits before they are employed.

335. The authorities informed the assessors that the overriding factors during recruitment remain the level of qualification and competency and to that extend only candidates with degrees are considered.

336. Crown counsels remain employees of the Civil Service Commission which regulates their conduct, and like all other public officers are bound by the provisions of the Official Secrets Act on matters relating to confidentiality.

337. The assessors were informed that there had been no cases of misconduct against any of the crown counsels. There was a proposal to have prosecution guidelines which would assist in enhancing the conduct of staff in the DPP's Office.

Training (c.30.3)

338. The DPP and the AG's Offices have not received any special training on combating ML/FT other than the awareness they get through attending ESAAMLG events. The Attorney General's Office also indicated that both offices had not yet received training in the areas of tracing of proceeds of crime, confiscation (forfeiture), seizure and freezing of assets. Inadequate funding for training was cited as one of the problems affecting both the Offices of Attorney General and the DPP.

339. At the time of the on site visit only one officer was attached to the Asset Forfeiture Unit of South Africa, receiving training. However, the assessors were informed that based on an MOU entered into in December 2004 between the governments of South Africa and Swaziland establishing a Joint Bilateral Commission for Cooperation, the DPP's office when handling difficult cases received assistance from the South African Authorities. At the time of the on-site visit, it was being assisted to deal with a corruption case by four advocates from South Africa.

340. The authorities indicated that more training was needed so that there would be more awareness on ML/FT cases as both the DPP and AG's Offices were of the view that such cases, particularly ML could be happening but going unnoticed due to lack of experience and expertise to identify such cases by the authorities.

Additional element –Special training for judges (c.30.4)

341. Assessors were informed by the authorities that there had not been any training conducted for judges in relation to ML/FT offences and the underlying predicate offences.

Statistics (applying R.32)

342. The assessors were duly informed that the Money Laundering (Prevention) Act has not yet been tested in the courts of law in the Kingdom of Swaziland therefore no statistics could be obtained in terms of cases handled under the Act.

343. The Prevention of Corruption Act also provides for the investigation of the offence of money laundering however there has not been any ML investigation carried out in terms of the Act. There was also no proper keeping of statistics in the Anti Corruption Commission as it was still at its infancy stage. The United Nations Development Programme (UNDP) was yet to be engaged to conduct the baseline survey on the Commission and to help it enhance its capacity as well as data capturing. The Commission was of the hope that after the survey proper statistics will be kept by the office.

344. The Royal Swazi Police, the main agency that investigates crime in the Kingdom of Swaziland has only investigated two cases so far involving money laundering. The two cases were investigated jointly with the Asset Forfeiture Unit of South Africa. At the time of the on site visit one of the cases had been successfully completed though prosecuted in South Africa. The following statistics was provided by the Police on investigations done on predicate offences:-

The table below reflects statistics for the period covering 2005 to 2008:

FOR THE PERIOD 2005 -2008				
Types of Offence	**Reported Cases**	**Detected cases**	**No. of Prosecutions**	**No. of Convictions**
Terrorism including TF	2 cases reported in 2008/2009	Nil	2	NIL
Sexual Exploitation Including exploitation Of children	2929	Nil	1312	927
Illicit trafficking in Narcotic drugs and Psychotropic substances	3156	Nil	2846	1677
Illicit arms trafficking	376	Nil	134	100
Fraud	1709	Nil	1052	600
Counterfeiting in	17	Nil	17	17

Currency				
Counterfeiting and Piracy of products	Nil	56	56	56
Environmental crimes	35	Nil	28	25
Murder	600	60	143	20
Grievous bodily harm	1028	Nil	1013	1013
Kidnapping	23	Nil	20	13
Robbery	1529	Nil	274	163
Theft	29,290	Nil	8766	4439
Extortion	1	1	1	1
Forgery	24	Nil	20	18

345. As already discussed under Recommendation 1 of the report, the *Second Schedule* to the Money Laundering (Prevention) Act has limitations in relation to listed predicate offences as required under the FATF Glossary. These limitations affect the scope of investigations carried out by law enforcement agencies on predicate offences to ML.

2.6.2 Recommendations and Comments

346. The authorities should consider:

- Providing training to all law enforcement and prosecutorial agencies on AML/CFT issues in order to allow effective investigations and prosecution of the cases.
- Ensuring that there are sufficient resources to enable effective ML/FT investigations and prosecutions to be conducted.
- Ensuring that judicial officers (judges and magistrates) are trained in handling ML/FT cases.
- Establishing a systematic process for the collection of statistics on ML/FT investigations and prosecutions to permit effective, proper and detailed review of the types or trends of ML/FT cases occurring in the Kingdom of Swaziland and monitoring of the progress of the ML/FT investigations and prosecutions.
- Effective use of the legal processes available to the investigating authorities.
- Covering all the predicate offences to the offence of ML, as required under the FATF standards.

347. The reason as to why the offence of ML was criminalised in the Prevention of Corruption Act which criminalises activities which are predicate offences to ML including the crime of corruption itself was not explained in a convincing manner by the authorities. Whereas corruption is a predicate offence to ML, in the Money Laundering (Prevention) Act of 2001 corruption is not listed as one of the predicate offences to ML.

2.6.3 Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	**PC**	• The Money Laundering (Prevention) Act 2001 has not been effectively applied. • Training for the law enforcement and prosecution authorities on ML/TF cases is not sufficiently provided. • Statistics with regards to ML/FT cases as well as the underlying predicate offences is not systematically kept and maintained.
R.28	**LC**	• Effectiveness could not be determined for money laundering.

2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and Analysis

348. In terms of s17 of Money Laundering (Prevention) Act *"a person who leaves Swaziland for a destination outside the common monetary area with more than ten thousands Emalangeni (E.10,000.00) in cash (in Swaziland currency) without first having obtained permission from the Supervisory Authority, commits an offence under this Act and is liable on conviction to a fine not exceeding twenty thousand Emalangeni or to imprisonment not exceeding five (5) years".*

349. It would appear that this provision relates to compliance with exchange control measures under Exchange Control Order, 1974 rather than declaration requirements of SR.IX.

2.7.2 Recommendations and Comments

350. The Kingdom of Swaziland should put in place appropriate measures to implement the requirements set out in SR.IX as required by the FATF Recommendations.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	**NC**	- The authorities have not implemented requirements under SR.IX as required by the FATF Standards.

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Preamble: Law, regulation and other enforceable means

351. The AML/CFT framework setting out preventative measures for financial institutions in the Kingdom of Swaziland is based on the Money Laundering (Prevention) Act, 2001; the Financial Institutions Act, 2005; and the Suppression of Terrorism Act, 2008. The CBS issued Anti-Money Laundering Guide, 2001 under the Money Laundering (Prevention) Act to accountable institutions to bridge the gap created by the lack of a law or regulation that requires financial institutions to conduct Customer Due Diligence (CDD) when either establishing a business relationship or conducting a transaction with a client. The Guide covers a number of preventative measures; including those not covered by the main Act.

352. The assessors noted the following regarding the Guide:-

- The Guide has been issued by a competent authority (i.e. the CBS) with the mandate to supervise financial institutions for compliance with the obligations under the Money Laundering (Prevention) Act, 2001;
- The Guide specifically addresses only AML issues;
- There are no effective, proportionate and dissuasive sanctions for non-compliance with the provisions of the Guide; and
- There is no precedent indicating that the Guide has been enforced to ensure compliance by financial institutions.

353. As a result, the assessors concluded that the Guide cannot be regarded as *"Other Enforceable* Means[20]"(OEM) for the criteria of the FATF Recommendations which do not required being set out in law or regulation. Furthermore, the assessors concluded that the lack of CDD obligations constitute a major weakness in the AML/CFT regulatory framework of the Kingdom of Swaziland. Consequently, compliance ratings related to some of the FATF Recommendations addressed in Section 3 of this report will be affected.

Customer Due Diligence & Record Keeping

3.1 Risk of money laundering or terrorist financing

354. Not all financial institutions as defined by the FATF are covered in the AML/CFT regulatory framework of the Kingdom of Swaziland. This means that the uncovered financial institutions are exposed to money laundering or terrorist financing risk since they are not required to implement AML/CFT

[20] *Other Enforceable Means* refers to guidelines, instructions or other documents or mechanisms that set out

enforceable requirements with sanctions for non-compliance, and which are issued by a competent or an SRO.

control measures such as record keeping, transactions monitoring and reporting as well as internal controls and procedures. The authorities have not conducted ML/TF risk assessment to justify the exclusion of uncovered financial institutions.

355. Banks in the Kingdom of Swaziland promote access to financial services by the unbanked Swazi people through, *inter alia*, simplifying their internal account opening procedures and introducing low-cost transaction accounts. While this initiative is important for financial inclusion, it does however expose the banks and other accountable institutions to ML/TF risks in the absence of enforceable CDD measures.

356. The financial sector in the Kingdom of Swaziland is predominantly controlled by subsidiaries of South African financial institutions. All subsidiaries of foreign banks originate from South Africa. The insurance sector is also dominated by subsidiaries of South African insurance institutions. The subsidiaries apply preventative measures derived from their respective AML/CFT Group Policy. This has mitigated the risks resulting from the inadequate AML/CFT obligations in the financial sector. By contrast, local banks implement the requirements under the Money Laundering (Prevention) Act, 2001.

357. Discussions with the CBS and both sets of banks revealed that foreign subsidiaries have higher level of awareness and implementation of AML/CFT measures relative to local banks. Banks raised a concern that this has already created uneven playing field as customers tend to prefer banks with lesser stringent Know-Your-Client (KYC) procedures

Scope Issue

Money Laundering (Prevention) Act

358. The First Schedule to the Money Laundering (Prevention) Act lists the following as "*Activities of Accountable Institutions*":-

- Banking business and financial business;
- Offshore banking business;
- Venture risk capital;
- Money transfer services;
- Issuing and administering means of payments (e.g. credit cards, travellers' cheques and bankers' drafts);
- Guarantees and commitments;
- Trading for own account or for account of customers in –

a) *Money marketing instruments (e.g. cheques, bills, certificates of deposits, commercial paper, etc).*

b) *Foreign exchange.*

c) *Financial and commodity-based derivative instruments (e.g. futures, options, interest rate and foreign exchange instruments, etc.)*

- Money broking;
- Money lending and pawning;
- Money exchange;
- Insurance business;
- Real property business
- Credit unions;
- Building societies;
- Trust business; and
- Safe custody services.

359. The list of financial activities operating in the country covered under the First Schedule to the Money Laundering (Prevention) Act is consistent with the list of designated financial institutions under the FATF 2004 Methodology.

<u>*Suppression of Terrorism Act*</u>

360. The Act only covers legal persons, namely:-

- Commercial banks; and
- Any financial institution which makes loans, advances, investment or accepts deposits from the public.

361. There is a scope issue resulting from the uncovered financial institutions for purposes of obligations under the Suppression of Terrorism Act. These are insurers, insurance brokers and insurance agents, and money transfer services (money transmission orders by Postal Office and value transfer services (by mobile phone service provider). These means that they are not required implement TF control measures under the Act. There is no TF risk assessment conducted to substantiate the exclusions. These gaps affect compliance ratings related to most of the FATF Recommendations in Section 3 of this report.

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

3.2.1 Description and Analysis

Recommendation 5

362. There is no law or regulation that requires financial institutions in the Kingdom of Swaziland to implement CDD measures[21]. Further, there is no enforceable obligation that prohibits financial institutions from keeping anonymous accounts or accounts in fictitious names. The CBS issued the Anti-Money Laundering Guide 2001 to provide guidance to financial services providers in relation to prevention, detection and reporting of money laundering activities. The Guide was primarily meant to address the lack of CCD requirements under the Money Laundering (Prevention) Act, 2001 and assist financial institutions with implementation. In particular, the Guide encourages financial institutions to undertake customer identification and verification measures when engaging in a transaction or establishing a business relationship. The assessors concluded that the Guide is not an OEM.

363. Financial Institutions Act, 2005 does not require financial institutions licensed under it to perform any form of customer verification when conducting a transaction or entering into a business relationship with a customer.

364. The CBS and Swaziland Bankers Association established customer identification and verification procedures pursuant to the Guide and international best practice. The KYC procedures are only applicable to banks. There are no sanctions for non-compliance with the procedures by banks.

365. Discussions with financial institutions particularly banks revealed contrasting approaches to identity verification on natural and legal persons. On the one hand, locally owned financial institutions applied simple KYC process in which clients are required to supply basic information related to identity, proof of residence and income. On the other hand, subsidiaries of foreign financial institutions implemented CDD measures required by Group AML/CFT Policy of parent companies. The Group Policy measures were considered more rigorous by the authorities and the subsidiaries of foreign financial institutions than those applied by locally owned financial institutions. The absence of enforceable CDD measures was noted as a major concern by the assessors, the authorities and the financial sector.

Recommendation 6

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1. [21] Money Laundering and Financing of Terrorism (Prevention) Bill, 2009 requires financial institutions to conduct customer due diligence. The Bill is still undergoing parliamentary process.

366. There is no requirement for financial institutions to identify, implement appropriate risk management systems, and establish source of wealth and funds on transactions involving foreign PEPs. Similarly, ongoing monitoring of business relationship with foreign PEPs is not an obligation in the Kingdom of Swaziland.

367. Local banks representatives do not have specific measures to distinguish PEPs from the rest of the customers with a view to applying appropriate control measures as required by the FATF Standards. By contrast, subsidiaries of foreign banks and insurers indicated that they relied on Group AML/CFT Policy when dealing with foreign PEPs in the Kingdom of Swaziland. The rest of the local financial institutions interviewed did not have measures in place to deal with PEPs.

Recommendation 7

368. There are no obligations for financial institutions entering into cross border correspondent and other similar relationships to take any measures to avoid being used for money laundering or terrorist financing activities. Financial institutions in the Kingdom of Swaziland have correspondent banking and other similar relationships with major financial institutions, mostly in South Africa and the United Kingdom. Subsidiaries of foreign financial institutions follow Group AML/CFT Policy procedures and seek approval on any cross-border relationship from their respective parent companies. One local bank indicated that it entered into an agreement with a subsidiary of a foreign bank in the Kingdom of Swaziland to manage cross-border correspondent relationships on its behalf. The CBS is only informed by banks of the nature of cross-border correspondent relationships once established and maintains a list.

Recommendation 8

369. Financial institutions are not required to pay special attention to any money laundering threats that may arise from new or developing technologies that might favour anonymity, including having policies and procedures in place to address any specific risks associated with non-face-to-face business relationships or transactions.

370. At the time of the onsite visit, assessors were informed that there was a growing business of selling pre-paid airtime voucher through a wholesaler which has an arrangement with a mobile phone network operator22. Under the arrangement, the wholesaler uses the network operator and its clients to sell pre-paid voucher to any member of the public with a mobile phone. In turn, individuals act as 'agents' selling pre-paid vouchers face to face through instant transfer of the value equivalent to cash amount received by the selling individual.

[22] There is only one mobile phone network operator in the Kingdom of Swaziland.

371. Currently, the authorities are considering mobile phone and internet banking licence applications.

3.2.2 Recommendations and Comments

372. The lack of CDD obligations in the Money Laundering (Prevention) Act, 2001 is a major deficiency in the AML/CTF regime of the Kingdom of Swaziland and adversely affected implementation of related FATF Recommendations. It is, therefore, recommended that the authorities in the Kingdom of Swaziland should, as a matter of urgency, provide for a law or regulation with enforceable obligations (including enactment of Money Laundering and Financing of Terrorism Prevention Bill, 2009) for financial institutions to effectively implement the following FATF Recommendations[23]:-

- Customer due diligence (R.5),
- Foreign PEPs (R.6).
- Correspondent relationships (R.7).
- Misuse of technological advancements (R.8).

373. The authorities should ensure that all financial institutions are subject to and effectively implement the FATF Recommendations unless where there is demonstrated low ML/TF risk.

374. In addition, the authorities should implement effective AML/CFT awareness raising programmes and ensure that financial institutions comply with the FATF Recommendations.

Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**NC**	• There is no law or regulation creating CDD obligations for financial institutions as required by the FATF Standards.
R.6	**NC**	• There are no requirements for financial institutions to apply enhanced due diligence when dealing with foreign PEPs clients.
R.7	**NC**	• There are no measures dealing with correspondent relationships as required by the FATF standards.
R.8	**NC**	• There are no requirements to have policies or measures in place to prevent the misuse of technological developments in money laundering and terrorist financing schemes.

[23] For FATF Recommendations 5, 6, 7 and 8 the authorities should refer to the FATF 2004 Methodology to convert the requirements set out in the criteria into clearly defined recommendations when developing Post-Evaluation Monitoring Implementation Plan following the adoption of the report.

3.3 Third parties and introduced business (R.9)

375. The Money Laundering (Prevention) Act, 2001 does not require financial institutions to obtain the necessary information concerning certain elements of the CDD process where permitted reliance of third parties and introduced business is permitted.

376. In practice however, financial institutions rely on third parties and engage in introduced business arrangements. The insurance and banking sectors have industry procedures that require some elements of CDD process, especially on customer verification, when dealing with third parties and introduced business transactions or relationships.

3.3.2 Recommendations and Comments

377. The authorities have not implemented measures related to third parties and introduced business owing to lack of CDD obligations for financial institutions in the Kingdom of Swaziland. It is recommended that the authorities should take immediate steps to ensure that financial institutions are required to have in place measures on reliance on third parties and introduced business to conduct some of CDD process in a manner consistent with the FATF Recommendations. The authorities should further implement a comprehensive awareness raising programme to ensure compliance with the requirements.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**NC**	• There are no requirements to deal with reliance on third parties and introduced business despite the fact that in practice, financial institutions do rely on third parties or intermediaries to conduct some elements of CDD measures in the Kingdom of Swaziland.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

Legal framework

Central Bank of Swaziland Order, 1975
Money Laundering (Prevention) Act, 2001
Financial Institutions Act, 2005

Inhibition of implementation of FATF Recommendations (c. 4.1)

378. S24 of the Money Laundering (Prevention) Act does not override secrecy provisions imposed by any banking law in the country. It states that: "***Subject***

***to the provisions of any banking law**, the provisions of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise"* (emphasis added). In terms of this provision, where a request for information is made by any competent authority in terms of the Money Laundering (Prevention) Act [s22]and that information is subject to banking secrecy and confidentiality laws that information cannot be provided.

379. S20(1) of the Central Bank of Swaziland Order, 1975 and s43(2) of the FIA, 2005 creates obligations for financial institutions to maintain secrecy and confidentiality of information.

380. Registrar of Insurance and Retirement Fund does not have any specific provision that allows it to share information with other competent authorities either domestically or internationally.

381. The CBS as the supervisory authority referred to under s10 of the Money Laundering (Prevention) Act has specific powers to exchange information with law enforcement authorities or regulatory bodies either within or outside of the Kingdom of Swaziland pursuant to s11(g) in the manner set out in s22 of the same Act.

382. There is no specific provision in any banking law on sharing of information between financial institutions regarding correspondent banking (R.7) and third parties and introduced business (R.9). Discussions with the CBS and financial institutions met during the onsite visit revealed that sharing of information between financial institutions is not restricted by any regulatory structure. Instead, the sharing of such information is conducted through specific business units between requesting and receiving financial institutions.

383. The assessors however observed that the absence of CDD requirements in addition to the uncovered financial institutions will greatly affect the extent and quality of information obtained and kept by financial institutions and the subsequent value of available information to share with other financial institutions, competent authorities and/or supervisory/regulatory bodies.

3.4.2 Recommendations and Comments

384. The provision overriding secrecy under the Money Laundering (Prevention) Act is inconsistent with the FATF requirements. The authorities should as a matter of urgency put in place enforceable measures that override secrecy provisions on information held by financial institution in the Kingdom of Swaziland in a manner consistent with the FATF Recommendation 4.

385. The RIRF should put in place measures that will enable it to share information with domestic and foreign competent authorities when necessary.

386. The authorities should ensure that immediate steps are taken to require financial institutions to conduct full CDD process as required by the FATF Recommendations in order to generate the necessary information to comply with information sharing requirements under R.7 and R9. In addition, the authorities should ensure that all relevant authorities (e.g. envisaged FIU) and supervisory bodies (e.g. the Registrar of Insurance and the CBS) dealing with sharing of information obtained from financial institutions have effective implementation mechanisms consistent with the requirements of the FATF Recommendations.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**NC**	- The Money Laundering (Prevention) Act does not override secrecy and confidentiality provisions of national banking laws.

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

3.5.1 Description and Analysis

Legal framework

Money Laundering (Prevention) Act, 2001
Anti-Money Laundering Guide, 2001

Recommendation 10

Record keeping and reconstruction of transaction records (c. 10.1 & 10.1.1)

387. There is no law or regulation that creates mandatory obligation to financial institutions to keep records for at least five years following termination of a business relationship or a transaction. While the Money Laundering (Prevention) Act creates the obligation to keep records under s12, it does not create an offence and a sanction for failure to comply. It states that "*An accountable institution shall keep a business transaction record of any business transaction for a period of five years after termination of the business so recorded*". Business transaction record includes the identification of all persons party to that transaction; a description of that transaction which identifies its purpose and method of execution; the details of any account used for that transaction, including bank, branch and sort code; and the total value of that transaction in terms of s2 of the Act.

388. Under s11(c) of the Act, the CBS is authorised to carry out inspections to make notes or take any copies of the whole or any part of any business transactions kept by any accountable institution suspected of any breach to the Act. In addition, s11(e) of the same Act gives the CBS power to destroy such records within three years of the inspection except when such records have been sent to a law enforcement agency. The assessors were not clear with regards to record keeping obligations of an accountable institution whose business transaction records have been removed through s11(c) and destroyed by the CBS under s11(e) of the Act.

389. The Money Laundering (Prevention) Act and the Financial Institutions Act do not contain any specific requirement for financial institutions to maintain records and keep them longer if requested by a competent authority in a specific case and upon appropriate authority.

390. To the extent that accountable institutions are not required to identify and verify customers, it would appear that transactions records kept by accountable institution would not be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for effective prosecution of criminal activity.

Record keeping for identification data (c. 10.2)

391. Since accountable institutions are not required to obtain identification data, account files and business correspondence information as discussed under the FATF Recommendation 5 in this report, there can be no requirement for accountable institutions to maintain such records for at least five years after the termination of an account or business relationship or longer if requested by a competent authority in specific cases upon proper authority.

Availability of records to competent authorities (c. 10.3)

392. Accountable institutions are not obliged to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority. Since there is no obligation for accountable institutions to obtain information on all customer and transactions, there can be no such records available on timely basis to domestic competent authorities.

Special recommendation VII

393. There is no specific legal framework on payment system for both local and international wire transfers[24].

[24] The Central Bank of Swaziland has a National Payment System Bill still going through parliamentary process.

394. Domestic electronic payments in the Kingdom of Swaziland are done through Swaziland Inter-Bank Payment System (SWIPPS). This is an automated clearing system owned by banks and the CBS. The CBS has direct oversight over the payment system. At the time of the onsite, the assessors were informed that wire transfers are conducted through SWIPPS Rules and Procedures. However, there are no sanctions for failure to comply with SWIPPS.

Originator information for wire transfers (c. VII.1)

395. There is no express provision requiring ordering financial institutions to obtain and maintain information (name, address and account number) relating to originator of the wire transfer for transactions equivalent to EUR/USD 1 000 or more.

396. Since financial institutions in the Kingdom of Swaziland are not subject to the FATF Recommendation 5, there can be no requirement for ordering financial institutions to verify the identity of the originator information for all wire transfers of EUR/USD 1000 or more.

397. In practice however, the SWIPPS Rules and Procedures are modelled on SWIFT system. Financial institutions obtain and maintain complete full originator information including the name of the originator, the originator's account number or unique reference number (where no account number exists) and the originator's address or identification document. These are mandatory fields that must be filled for the SWIPPS transaction to be transmitted.

398. In addition, for all international wire transfers from a country outside the CMA the transaction must be processed through Cross Border Foreign Exchange Reporting System which has mandatory fields (similar to SWIFT) which must be filled prior to carrying out a transfer failing which the transfer will not be processed.

Inclusion of originator information in cross border wire transfers (c. VII.2)

399. There is no specific requirement for ordering financial institution transacting in cross-border wire transfers to the value of EUR/USD1 000 or more to include all originator information in the message or payment form accompanying the wire transfer.

Inclusion of originator information in domestic wire transfers (c. VII.3)

400. There is no specific enforceable requirement for financial institutions to include originator information in domestic wire transfers. The SWIPPS Rules and Procedures require that for all domestic wire transfers the financial

institution should be required to include the originator's account number or a unique identifier within the message or payment form.

Originator information through payment chain (c. VII.4 & VII.4.1)

401. There is no requirement that each intermediary and beneficiary financial institution in the payment chain should ensure that all originator information that accompanies a wire transfer is transmitted with the transfer. In addition, there is no requirement for the receiving intermediary financial institution to keep records for at least five years of all the information received from the ordering financial institution where technical limitations prevent the full originator information accompanying a cross-border wire transfer from being transmitted with a related domestic wire transfer.

Risk based procedures for wire transfers that do not contain originator information (c. VII.5)

402. There is no requirement for beneficiary financial institutions to adopt risk-based procedures for handling wire transfers that do not contain complete originator information.

Monitoring of compliance with SR VII (c. VII.6)

403. In terms of s39(1) of the FIA, 2005 the CBS has powers to undertake onsite examination of operations and affairs of every financial institution. The CBS has set out rules and procedures for wire transfers under SWIPPS (domestic transfers), SWIFT (cross-border transfers) and Cross Boarder Foreign Exchange Reporting System (wire transfers subject to exchange controls). Exchange control clearance is done by the CBS.

404. Financial institutions and Postal Office offer wire transfer services through SWIPPS and SWIFT systems. The EXCON and the BSD monitor compliance with wire transfer procedures and rules by financial institutions. .

405. Money transmission orders transacted at Postal Office are not monitored for compliance with SRVII requirements.

Sanctions (c. VII.7)

406. Since procedures and rules under the SWIPPS, the SWIFT and the Cross Boarder Foreign Exchange Reporting System are not enforceable, there can be no sanctions for non-compliance by financial institutions and Postal Office. As already indicated under c.VII.1, wire transfers that do not contain information in the mandatory field are not processed through.

Incoming cross border wire transfers (c. VII.8)

407. There is no express requirement for all incoming cross-border wire transfers to contain full and accurate originator information.

Outgoing wire transfers of less than EUR/USD 1,000 (c. VII.9)

408. There is no express requirement for all out-going cross-border wire transfers below EUR/USD1 000 to contain full and accurate originator information.

3.5.2 Recommendations and Comments

Recommendation 10

409. The nature and extent of information kept under the Money Laundering (Prevention) Act and the Financial Institutions Act is undermined by the lack of law or regulation requiring financial institutions to apply CDD measures on customers. The authorities should accordingly implement the applicable FATF Recommendations that require financial institutions to generate information on customers to expand the scope of the information obtained and kept under the FATF Recommendation 10. In particular, the following should be implemented:-

410. The authorities should require accountable institutions to maintain all necessary records on transactions, both domestic and international, for at least five years following completion of the transaction or longer if requested by a competent authority in specific cases and upon proper authority. In addition, the transaction records kept by accountable institutions should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity.

411. Accountable institutions should be required to maintain records of the identification data, account files and business correspondence for at least five years following termination of an account or business relationship or longer if requested by a competent authority in specific cases upon proper authority.

412. Accountable institutions should be required to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate request.

413. To provide certainty, the authorities should clarify record keeping requirements of accountable institutions whose records have been subject to s11(c) and (e) of the Money Laundering (Prevention) Act.

Special Recommendation VII

414. The authorities in the Kingdom of Swaziland have not put measures in place to implement and ensure compliance with wire transfer obligations for financial institutions as set out in the FATF Special Recommendation VII. It is recommended that, as a matter of urgency, financial institutions should be

required to implement wire transfer requirements in a manner consistent with the FATF Special Recommendation VII.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**NC**	• There is no law or regulation that requires financial institutions to keep records for at least five years. • There is no requirement to keep records longer than the prescribed period if requested to do so by a competent authority. • There is no requirement for transaction records to be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. • There is no requirement to maintain records of the identification data, account files and business correspondence for at least five years after the termination of an account or business relationship or longer if required. • Accountable institutions are not required to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.
SR.VII	**NC**	• The authorities have not implemented requirements under SR.VII as required by the FATF Recommendations.

Unusual and Suspicious Transactions

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

3.6.1 Description and Analysis

Legal framework

415. The obligations for financial institutions to monitor transactions and relationships are set out the Money Laundering (Prevention) Act, 2001 and the Anti-Money Laundering Guide, 2001. There is scope issue created by uncovered financial institutions for purposes of terrorist financing as discussed in Section 3.1 of this report.

Special attention to complex, unusual large transactions (c. 11.1)

416. In terms of s13(1) of the Money Laundering (Prevention) Act accountable institutions are required to pay special attention to all complex, unusual or

large business transactions, or unusual patterns of transactions whether completed or not, including insignificant and periodic transactions that are suspicious. The Act does not require accountable institutions to pay special attention to transactions that have no apparent or visible economic or lawful purpose. Failure to comply is an offence under s13(4). In terms of s13(5) accountable institutions are liable to a fine not exceeding E50, 000.00 upon conviction. In addition, the CBS may suspend or revoke a licence of an accountable institution.

417. Discussions with financial institutions indicated that only subsidiaries of foreign banks and insurers have measures to deal with complex, unusual large transactions that have no apparent or lawful purpose. Subsidiaries of foreign banks filed suspicious transactions reports to the CBS once such transactions are identified. By contrast, the local bank interviewed did not pay special attention to complex, unusual large transactions as all transactions are treated in the same manner.

Examination of complex & unusual transactions (c.11.2)

418. The Money Laundering (Prevention) Act does not contain any specific provision that requires accountable institutions to examine complex and unusual transactions as far as possible the background and purpose of such transactions and to set forth their findings in writing. It would appear to the assessors that the only requirement for writing findings on examination of complex and unusual transactions is STR reporting.

Record keeping of findings of examination (c.11.3)

419. Accountable institutions are not required to keep records of findings of examinations for use by competent authorities and auditors for at least five years.

Recommendation 21

Special attention to countries not sufficiently applying FATF Recommendations (c.21.1 & 21.1.1)

420. There is no specific requirement for accountable institutions to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.

421. Paragraph 28 of the AML Guide 2001, draws the attention of accountable institutions to countries which are regarded by the Kingdom of Swaziland as "***Countries with Equivalent Legislation***[25]" to safeguard accountable

[25] Australia, Bahamas, Belgium, Belize, Brazil, Canada, Cyprus, Denmark, Finland, France, Germany, Gibraltar, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxemburg, Malta, Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Taiwan, Turkey, United Kingdom (the Channel Islands, the Isle of Man and the Overseas Territories), and the United States of America.

institutions against money laundering. This list is not backed up by a demonstrated risk assessment and has not been updated since 2001.

422. There are no measures in place to advise financial institutions of concerns about weaknesses in the AML/CFT systems of countries identified by the authorities for insufficiently applying or not implementing the FATF Recommendations.

Examination of transactions with no apparent economic or visible lawful purpose (c. 21.2)

423. There is no direct obligation for accountable institutions to examine transactions without apparent economic or lawful purpose and write down the findings for possible use by competent authorities.

Ability to apply counter measures with regard to countries that insufficiently apply FATF Recommendations (c. 21.3)

424. There is no express obligation for accountable institutions to apply counter-measures with regard to countries insufficiently applying the FATF Recommendations. The AML Guide advises financial institutions to take additional precautions to safeguard transaction facilities by requesting a letter of reference and other identification requirements from a regulated bank.

3.6.2 Recommendations and Comments

Recommendation 11

425. In order to comply with the criteria under the FATF Recommendation 11, the authorities should do the following:

- Accountable institutions should be required to pay special attention to transactions that have no apparent or visible economic or lawful purpose.
- Instead of just examining transactions for purposes of complying with STR reporting obligations as is the current situation, accountable institutions should be required to examine as far as possible the background and purpose of such transactions and to set forth their findings in writing.
- In addition, accountable institutions should be required to keep such findings available for competent authorities and auditors for at least five years.

Recommendation 21

426. The authorities should do the following:

- Should require financial institutions to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.
- The present requirements on examination of transactions with no apparent economic or visible lawful purpose appear to be for purposes of reporting suspicious transactions, and not for determining the background and purpose of such transactions from countries with inadequate AML/CFT measures with a view to making written findings for use by competent authorities. It is, therefore, recommended that the Kingdom of Swaziland should put in place adequate measures that require financial institutions to examine background and purposes of transaction and document such findings in manner that is useful to competent authorities.
- In addition, the authorities should require financial institutions to apply countermeasures with regard to transactions or relationships from countries that do not or insufficiently apply the FATF Recommendations.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	**NC**	• There is no requirement for financial institutions to pay special attention to transactions that have no apparent or visible economic or lawful purpose and examine as far as possible their background and purpose. • There is no requirement to set forth the findings in writing and make them available for competent auditors for at least five years
R.21	**NC**	• The authorities have not implemented requirements under the FATF Recommendation 21.

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

3.7.1 Description and Analysis[26]

Legal framework

427. The Money Laundering (Prevention) Act, 2001; the Financial Institutions Act, 2005 and the Suppression of Terrorism Act, 2008 create ML/TF reporting obligations for financial institutions.

Recommendation 13

[26] The description of the system for reporting suspicious transactions in s.3.7 is integrally linked with the description of the FIU in s.2.5, and the two texts need to be complementary and not duplicative.

428. There is scope issue created by uncovered predicate offences and list of financial institutions (for terrorist financing) as discussed in Sections 2.1 and 3.1 of this report, respectively.

Requirement to make STRs on ML & TF to FIU (c.13.1 & IV.1)

429. There is no law or regulation that requires financial institutions to report transactions when there is reasonable ground to suspect or know that funds are proceeds of a criminal activity.

430. In terms of s13(2) of the Money Laundering (Prevention) Act, financial institutions are only required to file STR related to unusual or complex transactions. A financial institution or its staff, employees, directors, owners or other authorised representatives are liable upon conviction to a fine not exceeding E50.000.00 without prejudice to criminal and/or civil liability. Additionally, financial institutions may have licences suspended or revoked.

431. There is indirect reporting under s38(1) of the Financial Institutions Act. It states that*: "No financial institution shall carry out a transaction which it knows or suspects to be related to a serious criminal activity until it reports the information regarding the transaction that indicates such activity to the Bank".* It would appear to the assessors that this subsection is meant to prohibit carrying out a transaction related to a serious criminal activity rather than an obligation to file an STR. In addition, there is no definition of what constitutes "serious criminal activity". There is no offence and sanction for non-compliance under this section.

432. Only banks are aware of the reporting obligations. Consequently, there were 127 STRs on suspicious of money laundering submitted to the CBS by banks from 2006 to the date of the onsite.

STRs related to Terrorism and its financing (c. 13.2)

433. There is direct obligation for financial institutions to report terrorist financing suspicious transactions to the Police and FIU in terms of s27 of the Suppression of Terrorism Act. Contravention is punishable by imprisonment term not exceeding five years upon conviction. There is no provision for administrative sanctions.

434. No financial institutions are aware of the reporting obligation under this Act and, as a result, there are no STRs reported to the Police.

No reporting threshold for STRs (c. 13.3)

435. In terms of s13 of the Money Laundering (Prevention) Act, 2001 accountable institutions are required to report all suspicious transactions regardless of value and whether completed or attempted. However, the *Second Schedule t*o

the Act sets a threshold of E10, 000.00 for reporting STRs related to robbery and theft.

436. There is no threshold for reporting STRs related to terrorist financing.

Making of ML& TF STRs regardless of possible involvement in tax matters (c.13.4 & IV.2)

437. Since tax crimes are not covered under the Act for purposes of reporting, it is the view of the assessors that financial institutions are not required to make STRs where tax matters are involved. No STR involving tax matters was made to the CBS.

Additional element –reporting of all criminal acts (c. 13.5)

438. Under s38 of the Financial Institutions Act, financial institutions can only report suspicious transactions from proceeds of serious criminal activities. In terms of *Second Schedule* to the Money Laundering (Prevention) Act, proceeds of theft and robbery below E10.000.00 should not be reported.

Statistics (applying R.32)

439. Since 2006 to the date of the onsite, only banks reported 127 STRs on suspicion of money laundering. There is no STR reported in relation to terrorist financing. The assessors concluded that the reporting obligations were ineffective.

Recommendation 14

Protection for making STRs (c. 14.1)

440. Financial institutions are exempted from liability of any kind in terms of s13(3) of the Money Laundering (Prevention) Act, 2001; s38(4) of the FIA, 2005; and s27(6) of the Suppression of Terrorism Act, 2008 for complying with reporting obligations. Where information is disclosed in good faith, there is no liability of any kind for complying with reporting obligations under the three Acts. Protection provisions extend to employees, staff, directors, owners or other representatives of financial institutions.

Prohibition against tipping-off (c. 14.2)

441. Tipping off is prohibited under s7(1) of the Money Laundering (Prevention) and s38(3) of the FIA Act. However, the former only applies to investigation of a money laundering offence. It states that: *"It is an offence for a person who knows or suspects than an investigation into money laundering has been, is being, or is about to be made, to divulge that fact or any other information to another whereby the investigation is likely to be prejudiced".* Tipping off is not prohibited under the Suppression of Terrorism Act.

442. There is exemption against tipping off prohibition under s38(3) of the Financial Institutions Act. Financial institutions can disclose that, information has been sent to or requested by the authorities, that an investigation is being carried out, or that instructions not to execute a transaction are being carried out only when there is an instruction from a court, competent authority or other person authorised by law.

443. On conviction, contravention of s71 of the Money Laundering (Prevention) Act, 2001, carries a fine not exceeding E20, 000.00, or imprisonment for a term not exceeding five years, or both.

444. For contravention of s38 of the Financial Institutions Act the CBS can apply the following sanctions as provided for in s46(1) of the same Act:

- *Issue a written warning to or supplementing an examination report;*
- *Conclude a written agreement providing for a program of remedial action;*
- *Revoke the licence of the institution to do banking business;*
- *Impose administrative penalty against the institution and/or any responsible person of not more than E25,000.00 for each day during which a violation continues;*
- *Issue an order to cease and desist that requires the institution and/or the responsible person to cease and desist from the actions and violations specified in the order and that may, further, require affirmative action to correct the conditions resulting from any such actions or violations.; and*
- *Issue an order to suspend from office in the institution any person who has engaged in, or is about to engage in, or is otherwise responsible for, such actions or violations and the suspension shall be for an initial period of thirty days which may be extended for similar periods or made permanent.*

Additional element –confidentiality of reporting staff (c. 14.3)

445. The Money Laundering (Prevention) Act; the FIA and the Suppression of Terrorism Act do not require authorities receiving reports to maintain confidentiality in relation to the identity of reporting staff. The authorities indicated that there were incidences where confidential details of reports provided by financial institutions to law enforcement agencies ended up in media.

Recommendation 19

Consideration of reporting of currency transactions above a threshold (c. 19.1)

446. The Money Laundering and Financing of Terrorism (Prevention) Bill, 2009 provides for implementation of currency transaction reporting regime above USD 10,000.00 once enacted.

Additional element – computerised data base for currency transactions above a threshold and access by competent authorities (c. 19.2)

447. The authorities will set up a computerised database system to be managed by the FIU once operational.

Additional element- proper use of reports of currency transactions above a threshold

448. The authorities indicated that the FIU will develop mechanisms to ensure that law enforcement agencies, supervisory bodies or any other body authorised by law will access and properly use the information as requested and authorised.

Recommendation 25

Establishment of guidelines for financial institutions (c. 25.1)

449. Under section 11(g) of the Money Laundering (Prevention) Act, 2001 the CBS is empowered to issue guidelines to accountable institutions on any matter relating to money laundering. The following guidelines have been issued:-

- The CBS issued Circular 1/2009 – Revised Suspicious Transaction Report (STR) Form which added more fields for information such as financial summary overview and details, leeway to attach additional copies, account turnover and related details of persons associated with the suspicion being reported.

- In 2008 the CBS issued Anti-Money Laundering Circular No.3 (Guidelines with Regard to Money Laundering), which strengthened information required for identification and verification of clients when conducting a transaction.
- The AML Guide was issued to assist reporting entities in implementing the provisions of the Money Laundering (Prevention) Act. They covered a variety of relevant AML control issues including definition of money laundering, identification of suspicious transactions and how to report STRs, a list of jurisdictions with equivalent AML legislation, record keeping, staff training, procedures for client identification and verification, and internal controls and procedures.

450. All the guidelines, including the AML Guide which was meant to be issued to and implemented by all financial institutions, were only issued to four banks and a building society. No similar guidelines were issued to other accountable institutions. The authorities indicated that the CBS could only issue guidelines to those entities licensed by it. Furthermore, the CBS considered the banking sector as a risky area based on financial materiality even though no comprehensive ML/TF risk analysis was conducted.

451. The Guide suffers from the same deficiencies as already discussed in the preamble part of Section 3 of this report.

452. There are no specific guidelines issued on terrorist financing.

Feedback to financial institutions (c. 25.2)

453. The CBS has given limited feedback to banks in the form of acknowledgement of receipt and reference numbers for submitting STRs.

3.7.2 Recommendations and Comments

454. The reporting regime under the Money Laundering (Prevention) Act and the Financial Institutions Act do not create direct reporting obligations for financial institutions. However, the Money Laundering and Financing of Terrorism (Prevention) Bill, 2009 creates a direct obligation to report proceeds of crime, money laundering and terrorist financing. The authorities should take urgent steps to ensure that financial institutions are required by law or regulation to report suspicious transactions when there is reasonable ground to suspect or know funds are proceeds of a criminal activity. The reporting obligations should cover, at minimum, the list of designated predicate offences for money laundering, including STRs regardless of possible involvement in tax matters and the designated financial institutions as defined in the Glossary of the 2004 FATF Methodology. Furthermore, the authorities should remove the E10, 000.00 threshold for reporting suspicious transactions related to theft and robbery indicated in the *First Schedule* to the Money Laundering (Prevention) Act.

455. The authorities should ensure that the list of financial institutions subject to reporting obligation under s27 of the Suppression of Terrorism is consistent with the designated list in the Glossary of the 2004 FATF Methodology.

456. The authorities should undertake outreach programmes to ensure that (i) for money laundering, all financial institutions (not just banks) report and (ii) for terrorist financing, all financial institutions are made aware of the reporting obligation and mechanisms to submit such reports.

457. It is recommended that the authorities should give feedback to accountable institutions on STRs in a manner that conforms to the *FATF Best Practice Guidelines on Providing Feedback to Reporting Persons and Other Persons*.

458. The authorities should keep detailed statistics on STRs filed to enable assessment of effectiveness of the system.

459. The AML guidelines issued by the CBS are limited only to the banking sector. The authorities should issue guidelines to all reporting entities and ensure that appropriate control measures are effectively implemented to combat money laundering and terrorist financing.

460. The existing STR reporting form does not take into account the diversity of reporting entities covered by the Financial Institutions Act and the Money Laundering (Prevention) Act as it only caters for the banking sector. The authorities should design STR reporting forms that take into account other specific sectors. In addition, the authorities should design and issue reporting forms specific to TF to all financial institutions.

461. The assessors observed that the tipping off provision under the Money Laundering (Prevention) Act is inadequate as it only relates to investigation of possible money laundering case. The authorities should ensure that financial institutions are prohibited from tipping off any person about information regarding STR reporting activities.

462. The authorities should ensure that there is enforceable tipping off prohibition on reports made under s27 of the Suppression of Terrorism Act.

463. The authorities should put measures in place to ensure that unauthorised details of the staff of accountable institutions who file STRs are not divulged to maintain the integrity of the reporting regime especially in this early stage of AML/CFT development in the Kingdom of Swaziland.

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**	• There is no law or regulation that requires financial institutions to report suspicious transaction that are proceeds of a criminal activity • Not all designated predicated offences and financial institutions are covered for reporting of STRs • Only banks submit STRs . • There is threshold reporting for proceeds from robbery and theft. • No STRs related to tax matters were made by financial institutions.
R.14	**NC**	• There is no specific tipping off prohibition for TF STRs. • Tipping off prohibition applies only at investigation stage.
R.19	**C**	• This Recommendation is fully meet.
R.25	**NC**	• STR reporting guidelines issued only to banks, and excluded other reporting entities. • The CBS provided limited feedback to accountable institutions that reported STRs.
SR.IV	**NC**	• There is scope issue as only some financial institutions are not obliged to report STRs on terrorism and its financing. • Financial institutions are not aware of obligations to file STRs related to terrorism and its financing under the Suppression of

		Terrorism Act. • No STR on TF has been filed and assessors could not determine the effectiveness of the reporting regime.

Internal controls and other measures

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

3.8.1 Description and Analysis

Legal framework

464. The Money Laundering (Prevention) Act, 2001 and Anti-Money Laundering Guide, 2001 contain limited requirements to put in place internal controls, compliance and audit measures.

Recommendation 15

465. ***Establish and maintain internal controls to prevent ML& TF (c. 15.1, 15.1.1 & 15.1.2)***

363. The Kingdom of Swaziland does not have law or regulation, or other enforceable means that require accountable institutions to establish and maintain internal procedures, policies and controls to prevent money laundering and terrorist financing, and communicate the same to their employees.

466. In addition, there is no specific requirement for accountable institutions to develop appropriate compliance management arrangements, including at minimum designation of an AML/CFT compliance officer at management level.

467. There is no requirement for the AML/CFT Compliance Officer and other staff of the financial institution to have timely access to customers' identification, data and other CDD information, transaction records and other relevant information.

Independent audit for internal controls to prevent ML & TF (c. 15.2)

468. There is no express provision under the Money Laundering (Prevention) Act for accountable institutions to maintain adequately resourced and independent audit function to test compliance with internal procedures, policies and controls to prevent money laundering and terrorist financing.

Ongoing employee training on AML/CFT matters (c. 15.3)

469. Under s11(1)(h) of the Money Laundering (Prevention) Act the CBS has power to create training requirements. However, this is only in respect of business transactions record-keeping and reporting obligations. This means

that training of employees of accountable institutions is dependent on issuance of AML training program by the CBS. At the time of the onsite visit, no training program was issued to accountable institutions by the CBS. In terms of s12(d) of the Money Laundering (Prevention) Act accountable institutions are expected to comply with training requirements of the CBS.

470. However, there are no sanctions against accountable institutions that fail to implement any AML training programme issued by the CBS. Assessors were informed by banks and insurers that the CBS has offered AML/CFT awareness training albeit at basic level and was found useful.

471. There is no requirement for financial institutions to train staff on CFT.

472. Discussions with subsidiaries of foreign banks revealed that Compliance Officers are trained in line with AML/ CFT Group Policy guidelines of parent companies. In addition, it is compulsory for all compliance officers of subsidiaries of South African banks to complete AML/CFT programme offered by the University of Johannesburg in South Africa. Although the programme is structured on South African AML/CFT regulatory framework, the compliance officers found it invaluable.

473. With regards to internal staff, it was revealed that there is compulsory in-house training programme based on AML/CFT Group Policy framework, which includes e-learning AML/CFT refresher course conducted on semester basis. It covers the following areas:-

- Background of Money Laundering (Prevention) Act, 2001;
- International AML/CFT regulatory regime;
- STR reporting;
- ML typologies;
- Duties of employees on combating ML/TF; and
- Record keeping.

474. A local insurance company interviewed indicated that they conducted insurance training programme for its staff covering local AML/CFT requirements, CDD measures, STR reporting, insurance fraud typologies. They also indicated that they extended the same programme to its brokers.

475. Other financial institutions indicated that they do not have AML programmes as they still wait for training programmes from the CBS.

Employee screening procedures (c. 15.4)

476. Under s16 of the Money Laundering Act any person with a criminal offence may not be eligible to carry on a business of an accountable institution.

477. As discussed under 23.3 of the FATF Recommendation 23 in this report, financial institutions are required to undertake fit and proper measures when

hiring employees at management level in terms of the Financial Institutions Act and the Insurance Act. The CBS and the RIRF have systems in place to ensure that entities regulated by them comply with their respective fit and proper requirements.

478. However, there is no specific requirement for financial institutions to put in place screening procedures to ensure high standard when hiring employees that are not at management level.

479. In practice however, assessors observed that banks and insurance companies conducted screening procedures on all staff before employment. The screening included background checks on criminal records through police clearance certificate, reference from other law enforcement agencies where required; letter of good conduct from previous employer and reference from a professional association at which a job applicant is a member.

Additional element – independence of compliance officer (c. 15.5)

480. Since there is no requirement for financial institutions in the Kingdom of Swaziland to appoint AML/CFT compliance officer, the assessors could not determine independence of compliance officers as required by criterion 15.5 of the FATF Recommendation 15.

Recommendation 22

481. This FATF Recommendation does not apply to the Kingdom of Swaziland since domestic financial institutions do not have foreign branches and subsidiaries operating in other jurisdiction(s).

3.8.2 Recommendations and Comments

482. The AML/CFT regulatory framework in the Kingdom of Swaziland does not require accountable institutions to comply with the FATF Recommendation 15. It is recommended that the authorities should do the following:

- Require accountable institutions to establish and maintain internal procedures, policies and controls to prevent ML and FT, and to communicate these to their employees. These procedures, policies and controls should cover, *inter alia*, CDD, record retention, the detection of unusual and suspicious transactions and the reporting obligation.

- Accountable institutions should be required to develop appropriate compliance management arrangements, including designation of AML/CFT compliance officer at management level. The compliance officer and other appropriate staff should have timely access to customer identification data and other CDD information, transaction records, and other relevant information.

- Accountable institutions should be required to maintain adequately resourced and independent audit function to test compliance (including sample testing) with procedures, policies and controls.

- The authorities should ensure that accountable institutions have adequate ongoing employee training programmes to keep employees abreast of new developments, including information on current ML and FT techniques, methods and trends; and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting. The authorities may opt to allow accountable institutions to develop their own AML/CFT programme for approval by a supervisory authority, or permit an accountable institution to establish and implement its own AML/CFT training programme to extent that the accountable institutions is satisfied with the adequacy of the training to its employees to combat ML or TF. In either case, the supervisory authority should monitor effective implementation of the training programmes to ensure compliance.

- Financial institutions should be required to put in place screening procedures to ensure high standards when hiring employees at all levels, not just at management level.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	**NC**	• There is no enforceable obligation to require accountable institutions to implement the requirements under the FATF Recommendation 15.
R.22	**N/A**	• Accountable institutions in the Kingdom of Swaziland do not have foreign subsidiaries or branches in other jurisdiction(s).

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

Legal framework

Financial Institutions Act, 2005 sets out licensing requirements for banking business in the Kingdom of Swaziland.

Prohibition of establishment of shell banks (c. 18.1)

483. Authorities in the Kingdom of Swaziland do not explicitly prohibit operation of shell banks in the country. The CBS has licensing requirements for banks or agents of bank as set out in *Banking License Application* issued by the Financial Regulation Department of the CBS, which are guided by banking

license requirements set out in the Financial Institutions Act, 2005. Amongst other things, the *Banking License Application* requires complete information on legal and operations structure of the applicant detailing business address and presence of senior management staff. The CBS conducts due diligence on every application including receiving compliance profile, including that of the directors and senior management of the applicant from a supervisory body and professional bodies. To ensure that all relevant information is received and considered in accordance with the FIA, the BICD of the CBS applies standard operating procedures set out in *Licensing Guidelines*.

484. The assessors are of the view that the licensing requirements in the Kingdom of Swaziland can effectively restrict establishment and operation of shell banks. No shell banks were operating in the country at the time of the onsite.

Prohibition of correspondent banking with shell banks (c. 18.2)

485. There is no specific prohibition for financial institutions not to enter into or continue correspondent banking relationships with shell banks. However, Paragraph 60.4 of the AML Guide, 2001 warns financial institutions against shell banks. It states that a "*Particular care should be exercised with "Shell banks" and parallel banks that are not branches or subsidiaries of well established banks, those that do not have a business presence in the country where they are licensed, or those that are not subject to effective consolidated banking supervision anywhere"*. The AML Guide is however not enforceable as discussed in detail in Section 3.1.1 of this report.

486. Discussion with private sector representatives indicated that in practice banks normally conduct due diligence when entering into correspondent banking relationships to ascertain the adequacy of AML/CFT systems and effective regulation and supervision in the home country. The CBS also confirmed that as part of its prudential compliance monitoring measures it reviewed correspondent relationships established by banks in the Kingdom of Swaziland and is satisfied with the quality of the relationships so far established.

Requirement to satisfy respondent financial institutions prohibit the use of accounts by shell banks (c. 18.3)

487. There is no specific obligation for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.2 Recommendations and Comments

488. The authorities in the Kingdom of Swaziland should create a more direct and specific prohibition against financial institutions from entering into, or continuing, correspondent banking relationship with shell banks.

Furthermore, the authorities should be required to satisfy themselves that respondent financial institutions in a foreign country 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	• There is no prohibition for financial institutions not to enter into or continue correspondent banking relationships with shell banks • There is no specific obligation for financial institutions to satisfy themselves that respondent financial institutions in a foreign country 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.23, 29, 17 & 25)

3.10.1 Description and Analysis

Legal framework

Money Laundering (Prevention) Act, 2001
The Central Bank of Swaziland Order, 1974
The Insurance Act, 2005 and its Regulations
The Retirement Funds Act, 2005 and its Regulations
Financial Institutions Act, 2005

Recommendation 23

489. The uncovered financial institutions create a scope issue as discussed under Section 3.1 of this report. This means that they are not supervised and regulated for AML/CFT requirements

Regulation and supervision of financial institutions (c. 23.1)

490. Supervision of financial institutions for AML compliance is inadequate due to the lack of comprehensive AML obligations under the Money Laundering (Prevention) Act. In addition, the authorities do not adequately regulate and supervise all financial institutions covered under the Money Laundering (Prevention) Act and the Suppression of Terrorism Act as required. Only banks are supervised by the CBS to ensure compliance with the AML obligations. Collective Investment Schemes, money transmission orders by the Post Office and Savings and Credit Cooperatives are some of the financial service entities licensed by the CBS but not subject to adequate AML supervision. There is no regulation and supervision of financial institution to implement CFT requirements in the Kingdom of Swaziland.

Designation of competent authority (c. 23.2)

491. There is no designated competent authority with specific functions and powers to ensure that financial institutions comply with measures to combat money laundering and terrorist financing. S11 of the Money Laundering (Prevention) Act lists the powers of the Supervisory Authority for purposes of this Act. S10 of the same Act designates the Governor of the CBS as the Supervisory Authority to carry out these powers. However, the powers do not include the authority or responsibility to ensure that financial institutions comply with AML/CFT obligations.

492. In practice, the authorities and financial institutions regard the CBS as the supervisory authority referred to under s10 with the powers to ensure AML/CFT compliance. The assessors observed that s10 confers the powers of the Supervisory Authority to the Governor of CBS as an individual (i.e. a natural person) and not the CBS

493. The CBS is established under s3 of the Central Bank of Swaziland Order, 1974. In terms of s4(c) of the Order, one of the function of the CBS is to foster financial conditions conducive to orderly and balanced economic development in the Kingdom of Swaziland. Banking Supervision Department (BSD) and Exchange Control Department (EXCON) within the CBS exercise powers under s10. The primary function of BSD is to supervise licensed entities in general. The Kingdom of Swaziland has exchange control regime which regulates inward and outward movement of foreign currency transactions that require clearance by the CBS. The EXCON administers and oversees this regime.

494. The Capital Market Development Unit is expected to carry out similar functions once the Securities Bill, 2009; Money Laundering and Financing of Terrorism (Prevention) Bill, 2009 and Financial Services Regulatory Authority Bill, 2009 are passed into law. The Unit licenses securities sector market players, which are presently licensed under the FIA, 2005.

495. The competencies of the BSD and EXCON do not extend to CFT measures. In practice however, the BSD and EXCON cover both AML/CFT inspections as demonstrated by one inspection report reviewed by the assessors.

496. Insurance and retirement funds sector is regulated and supervised by the Office of the Registrar of Insurance which is established under s20(1) of the Insurance Act, 2005 and recognised for purposes of retirement funds by s4(1) of the Retirement Funds Act, 2005. It states that "The person appointed as Registrar in terms of the Insurance Act, 2005, shall also be the Registrar of retirement *funds and the powers vested in him and his office for purposes of insurance business shall also vest in him for purposes of retirement fund business as applicable*".

497. The RIRF indicated that they use s22(a) of the Insurance Act, 2005 to include AML/CFT component in their scope of inspections on regulated entities even though it does not specifically cover these issues. The section states that, "*subject to the provisions of this Act, supervise and exercise control over the activities of insurance and retirement funds industry in terms of the Insurance Act and any other law of the Kingdom of Swaziland*". The RIRF further indicated that it intended to carry out joint inspections with the EXCON. At the date of the onsite visit no joint onsite inspections had been carried out. The joint inspections will be undertaken beginning April 2011.

498. The Suppression of Terrorism Act does not specifically designate any competent authority to ensure compliance with CFT measures by financial institutions.

Prevention of criminals from controlling institutions (c. 23.3 & 23.3.1)

Central Bank of Swaziland

499. Any person with criminal record wishing to operate a business of an accountable institution is prohibited in terms of s16 of the Money Laundering (Prevention) Act, 2005. It states that "a person who has been convicted of a prescribed offence (whether in Swaziland or elsewhere) or of an offence under this Act may not be eligible or licensed to carry on the business of an accountable institution".

500. S6(1) of FIA, 2005 requires any person wishing to provide banking services in the Kingdom of Swaziland to be licensed by the CBS. It states that "no person shall carry out on banking business in Swaziland unless he has been granted license by the Bank". The requirement to obtain a licence from the CBS extends to agents of financial institutions pursuant to s17(1) of FIA, 2005. Further, in terms of s12(1) the CBS can only consider license applications by financial institutions after being incorporated under the. Companies Act, 2009.

501. The BICD oversees license applications. The Department uses Licensing Guidelines which guide staff when assessing an application. Amongst others, the Guidelines cover "fit and proper" information requirements based on Core Principles of Basel Committee on Effective Banking Supervision. Further, the BICD has "Check List-License Application" guidelines to strengthen legal requirements suitability of licence applicants.

502. Licensing to participate in capital market is done by the Capital Market Development Unit of the CBS. Market participants are licensed under the Financial Institutions Act, 2005 through the CBS. It applies similar licensing requirements to that of banks.

503. Licensing requirements cover the proposed management wishing to set up a financial institution. This includes principal shareholders, proposed directors and executive officer. The CBS ensures that the proposed management constitute individuals of integrity and responsibility; must be fit and proper and have appropriate competence and experience in banking business by conducting background investigations. As part of the investigations, the CBS works with law enforcement agencies, tax and other regulatory authorities to verify information submitted by a license applicant by checking, inter alia, validity of documents submitted, financial status and criminal history of an applicant, and character and experience of its managers. In an event where it is revealed that some of the management is not deemed fit and proper, the CBS may require replacement of the proposed member of management or the application may be refused.

504. In terms of s5 of the FIA, 2005 no licence shall be issued if an application fails to meet licensing requirements. Operating a banking business operating without a licence is a contravention in terms of s8(3) and upon convictions attracts a fine of not more than E250,000.00 or imprisonment for not more than one year or both.

505. The CBS is not explicitly required by law or any other enforceable instrument to determine beneficial owners with significant or controlling interests in a financial institution.

Registrar of Insurance

506. Any person wishing to carry on insurance and retirement fund business must register with the Office of the Registrar of Insurance and Retirement Funds in terms of s6(1) of Insurance Act, 2005 and s5 of the Retirement Fund Act, 2005 respectively. Obligations under the Acts also apply to intermediaries such as brokers, agents, fund administrators/custodian and managers. All applicants must first be incorporated in the Kingdom of Swaziland in terms of the Companies Act, 2009.

507. Any person who owns or controls, directly or indirectly, significant interests in an insurance and/or retirement funds business are subject to the RIRF's "Fit and Proper Guidelines", which have been issued to insurance and retirement funds industry with a list of factors for consideration when carrying out a fit and proper evaluation of key functionaries. Under the Guidelines a significant shareholder refers to anyone with 25% or more which is in line with the threshold set by the Insurance Act, 2005 under s12. However, it would appear to the assessors that the Fit and Proper Guidelines are not Directives issued under s14(3) of the Insurance Regulations, 2005 and therefore not enforceable. This provision of the Insurance Regulations provides the Registrar with power to issue Directives to give direction on insurance business operations. The Directives are enforceable in a court of law.

508. If the functionaries change after authorisation is granted, the onus is on the licensed entity to notify the RIRF of the change and to ensure that the new key functionaries are fit and proper. The RIRF conducts on and off site inspections of internal processes of regulated entities to ensure compliance with the Guidelines for key functionaries appointed after issuing a license.

509. Under s12 and s60 of the Insurance Act, the Registrar should consider whether ownership of more than 25% by an individual or associates is desirable in the public interest. However, the Registrar needs a court order to enforce this power in order to direct the person to divest shares above the threshold. It is the view of the assessors that the requirement for the Registrar to use courts to enforce may undermine the power of the Registrar where cases of significant interest apply.

510. In addition, where a shareholder or a director has equity interest of 5 % or more in an insurance and retirement fund business, the license applications should be accompanied by name and company of principal activity, country of incorporation and the percentage held in the company. The same applies if an individual is a director, partner, proprietor or employee in any other insurance company. Combined, Form SIA 1 and Form SIA A1 of Insurance Regulations require a licence application to contain detailed background checks on company, principal representative officer, shareholders, every director and positions held in other companies. Included in the background checks are names, address, nationality and professional and integrity information, including criminal and unethical conducts. The same applies to retirement funds licence application.

511. In terms of s3(c) of the Insurance Regulations, a foreign financial institution wishing to conduct insurance in the Kingdom of Swaziland must also provide a certificate signed by the supervisory authority responsible for the enforcement of the laws relating to insurance sector in the country in which the foreign financial institution has head quarters. The certificate must indicate compliance record of the applicant.

Application of prudential regulations to AML/CFT (c. 23.4)

512. The CBS has prudential measures on regulations and supervision of licensees, which are modelled on Core Principles of Basil Committee on Effective Banking Supervision, and internal compliance procedures which are applied in a similar manner for anti-money laundering by entities regulated by it. The licensing requirements subject significant shareholders to higher scrutiny than ordinary shareholders.

513. Under s22(a) of the Insurance Act and s14(m) of Insurance Regulations it would appear that the RIRF could use prudential regulations to ensure implementation and supervision of AML/CFT measures. The provisions in the Acts and its regulations give the Registrar broad powers to ensure good

corporate governance standards and practices in the insurance and retirement funds industry.

514. The CBS and the RIRF subject regulated entities to ongoing supervisions through on-site and off-site monitoring process on regular bases. The assessors were provided with copies of onsite monitoring reports, licensing requirements and examination manuals by the CBS which combined prudential and AML supervision procedures. The assessors observed that albeit at limited basis, the scope of onsite inspection by the CBS covered both prudential and anti-money laundering issues. On the other hand, at the date of the onsite visit the RIRF had carried out a number of offsite and onsite inspections. However, these inspections currently do not include AML/CFT inspections. In preparation of conducting AML/CFT supervision beginning April 2011 the RIRF prepared inspections questionnaire which covers AML/CFT supervision for the insurance sector.

515. The RIRF applies progressive supervisory approach on regulated entities to determine levels of intervention required in terms of its Intervention Policy and Procedure, 2009. By contrast, the BSD and the EXCON officials work jointly to apply risk-based approach when monitoring compliance with prudential and AML obligations by financial institutions licensed by the CBS.

Licensing or registration of Value Transfer Services (c. 23.5)

516. As discussed under FATF SR. VI, the CBS directly licenses only banks for MVT services or allows a licensed bank to enter into a principal-agent business agreement whereby an independent MVT operator provides money or value transfer services as part of its business operation. The Postal Office money transmission orders are also licensed by the CBS.

517. Before 2010, only banks were licensed by the CBS to conduct foreign exchange operations. Independent foreign exchange operators were only allowed as part of business operations of a licensed bank. However, since February 2010 the CBS started licensing authorised dealers to carry on travel related foreign currency exchanges operations under guidelines it issued pursuant to Exchange Control Order, 1974.

518. Value transfers transacted via mobile phone operator discussed in the FATF Recommendation 8 in Section 3 of this report take place outside of the legal framework.

519. There are no natural persons operating MVT service in the Kingdom of Swaziland.

Monitoring and supervision of Value Transfer Services (c. 23.6)

520. The CBS monitors MVT services providers under licensed banks for compliance with the AML obligations, as discussed under FATF SR VI. Since

the CBS is not empowered to ensure compliance with CFT measures, there is no authority responsible for monitoring and supervision of value transfer services to combat CFT.

521. Currently, currency exchanges operate as part of business operations of a licensed bank which are monitored and supervised by the CBS.

522. Money or value transfer services provided through mobile phone network operator and Postal Office are not monitored and supervised for compliance with AML/CFT requirements.

Licensing and AML/CFT supervision of other financial institutions (c. 23.7)

523. All financial institutions, save insurance and retirement funds sector, are licensed by the CBS. Supervision of AML/CFT is however implemented primarily on commercial banks. For foreign currency operations refer to c.23.5.

524. Remittances service providers are licensed as part of operations of banks by the CBS. AML/CFT supervision is inadequate as the CBS largely concentrates on prudential compliance and banks.

525. Savings and credit cooperatives (SACCOS) are licensed by the Department of Cooperatives. The level of AML/CFT awareness is non-existent and there has been no AML/CFT supervision undertaken by the Department or the CBS.

Recommendation 30

Structure, funding, staffing and other resources of AML/CFT supervisors (c. 30.1)

<u>Central Bank of Swaziland</u>

Structure

526. The Central Bank of Swaziland enjoys autonomy and operational independence. It is a body corporate established under s3(1) of the Central Bank of Swaziland Order, 1975. It reports directly to the Minister of Finance.

527. It is run by a Governor, who is appointed by the King in consultation with the Prime Minister. The Governor and Deputy Governor are appointed on such terms and conditions subject to the Order for a period not exceeding five and three years respectively. Both are eligible for reappointment.

528. The Governor and his deputy, together with seven directors form part of the Board of Directors appointed under the Order to regulate the conduct of the CBS. The Directors are appointed by the Minister of Finance for a period not exceeding three years and can be renewed.

529. There are three departments of the CBS for prudential and AML compliance, each headed by a manager who reports directly to the General Manager: Financial Regulation.

530. **Capital** Market Development Unit: It licenses and monitors market players in the securities sector. The Unit applies licensing requirements in the FIA, 2005 and the CIS guidelines in the absence of a specific law. It has one section for collective investment schemes and the other for stock markets. Each manager of the two sections has one staff member to deal with the only two listed companies. Approved applications are sent to Swaziland Stock Market Listing Committee for authorisation to participate in the stock market. The Unit conducts inspections, which do not include AML/CFT issues.

531. Banking Supervision Department: It conducts onsite and offsite supervision of banks. It has staff compliment of eight to oversee compliance by banks.

532. Exchange Control Department: It administers exchange controls and ensures compliance with AML obligations. This department houses the office for STRs. It is headed by a manager, with two inspectors. One inspector is a trained AML/CFT assessor.

533. In all three departments, the staff levels were considered inadequate and lacking AML/CFT training. Further, the authorities indicated that there is shortage of technical resources to effectively carry out their respective functions.

Funding

534. The authorities indicated that they are well funded to carry out their respective mandate. However, the assessors observed that there is an urgent need for the authorities to improve the capacity of the three departments to ensure effective AML/CFT regulation and supervision in view of the obligations set out in the Money Laundering and Financing of Terrorism (Prevention) Bill, 2009.

Registrar of Insurance and Retirement Funds

Structure

535. The RIRF is established under s20(1) of the Insurance Act, 2001 as the regulator of insurance and retirement funds industry. It is headed by a Registrar, who is appointed by the Minister of Finance on conditions determined by the Minister with due regard to laws governing the public service.

536. In terms of s20(3) the Registrar has no powers to appoint staff. Instead, powers to appoint staff rest with the Minister at the request of the Registrar. It would appear to the assessors that this might undermine the operational

independence of the Registrar to appoint suitably qualified personnel with high integrity and professional standard.

537. The Minister's authority to fire the Registrar, including reasons thereon, are set out in s24(1). These are, i) conflict of interest, declared insolvent, criminal records, unsound mind and previous director or chairman of any financial institution that has been wound up in any country unless the Minister is satisfied with the part played by the director or chairman, ii) proven incompetence and, iii) if the Minister of the opinion that the Registrar is detrimental to the industry.

538. The core divisions are as follows:

539. **Licensing and Inspections**: It is headed by a manager, who reports directly to the Registrar. The division oversees applications for insurance and retirement funds licenses. It also conducts inspections on regulated entities to ensure compliance with the applicable Acts and Regulations.

540. **Legal, Policy and Intervention**: It is headed by a manager, who reports directly to the Registrar. The primary function is to provide interpretation of the applicable laws to regulated entities for better implementation. It also conducts research in legal and regulatory fields to inform policy-making and intervention in the insurance and retirement funds industry, when required.

Funding

541. Government allocated E15.5 million as initial capital to start the RIRF. At the time of the onsite, the RIRF was funded by levies paid by regulated entities and government grants. The RIRF prepares its own budget for approval by the Minister of Finance. During the FY 2008/9, the RIRF collected its first levies totalling E10 million since coming into operation in 2008. During the same year, government contributed E5.5 million. The aim of the RIRF is to gain financial independence from the government as set out in s22(d) of the Insurance Act, 2005.

542. The RIRF is well structured and funded with technical resources to carry out its functions. The assessors however observed that with the envisaged supervisory roles expected under the Money Laundering and Financing of Terrorism (Prevention) Bill, 2009 and the Financial Services Regulatory Authority Act, 2010 there would be a need for extra financial, human and technical resources.

543. At the time of the onsite, the RIRF had 16 staff compliment, with 12 technical staff Only two technical staff had exposure to AML/CFT issues, albeit at basic level. The assessors further observed that the staff compliment was not adequate to discharge the RIRF's responsibilities. The authorities informed the assessors that the RIRF management has plans to recruit additional staff.

544. The assessors further observed that at its current level the RIRF is well structured, funded and enjoyed autonomy and operational independence except regarding appointment of staff as already discussed.

Integrity of AML/CFT supervisors (c. 30.2)

545. Staff of the CBS are required to observed integrity and maintain confidentiality of information obtained while carrying out duties in terms of s20(1) of the Central Bank of Swaziland Order, 1975. Further, they are required to take oath of secrecy before acting under this Order, and if found guilty of an offence the staff member is liable upon conviction to E100.00. – about USD 15. The assessors considered this amount very insufficient.

546. Any staff member found not observing integrity requirements shall be guilty of an offence and liable upon conviction to a fine E 2 000.00 or two years imprisonment or both. No staff member was found guilty of any offence under these provisions in the last four years.

547. Staff members at the RIRF must maintain confidentiality in terms of s26 of the Insurance Act, 2005. There are however specific circumstances under which information can be disclosed. These are, i) authorised under this Act, ii) written consent of the person to whom the information pertains, iii) by order or court, or iv) to enforce the provision of this Act in court of Law. A violation by staff member is an offence punishable upon conviction by a fine not exceeding E10 000.00 or a term of imprisonment not exceeding 1 year and shall be individually liable for damages arising as a result of the action. There has been no breach of this provision.

548. Furthermore, the Registrar is required under s26(3) to ensure that all new staff are aware of the confidentiality provision before assuming duties. The Registrar must obtain a sworn and witnessed written statement from each staff, stating that they will abide by this provision.

549. The CBS has no administrative sanctions for violating confidentiality provisions. By contrast, in terms of Clause 8.7 of the Staff Disciplinary Policy and Procedure of the RIRF any violation of confidentiality provisions can result in a dismissal if found guilty.

550. Both the CBS and the RIRF indicated that they conducted background checks on all employees before employment, including verification of academic qualifications, criminal record and ethical conduct to ensure that only staff with high integrity and professional standard is hired.

Training for staff of AML/CFT supervisors (c. 30.3)

551. Overall, the staff members of the three departments of the CBS are not adequately trained on AML/CFT issues. Only the manager for the EXCON is a trained AML/CFT assessor. It was further revealed that various awareness raising workshops on AML/CFT have been undertaken by the three CBS departments and the RIRF for their staff. However, the authorities did not furnish the assessors with relevant statistics and content of the workshops to gauge the adequacy thereof. It is the view of the assessors that the limited trainings on AML/CFT are inadequate to fully capacitate all staff members of the three departments of the CBS and that of the RIRF to ensure effective regulation and supervision of AML/CFT control measures.

Recommendation 29

Power for supervisors to monitor AML/CFT requirement (c. 29.1)

552. There is no competent authority with specific powers to monitor and ensure compliance with AML/CFT requirements. As discussed under c.23.2 that, under s10 of the Money Laundering (Prevention) Act, there is no specific provision that empowers the CBS to monitor and ensure compliance with AML/CFT requirements. In practice however, the CBS only monitors banks for compliance with the AML requirements.

Authority to conduct AML/CFT inspections by supervisors (c. 29.2)

553. The CBS does not have the authority to conduct AML/CFT inspections of accountable institutions to assess compliance. In terms of s11(c) of Money Laundering (Prevention) Act, the powers of the CBS are restricted to contravention of the Act, i.e. authority to investigate. It states that the CBS "*may, if there are grounds for believing that a contravention or breach of this Act may have occurred, enter into the premises of any accountable institution during normal working hours to inspect any business transaction record kept by that accountable institution and ask any questions relevant to such record and to make any notes or take any copies of the whole or any part of such record*". There has been no investigation instituted against accountable institution for contravention of the Act.

554. Under s39(1) of Financial Institutions Act, 2005, the CBS has authority to conduct prudential onsite inspections on financial institutions. The authorities informed the assessors that AML and prudential inspections of financial institutions licensed by the CBS are done simultaneously. For prudential inspection purposes, this power is considered adequate. Further, the assessors observed that the CBS does not have specific powers to conduct off-site inspections of entities licensed by it.

555. The assessors reviewed the inspection reports provided by the authorities and found that the scope of AML inspections was not comprehensive. The inspection reports however, showed that the authorities reviewed policies

and procedures, books and records for both prudential and AML purposes, including sample testing.

556. The RIRF has powers to conduct inspections (onsite and offsite) of regulated entities pursuant to s35 of the Retirement Fund Act, 2005 and s13 of the Insurance Regulations, 2005. The RIRF has already prepared a questionnaire to guide the scope of AML/CFT inspections planned to begin in April 2011.

Power for supervisors to compel production of records (c. 29.3 & 29.3.1)

557. The Money Laundering (Prevention Act) does not contain any specific powers for the CBS to compel production of or obtain access to all records, documents or information relevant to monitor compliance. Under s11(c) and s14 of the Act, the CBS has powers to obtain information through onsite inspection when there is reasonable grounds for breach of the Act. It is the view of the assessors that these powers are only relevant when there is an investigation, and not for monitoring of compliance. In addition, there are no sanctions for failure to comply with s11(c).

558. The CBS has powers under the Financial Institutions Act to compel licensed entities to produce records. In terms of s40(1) of the Financial Institutions Act, the CBS has the power to compel production of records for examinations carried out by an examiner as required under s39(1). It states that "*every financial institution (i.e. banking institutions) and every affiliate of such institution to produce for the inspection of any examiner duly authorized by the Bank, at such times and in such places as the examiner may specify (being times and places which, in the opinion of the examiner, are not detrimental to the conduct of the normal ,daily business of such institution), all books, minutes, accounts, cash, securities, documents and vouchers in their possession or custody, relating to their business and shall supply all information concerning their business as may reasonably be required by such examiner within such time as the examiner may specify*". It is the view of the assessors that this provision does not specifically include off-site inspections.

559. There are sanctions for failure to comply with this provision. Any financial institution or its affiliate, or both that fails to comply with s40(1) shall be liable upon conviction to a fine of not less that E50.000.00 and additional fine of not less than E25.000.00 in respect of every day during which the default continues. Further, any financial institution or its affiliate, or both that provides misleading information in respect of s40(1) shall be liable upon conviction to a fine of not less than E500.000.00.

Insurance and retirement fund industry

560. In terms of s35(2) of the Retirement Fund Act, 2005 the RIRF has powers to compel production of or obtain access to records, documents or information relevant to monitoring compliance retirement fund entities. The powers of

the RIRF under s25 of the Insurance Act, 2005 are restricted to investigations and do not extend to monitoring of compliance by insurers.

Powers of enforcement & sanction (c. 29.4)

561. There are no specific provisions under the Money Laundering (Prevention) Act that give powers to the CBS to institute sanctions against accountable institutions, and their directors or senior management for non-compliance with or properly implement measures to combat money laundering and terrorist financing.

Recommendation 17

Availability of effective, proportionate & dissuasive sanctions (c. 17.1)

562. Money Laundering (Prevention) Act has three requirements that carry sanctions against natural and legal persons for non-compliance, as follows:-

- **Penalty for commission of money laundering (s6)** – a person is liable upon conviction to a fine not exceeding E20, 000.00, or imprisonment for a term not exceeding five years, or both such fine and imprisonment.
- **Penalty for tipping off (s7)** – a person is liable upon conviction to a fine not exceeding E20, 000.00, or imprisonment for a term not exceeding five years, or both such fine and imprisonment.
- **Penalty for failure to file an STR (s13)** – accountable institution is liable upon conviction to a fine not exceeding E50, 000.00 and may have license suspended or revoked. Criminal, civil and administrative sanctions apply.

563. Suppression of Terrorism Act provides for the following sanctions:-

- **Penalty for commission of terrorist financing (s6 & 7) – imprisonment for a term not exceeding 15 years.**
- **Penalty for failure to file an STR (27) – imprisonment for a term not exceeding 5 years** upon conviction. There is no option of a fine.

564. The authorities have not applied any sanction under both Acts.

Designation of authority to impose sanctions (c. 17.2)

565. There is no competent authority designated to impose civil or administrative sanctions for contravention of Money Laundering (Prevention) Act, 2001 and the Suppression of Terrorism Act, 2008. However, criminal sanctions, which include both offences on ML and TF, are imposed by the courts.

Ability to sanction directors and senior management of financial institutions (c. 17.3)

566. S13(4) creates an offence for employees, staff, directors, owners or authorised representatives of an accountable institution who fail to file an STR with a supervisory authority. It does not however, impose any sanctions on them for failure to report as discussed under c.17.1.

Range of sanctions – broad and proportionate (c. 17.4)

567. The Money Laundering (Prevention) Act does not sufficiently cover a number of FATF Recommendations especially with regards to preventative measures. This has in turn affected the number of obligations for and range of sanctions applicable to accountable institutions for non-compliance. The available sanctions are not adequately broad and proportionate to severity of a situation. One such example is the sanction for committing actual offence of money laundering against failure to report a suspicious transaction as discussed under c.17.1

Recommendation 32

568. Since no sanctions have been applied by the authorities, it was not possible for the assessors to determine effectiveness.

Recommendation 25

Guidelines for financial institutions (applying c.25.1)

569. Under s11(g) of Money Laundering (Prevention) Act, the CBS is empowered to issue guidelines on money laundering to accountable institutions. In turn, s12(d) of the same Act, requires accountable institutions to comply with the guidelines issued by the CBS. However, there are no sanctions for non-compliance. Two guidelines have been issued:-

- **Anti-Money Laundering Guide, 2001**. It has extensively covered the FATF **Recommendations** relative to the Money Laundering (Prevention) Act and typologies of money laundering. It suffers from the same deficiencies as discussed under Section 3 of this report.
- **Anti-Money Laundering Circular 1, 2002**. It was subsequently amended by **Circular** 2 and 3 in 2007 and 2008 respectively. It provides guidance to banks only in relation to KYC requirements on natural and legal persons. There are no sanctions for non-compliance.

570. There are no guidelines issued relating to terrorist financing.

3.10.2 Recommendations and Comments

571. In general, the CBS appears to enjoy sufficient autonomy and operational independence to undertake its general functions under the Central Bank of Swaziland Order, 1975; Money Laundering (Prevention) Act, 2001; and

Financial Institutions Act, 2005. In particular, the BSD and EXCON have sufficient autonomy and operational independence to regulate and supervise financial institutions. The same applies to the RIRF for insurance and retirement funds industry, except for Minister's power to appoint staff.

572. There are no adequately skilled staff compliments in the three Departments of the CBS, including financial and technical resources, to ensure effective AML/CFT supervision and compliance.

573. The sanctions available against financial institutions under the Money Laundering (Prevention) Act are not broad and proportionate. Further, the authorities have not applied them. Accordingly, the authorities should do the following:

Recommendation 17

- Sanctions should cover directors and senior management of financial institutions.
- Ensure that the sanctions are proportionate, dissuasive and effective to ensure compliance.
- Keep comprehensive statistics of the sanctions issued.
- Sanctions should be extended to all contravention of financial institutions obligations in line with the FATF.

Recommendation 23

- The authorities should ensure that the scope of supervision by supervisors is broad enough to ensure that all financial institutions, not just banks, are subject to comprehensive AML/CFT control measures and that there is effective implementation.
- Ensure that the Office of the RIRF has the independence and autonomy to appoint staff instead of the current situation where the responsible person is the Minister.
- Ensure that designated competent authorities have adequate responsibility for ensuring adequate compliance by financial institutions with AML/CFT requirements.
- Ensure that all MVT operators, including transfer of value through mobile phone currently operating in the country, are subject to effective systems for monitoring and ensuring compliance with the Kingdom of Swaziland's AML/CFT obligations.
- The authorities should ensure that other financial institutions, such as pawning and savings and credit cooperatives are subject to AML/CFT oversight taking into regard ML/TF risk profile of each sector to determine the level of application of control measures.
- Supervisors/regulators should undertake effective AML/CFT awareness raising programmes to ensure that all financial institutions are aware of their responsibilities under the relevant AML/CFT measures.

Recommendation 25

- Issue guideline to and ensure effective implementation by financial institutions.
- The guidelines should extend to all financial institutions and preventative measures consistent with the FATF standards.
- The guidelines should carry sanctions for non-compliance in line with the FATF Recommendation 17.
- The scope of the guidelines should include CFT controls measures.

Recommendation 29

- Ensure that supervisors' powers have adequate powers to monitor and ensure compliance by financial institutions with AML/CFT requirements meeting the FATF standards.
- Ensure that supervisors are authorised to conduct comprehensive inspections of financial inspections, (e.g. onsite inspections), including review of policies, procedures, books and records.
- Ensure that supervisors have adequate power to compel production or to obtain access to all kinds of information relevant for monitoring of a supervised entity and the powers should not require a court to be carried out.
- Make sure that supervisory authorities have adequate powers of enforcement and sanction against financial institutions and their directors or senior management for failure to comply with or properly implement the FATF standards.

3.10.3 Compliance with Recommendations 23, 29, 17 & 25

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	**NC**	• Sanctions do not extend to directors and senior managers of financial institutions. • Sanctions are not proportionate and dissuasive. • There are limited administrative sanctions available. • Sanctions not broad enough to cover all AML/CFT requirements. • No sanctions have been imposed and therefore effectiveness could not be determined
R.23	**NC**	• There is general scope issue affecting uncovered FIs and entities not licensed by the CBS. • Generally, regulation and supervision scope is too limited owing to inadequate AML/CFT requirements for FIs, e.g. lack of CDD measures and internal controls obligations. • No competent authority is designated to ensure CTF compliance.
R.25	**NC**	• The scope of guidelines goes beyond that of the principal Act under

		which they are being issued. • AML guidelines have not been issued to all accountable institutions • No measures for non-compliance with the guidelines. • No guidelines on CFT have been issued.
R.29	**NC**	• The authorities have not implemented the requirements under the FATF Recommendations 29.

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis (summary)

Legal framework

574. The *First Schedule* to the Money Laundering (Prevention) Act, 2001 lists money transmission services as one of the business activities of accountable institutions.

Designation of registration or licensing authority (c. VI.1)

575. Banks and Postal Office money or value transfer services are licensed by the CBS. As part of its normal business operations, Banks are allowed to carry on money or value transfer services for occasional and regular clients. Postal Office operates money transmission orders.

576. Although there is no direct legal prohibition, independent money or value transfer operators are not licensed in the country. Independent MVT operators can only operate money or value transfer through a principal-agent business arrangement, wherein an MVT operator is allowed to use its money or value transmission technology to provide MVT services as part of business operations of a licensed bank in the Kingdom of Swaziland. Only Money Gram operated under this arrangement.

577. Money or value transfers through mobile phone network operator as discussed under the FATF Recommendation 8 are not licensed or registered with any competent authority.

Application of FATF Recommendations (applying R.4-11, 13-15 & 21-23 & SRI-IX) (c. VI.2)

578. Money laundering and terrorist financing findings made in sections 3.2-3.10 are applicable to SRVI.2 with regards to MVT services licensed under banks. As discussed above, Postal Office money transmission orders are licensed by the CBS and are subject to AML obligations. However, no AML measures consistent with the applicable FATF Recommendations have been implemented.

579. The Suppression of Terrorism Act does not cover money or value transfer services not provided by commercial banks (e.g. those offered by the Post Office).

580. The authorities indicated that there are no known information remittance service providers in the Kingdom of Swaziland.

Monitoring of value transfer service operators (c. VI.3)

581. There is no specific requirement in law or regulation, or any other enforceable means to monitor implementation of AML obligations in general, and in particular money or value transfer service operators. As part of its general supervision function, the CBS ensures compliance with licensing and AML obligations under the FIA and Money Laundering (Prevention) Act respectively. As already discussed, the powers of the CBS are restricted to inspections when there is a reasonable ground to suspect contravention of the Money Laundering (Prevention) Act.

582. Money or value transfer services offered by Postal Office and those conducted through mobile phone network operator are not monitored for compliance with applicable the FATF Recommendations.

List of agents of value transfer service operators (c. VI.4)

583. There is no list of agents of value transfer service operators in relation to mobile phone value transmission service operated by the mobile phone network operator.

584. The authorities do not require licensed or registered MVT service operators to maintain a current list of its agents and make it available to a designated competent authority.

Sanctions (applying c.17.1-17.4- c. VI.5)

585. Sanctions discussed under the FATF Recommendation 17 in this report also apply to licensed MVT services operators.

Additional element- applying Best Practices Paper for SR VI (c. VI.6)

586. The Best Practice Paper for money or value transfer is not applied as required.

587. MVT service provided by the mobile phone operators and the agents using its network are not licensed or registered.

588. There is inadequate monitoring and enforcement of AML/CFT obligations applicable to MVT service operators.

589. There is no requirement to maintain a list of agents.

590. No customer identification and verification obligations for MVT service operators.

3.11.2 Recommendations and Comments

591. Money or value transfer services offered by Postal Service and independent operators through mobile phone network provider are vulnerable to ML/TF abuse in the absence of effective regulatory and supervisory framework.

592. It is therefore recommended that the authorities should take immediate steps to ensure that MVT service operations are subject to applicable AML/CFT measures and ensure that they comply with such measures. In particular, the authorities should do the following:

- Ensure that there is a designated competent authority with appropriate powers and resources to license or registered MVT service operators in the mobile phone industry.
- Ensure that all MVT service operators (e.g. Banks, Postal Office and mobile phone network provider and associated agents) are subject to the applicable FATF Recommendations in particular Recommendations 4-11, 13-15 and 21-23 and the Nine Special Recommendations especially SR.VII (Wire transfers).
- Put in place enforceable systems to monitor all MVT service operators and ensure compliance with the FATF Recommendations.
- Require each licensed or registered MVT service operator to maintain a current list of its agents which must be made available to the designated competent authority.
- Ensure that sanctions for non-compliance with AML/CFT obligations for MVT service provision are dissuasive, proportionate and effective as required by applicable criteria under FATF Recommendation 17 (Sanctions).
- Implement measures set out in the Best Practice Paper for SR.VI for MVT service sector.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**NC**	• There is no competent authority to license or register value transfer service operators and agents via mobile phones. • MVT service operators are not subject to all applicable FATF Recommendations, including customer due diligence. • There are no enforceable systems to monitor all MVT service operators in the Kingdom of Swaziland and ensure compliance with applicable FATF Recommendations. • There is no requirement for Banks and Postal Office to maintain a current list of its agents and make it available to CBS.

		• There are no sanctions for failure to comply with obligations and operating MVT service without approval from a competent authority.

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

Legal framework

593. Only real estate agents are covered under the Money Laundering (Prevention) Act, 2001. The Suppression of Terrorism Act, 2008 does not cover any DNFBPs.

594. The following uncovered DNFBPs operate in the Kingdom of Swaziland.

- Lawyers.
- Accountants.
- Dealers in precious stones and metals.
- Casinos.

595. Trust and Company Service Providers (TCSPs) do not operate in the Kingdom of Swaziland.

596. There is no ML/TF risk assessment which was conducted by the authorities to justify the exclusion of accountants, casinos, dealers in precious stones and metals and lawyers from domestic AML/CFT requirements.

Real Estate Agents

597. Buying and selling of real estate is done by real estate agents, property developers, property managers, lawyers and accountants either exclusively or as part of their normal business operation.

598. Real estate sector in the Kingdom of Swaziland is not regulated, i.e. there is no requirement for registration or licensing with a competent authority. As a result, the authorities do not have data on the number of real estate agents and the size of the sector. The Ministry of Housing was working with a newly formed Association of Real Estate Agents with a view to regulating the sector at the time of the onsite.

599. The authorities indicated that real estate business is a booming industry in the Kingdom of Swaziland and is dominated mostly by foreign investors mainly from South Africa and countries in the Far East.

600. It emerged that real estate agents are more involved with the buying, i.e. on behalf of an individual purchasing, than with the selling of property. A client would identify a property and engage a real estate agent to conclude the buying of the property. Assessors were informed by the private sector that an increasing number of real estate deals are settled in cash transactions and not much client identification procedures take place.

601. There is no monitoring of the sector for compliance with provisions of the Money Laundering (Prevention) Act, 2001. In addition, AML awareness in the sector is nonexistent.

Lawyers

602. Regulatory framework governing lawyers in the Kingdom of Swaziland include:

- Legal Practitioners Act, 1964.
- Legal Practitioners (Disciplinary Proceedings) Regulations, 1989.
- The Law Society of Swaziland Bye-Laws, 1992.

603. In terms of s36 of Legal Practitioners Act, 1964 Law Society of Swaziland is responsible for regulation of legal profession. It is a statutory body established under s34 of Legal Practitioners Act, 1964. The Law Society reports directly to the Minister of Justice.

604. Its membership comprise attorneys, notaries and conveyancers who are admitted by the High Court upon successfully passing examination, or admitted or entitled to practice in South Africa, Namibia, Lesotho or Zimbabwe. Additionally, all attorneys must have a Bachelors degree in Law from any of the countries mentioned above or from a University in England, Ireland and Scotland

605. During a meeting with the private sector, it was revealed to the assessors that lawyers handled a large number of high-value real estate transactions, including large cash transactions to pay-off property, without conducting proper identity verification procedures. The amount is usually deposited into an account of a property seller by a lawyer on behalf of a client. It also revealed that lawyers feared losing clients to other lawyers if they asked more questions regarding the source of the cash and identity of a client.

Casino

606. Legal framework regulating gaming activities consists of the following.

- Casino Act, 1963
- Lotteries Act, 1963
- Bookmakers Act, 1970

607. A casino that wishes to operate in the Kingdom of Swaziland must be licensed by Swaziland Gaming Board of Control through the Minister of Tourism, Environment and Communication in accordance with s9 of Casino Act, 1963[27]. The Gaming Board of Control was established under s6 of the same Act. Its main function is to *"supervise and control the conduct and operation of a casino"* pursuant to s7(a) of the Casino Act.

608. There are four licensed casinos. One of these casinos operates a licensed internet casino as part of its business operations.

609. There are 550 slot machines and 16 outlets licensed under Lotteries Act, 1963.

610. Inspections at all casinos and slot machines are done by the Gaming Board. The scope of the inspection covers equipment, premises and books of accounts. There is always an inspector from the Gaming Board on duty at the gaming floor of each casino.

611. There is no license issued to a bookmaker under Bookmakers Act, 1970.

612. There is generally no AML awareness in this sector. One casino interviewed indicated that they have not heard about AML/CFT issues related to their sector in the country. They have however received minimum exposure while attending a workshop on casino management outside of the country. Both Gaming Board officials and casino operators demonstrated lack of ML/TF risks through casino industry and expressed urgent need for AML/CFT training and awareness.

Internet Casino

613. One licensed casino is authorised to operate internet casino. It uses a website to advertise services offered and invite clients to play any game of their choice through a credit facility. All clients are registered by the casino. Only clients from the Common Monetary Union[28] can play. It has a call-centre which offers support services and checks identity of clients before making bets. The casino conduct limited identity verification.

614. Payments for winnings are only paid into a bank account of a client. The internet casino does not conduct identity verification when making payments on winnings. It only relies on banks' identity verification measures for the payment integrity.

[27] There is Gaming Bill, 2009 undergoing final stages of parliamentary process.

[28] Common Monetary Union comprises The Kingdom of Lesotho, Namibia and South Africa and the Kingdom of Swaziland. The South Africa Rand (ZAR) is legal tender within the Union. The other members have their own national currencies which are only legal tender within their respective borders.

615. The casino uses secured software supplied by eCommerce and Online Gaming Regulation and Assurance (eCOGRA[29]). The authorities informed the assessors that ECOGRA only admits well regulated online casinos. It also checks the software and audits it annually to verify that rules are adhered to. Inspections, which are done annually by the Casino Board of Control, covers equipment used, layout of premises and books of account.

616. There is no specific and effective regulatory and supervisory framework for dealing with internet casino in general and AML/CFT in particular.

Precious stones and metals

617. The Geology Department of the Ministry of Natural Resources and Energy is responsible for surveying, issuing licences and ensuring enforcement with licensing requirements. Mining activities are subject to Mining Act, 1958 and its subsequent regulations. No licence was issued for precious stones and metals business. The authorities expressed concern regarding cases of illegal mining of gold albeit at small scale. Further, assessors were informed of cases of smuggling of diamond and gold from neighbouring countries to unknown destinations.

Accountants

618. Accountants are registered by Swaziland Institute of Accountants established under s3(i) of the Accountants Act, 1985. It registers chartered accountants, auditors, registered accountants, student clerks, articled clerks, and trainee accountants which are open for inspection by any person upon payment of a specified fee. All accountants must meet registration requirements, which include meeting professional and integrity standards, as set out in s9 and s10 of the Accountants Act, 1985.

Trust and Company Service Providers

619. There are no TCSPs operating in the country.

Applying Recommendation 5

620. There is no law or regulation creating an obligation for real estate agents to conduct customer due diligence in the Kingdom of Swaziland.

Applying Recommendation 6

621. Real estate agents are not required to perform any due diligence on PEPS, establish the source of wealth and funds, have appropriate risk management

[29] ECOGRA is a non-profit organisation based in the United Kingdom which promotes integrity of the gaming industry by

ensuring that online casino operators uphold common standards such as payments and secure storage of information.

systems to determine PEP and conduct enhanced ongoing monitoring on the relationship.

Applying Recommendation 8

622. There is no requirement for real estate agents to pay special attention to any ML/TF threat that may arise from new or developing technologies.

623. Although internet casino is allowed to operate, there is no requirement for the operator to have policies and procedures to address any specific risks that may arise from non-face-to-face business relationships or transaction.

Applying Recommendation 9

624. There is no requirement for real estate agents to undertake any form of CDD when conducting a single transaction or establishing a business relationship.

Applying Recommendation 10

625. The same requirements under Section 3 of this report for financial institutions apply to real estate agents. The same deficiencies identified for financial institutions also apply to real estate agents.

Applying Recommendation 11

626. The same analysis made under Section 3 of this report for financial institutions, including deficiencies identified, apply to real estate agents.

4.1.2 Recommendations and Comments

627. The authorities in the Kingdom of Swaziland should extend the scope of AML/CFT regulatory framework to uncovered DNFBPs in a manner consistent with the applicable FATF Recommendations.

628. The deficiencies identified in Section 3 of this report on FATF Recommendations 5, 6, and 8 - 11 should be remedied as recommended.

629. The authorities in the Kingdom of Swaziland should develop and undertake AML/CFT outreach programmes in the DNFBP sector.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	NC	• Accountants, casinos, dealers in precious stones and metals and lawyers are not subject to AML/CFT measures. • Real estate agents not covered for CFT measures. • Real estate agents not required by law or regulation to undertake

		CDD measures and other related requirements such as R. 6, 8 & 9. • The same deficiencies identified under FATF Recommendations 10 & 11 also apply to real estate agents. • Real estate agents have not implemented AML obligations under applicable law. • There is no AML awareness in the real estate sector.

4.2 Suspicious transaction reporting (R.16)

(*applying R.13 to 15 & 21*)

4.2.1 Description and Analysis

Legal framework

630. The *First* Schedule to the Anti-Money Laundering (Prevention) Act, 2001 subjects only real estate agents to implement AML measures in the DNFBP category. The Suppression of Terrorism Act, 2008 does not cover any DNFBPs.

Requirement to make STRs on ML and TF to FIU - Applying Recommendation 13

631. Only real estate agents are subject to reporting requirements under s13(2) Money Laundering (Prevention) Act, 2001. There has been no STR filed with the CBS and there are no measures in place to do so.

Protection for making STRs - Applying Recommendation 14

632. The same deficiencies identified for financial institutions under FATF Recommendation 14 also apply to real estate agents.

Establish and maintain internal controls to prevent ML and TF - Applying Recommendation 15

633. There are no requirements for real estate to establish and maintain internal controls to prevent ML and TF. The same deficiencies identified for financial institutions under the FATF Recommendation 15 also apply to real estate agents.

Special attention to countries not sufficiently applying FATF Recommendations - Applying Recommendation 21

634. There are no requirements for real estate to pay special attention to countries not sufficiently applying FATF Recommendations. The same deficiencies identified for financial institutions under the FATF Recommendation 21 also apply to real estate agents.

4.2.2 Recommendations and Comments

635. All DNFBPs that operate in the Kingdom of Swaziland should be subject to applicable AML/CFT measures and effective implementation consistent with the FATF Recommendations. The authorities should take necessary measures to ensure that internet casino business implement effective measures to combat money laundering and terrorist financing.

636. The deficiencies identified in Section 3 of this report on the FATF Recommendations 13 -15 and 21 should be remedied as recommended.

637. The authorities in the Kingdom of Swaziland should develop and undertake effective AML/CFT outreach programmes in the DNFBP sector.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**NC**	• AML/CFT regime does not extend to accountants, casinos, dealers in precious metals and stones and lawyers although they operate in the country. • The same deficiencies that have been identified in Section 3 of the Report regarding FATF Recommendations 13 -15 and 21 also apply to real estate agents. • Real estate agents have not implement obligations set out in Money Laundering (Prevention) Act, 2001.

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

4.3.1 Description and Analysis

Legal framework

Recommendation 24

Regulation and supervision of casinos (c.24.1, 24.1.1, 24.1.2 & 24.1.3)

638. Casinos are not subject to AML/CFT obligations. The Swaziland Gaming Board of Control is a designated supervisor and regulator of casinos in terms of s6 of the Casino Act. The Board of Control conducts one inspection per casino on annual basis, monitoring compliance with licensing and operational requirements.

639. On the advise of the Board, the Minister for Tourism, Environment and Communication may issue a license for operation of a casino in accordance with s9(1) of the Casino Act, 1963.

640. In terms of s13 and 14 of the Casino Act, 1963 the Minister has power to revoke or not renew a license of a licensee convicted of an offence relating to

casino operation and sentenced to imprisonment within or outside of the Kingdom of Swaziland. For companies, these powers only apply to managing director or any other officer managing the casino.

641. However, there are no adequate legal or regulatory measures in place to prevent criminals or their associates from holding or being the beneficiary of a significant or controlling interest in a casino. The authorities informed the assessors that when issuing a license the Board of Control examines only management of a casino and does not cover beneficial owners.

642. The authorities apply criminal and administrative sanctions. There is no option for a fine upon conviction. No sanctions have been imposed on a casino.

Monitoring (c.24.2 & 24.2.1)

643. As discussed earlier, real estate agents are accountable institutions under the Money Laundering (Prevention) Act and therefore subject to the CBS monitoring. There has not been any AML/CFT monitoring of real estate agents.

644. Other DNBFPs operating in the Kingdom of Swaziland are not subject to AML/CFT requirements. No ML/TF risk assessment was conducted by the authorities to justify the exclusion of accountants, lawyers, casinos and dealers in precious metals and stones from AML/CFT requirements.

Recommendation 25

Guidelines for DNFBPs (applying R.25.1)

645. There are no guidelines issued to any DNFBPs for implementation of AML/CFT requirements.

4.3.2 Recommendations and Comments

646. Together with the recommendations already made for DNFBPs under Section 4 of this report, the authorities in the Kingdom of Swaziland should do the following to ensure AML/CFT compliance:

- Designate competent authorities with adequate responsibility for ensuring AML/CFT regulatory compliance by accountants, casinos, lawyers and dealers in precious stones and metals that operate in the Kingdom of Swaziland.
- Put in place necessary legal or regulatory framework to prevent criminals or their associates from holding or being beneficial owners or controlling interest.
- Ensure that all DNFBPs are effectively monitored and complied with AML/CFT requirements.

- Issue guidelines to assist all DNFBPs to comply with applicable 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**	• There are no designated competent authorities for AML/CFT regulation and supervision for accountants, real estate, lawyers and dealers in precious metals and stones. • The Central Bank of Swaziland has not monitored casinos for compliance with AML obligations. • All DNFBPs are not monitored for compliance with applicable AML/CFT measures. • No measures in place to prohibit criminals or their associates from holding or being beneficial owners of a casino.
R.25	**NC**	• No guidelines have been issued to DNFBPs.

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

4.4.1 Description and Analysis

Legal framework

Money Laundering (Prevention) Act, 2001

Money Laundering (Prevention) Guide, 2001

Other vulnerable DNFBPs (c. 20.1)

647. Under the *First Schedule* to the Money Laundering (Prevention) Act, 2001 pawning is classified as an activity of accountable institution which is subject to requirements of the Act. The same deficiencies identified in Section 3 of this report will affect the scope and effective implementation of pawnshops and other DNFBPs considered vulnerable to ML/TF abuse.

Modernisation of conduct of Financial Transactions (c. 20.2)

648. The CBS and all banks in the Kingdom of Swaziland promote access to financial services by unbanked people by, *inter alia*, reducing account opening requirements, mandatory bank account balances and transaction costs.

649. One bank introduced a minor's account known as *Siyakhula Savings Account* for individuals aged between 6 and 21 years. The bank requires birth certificate of the minor and normal KYC information of the parent or guardian (i.e. copy of national identity document and proof of residence).

650. Another bank introduced a low cost account called *u*Mla*muli Savings Account*. The bank informed the assessors that they apply simplified KYC measures as opposed to normal stringent identity verification requirements.

651. The banks further informed assessors that they have seen major increases in electronic transactions paid through debit and credit cards. This is a direct result of marketing efforts by banks to discourage their customers to conduct cash transactions. They indicated to the assessors that plans are ongoing to launch cell phone banking.

652. The assessors however observed that while the authorities and the private sector have taken considerable steps to modernise the manner in which financial transactions are conducted, the AML deficiencies identified in Section 3 of this report pose ML/TF vulnerabilities to these initiatives.

653. The Kingdom of Swaziland does not issue large denomination bank notes. The largest bank note is E200 - about USD 25.

4.4.2 Recommendations and Comments

654. The authorities have implemented measures introducing modern secured transactions methods and subject other non-financial institutions and DNFBPs to domestic AML/CFT requirements. The assessors observed that the deficiencies identified in Section 3 of this report greatly expose these methods to ML/TF risks. It is therefore recommended that the authorities in the Kingdom of Swaziland should consider applying all relevant FATF Recommendations to non-financial and professions in a manner consistent with the FATF standards.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	NC	- The authorities do not subject modern transaction techniques to applicable FATF Recommendations, including CDD measures, as required.

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

Legal framework

655. The registration and licensing of both local and foreign companies in the Kingdom of Swaziland is done in terms of the Companies Act of 1912, the Protection of Names, Uniforms and Badges Act and the Trade Licensing Order 20 of 1975.

Measures to prevent unlawful use of legal persons (c. 33.1)

656. In order for a company to be incorporated in the Kingdom of Swaziland it has to be registered with the Registrar of Companies which is a department under the Ministry of Trade and Commerce. The Registrar of Companies administers the Companies Act on behalf of the Minister. During the on-site visit the assessors were informed that the main function of the department of the Registrar of Companies is to ensure the legal protection of foreign investors and local companies against any unlawful use by requiring their registration or incorporation. Applications to register companies are done by legal practitioners on behalf of the companies. The use of company service providers is not common in the Kingdom of Swaziland but it was not clear whether this was by virtue of the law prohibiting it or it was an administrative decision taken by the department of the Registrar of Companies. The authorities indicated to the assessors that it was not a requirement for legal practitioners to do a due diligence check on the information they will be receiving from their clients who intend to apply for registration with the Registrar of Companies.

657. In terms of the Companies Act, the registration requirements for companies which can be created under the Companies Act which are companies with unlimited shareholding and companies with limited shareholding are the same. However, foreign companies requiring to be incorporated in the Kingdom of Swaziland have got different requirements.

658. The process of registering a company starts with the name search at the department of the Registrar of Companies to determine whether the name intended to be used for the company is not already in use. The name search can be done by either the officials of the department or by the legal practitioner who is to apply for the registration of the company. If the name is not yet in use then the department issues a letter to that effect. Once the name has been cleared the applicant is expected to file:

- a prescribed form called Form C with details of the directors including their names, addresses, identification particulars, nationality, information on any other directorship held by the person and the person who will serve as secretary of the company;
- the memorandum and articles of association;
- local company directors have to supply copies of their national identification card;
- foreign company directors have to supply copies of their passports, a visa stamp for thirty days and a work permit;
- a tax clearance certificate for the company;
- a residential form containing information on where the company is going to be located; and
- supporting documents on the company profile and its objectives.

659. Once the above information has been filed with the Registrar of Companies it will be captured into the system and taken for verification with the Examiner of Companies. The Examiner will check to see if all the required documents and information has been submitted and if satisfied that the application is in order the Examiner will recommend the registration of the company. The Registrar of Companies will then sign the certificate of incorporation of the company which will then be issued to the applicant. The applicant will then take the certificate of incorporation to the Office of Trade and Licensing for licensing of the company to trade.

660. In terms of the Companies Act, directors and other persons who manage the company are supposed to be natural persons. However, it does not appear that there are provisions restricting a body corporate becoming a director or being appointed as nominee shareholder to play a direct or indirect role in the management of the company. In such instances there are no requirements under the Companies Act for the Registrar of Companies to require and keep information on the shareholders or directors or beneficial owners of the corporate body appointed as corporate directors or nominee shareholders.

661. In the event of the directorship of the company changing then the company is expected to file a Form J and the company special resolution altering the directorship with the Registrar of Companies within 21 days. The special resolution filed has to have the name of the director, nationality, address, date of appointment, designation and names of other companies in which the person might be a director. If the company fails to inform the Registrar of the changes within 21 days then a fee will be charged.

662. A company is also supposed to inform the Registrar of Companies of any changes in its shareholding including the filing of the new share allotment.

The information submitted must have the full names, addresses of the shareholders and date of acquisition of the shares. There is however no requirement to establish where the new shareholder is a body corporate, the legal or natural beneficiary owner of the shares.

663. At the end of each financial year a company is expected to file its annual returns together with audited statements with the Registrar. Failure to comply with this requirement should attract punitive measures but due to the fact that most of the company records are still kept manually it is not easy for the Registrar to keep track of which companies will not have complied with this requirement.

664. Information on companies registered by the Registrar of Companies is kept indefinitely with the old information being archived for future references. However, updating of the records presence challenges to the department of the Registrar as the process is still done manually making it long and demanding on manpower required to keep the records updated. The Registrar does not verify information brought by the legal practitioners for registration of companies on behalf of their clients. According to information received from the parent Ministry during the on-site visit, this has led to misleading information, such as fake names being used in registering companies which at times is picked at the time of the company applying for a trading license with the Office of Trade and Licensing. In addition, the Registrar of Companies does not collect information on beneficial ownership and those in ultimate control of legal persons being registered.

665. For purposes of licensing a company is required to file the following information with its application with the Office of Trade and Licensing:

- Certificate of Incorporation from the Department of the Registrar of Companies;
- Memorandum and Articles of Association;
- Lease agreement of where the company is going to operate or title deed in the event of the company owning the place;
- Bank statement;
- Health report of the premises of where the business is going to operate;
- Form G
- Form C
- Citizenship of the directors issued by the Ministry of Home Affairs;
- Temporary resident permit;
- National identification card;

- Tax certificate for each of the directors; and
- A tax clearance certificate for the company issued by the Department of Income Tax.

666. The Office of Trade and Licensing informed the assessors that it uses an electronic system linked to the Registrar of Companies, Ministry of Home Affairs, Population Register and citizenship registry to verify whether information supplied on application for a trading license particularly on the directors is genuine. There are plans to link the system with banks as there are fears that some of the companies are using fake trading licences to access loans from the banks. A figure of 120 licenses having been issued illegally in 2007 was given by the authorities.

Corporate record keeping requirements

Register of Directors

667. It is requirement in terms of the Companies Act for both local and foreign companies to keep registers of directors and officers. The information kept on each director has to include, if it is an individual the name, nationality, business occupation, date of birth, date of assuming directorship and any other directorship held. And if it is a legal entity, details of its registered office.

Register of shareholders

668. Companies are expected to keep a register of shareholders with names and addresses of the shareholders, amount of shares issued to each of the shareholders with each share being distinguished by its class, the date the shareholder became a member and the date when such membership ceased.

669. Shares may be held by both natural and legal persons. Shares may also be held through nominee shareholders and on behalf of another person but there is no obligation to disclose to the competent authorities on whose behalf shares are being held and the amount of shares held.

Access to information on beneficial owners of legal persons (c. 33.2)

670. The information kept by the Registrar of Companies can be availed to the public by virtue of the Office being a public office. The information is available to both members of the public and those from law enforcement free of charge with the only exception of being when a copy of the document is required. In such circumstances a court order has to be obtained and authority granted for the release of the document. A token fee also has to be paid for the document. The Anti-Corruption Commission officials in terms of the Anti- Corruption Commission Act are however exempted from the requirement of first acquiring a court order in order to obtain documents from the Registrar.

671. Access and inspection of information kept by the Registrar by law enforcement is given over the counter .The provisions in the Companies Act and the practice at the Registrar of Companies enables the police and other law enforcement agencies to access and inspect information at the department in a timely manner. The only impediment that is there for other law enforcement agencies other than the Anti-Corruption Commission is that a court order has to be obtained in order for the Registrar to release any document to them. There are no safeguards to ensure that the information eventually given to law enforcement and other supervisory authorities is accurate as no verification of beneficial ownership and control of legal persons is done. The use of nominee shareholders may also easily distort the ultimate beneficial owner in the share registry.

Prevention of misuse of bearer shares (c. 33.3)

672. The issue of bearer shares seems not to be provided for under the Companies Act and the assessors were of the view that a company with limited shares may still issue bearer shares which might entitle the bearer to shares which he or she can transfer by mere delivery of the bearer shares. There are no measures in place to ensure that bearer shares are not misused for purposes of money laundering although the use of bearer shares, according to the authorities, is not a common practice in the Kingdom of Swaziland.

5.1.2 Recommendations and Comments

673. It is recommended that legal practitioners who are used to register legal persons on behalf of their clients be required to comply with AML/CFT requirements so that they have more information on the beneficial ownership of the legal persons on whose behalf they apply for registration and the persons who will be in control of such persons.

674. The fact that legal practitioners and the Registrar's department do not collect nor verify information on beneficial ownership and control of the legal persons as specified under the FATF requirements, compromises the accuracy of the information retained by the Registrar's department.

675. The authorities should consider making it a requirement where the shareholder is a body corporate to establish the legal or natural beneficiary owner of the shares.

676. The Registrar of Companies with the availability of resources should be fully computerised to enable an electronic filing system which would improve efficiency on keeping, maintaining and timely access to the records by the public, law enforcement agencies and other supervisory authorities.

677. It is recommended that there be an obligation to disclose to the Registrar of Companies or any other competent authority on whose behalf shares are being held and the number of shares held.

678. Where corporate directors are involved directly or indirectly in the running of a legal person, it is recommended that measures be put in place requiring the identification of the beneficial owner of the corporate directors.

679. Where nominee shareholders are appointed, measures should be put in place to have the beneficial owners identified.

680. The authorities should consider coming up with clear measures to prevent the possible misuse of bearer shares.

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	**NC**	• Information submitted for registration of legal persons by legal practitioners is not necessarily accurate as it is not verified. • The non-verification of information on beneficial ownership and control of legal persons as specified under the FATF definitions compromises the accuracy of the information retained by the Registrar's department. • No requirement where the shareholder is a body corporate, to establish the legal or natural beneficiary owner of the shares. • The running of companies by corporate directors and nominee shareholders distorts information on beneficial ownership and control of the legal persons that engage them. • Timely access to information and accuracy of the information might be undermined by the use of manual systems to maintain information. • No measures in place to insure that bearer shares are not misused for purposes of money laundering.

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

5.2.1 Description and Analysis

Legal framework

681. The authorities indicated that the same provisions of the law which are used to register companies are the same provisions used to register trusts and that there is no distinction between a trust and a company during the registration process as the same type of documents are required. In terms of the amended Companies Act of 2009 a trust upon being registered by the department of the Registrar of Companies is issued with a trust deed.

Measures to prevent unlawful use of legal arrangements (c. 34.1)

682. Apart from the registration process described in c.33.1 there is no specific requirement in terms of the law for the legal practitioners registering trusts and the department of the Registrar of Companies to verify the beneficiaries and protectors of trusts. The legal practitioners are also not required to retain records of the details of the trust and other similar legal arrangements.

Access to information on beneficial owners of legal arrangements (c. 34.2)

683. The competent authorities indicated that they did not encounter any impediments when accessing information retained by the Registrar of Companies pertaining to trusts. The concern as with c.33.2 was that despite access to the information such information is not verified and chances are that it might not be accurate and it will not disclose the beneficial ownership and control of legal arrangements as this is not a requirement. The fact that the Registrar of Companies' department is not fully computerised which would have enabled the records kept by it to be easily updated and accessible electronically creates possibilities of delays for the competent authorities to access the information in a timely fashion.

Additional element- access to information on beneficial owners of legal arrangements by financial institutions (c. 34.3)

684. Access to information on beneficial owners of legal arrangements by financial institutions is the same as in c.34.2 above.

5.2.2 Recommendations and Comments

685. The authorities are encouraged to consider requiring legal practitioners who provide trusteeship services to adequately comply with AML/CFT requirements and to retain records of the details of the trust or other similar legal arrangements.

686. It is recommended that the authorities consider having in place systems to allow access to information on beneficial ownership and control of trusts. Particularly where a legal person is a founder, trustee or beneficiary of the trust there should be a requirement to have information available in a timely manner to law enforcement and other supervisory authorities on the beneficial owner of the legal person.

687. The Registrar of Companies with the availability of resources should be fully computerised to enable an electronic filing system on trusts which would improve efficiency on keeping, maintaining and timely access to the records by the public, law enforcement agencies and other supervisory authorities.

688. The other deficiencies highlighted in c.33 above also apply to this part.

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating

R.34	**NC**	• The legal practitioners who provide trusteeship services are not required to comply with AML/CFT requirements. • There are no systems in place to allow access to information on beneficial ownership and control of trusts particularly where the founder of the trust is a legal person. • Possibility of undue delay in accessing information by competent authorities and financial institutions due to the manual system which is still used to record information on trusts at the department of the Registrar of Companies exists.

5.3 Non-profit organisations (SR.VIII)

689. 5.3.1 Description and Analysis

690. The Kingdom of Swaziland does not have specific legal framework for NPO sector. In 2005 the Ministry of Home Affairs developed National NGO Policy, 2005 which sets out mechanisms to properly regulate and coordinate NPO sector in the country. In particular, the policy document seeks to establish a registration body and NGO Committee to oversee transparency and accountability in the sector.

691. Within the Ministry of Home Affairs, there is NGOs and Religious Affairs Division which was formed to regulate and supervise the activities of the NGO sector following restructuring of government ministries and their responsibilities. However, there is not a single person appointed to man this unit at the time of the onsite due mainly to lack of clearly defined NGO policy implementation and resource constraints. Government intends to create NGO Coordination Committee as envisaged in the NGO Policy document.

692. At the time of the onsite, NPO sector activities were coordinated by an organisation known as Coordinating Assembly of Non-Governmental Organisations (CANGO) which was formed in 1983 as a voluntary association of NGOs. It is run by a Board, Secretariat and members. NGOs wishing to become members must be registered and issued with certificate of registration by the Registrar of Companies and meet other requirements before admission such as providing articles of association and paying subscription. CANGO is currently developing a code of conduct for its members.

693. A large number of NGOs in the country are registered with CANGO. There are about 67 members operating across the country with specific focus on development projects in four main areas, namely, HIV and AIDS, Children and Human Rights, Gender and food security.

694. However, there is large number of unregistered NGOs operating outside the armpit of the CANGO and government.

695. Both government and CANGO demonstrated lack of CFT awareness and expressed the need for technical assistance and other resources to implement the requirements under the FATF Special Recommendation 8.

5.3.2 Recommendations and Comments

696. The authorities have not implemented requirements set out in the FATF Special Recommendation 8 for the NPO sector. It is therefore recommended that the authorities should take the necessary action to put in place appropriate measures consistent with the Special Recommendation.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**NC**	• NPO sector requirements have not been implemented.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and coordination (R.31 & R.32)

4.1.3 Description and Analysis

Mechanism for domestic cooperation and coordination in AML/CFT (c. 31.1)

Policy cooperation & coordination

697. The Money Laundering (Prevention) Act, 2001 does not create mechanisms to promote policy cooperation and coordination amongst stakeholders responsible for AML implementation in the Kingdom of Swaziland. The country has a National Task Force on AML/CFT, which is chaired by the Ministry of Finance. It consists of the CBS, Bankers Association, the DPP, AG's Office, Swaziland Law Society, Directorate on Corruption and Economic Crimes, Customs, the RIRF, Gaming Board and the Police. There are plans to include other authorities such as Immigration.

698. In practice however, the NTF is not operational. The assessors were informed that the last meeting to discuss issues related to AML/CFT was held almost a year ago to discuss Money Laundering and Financing of Terrorism (Prevention), 2009 which is still before parliament. The absence of FIU, inadequate financial resources and effective coordination of AML/CFT policy implementation are major factors inhibiting mechanism for domestic cooperation.

699. The Money Laundering and Financing of Terrorism (Prevention) Bill, provides for establishment of a national task force on AML/CFT with legal mandate to advise government on policy formulation and implementation. It will comprise a number of stakeholders which are currently not included in the existing national task force.

700. ***Additional element –mechanisms for consultation between competent authorities (c. 31.2)***

701. The Ministry of Finance worked very closely with the CBS, the RIRF and other Self-Regulatory Organisations (SROs) for different accountable institutions during the drafting of the Money Laundering and Financing of Terrorism (Prevention) Bill, 2009 which will repeal the current AML law.

Central Bank of Swaziland

702. The CBS and Swaziland Banking Association established Bankers Technical Committee which meets on monthly basis to discuss AML/CFT issues, bankers' code of conduct, and other general issues affecting banking business in the country. For instance, in the absence of enforceable CDD requirements, the Committee established CDD measures which are subject to AML inspection by the CBS.

The Registrar of Insurance and Retirement Funds

703. Consultations on draft AML/CFT guidelines were ongoing at the time of the onsite visit. Discussions with the Registrar of Insurance and regulated entities revealed close consultation between the supervisory body and the regulated entities in relation to the general well-being of the industry and AML/CFT issues especially on the pending Money Laundering and Financing of Terrorism (Prevention) Bill, 2009. The regulated entities have agreed to have AML compliance inspections done on their businesses by the RIRF without powers to do so under the current legal framework. The regulated entities indicated that this will assist them to get ready for the new AML/CFT dispensation.

704. The CBS and the RIRF have also worked very closely with the Ministry of Finance

Recommendation 32

705. The authorities do not keep and maintain comprehensive statistics. Consequently, there has been no review of the effectiveness of the AML/CFT systems in the Kingdom of Swaziland.

6.1.2 Recommendations and Comments

706. There are no effective mechanism for AML/CFT cooperation and coordination. It is therefore recommended that the authorities in the Kingdom of Swaziland should as a matter of urgency create effective mechanisms for policy makers, planned FIU, law enforcement and supervisors and other competent authorities to cooperate and coordinate with each other on programmes to combat money laundering and terrorist

financing. In particular, the authorities should ensure that the National Task Force on AML/CFT is well structured and funded to drive policy making and implementation in the country. A closer working relationship between the FIU and the unit responsible for AML/CFT issues within the Ministry of Finance is essential to bring together all relevant stakeholders in the country.

707. The authorities should expand the scope of consultation outside the entities regulated by the CBS and the RIRF to include other accountable institutions currently not consulted. It is further urged that the authorities should take immediate steps to create consultative mechanisms with all accountable institutions especially in the context of the current domestic changes in the financial sector regulatory in general and AML/CFT framework in particular.

6.1.3 Compliance with Recommendation 31 & 32 (criterion 32.1 only)

	Rating	Summary of factors underlying rating
R.31	**NC**	• There is no policy cooperation and coordination mechanism amongst relevant authorities. • No well functioning National Task Force on AML/CFT.
R.32	**NC**	• The authorities in the Kingdom of Swaziland do not keep and maintain comprehensive statistics. • Effectiveness could not be determined.

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

6.2.1 Description and Analysis

Legal framework

708. The Kingdom of Swaziland has signed and ratified the following conventions:

- The Vienna Convention
- The Palermo Convention (only signed and not yet ratified)
- The SFT Convention

709. Through s2 of the Suppression of Terrorism, the Kingdom of Swaziland has recognised the S/RES/1373 to be binding on it. However, the same provision is silent on S/RES/1267.

Ratification of AML related UN Conventions (c. 35.1)

710. The Kingdom of Swaziland ratified to the Vienna Convention on the 10th of November 1992.

711. The Kingdom of Swaziland only signed the Palermo Convention on the 14th of December 2000 but has not ratified it. As highlighted under R1 in this report, although Swaziland has not yet ratified the Palermo Convention it has domesticated most of the provisions of the Palermo Convention in its Money Laundering (Prevention) Act, 2001. However the list of offences provided as predicate offences does not cover the minimum predicate offences prescribed under the FATF Glossary.

Ratification of CFT related UN Conventions (c.I.1)

712. The Kingdom of Swaziland signed and ratified to the UN International Convention for the Suppression of the Financing of Terrorism in 2003. It proceeded to domesticate most of the provisions of the TF Convention in the Suppression of Terrorism Act of 2008. The Kingdom of Swaziland has also signed and ratified/acceded to eight of the UN Conventions and Protocols which are annexes to the TF Convention (see SRII of this report).

Implementation of Vienna Convention (Articles 3-11, 15,17 & 19-c.35.1)

713. The Opium and Habit Forming Drugs Act and the Pharmacy Act criminalise some of the measures listed in the Vienna Convention. Article 3 of the Convention has been partially implemented through criminalisation of exporting, importing, producing, manufacturing, assisting in, permitting, allowing the importation, production or manufacture of any habit forming drug or; importing, cultivating, or exporting, or assisting in, or permitting or allowing the importation, cultivation or exportation, of any plant from which such drug can be extracted, derived, produced or manufactured; or administering, giving, selling, bartering, exchanging or otherwise supplying or using, accepting, purchasing, taking in exchange or otherwise receiving any such drug or plant; or cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs; or exporting and importing of any prepared opium.

714. The following activities which in terms of the Convention are supposed to be criminalised under Article 3(1)(a) are not criminalised in the Kingdom of Swaziland: extraction, preparation, offering for sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport; possession or purchase of any narcotic drug or psychotropic substance for the purpose of production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale , delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance; or the manufacture, transport or distribution of instrumentalities knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances; or the organisation, management or financing of any of the above activities.

715. The measures listed above which are not criminalised under paragraph (1)(a) of Article 3 affect the remaining paragraphs of Article 3 as well as measures under Article 4 on jurisdiction, Article 5 on confiscation, Article 6 on extradition, Article 7 on mutual legal assistance, Article 8 on transfer of proceedings, Article 9 on other forms of co-operation and training, Article 11 on controlled delivery and Article 15 on commercial carriers as the activities intended to be criminalised are dependent on all the measures described under paragraph (1)(a) having been criminalised.

716. Measures enabling confiscation for activities criminalised in the Kingdom of Swaziland under Article 3(1) of the Convention are provided for under the Serious Offences Act and the Money Laundering (Prevention) Act. Part II and III of the Serious Offences Act provides for the identification, tracing and freezing or seizing of proceeds, property, instrumentalities or any other thing intended to be used in violation of the measures listed under Article 3(1) which are criminalised in the Kingdom of Swaziland. Part IV of the Money Laundering (Prevention) Act provides for the confiscation of proceeds intermingled with property acquired from legitimate sources and income or other benefits derived from proceeds, property into which proceeds have been transformed or converted. Section 22 of the Money Laundering (Prevention) Act provides for identification, tracing, freezing or seizing and confiscation of proceeds, property or instrumentalities connected to ML pursuant to a foreign request. The current laws however do not provide for concluding of agreements to enable sharing of proceeds or property, or funds derived from the sale of such property or proceeds.

717. Article 6 covering extradition is provided for under the Extradition Act, Fugitive Offenders Act and the Transfer of Convicted Offenders Act. The Extradition Act only provides for extradition with countries that have entered into bilateral or multi-lateral agreements with Swaziland, whereas the Fugitive Offenders Act only enables extradition with designated countries. The Transfer of Convicted Offenders Act provides for the transfer to and from the Kingdom of Swaziland of persons sentenced to imprisonment or other forms of deprivation of liberty for offences under Article 3(1) criminalised in the Kingdom of Swaziland or agreed to in an agreement pursuant to the Extradition Act in order that such persons complete serving their sentences. The three Acts however do not provide for simplified extradition measures. In addition, the extradition laws do not create an obligation on the Kingdom of Swaziland in the event of it refusing to extradite any person, for the competent prosecution authority to prosecute the person if the person could be prosecuted for such type of offence under the Kingdom of Swaziland's laws.

718. Mutual legal assistance measures set out in Article 7 of the Convention are provided for in the Criminal Matters (Mutual Assistance) Act and the Money Laundering (Prevention) Act. Part II of the Criminal Matters Act provides for:

- assistance in obtaining evidence which includes taking of evidence from any person, production of judicial or other records or documents, taking or examining of samples of any matter or things and viewing or photographing of any site or thing;
- assistance in identifying and locating persons; assistance in obtaining articles or things through search and seizure;
- assistance in arranging attendance of witnesses;
- assistance in securing transfer of prisoners;
- assistance in serving documents;
- assistance in tracing proceeds of serious offences, obtaining restraining orders; and
- assistance relating to forfeiture and pecuniary orders.

719. Section 22 of the Money Laundering (Prevention) Act provides for international cooperation in the:

- identification, freezing, seizing or forfeiture of property, proceeds or instruments related to ML upon request; and
- facilitation of a civil, criminal, or administrative investigation, prosecution or proceeding involving a ML case.

720. The same section provides for the waiver of banking secrecy and confidentiality in compliance with mutual legal assistance requests. However, the same section provides that such assistance can only be given to countries which have entered into bilateral or multilateral mutual legal assistance agreements with the Kingdom of Swaziland. This proviso in the view of the assessors, created limitations as to the extent of the countries which could be given assistance in terms of the Money Laundering (Prevention) Act.

721. The Minister of Justice is the designated competent authority for receiving and executing mutual legal assistance in the Kingdom of Swaziland. According to the authorities, the Minister has however delegated that function to the DPP's Office. Section 17 of the Criminal Matters Act provides for the kind of information which is expected to be in a request and that such a request has to be in writing. The Act also authorises the competent authority to ask for additional information to enable proper execution of the request. The laws do not provide for the transfer of proceedings in line with the requirements of Article 8.

722. In compliance with measures under Article 9, the Kingdom of Swaziland is a member of the CMA, INTERPOL, SAFAC and SARPCCO. The membership to these organisations according to the authorities has enabled Swaziland to maintain channels of communication with other competent law enforcement

agencies and also cooperate with them in conducting inquiries relating to criminal offences.

723. The authorities informed the assessors that the drafting section of the Attorney General's Office has been assisted by the Government of Australia since the year 2009 to review the Prevention of Organised Crime Act and that the assistance is on-going. The authorities further informed the assessors that measures to Article 10 on international co-operation and assistance have been enhanced by the Commonwealth Secretariat which seconds law officers to the Attorney General's Office and judges to the High Court.

724. The law enforcement authorities informed the assessors that the laws did not have provisions specifically providing for special investigative techniques covered under Article 11 of the Convention to be used but in cases where such techniques had to be applied, the authorities would use them in terms of the administrative powers they have in carrying out their duties. The authorities indicated that they had successfully used controlled delivery in two cases relating to drug trafficking.

725. In order to ensure that commercial carriers are not used to commit offences as required under Article 15, the customs authorities indicated that in terms of section 4 of the Customs and Excise Act they have general powers to search premises, packages and vehicles and that section 7 of the same Act specifically gives them powers to search aircrafts. The customs authorities also indicated that their Anti-Smuggling Unit often jointly carry out anti-smuggling operations with the police. The commercial carriers have an obligation under the Customs and Excise Act and other laws of Swaziland not to use their means of transport to commit offences. The customs authorities however informed the assessors that they had not carried out any training for the commercial carriers to assist their personnel in identifying suspicious consignments or persons and on integrity of the personnel they have to employ.

726. Although, the customs authorities informed the assessors that the commercial carriers are required to submit their cargo manifests in advance. The authorities could not assist in providing information on whether this was in terms of the law or an administrative arrangement. The customs authorities indicated that they have been automating the system of submission of manifests since 2007 and the process is still ongoing. The authorities indicated that they had 12 points of entry and exit on the borders, with four of them being major ones. At most of the border points they had clear separation of traffic entering and exiting Swaziland with the exception of small ones. The police, customs, immigration, officials from the Ministry of Agriculture, Agricultural Marketing Board and Dairy Board are stationed at the four major border points where there is heavy flow of traffic to check and

verify goods being carried by commercial carriers. The authorities indicated that if required would cooperate with other countries to suppress illicit traffic by sea in compliance with the measures under Article 17, although their country was landlocked.

727. Measures under Article 19 are implemented in terms of s31 of the Swaziland Post and Telecommunications Cooperation Act which criminalises the use of mails for purposes of illicit traffic. The same section also enables the authorities to secure evidence for purposes of judicial proceedings. The authorities could not confirm as to whether the Kingdom of Swaziland is a member of the Universal Postal Union or not.

Implementation of SFT Convention (Articles 2-18, c 35.1 & c. I.1)

728. The TF Convention was implemented in the Kingdom of Swaziland through the enactment of the Suppression of Terrorism Act of 2008. Offences relating to terrorist acts described in Articles 2 and 4 of the Convention are provided for under Part III of the Act; section 5(4) of the Act criminalises both the conduct of the legal person and that of the natural person who in an official capacity could have participated in the commission of the same offence for which the legal person would be liable (Art. 5); under sections 37 and 38 political reasons cannot be used to justify terrorist acts or as a basis to deny the extradition of an offender (Art. 6); section 3 provides the Kingdom of Swaziland authorities with jurisdiction over terrorist offences committed in the Kingdom of Swaziland and extra-territorial jurisdiction on terrorist acts committed elsewhere where such an act would be an offence in the Kingdom of Swaziland (Art. 7); Part VII provides for the identification, detection, freezing/seizure and eventual forfeiture of assets connected to terrorist acts (Art. 8); sections 22-24 deal with the investigation of terrorist offences in the Kingdom of Swaziland and the rights of the offender (Art. 9-10), under section 35 terrorist acts covered by counter-terrorism conventions to which the Kingdom of Swaziland is a party are extraditable offences to other parties to the conventions (Art. 11); section 36 in addition to the provisions of the Mutual Assistance in Criminal Matters Act allows the Kingdom of Swaziland to provide mutual legal assistance to countries which are parties to counter-terrorism conventions to which the Kingdom of Swaziland is a party (Art. 12); sections 37-38 provide for extradition/ mutual legal assistance for terrorist acts under the Convention regardless of political reasons , the Act does not however provide for extradition/ mutual legal assistance for terrorist acts under the Convention where fiscal matters might be involved (Art. 13-14); the provisions under the Extradition Act and the Mutual Assistance in Criminal Matters Act provide for the protection against politically motivated requests and other motives such as race, religion, nationality and ethnic origin (Art. 15-16); and section 24(10) provides for the right to legal representation (Art. 17).

Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34- c. 35.1)

729. The Kingdom of Swaziland has enacted laws which provide for:

- the criminalisation of money laundering;
- measures in combating ML (the Money Laundering (Prevention) Act provides for a Supervisory Authority which is partly performing the functions of an FIU.
- liability of legal persons;
- the prosecution, adjudication and sanctions for the offences of ML, corruption and obstruction of justice;
- confiscation and seizure of property, proceeds or instruments connected to crime and international cooperation for purposes of confiscation;
- the establishment of jurisdiction over ML, corruption and obstruction of justice cases;
- the extradition of offenders;
- mutual legal assistance;
- joint investigations;
- special investigative techniques; and
- law enforcement cooperation.

730. The above laws enable the implementation of Articles 6, 7, 10, 11, 12, 13, 15, 16, 18, 19, 20 and 27 in the Kingdom of Swaziland. In relation to Article 20 which provides for special investigative techniques, the authorities indicated to the assessors that they had no specific provisions of the law relating to these techniques but the techniques were used by law enforcement in terms of the administrative powers they have in carrying out their duties.

731. The laws enabling the implementation of the above articles are provided for in the Money Laundering (Prevention) Act, 2001, Criminal Procedure and Evidence Act, Criminal Matters (Mutual Assistance) Act and the Extradition Act.

732. The Kingdom of Swaziland has not enacted laws criminalising participation in an organised criminal group consistent with the requirements of Article 5 of the Palermo Convention. The non-criminalisation of the participation in an organised criminal group means that the Kingdom of Swaziland cannot also implement Article 10(1), which requires that legal persons be held liable for participation in an organised criminal group, Articles 11 and 12 which require prosecution, adjudication and sanctions for participation in an organised criminal group as well as confiscation and seizure of proceeds arising out of such acts and Article 15 which requires that each of the State Parties to the Convention should have enabling laws to establish jurisdiction over offences related to participation in an organised criminal group.

733. The Kingdom of Swaziland signed an MOU with the Government of South Africa on the 12th of December 2004 which establishes a Joint Bilateral

Commission for Cooperation. The MOU provides for cooperation between the two authorities in the areas of search, seizure, freezing and forfeiture of assets in criminal cases, secondment of expert officers from South Africa to assist with investigations, prosecution of serious criminal and civil cases at the request of the DPP or the AG and where the Chief Justice deem it necessary, the secondment of judges to deal with certain cases or backlog of cases in the High Court of the Kingdom of Swaziland. The MOU provides for the implementation of the measures in Article 19 of the Convention in as far as it allows cooperation in joint investigations, prosecutions and other judicial processes between the authorities of the Kingdom of Swaziland and South Africa. The assessors were not provided with any other agreements which the Kingdom of Swaziland has entered with any other country other than South Africa for purposes of facilitating joint investigations or any other judicial processes.

734. The Kingdom of Swaziland has not enacted laws which provide for the protection of witnesses and assistance to and protection of victims, consistent with the requirements of Articles 24 and 25.

735. The Kingdom of Swaziland has also not adopted laws to implement the requirements of Article 26 relating to measures to enhance cooperation with law enforcement authorities such as encouraging persons who participate in an organised criminal group to supply information useful to competent authorities for investigations and for evidentiary purposes.

736. It did not appear to the assessors that there were adequate training programmes developed for law enforcement authorities, including prosecution, anti-corruption commission personnel and other agencies responsible for the prevention, detection and control of the offences covered by the Palermo Convention. There were no formal training programmes availed to the assessors nor were there specific budgets produced relating to training of the law enforcement authorities. The Criminal Investigation Unit had just established a new unit to investigate money laundering but again it was not satisfactorily explained to the assessors how this unit was going to be trained to detect ML and other offences in line with the requirements of Article 29 of the Convention.

Implementation of UN SCRs relating to Prevention and Suppression of FT (c. I.2)

737. Although s2 of the Suppression of Terrorism Act recognises the UNSC S/RES/1373 as binding the Government of Swaziland, it was not demonstrated to the assessors as to how this S/RES has been implemented in the Kingdom of Swaziland. At the time of the onsite visit there were no mechanisms in place to effectively implement the S/RES. S29 of the same Act as discussed under SR III of this report, empowers the Minister responsible for national security to implement measures issued by the UNSC but again despite this provision the authorities could not demonstrate how effectively

this provision had been used as the assessors were not shown any of the Gazettes publishing the list issued by the UNSC as the Minister is empowered to do under s29. This is regardless of whether the person listed has funds/ assets in the Kingdom of Swaziland or not.

Additional element- ratification or implementation of other relevant international conventions (c. 35.2)

738. The Kingdom of Swaziland has ratified the following relevant international conventions and protocols:

- Convention for the Suppression of Unlawful Seizure of Aircraft, the Hague, 16 December 1970 (acceded to in 1999);
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 23 September 1971 (acceded to in 1999);
- Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, General Assembly, United Nations, 14 December 1973 (acceded to in 2003);
- International Convention against the Taking of Hostages, 17 December 1979(acceded to in 2003);
- Convention for the Physical Protection of Nuclear Material, Vienna, 3 March 1980 (acceded to in 2003);
- Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Rome, 10 March 1988(acceded to in 2003);
- Protocol for the Suppression of Unlawful Acts against the safety of Fixed Platforms located on the Continental Shelf, Rome, 10 March 1988 (acceded to in 2003); and
- International Convention for the Suppression of Terrorist Bombings, General Assembly, United Nations, 15 December 1997 (acceded to in 2003).

6.2.2 Recommendations and Comments

739. The implementation of both the Vienna and Palermo Conventions in the Kingdom of Swaziland is limited as the list of predicate offences criminalised does not meet the minimum of the designated categories of offences under the FATF Glossary.

740. It is recommended that the Kingdom of Swaziland consider criminalising the measures provided for under Article 3(1) of the Vienna Convention which have not been criminalised as set out under the part dealing with the implementation of the convention above.

741. It is recommended that Swaziland ratify the Palermo Convention.

742. It is recommended that the Kingdom of Swaziland consider criminalising participation in an organised criminal group.

743. The Authorities should consider enacting laws that provide witness protection, assistance to and protection of victims.

744. The Kingdom of Swaziland should consider enacting laws that enhances cooperation with law enforcement authorities to enable them to among other things gather information from members of organised criminal groups for purposes of carrying out their investigations and evidence gathering and in deserving situations to offer immunity from prosecution to persons offering such information.

745. It is recommended that the authorities consider developing a Training Programme for law enforcement authorities charged with the prevention, detection and control of offences covered by the Palermo Convention.

746. The Suppression of Terrorism Act is not clear as to what would happen to a request for extradition or for mutual legal assistance where the matter involves fiscal matters. The Act does not provide for such a situation.

747. The Authorities must implement the provisions of s29 of the Suppression of Terrorism Act to give effect to the freezing mechanisms under the UNSC S/RES/1267 and 1373.

748. The Kingdom of Swaziland should accede to and implement the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Montreal, 24 February 1988.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**PC**	• Swaziland has not ratified the Palermo Convention although most of the measures provided by the Convention are criminalised in the Money Laundering (Prevention) Act. • Limited implementation of both the Vienna and Palermo Conventions as the list of predicate offences does not cover the minimum of the designated categories of offences under the FATF Glossary.

		• Participation in an organised criminal group not criminalised. • No laws providing for witness protection, assistance to and protection of victims. • Limited cooperation with other law enforcement authorities to assist the law enforcement authorities with investigations and evidence gathering. • Lack of an effective training programme for law enforcement authorities including prosecution, responsible for the prevention, detection and control of offences covered by the Palermo Convention.
SR.I	**NC**	• The lack of implementation of section 29 of the Suppression of Terrorism Act to give effect to the freezing mechanisms under the UNSC S/RES/1267 and 1373. • No clear guidance and provisions in the Suppression of Terrorism Act on requests for extradition and mutual legal assistance involving fiscal matters. • Not all the Protocols which are annexes to the UN Convention for the Suppression of the Financing of Terrorism have been acceded to and implemented.

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

6.3.1 Description and Analysis

Legal framework

749. The Criminal Matters (Mutual Assistance) Act of 2001 is the enabling act on mutual legal assistance aided by provisions in the Money Laundering (Prevention) Act and the Suppression of Terrorism Act. The mutual legal assistance rendered under the Criminal Matters (Mutual Assistance) Act is only limited to countries designated in terms of the provisions of the Act by the Minister of Justice, who also in terms of the same Act is the Competent Authority for making or receiving requests for mutual assistance from and to other jurisdictions. During the on-site visit, the authorities explained to the assessors that in practice the requests are received through the Ministry of Foreign Affairs. In terms of the Suppression of Terrorism Act, the Commissioner of Police, under s34 is empowered to exchange information with other appropriate authorities of foreign states on terrorist groups and terrorist acts. Under s22 of the Money Laundering (Prevention) Act which provides for international cooperation, the courts or any other competent authority are empowered to cooperate with the courts or competent authorities of another State on matters relating to money laundering in accordance with the Act. Offering of such assistance is restricted to money laundering matters and only to countries with which the Kingdom of Swaziland has entered into mutual assistance treaties on a bilateral or multilateral basis. The Criminal Matters (Mutual Assistance) Act also makes reference to a serious offence as defined in the Serious Offences (Confiscation

of Proceeds) Act. As discussed under R1 of this report, the offence of terrorist financing/terrorism is not listed in the schedule of serious offences which adversely affects the extent of assistance which can be given under the Criminal Matters (Mutual Assistance) Act.

Recommendation 36

Widest possible range of mutual assistance (c. 36.1, SR V)

750. The Criminal Matters (Mutual Assistance) Act in sections 5-16 enables the competent authority in the Kingdom of Swaziland to render and request for assistance in the following areas:

- obtaining of evidence;
- identifying and locating persons;
- obtaining articles or things by search and seizure;
- arranging attendance of witnesses;
- securing transfer of prisoners;
- serving of documents;
- tracing proceeds of serious offences;
- production of judicial and official records;
- forfeiture of proceeds of serious offences and pecuniary penalty orders; and
- obtaining restraining orders.

751. The limitation to provision of some of the assistance listed above is that the schedule of serious offences to the Serious Offences (Confiscation of Proceeds) Act which is made reference to under this Act, does not include some of the offences like terrorist financing. Inclusion of the financing of terrorism offence would have allowed a broader base in giving mutual assistance.

752. The Money Laundering (Prevention) Act under Part V, in s22 provides that the court or other competent authority in the Kingdom of Swaziland can cooperate with a request from the court or other competent authority of another jurisdiction to:

- identify, trace, freeze, seize or forfeit the property, proceeds, or instruments related to ML;
- take appropriate action in respect of a civil, criminal, or administrative investigation, prosecution or proceedings relating to ML.

753. In terms of s34 of the Suppression of Terrorism Act, the Commissioner of Police upon request by an appropriate authority of another State can disclose information in his or her possession or in the possession of any other government department or agency relating to any of the following :-

- the actions or movements of terrorist groups or persons suspected of involvement in the commission of terrorist acts;
- the use of forged or falsified travel papers by persons suspected of involvement in terrorist acts;
- dealing in weapons and sensitive materials by terrorist groups or persons suspected of involvement in the commission of terrorist acts; and
- the use of communications technologies by terrorist groups.

754. S36 of the Suppression of Terrorism Act further provides as follows:

''36(1) Where Swaziland becomes a party to a counter-terrorism convention and there is in force an arrangement for mutual assistance in criminal matters between the Government of Swaziland and another State which is a party to that counter-terrorism convention, that arrangement shall be deemed, for the purposes of the Mutual Assistance in Criminal Matters Act, to include provision for mutual assistance in criminal matters in respect of offences falling within the scope of that counter-terrorist convention.

(2) Where Swaziland becomes party to a counter-terrorism convention and there is no arrangement for mutual assistance in criminal matters between the Government of Swaziland and another State which is party to that counter-terrorism convention, the Minister may by notice published in the Gazette, treat that counter-terrorism convention as an arrangement between the Government of Swaziland and that other State provided for mutual assistance in criminal matters in respect of offences falling within the scope of that counter-terrorism convention. ''

Provision of assistance in timely, constructive and effective manner (c. 36.1.1, SR V)

755. During the on-site visit the authorities in the Kingdom of Swaziland explained to the assessment team that after a mutual assistance request is received by the Ministry of Foreign Affairs it is referred to the Minister of Justice, who is the Competent Authority to deal with such requests. The Minister has however delegated that function to the DPPs' Office .The officials from the DPP's Office were not helpful in describing the process which is followed in their office in dealing with a request until the time the response is referred back to the requesting State. The assessors found it difficult to ascertain whether the DPP's Office acknowledged receipt of requests to the requesting jurisdictions as such records were not shown to them nor was there affirmation by the DPP's Office that it keeps such records. It therefore became difficult for the assessors to determine whether the authorities attend to requests in a timely, constructive and effective manner.

No unreasonable or unduly restrictive conditions on mutual assistance (c. 36.2, SR V)

756. S18 of the Criminal Matters (Mutual Assistance) Act provides the basis upon which the Minister may refuse to accede to a request for MLA from another jurisdiction and this may include the following:

- when the circumstances of the case would not constitute an offence in the Kingdom of Swaziland;
- when the circumstances of the case alleged to have been committed are of political character;
- when the person accused or suspected to have committed the offence has already been tried for the same offence by a court in the requesting country;
- where in the opinion of the Minister granting the assistance requested would be contrary to the laws of the Kingdom of Swaziland or would prejudice the security, international relations or other essential public interest of the Kingdom of Swaziland;
- where granting the request would result with the person being prosecuted or punished the grounds of the person's race, religion, nationality or political opinions; and
- where the steps to be taken to fulfil the requirements of the request would not be possible in a criminal matter under the laws of the Kingdom of Swaziland if the criminal matter had arisen in the Kingdom of Swaziland.

757. The above grounds do not appear to be overly restrictive, or unreasonable, or prohibitive to hinder provision of mutual legal assistance.

758. The Money Laundering (Prevention) Act in s22(5) specifically provides for the overriding of bank secrecy or confidentiality provisions when the information required in terms of this section has been requested by a court or a competent authority of another jurisdiction.

759. The only restriction in terms of the Criminal Matters (Mutual Assistance) Act is that assistance in terms of that Act can only be offered to countries which have been designated in terms of the Act and similarly with the Money Laundering (Prevention) Act, assistance can only be provided to countries with which the Kingdom of Swaziland has entered into mutual assistance treaties on bilateral or multilateral basis and that the assistance can only be offered in terms of the treaty [s22(6)].

Efficiency of process (c. 36.3, SR V)

760. The Criminal Matters (Mutual Assistance) Act provides the Minister of Justice as the Competent Authority to deal with all mutual legal assistance requests but the process, as explained in c.36.1 above, is that the request will have to go through the Ministry of Foreign Affairs which in turn will send it to the Minister of Justice. The Minister of Justice upon receipt of the request will refer it to the DPP's Office for processing. It was not clear from the Authorities whether the same process is followed when providing feed back

to the requesting state. It did not appear to the assessors that there was a clear set system in the DPP's Office to deal with requests for mutual legal assistance as the office could not provide the statistics of mutual legal assistance requests received, the time taken to deal with the requests, how many of such requests had been acceded to and how many had been rejected and the reasons for rejection. Due to the absence of this information it was not possible for the assessors to determine whether mutual legal assistance requests were attended to in a timely manner and without undue delays.

Provision of assistance regardless of possible involvement of fiscal matters (c. 36.4, SR V)

761. The Criminal Matters (Mutual Assistance) Act does not have a specific provision which discusses whether mutual legal assistance can be given regardless of possible involvement of fiscal matters. S18 of the Act which sets out the reasons upon which a request for assistance can be refused by the authorities does not include involvement of fiscal matters as one of the reasons for refusal. The provisions in the Money Laundering (Prevention) Act and the Suppression of Terrorism Act enabling the authorities to provide MLA are also silent on what would happen if assistance is required in a matter which is likely to involve fiscal matters. The Authorities could not commit themselves to what would happen in such a situation.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c. 36.5, SR V)

762. S22(5) of the Money Laundering (Prevention) Act provides that in compliance with this section for purposes of international cooperation on information requested by courts or competent authorities of another jurisdiction, any provisions relating to bank secrecy or confidentiality shall not be an impediment to such requests. However, s24 of the Act provides: "***Subject to the provisions of any banking law****, the provisions of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise"* (emphasis added). It is the view of the assessors that the exception created by this section relating to any other banking law impedes the exchange of information kept by banks when it comes to international cooperation relating to ML.

763. In terms of section 36 of the Suppression of Terrorism Act, if the Government of Swaziland becomes a party to a counter-terrorism convention which makes provision for assistance in criminal matters regardless of existence of secrecy and confidentiality laws then it would be expected that the Kingdom of Swaziland by virtue of being a party to that convention will be obligated to provide such assistance to States which are also parties to that convention

Availability of powers of competent authorities (applying R28, c.36.6, SR V)

764. Under s22(1) of the Money Laundering Act, the Competent Authorities are empowered to take the appropriate measures to provide assistance to competent authorities of foreign jurisdictions in matters concerning ML in terms of that Act and taking into consideration the legal limitations of their systems. The Commissioner of Police, in terms of s34 of the Suppression of Terrorism Act has the discretion to disclose to appropriate authorities of a foreign state information in his or her possession or in the possession of any other government department or agency relating to actions or movements of terrorist groups or persons suspected of involvement in the commission of terrorist acts, the use of forged or falsified travel papers by persons suspected of involvement in the commission of terrorist acts or trafficking in weapons and sensitive materials by terrorist groups or persons suspected of involvement in the commission of terrorist acts. Further, in terms of s30 of the Suppression of Terrorism Act, the Commissioner of Police where he or she has reasonable suspicion for believing that any property has been, or is being used to commit an offence in violation of that Act, he or she may seize the property regardless of whether proceedings have been commenced under that Act in terms of the property. The Commissioner is however required in terms of the same section to as soon as practicable apply *ex parte* to a Judge of the High Court for a detention order in regards to the property.

765. In terms of Part VI of the Criminal Procedure and Evidence Act the police upon an order being issued by a court or upon being granted an order by the courts, can proceed using the powers vested upon them by the same Act or any other laws in the Kingdom of Swaziland to assist with a request for mutual legal assistance.

Avoiding conflicts of jurisdiction (c. 36.7)

766. The authorities informed the assessors that there were no legal provisions providing for determination of which jurisdiction would receive assistance first in the event of two foreign jurisdictions requesting for the same information or assistance. The authorities indicated that such a situation would be resolved through administrative arrangements. No specific example on how this would work was given to the assessors.

Additional element –Availability of powers of competent authorities required under R28 –(c. 36.8)

767. The Authorities informed the assessors that where requests for assistance were made by competent authorities that had entered into MOUs with their counterparts in the Kingdom of Swaziland then the information requested would be supplied in terms of the MOUs. Such MOUs exist between the police force of the Kingdom of Swaziland and South Africa, the Kingdoms of Swaziland and Lesotho, and the Kingdom of Swaziland and Mozambique. In the absence of MOUs other appropriate arrangements would be made through establishments such as the SARPCCO and INTERPOL to make the

information available informally to the requesting foreign competent authority.

International cooperation under SR V (applying c.36.1-36.6 in R.36, c. V.1)

768. International cooperation under *SR V* is as discussed in c.36.1-36.6 above. The Criminal Matters (Mutual Assistance) Act does not make a distinction between requests for mutual legal assistance relating to money laundering or terrorist financing cases, the same requirements apply in both cases. The exception would be where the request is to do with tracing or forfeiture of proceeds of serious offences as the schedule of serious offences to the Serious Offences Act does not include the offence of terrorist financing.

Additional element- (applying c. 36.7 & 36.8 in R 36, c. V.6)

769. The additional elements in c.36.7 and 36.8 above would apply in relation to the obligations under SR V.

Recommendation 37

Legal Framework

770. The Criminal Matters (Mutual Assistance) Act and the Money Laundering (Prevention) Act have international cooperation provisions which require requests to meet dual criminality requirements. The Extradition Act provides for extradition only to countries with which the Kingdom of Swaziland has entered into an extradition treaty and the treaty is still valid at the time of making the extradition request. Mutual legal assistance provisions under the Suppression of Terrorism Act also rely on arrangements for mutual assistance in criminal matters in counter-terrorism conventions to which the Kingdom of Swaziland is a Party. The Minister of Justice in terms of the Criminal Matters (Mutual Assistance) Act is the competent authority to deal with mutual legal assistance requests and in terms of Part III of that Act, he or she has discretion to decide whether to reject a request or accede to it, if it does not meet the dual criminality requirements.

Dual criminality and mutual assistance (c. 37.1 & 37.2)

771. S18 of the Criminal Matters (Mutual Assistance) Act provides as follows:-

''S18(1) The Minister may refuse a request by a designated country for assistance under this Part if in the opinion of the Minister the criminal matter concerns-

(a) ----------

(b) ----------

(c) conduct which would not constitute an offence under the laws of Swaziland.

(2) Without prejudice to subsection (1), the Minister may refuse to comply in whole or in part with a request under this Part-

(a) ----------

(b) ----------

(c) if the Minister is satisfied that the steps required to be taken in order to comply with the request cannot under the laws of Swaziland be taken in respect of the criminal matter to which the request relates if it has arisen in Swaziland.''

772. In terms of the above provisions the Minister in considering a request for mutual legal assistance has to first consider if the request is based on conduct which would be an offence in the Kingdom of Swaziland, if that requirement is met then there would be no impediment to the application. However, where the request relates to conduct which is not an offence in the Kingdom of Swaziland, the Minister is then empowered by the Act to use his or her discretion to decide on whether he or she can accede to the request. The factors which the Minister has to assess under such circumstances were not explained to the assessors.

773. The Money Laundering (Prevention) Act in s22 provides that assistance in international cooperation concerning money laundering has to be provided in accordance with the Act and within the limits of the respective legal systems. The requests in mutual legal assistance in matters relating to money laundering have to be in compliance with the provisions of the Act and within the limits of their respective legal systems in order for them to be considered. It appears according to s22(1) the request has to meet the requirements of the Act first and it has to be within the limits of both the Kingdom of Swaziland's legal system and that of the country making the request.

774. The Extradition Act only provides for extradition in terms of an extradition treaty entered into between the Kingdom of Swaziland and the requesting country. Issues of dual criminality will therefore be considered according to the terms of the treaty.

International co-operation under SRV (applying c. 37.1-37.2 in R37, cV.2)

775. The provisions for international cooperation and extradition in terms of sections 35 and 36 of the Suppression of Terrorism Act are based on arrangements provided in counter- terrorism conventions to which the Government of Swaziland is a Party.

776. It therefore follows that if dual criminality is not a requirement for mutual legal assistance or extradition in terms of a particular convention to which the Kingdom of Swaziland is a Party then that requirement shall not apply in considering the request from a particular State, if that State is also a Party to the same convention.

Recommendation 38

Timeliness to requests for provisional measures including confiscation (c. 38.1, SR V)

777. In terms of s26 of the Criminal Matters (Mutual Assistance) Act, the Minister of Justice is empowered to receive and consider foreign requests to enforce seizure, restraining or forfeiture orders. Upon receipt of such a request and the Minister is satisfied that it meets with the requirements of the same Act he or she may direct the Director of Public Prosecutions in writing to apply for registration of the order with the High Court. S27 provides for the seizure, restraining or forfeiture order, once registered with the High Court to have the same effect and to be enforced as if it had been an order made by the High Court. In terms of s28, where the order has seized to exist in the requesting country, the Minister may instruct the Director of Public Prosecutions to apply to the High Court for the cancellation of the order or any other necessary amendments recommended by the requesting State to the order. Although the authorities were of the view that the above provisions can be applied to any foreign request relating to mutual legal assistance but in terms of s26 of the Criminal Matters (Mutual Assistance) Act assistance relating to forfeiture is only limited to offences listed as serious offences in the schedule to the Serious Offences(Confiscation of Proceeds) Act.

778. Part V of the Money Laundering (Prevention) Act provides for international cooperation and s22(2) of that Part empowers the court or any other competent authority to receive foreign requests for the identification, tracing, freezing, seizure or forfeiture of property, proceeds or instrumentalities connected to ML and to take the necessary action to fulfil a foreign request. Subsection (3) to the same section further provides for the recognition of a final judicial order issued by a court or competent authority of another State relating to the forfeiture of property, proceeds or instrumentalities related to ML as evidence that the property, proceeds or instrumentalities referred to in the order may be subject to forfeiture in terms of the laws of the Kingdom of Swaziland. In terms of the Money Laundering (Prevention) Act, the term ''instrument'' is defined to mean anything that is used or intended to be used in any manner in the commission of a money laundering offence.

779. In terms of s36 of the Suppression of Terrorism Act, foreign requests for provisional measures and forfeiture can apply to the Kingdom of Swaziland, if the Kingdom of Swaziland is a Party to a counter-terrorism convention and the requesting State is also a Party to that convention and there is already an existing arrangement for mutual legal assistance between the Kingdom of Swaziland and the requesting State and the convention provides for mutual legal assistance in provisional measures and forfeiture.

780. The assessors observed that although the processes for providing mutual legal assistance to foreign requests concerning identification, tracing, freezing, seizure or forfeiture of property, proceeds or instrumentalities to

money laundering and terrorist financing were wide enough to enable the authorities to effectively assist with such foreign requests, it was not possible to determine the timeliness of the authorities to attend to such requests as there were no statistics availed to the assessors.

Property of corresponding value (c. 38.2, SR V)

781. The definition of 'property' or 'proceeds of crime' in the Money Laundering (Prevention) Act does not specifically include property of corresponding value, however s19(2) of the same Act seem to cure that shortcoming. The section provides as follows:

''19(2) If, as a result of any act or omission of the person convicted, any of the property, proceeds or instruments cannot be forfeited, the court shall order the forfeiture of any other property of the person convicted, for an equivalent value, or shall order the person convicted to pay a fine of such value.'' [12]

782. The Suppression of Terrorism Act does not provide for forfeiture of property of corresponding value but it should be noted, as explained in c.38.1 above that where the Kingdom of Swaziland is a Party to a counter-terrorism convention and the requesting State is also a Party to that convention and there is already an existing arrangement for mutual legal assistance between the Kingdom of Swaziland and the requesting State, if that convention provides for forfeiture of property of corresponding value then its provisions shall apply to the Kingdom of Swaziland in providing the assistance required (s36 of the Suppression of Terrorism Act).

Coordination of seizure and confiscation actions (c. 38. 3, SR V)

783. The authorities informed the assessors of a recent case where there had been coordination between the authorities in the Kingdom of Swaziland and in South Africa on the forfeiture of assets of a Swazi national who had been convicted in South Africa for defrauding the Government of the Kingdom of Swaziland and later using the funds to acquire assets in South Africa. The authorities also informed the assessors of a case which was under investigation with the cooperation of Mozambican, South African and the Kingdom of Lesotho authorities. The case involved a person who had been arrested about to exit the Kingdom of Swaziland with a huge amount of undeclared foreign currency which the authorities had seized pending further investigations. The Royal Swazi Police informed the assessors that in order to facilitate the coordination of seizure and confiscation of proceeds of crime it had entered into MOUs with the police forces of the neighbouring countries including South Africa, the Kingdom of Lesotho and Mozambique.

International cooperation under SR V (applying c. 38.1-38.3 in R.38, c.V.3)

784. The Kingdom of Swaziland is able to provide international cooperation in matters relating to foreign requests for provisional measures connected to TF

in terms of Part III of the Criminal Matters (Mutual Assistance) Act .The assistance however, as already noted under SRV in c.36 above, cannot be extended to requests for tracing and forfeiture of proceeds of a terrorist financing offence as the offence is not included in the schedule of serious offences to the Serious Offences Act which is made cross-reference to under this Act. The extent of how seizure and forfeiture actions related to TF would be coordinated could not be determined as the authorities indicated that such a situation had not yet arisen in the Kingdom of Swaziland (also refer to c.38.1-38.3 above).

Asset forfeiture fund (c. 38.4)

785. The current laws of the Kingdom of Swaziland do not provide for the creation of an asset forfeiture fund into which the forfeited proceeds of crime can be deposited for purposes of being used by law enforcement or for other appropriate requirements such as health or education.

Sharing of confiscated assets (c. 38.5)

786. Although the current laws in the Kingdom of Swaziland do not provide for sharing of proceeds of crime or confiscated assets, it appears in practice this is possible through administrative arrangements. The authorities informed the assessors that of the case of the Swazi national who was convicted in South Africa discussed in c. 38.3 above, the authorities were able to agree with the South African authorities and have the proceeds from the disposal of the confiscated assets repatriated back to the Government of Swaziland as the effects of the crime were felt more in the Kingdom.

Additional element – recognition of foreign orders for a) confiscation of assets from organisations principally criminal in nature; b) civil forfeiture and c) confiscation of property which reverses burden of proof (applying c. 3.7 in R3- c. 38.6)

787. Recognition of foreign orders for confiscation of assets from organisations on the basis that such organisations are principally criminal in nature is not provided for in the Kingdom of Swaziland. In terms of the laws of the Kingdom of Swaziland, forfeiture is only upon conviction and there are no provisions for civil forfeiture or for confiscation of property which reverses burden of proof.

Additional element under SR V (applying c. 38.4-38.6 in R38, c. V.7)

788. The observations in c.38.4-38.6 above would also apply to this additional element.

Statistics (applying R32)

789. Other than the two cases discussed in c.38.3 above, the assessors were not informed of any other cases where the Kingdom of Swaziland had been requested to provide assistance or where the Kingdom of Swaziland had requested for assistance.

6.3.2 Recommendations and Comments

Statistics

790. It is recommended that the authorities maintain comprehensive statistics on the number of mutual legal assistance requests received, the nature of the assistance required, date of acknowledgment of receipt of the request, the number of requests acceded to, number of requests rejected and where possible the reasons, time taken to respond to the requests and when the responses were dispatched.

Recommendation 36

791. Mutual legal assistance in terms of the Criminal Matters (Mutual Assistance) Act is only limited to designated countries. It is recommended that the authorities consider broadening the Act to include non-designated countries.

792. The exception created by s24 of the Money Laundering (Prevention) Act relating to any other banking law impedes the exchange of information kept by banks when it comes to international cooperation. It is recommended that the authorities remove the exemption.

793. The schedule of serious offences to the Serious Offences (Confiscation of Proceeds) Act does not include the offence of financing of terrorism. In terms of Part IV of the Criminal Matters (Mutual Assistance) Act, mutual legal assistance can only be provided relating to tracing and forfeiture of proceeds of a serious offence. The authorities are encouraged to amend the schedule of serious offences to include other offences which are not currently included in the schedule to allow a broader base of mutual legal assistance which can be provided under the Criminal Matters (Mutual Assistance) Act.

794. The DPP's Office should consider having a proper system in place which would enable it to deal with mutual legal assistance requests in a timely, constructive and effective manner and be able to properly account for the manner in which each one of the requests is handled.

795. It is recommended that s22(6) of the Money Laundering (Prevention) Act be amended to extend the mutual legal assistance which can be provided under that section to other countries which might not have entered into mutual assistance treaties with the Kingdom of Swaziland.

796. The authorities should consider having clear provisions on how to deal with a request where there is possible involvement of fiscal matters.

797. It is recommended that the authorities consider having provisions to guide the Competent Authority responsible for considering requests for mutual legal assistance where two foreign jurisdictions have made requests asking for the same information or assistance which might lead to conflict of jurisdictions.

Recommendation 37

798. Although dual criminality is a requirement for provision of mutual legal assistance under the Criminal Matters (Mutual Assistance) Act, the assessors were of the view that the requirement was not much of an impediment as the Minister of Justice in terms of the same Act still had the discretion to accede to or reject a request which did not meet the requirement. The assessors could not however determine under what circumstances the Minister can use such discretion as no reference to similar cases was given by the authorities.

Recommendation 38

799. The authorities should put systems in place to enable the time within which requests for provisional measures including confiscation are handled to be determined, as well as enabling proper statistics on the requests to be retained.

800. It is recommended that both the Money Laundering (Prevention) Act and the Suppression of Terrorism Act include property of corresponding value in the definition of property. This would make the definition of property provided in s2 of the Money Laundering (Prevention) Act consistent with the provisions of s19(2) of the same Act.

801. The authorities should consider establishing an Asset Forfeiture Fund where forfeited proceeds of crime can be deposited and be used for appropriate purposes such as law enforcement, health or education.

802. It is recommended that formal arrangements be put in place to allow sharing of confiscated assets with other jurisdictions.

SR V

803. The Criminal Matters (Mutual Assistance) Act does not apply to tracing and forfeiture of proceeds relating to the offence of terrorist financing as it is not listed as one of the offences to the Serious Offences (Confiscation of Proceeds) Act which is made cross-reference to under the definition section of the Criminal Matters (Mutual Assistance) Act.

804. The deficiencies observed under Recommendations 36, 37 and 38 above also apply to SR V.

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	**PC**	• Mutual legal assistance in terms of the Criminal Matters (Mutual Assistance) Act is only limited to designated countries. • S24 of the Money Laundering (Prevention) Act impedes provision of information kept by banks in relation to ML. • Lack of a defined system in the DPP's Office to enable mutual legal assistance requests to be dealt with in a timely, constructive and effective manner. • Provisions of s22(6) of the Money Laundering (Prevention) Act are prohibitive as in terms of that section mutual legal assistance can only be provided to countries with which the Kingdom of Swaziland has entered into mutual legal assistance treaties. • The list of serious offences in the schedule to the Serious Offences Act which is relied on in providing mutual legal assistance under the Criminal Matters (Mutual Assistance) Act is not exhaustive as it does not include other serious offences. • Not clear how a request involving fiscal matters would be handled.
R.37	**NC**	• A request which does not meet the dual criminality requirement can still be rejected. • The circumstances in which the Minister of Justice can use his discretion in considering requests which do not meet the dual criminality requirement could not be determined due to absence of precedent of similar cases. • Overall effectiveness could not be determined.
R.38	**PC**	• No proper systems in place to enable the time within which requests for provisional measures including confiscation are handled to be determined. • The extent to which the laws and procedures in place in the Kingdom of Swaziland could be used to provide an effective and timely response to requests for provisional measures including confiscation from other countries could not be determined as the authorities could not provide any statistics on such requests. • The definition of 'property' does not include property of corresponding value. • The authorities have not considered establishing an Asset Forfeiture Fund
SR.V	**PC**	• The definition of serious offence in the Serious Offences (Confiscation of Proceeds) Act which is made cross-reference to in the definition section of the Criminal Matters (Mutual Assistance)

		Act does not include the offence of terrorist financing. • The deficiencies observed under Recommendations 36, 37 and 38 above also apply to SR V.

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

6.4.1 Description and Analysis

Legal framework

805. Extradition is provided for under the following pieces of legislation:

- The Extradition Act;
- The Criminal Matters (Mutual Assistance) Act;
- The Fugitive Offenders Act;
- The Transfer of Convicted Offenders Act;
- The Money Laundering (Prevention) Act.

806. The Extradition Act only provides for extradition with countries that have entered into bilateral or multi-lateral agreements with the Kingdom of Swaziland, whereas the Fugitive Offenders Act enables extradition only with designated countries. The Transfer of Convicted Offenders Act provides for the transfer to and from the Kingdom of Swaziland of persons sentenced to imprisonment or other forms of deprivation of liberty.

D*ual criminality and mutual assistance (c. 37.1 & 37.2)*

807. Dual criminality and mutual legal assistance provisions are as described in c.37.1 and c.37.2 of this report.

Money laundering as extraditable offence (c. 39.1)

808. In terms of section 4 of the Extradition Act both money laundering and the offence of terrorist financing are extraditable offences. S23 of the Money Laundering (Prevention) Act further provides that money laundering is an offence for extradition purposes.

Extradition of nationals (c. 39.2)

809. The Extradition Act gives a wide definition of a person likely to be extradited which includes any person accused or convicted of an offence included in an extradition treaty and committed within the jurisdiction of a state which is a party to such agreement regardless of whether the Kingdom of Swaziland has jurisdiction over the offence. It appears in terms of the Extradition Act any person can be extradited from the Kingdom of Swaziland regardless of

whether the person is a national or non-national. The only limitations are that such extradition can only be done to a country which is designated in terms of the Fugitive Offenders Act or a country with which the Kingdom of Swaziland has entered into an extradition treaty and that the offence should have been committed in the jurisdiction of a State which is party to such a treaty. In situations where these conditions are met, it would be possible for the Kingdom of Swaziland to extradite its own nationals.

810. In terms of section 3(1) of the Fugitive Offenders Act, any person found in the Kingdom of Swaziland and is accused of having committed a relevant offence or is alleged to be unlawfully at large after being convicted for the commission of a relevant offence in a country designated in terms of section 4(1) of the same Act can be arrested and extradited to that country. A relevant offence is defined in section 5(1) of the Act as an offence against the law of a designated country, regardless of how the offence is described in that law, if it falls within any of the descriptions provided for in the schedule to the Act and is punishable in terms of that law with a term of imprisonment of twelve months or greater and the act or omission constituting the offence, or the equivalent act or omission, would constitute an offence against any law in the Kingdom of Swaziland if it had taken place in the Kingdom of Swaziland or under similar circumstances if it had taken place outside the Kingdom of Swaziland. It follows from section 3 described above, that any person regardless of whether the person is a national of the Kingdom of Swaziland or not can be extradited to any other country, as long as the country is designated and the offence for which the person is wanted is recognised in the Kingdom of Swaziland under section 5.

Cooperation for prosecution of nationals (applying c. 39.2(b), c. 39.3)

811. Criterion 39.3 does not apply as the Kingdom of Swaziland can extradite its own nationals as described in c. 39.2 above.

Efficiency of extradition process (c. 39.4)

812. In terms of section 6 of the Extradition Act and section 7 of the Fugitive Offenders Act, a request for extradition is supposed to be made to the Minister, who is defined in section 2 of the both Acts as the Prime Minister. The authorities informed the assessors that in practice the request is normally sent through the Ministry of Foreign Affairs which will then forward it to the Prime Minister's Office. The Prime Minister's Office then works with the DPP's Office to consider the request. Depending on the Act which regulates the extradition relationship with the Kingdom of Swaziland, if the request meets the requirements of the Act upon which it is made, then it goes through the different stages provided under that Act until it is either granted or dismissed by the courts.

813. The authorities indicated that they had not dealt with an extradition request involving a money laundering offence. However, the assessors were not

provided with statistics or adequate information on any other requests that the authorities might have dealt with. In the absence of information of how many extradition requests had been received by the authorities and how the requests had been handled, the time it had taken to deal with such requests and any possible difficulties encountered in dealing with the requests and how many of the requests had been acceded to or rejected, the assessment team was not able to assess the efficiency of the extradition process in the Kingdom of Swaziland in the event of a request for extradition on a money laundering offence being received.

Additional element – existence of simplified procedures relating to extradition (c. 39.5)

814. The Extradition Act and the Fugitive Offenders Act do not have provisions for simplified procedures relating to extradition.

Extradition under SR V (applying c.39.1-39.4 in R.39, c.V.4)

815. The write up to c.39.1-39.4 above also applies to extradition under SR V. In addition section 35 of the Suppression of Terrorism Act provides as follows:

''35(1) Where Swaziland becomes a party to a counter-terrorism convention and there is in force an extradition arrangement between the Government of Swaziland and another State which is party to that counter-terrorism convention, the extradition arrangement shall be deemed, for the purposes of the Extradition Act, to include provision for extradition in respect of offences falling within the scope of that counter-terrorism convention.
(2) Where Swaziland becomes a party to a counter- terrorism convention and there is no extradition arrangement between the Government of Swaziland and another State which is party to that counter-terrorism convention, the Minister may, by notice published in the Gazette, treat the counter-terrorism convention, for the purposes of the Extradition Act, as an extradition arrangement between the Government of Swaziland and that State, providing for extradition in respect of offences falling within the scope of that counter-terrorism convention.''

Additional element under SR V (applying c. 39.5 in R 39, c. V.8)

816. The write up in c.39.5 above applies to this part as well unless in terms of s35 of the Suppression of Terrorism Act cited above, the Kingdom of Swaziland is a party to a counter-terrorism convention which provides for simplified extradition procedures which in terms of this section, it would be obligated to comply with provided the requesting State is also a party to that counter-terrorism convention and there is an extradition arrangement between the Kingdom of Swaziland and the requesting State.

Statistics (applying R32)

817. The Kingdom of Swaziland authorities did not provide any statistics on the number of extradition requests received, acceded to or denied and the time taken to consider and process the requests.

6.4.2 Recommendations and Comments

818. The authorities are encouraged to consider amending the Extradition and the Fugitive Offenders Act so that there can be provisions for requests made by a country which does not have an extradition agreement or arrangement with the Kingdom of Swaziland or is not designated in terms of the Fugitive Offenders Act.

819. The authorities should consider putting in place measures to ensure that the extradition requests relating to offences of money laundering are dealt with without undue delay.

820. The authorities should maintain comprehensive statistics on the requests for extradition received, acceded to, declined and where possible the reasons for declining and the time taken to consider and process the requests.

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**	• Extradition to a money laundering offence can only be done to a country which has an extradition agreement with Swaziland or is designated. • No measures in place to ensure that extradition requests relating to the offences of money laundering are dealt with without any delay. • Overall effectiveness of the extradition regime relating to money laundering could not be determined.
R.37	**PC**	• Extradition on predicate offences is restricted to countries which have either entered into an extradition treaty with Swaziland or are designated. • The authorities could not demonstrate the effectiveness of the extradition regime in the Kingdom of Swaziland as no statistics were kept on such requests. • None of the extradition treaties were made available to the assessment team by the authorities to enable it to determine the status of the requirement for dual criminality where the Kingdom of Swaziland has entered into an extradition treaty with another country.
SR.V	**PC**	• Requests for extradition relating to terrorist financing offences are only limited to countries with which Swaziland has entered into an

		extradition treaty or are designated. • Effectiveness of the extradition regime relating to terrorist financing offences could not be determined as there were no statistics available

6.5 Other Forms of International Co-operation (R.40 & SR.V)

6.5.1 Description and Analysis

Widest range of international cooperation (c. 40.1)

<u>FIU to FIU cooperation</u>

821. There is no FIU. Under s11(g) the Supervisory Authority is authorised to exchange information with foreign counterparts only with regard to freezing and forfeiture of assets related to money laundering cases. There has been no information exchanged or mechanisms entered into to exchange information with foreign counterparts. The CBS has signed an MoU with the Financial Intelligence Centre of South Africa to provide for information exchange and cooperation on ML/TF matters between the two countries.

<u>Police to police cooperation</u>

822. The Royal Swaziland Police informed the assessors at the time of the on-site visit that in order to facilitate cooperation with the police forces of other countries it had entered into MOUs with the police force of South Africa, Lesotho and Mozambique. The Royal Swaziland Police is also a member of INTERPOL and SARPCCO.

823. The assessors were also informed that the Royal Swaziland Police has had cooperation in joint investigations with South Africa, the Kingdom of Lesotho and Mozambique. The joint cooperation mostly involved cases relating to drugs such as dagga which is commonly dealt with in the Kingdom of Swaziland, cigarette smuggling and other commercial crimes. The authorities expressed concern that the bona fide third part principle was hindering cooperation with other countries as the countries were using it to protect the ill gotten proceeds from criminal activities committed in the Kingdom of Swaziland.

<u>Supervisor to supervisor cooperation</u>

<u>CBS</u>

824. There is no specific provision in the CBS Act, 2004 that allows for the widest range of international cooperation with counterparts. The CBS has however entered into a number of MoU to facilitate international cooperation and exchange of information.

RIRF

825. The insurance regulator is a member of the International Association of Insurance Supervisors (IAIS) and also a member of the Committee of Insurance, Securities and Non-Financial Activities (CISNA), which is a regional under the SADC for exchange of information and cooperation. The RIRF further entered into MoU with counterparts in other countries such as the Financial Services Board (FSB) of South Africa.

Clear and effective gateways for exchange of information (c. 40.2)

826. The Police indicated that it uses the INTERPOL as well as the SARPCCO to exchange information with other competent authorities in addition to bilateral channels with counterparts.

Spontaneous exchange of information (c. 40.3)

827. The Money Laundering (Prevention) Act and the Suppression of Terrorism Act appear to provide for exchange of information both spontaneously and upon request on money laundering and terrorist financing offences and other predicate offences but only in terms of the requirements of the Acts. . It could however not be determined whether in practice this happens as there were no specific examples of such exchanges of information given by the authorities

Making inquiries on behalf of foreign counterparts (c. 40.4)

828. The Police indicated that they are able to make informal inquiries on behalf of their foreign counterparts and where such inquiries have to be formal then the request will have to be channelled through the Minister of Justice.

FIU authorised to make inquiries on behalf of foreign counterparts (c. 40.4.1)

829. There is no specific provision in the Money Laundering (Prevention) Act or any formal mechanism for the CBS to make enquiries on behalf of foreign FIUs on information related to ML/TF. Further, the CBS does not have either direct or indirect access to databases of law enforcement agencies, public databases and commercially available databases to make enquiries on when requested by foreign counterparts.

Conducting of investigations on behalf of foreign counterparts (c. 40.5)

830. The Police indicated that they conduct investigations on behalf of foreign counterparts upon request and the extent of the investigation will depend on how the request for such assistance will have been made. The authorities indicated that they have attended to requests where they had to record statements on behalf of their foreign counterparts but such requests had to be made formally.

No unreasonable or unduly restrictive conditions on exchange of information (c. 40.6)

831. In terms of s22(6) of the Money Laundering (Prevention) Act exchange of information can only be made with foreign counterparts whose countries have mutual legal assistance treaties on bilateral or multilateral basis with the Kingdom of Swaziland. It is the view of the assessors that the provision of this Act creates restrictive conditions on exchange of information.

Provision of assistance regardless of possible involvement of fiscal matters (c.40.7)

832. There is no prohibition against provision of assistance where fiscal matters are involved. No statistics was provided to the assessors.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c. 40.8)

833. S22(5) of the Money Laundering (Prevention) Act provides that in compliance with this section for purposes of international cooperation on information requested by courts or competent authorities of another jurisdiction, any provisions relating to bank secrecy or confidentiality shall not be an impediment to such requests. However, s24 of the Act provides: "***Subject to the provisions of any banking law***, *the provisions of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise"* (emphasis added). It is the view of the assessors that the exception created by this section relating to any other banking law impedes the exchange of information kept by banks when it comes to international cooperation relating to ML.

Safeguards in use of exchanged information (c.40.9)

834. The assessors were not provided with measures which are used by the authorities in safeguarding exchange of information.

Additional element –exchange of information with non-counterparts (c.40.10 & c.40.10.1)

835. There are no mechanisms in place to permit a prompt and constructive exchange of information with non-counterparts.

Additional element- provision of information to FIU by other competent authorities pursuant to request from foreign FIU (c. 40.11)

836. There is no specific mechanism or provision in the Money Laundering (Prevention) Act that allows the CBS to obtain information from other competent authorities pursuant to a request made by a foreign FIU. The assessors were informed that no such request was made to the CBS by a foreign FIU.

Statistics (applying R.32)

837. The authorities did not provided assessors with statistics on international exchange of information to determine effectiveness.

6.5.2 Recommendations and Comments

838. There are no formal channels or mechanism in the Kingdom of Swaziland to deal with information exchange and international cooperation with counterparts on ML/TF requests. It is recommended that the authorities should as a matter of urgency ensure that such measures are put in place to provide the widest range of international cooperation with counterparts in other jurisdictions.

839. Once formally established, the FIU should take urgent steps to enter into MoUs with counterparts to facilitate exchange of information. Further, the authorities should expand the scope of international cooperation under the Money Laundering (Prevention) Act beyond asset seizure and forfeiture to also include information exchange related to predicate offences as well as money laundering and terrorist financing.

840. The CBS, the RIRF and other law relevant law enforcement authorities should be given statutory powers to provide the widest possible range of international cooperation including the authority to conduct enquiries on behalf of counterparts.

841. The authorities should remove the restrictive prohibition requiring authorities in the Kingdom of Swaziland to provide assistance only to counterparts from countries which have mutual legal assistance treaties with the Kingdom of Swaziland.

842. The authorities should put in place effective measures to keep comprehensive statistics on information exchange requests and responses to enable the country to assess effectiveness of the measures in place.

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**	• There are no specific measures authorising the CBS relevant law enforcement agencies to offer the widest range of international cooperation. • Information exchange on ML is only authorised where the requesting authority's country has mutual legal assistance treaty with the Kingdom of Swaziland. • The authorities have inadequate measures to handle international cooperation on predicate offences and money laundering requests for information. • There are no measures in place to keep comprehensive statistics on

		information exchange requests and responses. • S24 of the Money Laundering (Prevention) Act impedes provision of information kept by banks in relation to ML.
SR.V	**PC**	• Terrorist financing is not a predicate offence to money laundering. • The deficiencies observed under Recommendations 36, 37 and 38 also apply to SR V. • Effectiveness of international cooperation could not be determined by the assessors.

7. OTHER ISSUES

7.1 Resources and statistics

843. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report i.e. all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections.

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
R.30	**NC**	• The CBS does not have adequate resources to carry out FIU functions under the Money Laundering (Prevention) Act. • Overall, law enforcement authorities lack adequate resources (financial, technical and human) to combat money laundering and financing of terrorism. • Law enforcement did not appear to have adequate investigative capacity to handle cases related to predicate offences, ML and TF. • Law enforcement agencies including the RIRF do not have authority to hire staff on their own. Only the Public Service Commission can appoint staff on behalf of the authorities. • AML/CFT awareness among government institutions tasked with combating ML and TF is severely lacking. • The CBS and the RIRF have no capacity, including adequate training and skills, to effective supervise accountable institutions regulated by them. • There are no expressed requirements for screening of staff to ensure that staff with high professional standards and integrity is employed in government institutions implementing with AML/CFT measures.
R.32	**NC**	• The authorities do not maintain comprehensive statistics useful to determine and review effectiveness of measures in place to combat money laundering and financing of terrorism.

		• The authorities do not keep comprehensive statistics of mutual legal assistance and extradition requests and responses; property frozen, seized and confiscated in relation to predicate offences, money laundering and financing of terrorism. • The authorities do not maintain comprehensive statistics on investigations, prosecutions and criminal sanctions applied to persons convicted of predicate offences, money laundering and cases.

7.2 Other relevant AML/CFT measures or issues

844. The assessment team has no other issues to raise on the AML/CFT system in the Kingdom of Swaziland.

7.3 General framework for AML/CFT system (see also section 1.1)

845. The assessment team has no comments on the general framework for AML/CFT system of the Kingdom of Swaziland.

TABLES

Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations have been made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), and, in exceptional cases, have been marked as not applicable (NA).

Forty Recommendations	Rating	Summary of factors underlying rating[30]
Legal systems		
1. ML offence	PC	• Swaziland has not ratified the Palermo Convention. • The range of predicate offences provided under the Money Laundering (Prevention) Act does not meet with the minimum designated categories of predicate offences under the FATF Glossary which makes it difficult to successfully combat ML. • The purpose of engaging in a Money Laundering (Prevention) Activity is not included in the criminalisation of ML. • The schedule to the Money Laundering (Prevention) Act provides restrictions to the value of proceeds of crime generated from the crimes of robbery and theft which can be laundered. • Effectiveness of the ML regime in Swaziland could not be determined due to the absence of statistics.
2. ML offence – mental element and corporate liability	PC	• The penalties provided for in section 6 of the Money Laundering (Prevention) Act apply only to natural persons and employees of legal persons in their official capacity but do not apply to legal persons. • The Money Laundering (Prevention) Act does not provide for civil or administrative liability to run parallel with criminal ML proceedings. • It could not be determined whether the sanctions to ML are being effectively

2. [30] These factors are only required to be set out when the rating is less than Compliant.

		implemented as the authorities indicated that no cases had been prosecuted under the Money Laundering (Prevention) Act.
3. Confiscation and provisional measures	PC	• The list of prescribed offences does not cover all designated categories of offences which affect the scope of offences against which provisional measures and forfeiture can be applied. • There is no authority to take steps to void actions. • Absence of specific provisions allowing identification and tracing of proceeds which may be subject to forfeiture. • The absence of statistics made it difficult to determine overall effectiveness.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	NC	• Banking secrecy provisions created by banking laws are not overridden.
5. Customer due diligence	NC	• There is no law or regulation creating obligations for financial institutions to undertake CDD measures as required by the FATF Standards.
6. Politically exposed persons	NC	• There are no requirements for financial institutions to apply enhanced due diligence when dealing with foreign PEPs clients.
7. Correspondent banking	NC	• There are no measures dealing with correspondent relationships as required by the FATF standards.
8. New technologies & non face-to-face business	NC	• There are no requirements to have policies or measures in place to prevent the misuse of technological developments in money laundering and terrorist financing schemes.
9. Third parties and introducers	NC	• There are no requirements for financial institutions to obtain the necessary information concerning some elements of CDD process when relying on third parties and introduced business.
10. Record keeping	NC	• There is no law or regulation to keep records longer than the prescribed period if requested to do so by a competent authority. • There is no law or regulation creating

		requirement for transaction records to be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. • There is no law or regulation setting out requirement to maintain records of the identification data, account files and business correspondence for at least five years after the termination of an account or business relationship or longer if required. • Accountable institutions are not required to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.
11. Unusual transactions	NC	• There is no requirement for financial institutions to pay special attention to transactions that have no apparent or visible economic or lawful purpose and examine as far as possible their background and purpose. • There is no requirement to set forth the findings in writing and make them available for competent auditors for at least five years.
12. DNFBP – R.5, 6, 8-11	NC	• Accountants, casinos, dealers in precious stones and metals and lawyers are not subject to AML/CFT measures. • Real estate agents not covered for CFT measures. • Real estate agents not required by law or regulation to undertake CDD measures and other related requirements such as R. 6, 8 & 9. • The same deficiencies identified under FATF Recommendations 10 & 11 also apply to real estate agents. • Real estate agents have not implemented AML obligations under applicable law. • There is no AML awareness in the real estate sector.
13. Suspicious transaction reporting	NC	• There is no law or regulation creating direct ML reporting obligation of funds

		from proceeds of a criminal activity. • Not all designated predicated offences and financial institutions are covered for reporting of STRs • Only banks submit STRs . • There is threshold reporting for proceeds of robbery and theft. • There is no requirement to report STRs irrespective of possible involvement in tax matters.
14. Protection & no tipping-off	NC	• There is no specific tipping off prohibition for TF STRs. • Tipping off prohibition applies only at investigation stage.
15. Internal controls, compliance & audit	NC	• There is no enforceable obligation to require accountable institutions to implement the requirements under the FATF Recommendation 15.
16. DNFBP – R.13-15 & 21	NC	• AML/CFT regime does not extend to accountants, casinos, dealers in precious metals and stones and lawyers although they operate in the country. • The same deficiencies that have been identified in Section 3 of the Report regarding FATF Recommendations 13 -15 and 21 also apply to real estate agents. • Real estate agents have not implement obligations set out in Money Laundering (Prevention) Act, 2001.
17. Sanctions	NC	• Sanctions do not extend to directors and senior managers of financial institutions. • Sanctions are not proportionate and dissuasive. • There are limited administrative sanctions available. • Sanctions not broad enough to cover all AML/CFT requirements. • No sanctions have been imposed and therefore effectiveness could not be determined
18. Shell banks	PC	• There is no express prohibition for financial institutions not to enter into or

		continue correspondent banking relationships with shell banks • There is no specific obligation for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
19. Other forms of reporting	C	• This Recommendation is fully met.
20. Other NFBP & secure transaction techniques	NC	• The authorities do not subject modern transaction techniques to adequate AML/CFT obligations..
21. Special attention for higher risk countries	NC	• The authorities have not implemented requirements under the FATF Recommendation 21.
22. Foreign branches & subsidiaries	N/A	• Accountable institutions in the Kingdom of Swaziland do not have foreign subsidiaries or branches in other jurisdiction(s).
23. Regulation, supervision and monitoring	NC	• There is general scope issue affecting uncovered FIs and entities not licensed by the CBS. • Generally, regulation and supervision scope is too limited owing to inadequate AML/CFT requirements for FIs, e.g. lack of CDD measures and internal controls obligations. • No competent authority is designated to ensure CTF compliance.
24. DNFBP - regulation, supervision and monitoring	NC	• There are no designated competent authorities for AML/CFT regulation and supervision for accountants, casinos, lawyers and dealers in precious metals and stones. • The Central Bank of Swaziland has not monitored casinos for compliance with AML obligations. • All DNFBPs are not monitored for compliance with applicable AML/CFT measures. • No measures in place to prohibit criminals or their associates from holding or being beneficial owners.
25. Guidelines & Feedback	NC	• STR reporting guidelines issued only to banks, and excluded other reporting entities.

		• AML Guide, 2001 is not enforceable. • Feedback provided to accountable institutions does not conform to the FATF Best Practice Guidelines on Providing Feedback to Reporting *Persons and Other Persons*. • The scope of guidelines goes beyond that of the principal Act under which they are being issued. • AML guidelines have not been issued to all accountable institutions • No measures for non-compliance with the guidelines. • No guidelines on CFT have been issued. • No guidelines have been issued to DNFBPs.
Institutional and other measures		
26. The FIU	NC	• The requirements for effective FIU have not been implemented
27. Law enforcement authorities	PC	• The Money Laundering (Prevention) Act 2001 has not been effectively applied. • Training for the law enforcement and prosecution authorities on ML/TF cases is not sufficiently provided. • Statistics with regards to ML/FT cases as well as the underlying predicate offences is not systematically kept and maintained.
28. Powers of competent authorities	PC	• Effectiveness could not be determined.
29. Supervisors	NC	• The authorities have not implemented the requirements under the FATF Recommendations 29.
30. Resources, integrity and training	NC	• The CBS does not have adequate resources to carry out FIU functions under the Money Laundering (Prevention) Act. • Overall, law enforcement authorities lack adequate resources (financial, technical and human) to combat money laundering and financing of terrorism. • Law enforcement did not appear to have adequate investigative capacity to handle cases related to predicate offences, ML and TF. • Law enforcement agencies including the RIRF do not have authority to hire staff on

		their own. Only the Public Service Commission can appoint staff on behalf of the authorities. • AML/CFT awareness among government institutions tasked with combating ML and TF is severely lacking. • The CBS and the RIRF have no capacity, including adequate training and skills, to effective supervise accountable institutions regulated by them. • There are no expressed requirements for screening of staff to ensure that staff with high professional standards and integrity is employed in government institutions implementing with AML/CFT measures.
31. National co-operation	NC	• There is no policy cooperation and coordination mechanism amongst relevant authorities. • No well functioning National Task Force on AML/CFT.
32. Statistics	NC	• The authorities do not maintain comprehensive statistics useful to determine and review effectiveness of measures in place to combat money laundering and financing of terrorism..
33. Legal persons – beneficial owners	NC	• Information submitted for registration of legal persons by legal practitioners is not necessarily accurate as it is not verified. • The non-verification of information on beneficial ownership and control of legal persons as specified under the FATF definitions compromises the accuracy of the information retained by the Registrar's department. • No requirement where the shareholder is body corporate to establish the legal or natural beneficiary owner of the shares. • The running of companies by corporate directors and nominee shareholders distorts information on beneficial ownership and control of the legal persons that engage them. • Timely access to information and accuracy of the information might be

		undermined by the use of manual systems to maintain information. • No measures in place to insure that bearer shares are not misused for purposes of money laundering.
34. Legal arrangements – beneficial owners	NC	• The legal practitioners who provide trusteeship services are not required to comply with AML/CFT requirements. • There are no systems in place to allow access to information on beneficial ownership and control of trusts particularly where the founder of the trust is a legal person. • Possibility of undue delay in accessing information by competent authorities and financial institutions due to the manual system which is still used to record information on trusts at the department of the Registrar of Companies exists.
International Co-operation		
35. Conventions	PC	• The Kingdom of Swaziland has not ratified the Palermo Convention although most of the measures provided by the Convention are criminalised in the Money Laundering (Prevention) Act. • Limited implementation of both the Vienna and Palermo Conventions as the list of predicate offences does not cover the minimum of the designated categories of offences under the FATF Glossary. • Participation in an organised criminal group not criminalised. • No laws providing for witness protection, assistance to and protection of victims. • Need for enhancement of cooperation with law enforcement authorities to assist them in their investigations and evidence gathering. • Lack of any effective training programmes for law enforcement authorities including prosecution, responsible for the prevention, detection and control of offences covered by the

		Palermo Convention..
36. Mutual legal assistance	PC	• The lack of implementation of section 29 of the Suppression of Terrorism Act to give effect to the freezing mechanisms under the UNSC S/RES/1267 and 1373. • No clear guidance and provisions in the Suppression of Terrorism Act on requests for extradition and mutual legal assistance involving fiscal matters. • Not all the Protocols which are annexes to the UN Convention for the Suppression of the Financing of Terrorism have been acceded to and implemented. • Mutual legal assistance in terms of the Criminal Matters (Mutual Assistance) Act is only limited to designated countries. • Lack of a defined system in the DPP's Office to enable mutual legal assistance requests to be dealt with in a timely, constructive and effective manner. • Provisions of s22(6) of the Money Laundering (Prevention) Act are prohibitive as in terms of that section mutual legal assistance can only be provided to countries with which the Kingdom of Swaziland has entered into mutual legal assistance treaties. • The list of serious offences in the schedule to the Serious Offences Act which is relied on in providing mutual legal assistance under the Criminal Matters (Mutual Assistance) Act is not exhaustive as it does not include other serious offences. • Not clear how a request involving fiscal matters would be handled.
37. Dual criminality	NC	• A request which does not meet the dual criminality requirement can still be rejected. • The circumstances in which the Minister of Justice can use his discretion in considering requests which do not meet the dual criminality requirement could not be determined due to absence of statistics

		of similar cases. • Extradition on predicate offences is restricted to countries which have either entered into an extradition treaty with Swaziland or are designated. • The authorities could not demonstrate the effectiveness of the extradition regime in the Kingdom of Swaziland as no statistics were kept on such requests. • None of the extradition treaties were made available to the assessment team by the authorities to enable it to determine the status of the requirement for dual criminality where the Kingdom of Swaziland has entered into an extradition treaty with another country. • Overall effectiveness could not be determined
38. MLA on confiscation and freezing	PC	• No proper systems in place to enable the time within which requests for provisional measures, including confiscation are handled, to be determined. • The extent to which the laws and procedures in place in the Kingdom of Swaziland could be used to provide an effective and timely response to requests for provisional measures including confiscation from other countries could not be determined as the authorities could not provide any statistics on such requests. • The definition of 'property' does not include property of corresponding value. • The authorities have not considered establishing an Asset Forfeiture Fund
39. Extradition	PC	• Extradition to a money laundering offence can only be done to a country which has an extradition agreement with the Kingdom of Swaziland or is designated. • No measures in place to ensure that extradition requests relating to the offences of money laundering are dealt with without any delay. • Overall effectiveness of the extradition

		regime relating to money laundering could not be determined.
40. Other forms of co-operation	PC	• There are no specific measures authorising the CBS relevant law enforcement agencies to offer the widest range of international cooperation. • Information exchange on ML in terms of the Money Laundering (Prevention) Act is only authorised where the requesting authority's country has mutual legal assistance treaty with the Kingdom of Swaziland. • The authorities have inadequate measures to handle international cooperation on predicate offences and money laundering requests for information. • There are no measures in place to keep comprehensive statistics on information exchange requests and responses.
Nine Special Recommendations	**Rating**	**Summary of factors underlying rating**
SR.I Implement UN instruments	NC	• The lack of implementation of section 29 of the Suppression of Terrorism Act to give effect to the freezing mechanisms under the UNSC S/RES/1267 and 1373. • No clear guidance and provisions in the Suppression of Terrorism Act on requests for extradition and mutual legal assistance involving fiscal matters. • Not all the Protocols which are annexes to the UN Convention for the Suppression of the Financing of Terrorism have been acceded to and implemented.
SR.II Criminalise terrorist financing	NC	• The term 'person' is not defined under the Suppression of Terrorism Act and the definition provided under the Interpretation Act cannot be extended to cover an individual terrorist as required under the international and FATF standards. • The term terrorism is not defined in order to know whether it includes the offence of terrorist financing as a predicate

		offence for ML. • The term funds used in section 6 of the Suppression of Terrorism Act is not defined which made it difficult for the assessors to determine whether it meets the standard under the TF Convention. • The extent to which parallel actions can be used against legal persons is limited only to charities and needs to be broadened. • The overall effectiveness of the Suppression of Terrorism Act could not be determined by the assessors.
SR.III Freeze and confiscate terrorist assets	NC	• The extent of the powers of the Minister responsible for national security in freezing funds or assets of persons associated with financing of terrorism could not be determined. • There is no effective framework to communicate actions made under the UNSC freezing mechanisms to the financial sector immediately upon such action being taken. • The authorities have not issued guidelines to financial institutions that might be holding targeted funds on their obligations in handling such funds under the freezing mechanisms. • There are no effective and publicly known procedures for processing de-listing requests and unfreezing of funds or assets of de-listed persons. • There is no legal framework for unfreezing funds or assets of persons inadvertently affected by freezing mechanisms upon verification that the person is not a designated person. • There is no legal framework to allow access to frozen funds or assets for basic expenses and other services. • There are no procedures in place enabling the review or challenging of the freezing decisions. • There are no procedures in place

		consistent with the TF Convention to protect the rights of *bona fide* third parties
SR.IV Suspicious transaction reporting	NC	• There is scope issue as only few financial institutions are obliged to report STRs on terrorism and its financing. • Financial institutions are not aware of obligations to file STRs related to terrorism and its financing under the Suppression of Terrorism Act. • No STR has been filed and assessors could not determine the effectiveness of the reporting regime.
SR.V International co-operation	NC	• The definition of serious offence in the Serious Offences (Confiscation of Proceeds) Act which is made cross-reference to in the definition section of the Criminal Matters (Mutual Assistance) Act does not include the offence of terrorist financing. • The deficiencies observed under Recommendations 36, 37 and 38 above also apply to SR V. • Requests for extradition relating to terrorist financing offences are only limited to countries with which Swaziland has entered into an extradition treaty or are designated. • There are no specific mechanisms to handle international cooperation on terrorist financing. • Effectiveness of the extradition regime relating to terrorist financing offences could not be determined as there were no statistics available • Terrorist financing is not a predicate offence to money laundering. • The deficiencies observed under Recommendations 36, 37 and 38 also apply to SR V. • Effectiveness of international cooperation could not be determined by the assessors.
SR VI AML requirements for money/value transfer services	NC	• There is no competent authority to license or register value transfer service

		operators and agents via mobile phones. • MVT service operators are not subject to all applicable FATF Recommendations, including customer due diligence. • There are no enforceable systems to monitor all MVT service operators in the Kingdom of Swaziland and ensure compliance with applicable FATF Recommendations. • There is no requirement for Banks and Postal Office to maintain a current list of its agents and make it available to CBS. • There are no sanctions for failure to comply with obligations and operating MVT service without approval from a competent authority.
SR VII Wire transfer rules	NC	• No measures in place to implemented requirements under SR.VII.
SR.VIII Non-profit organisations	NC	• The authorities have not implemented requirements under SR.VIII as required by the FATF Standards.
SR.IX Cross Border Declaration & Disclosure	NC	• The authorities have not implemented requirements under SR.IX as required by the FATF Standards.

Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 & 2)	• It is recommended that the Kingdom of Swaziland ratifies the Palermo Convention. • The authorities should pass into law the Money Laundering and Financing of Terrorism (Prevention) Bill as a matter of urgency. • It is recommended that the Kingdom of Swaziland should enact a law that covers the minimum range of predicate offences prescribed in each of the designated categories of offences under the FATF Glossary. • It is recommended that the authorities should criminalise the purpose of engaging in a Money Laundering (Prevention) Activity. • It is recommended that the ancillary offences of participation in, associate with and facilitate the commission of the offence of ML be provided for under ancillary offences to ML. • The authorities should remove the restrictions to the value of proceeds of crime generated from the crimes of robbery and theft which can be laundered. • There should be consistence of terms used to define offences listed in the schedule to the Serious Offences (Confiscation of Proceeds) Act and in the Money Laundering (Prevention) Act and, at most, there should be efforts to have the offences in the two schedules harmonised. • It is recommended that the penalty provisions should apply to both natural and legal persons. • The authorities should have other forms of liability such as civil and administrative

	to run parallel with criminal proceedings relating to money laundering offences. The provisions to section 19(6) should also be clarified or better guidance should be provided as to what was intended to be achieved by the provisions.
2.2 Criminalisation of Terrorist Financing (SR.I I)	• The authorities should pass into law the Money Laundering and Financing of Terrorism (Prevention) Bill as a matter of urgency. • Criminal acts committed by an individual terrorist should be *specifically* criminalised under the Suppression of Terrorism Act. • The term funds used in the Suppression of Terrorism Act should be defined and the definition should be in line with the one in the Convention on the Suppression of the Financing of Terrorism. • The term "terrorism" used in the Suppression of Terrorism Act should be defined to include the offence of TF. • The authorities should consider providing civil and, or administrative proceedings to run parallel with criminal proceedings where the legal persons are criminally liable for terrorist financing offences.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• It is recommended that all proceeds of crime for ML and TF, including instrumentalities should be subject to seizure, freezing, confiscation and forfeiture. • It recommended that the authorities enact the Bill which will have the effect of voiding actions whether contractual or otherwise where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation • It is recommended that the authorities keep and maintain detailed statistics on confiscation, freezing and seizing of

	proceeds of crime, including instrumentalities. • It is recommended that the laws in the Kingdom of Swaziland should have specific provisions allowing identification and tracing of proceeds that may become subject to forfeiture for purposes of terrorist financing.
2.4 Freezing of funds used for terrorist financing (SR.III)	• It is recommended that the authorities establish clear procedures to give effect to section 29 of the Suppression of Terrorism Act. • There is need for the authorities to establish mechanisms to give effect to the UNSC S/RES/1267 and S/RES/1373. In particular, mechanisms for communicating freezing actions to accountable institutions and other guidance to ensure compliance with SRIII. • The authorities should consider providing a legal framework consistent with the TF Convention on the protection of the rights of *bona fide* third parties.
2.5 The Financial Intelligence Unit and its functions (R.26)	• It is recommended that the authorities pass into law of the Money Laundering and Financing of Terrorism (Prevention) Bill to provide for the establishment of a Swaziland Financial Intelligence Unit. • Once set up Swaziland FIU should provide guidance on the manner and form of reporting as well as providing effective feedback to all accountable institutions, taking into account their diversity. • There is need for Swaziland FIU to develop mechanisms to access relevant information held by national authorities to properly undertake its functions. • The authorities should ensure that Swaziland FIU enjoys operational independence and autonomy including being well structured, funded and given powers to employ high integrity and

	skills staff with adequate training. • The authorities should take necessary steps to enable Swaziland FIU to join and abide by the information exchange principles of the Egmont Group of FIUs. • The authorities should ensure that Swaziland FIU has systems to protect database or any information held by it and disseminate in accordance with authorised channels. • There is need once operational, to produce publicly accessible periodic releases such as annual reports which outline in detail activities of Swaziland FIU. • There is need to undertake effective awareness raising programmes for accountable institutions and other role-players to make known Swaziland FIU.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	• It is recommended that the authorities provide resources (human, technical and financial) to ensure capacity of all law enforcement and prosecutorial agencies for effective investigation and prosecution of cases. • There is need to capacitate judicial officers with skills to handle ML/FT cases. • It is recommended that the authorities keep and maintain detailed statistics on ML/TF investigations (in particular where special investigative techniques are used) and prosecutions and undertake reviews of ML and TF trends.
2.7 Cross Border Declaration & Disclosure	• It is recommended that the authorities implement requirements consistent SRIX.
3. Preventive Measures – Financial Institutions	• It is recommended that the authorities pass into law the Money Laundering and Financing of Terrorism (Prevention) Bill, 2009 to extent AML/CFT obligations to financial institutions consistent with the FATF Standards. • The authorities should refer to the criteria of the FATF Recommendations on

	preventative measures to ensure consistency between the recommendations made and the requirements under each FATF Recommendation for Post-Evaluation Monitoring and Implementation Process.
3.1 Risk of money laundering or terrorist financing	• There are no specific recommendations for this section.
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	• The authorities should enact the Money Laundering and Financing of Terrorism (Prevention) Bill to provide for obligations to conduct customer due diligence, PEPs, correspondent relationships and transactions and non-face to face transactions and relationships.
3.3 Third parties and introduced business (R.9)	• The authorities should enact the Money Laundering and Financing of Terrorism (Prevention) Bill to provide for obligations on reliance on third parties and introduced business.
3.4 Financial institution secrecy or confidentiality (R.4)	• It is recommended that the authorities enact the Money Laundering and Financing of Terrorism (Prevention) Bill to adequately override secrecy and confidentiality.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	• The authorities should require accountable institutions to maintain all necessary records on transactions, both domestic and international, for at least five years following completion of the transaction or longer if requested by a competent authority in specific cases and upon proper authority. In addition, the transaction records kept by accountable institutions should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. • It is recommended that accountable institutions be required to maintain records of the identification data, account files and business correspondence for at least five years following termination of an account or business relationship or

	longer if requested by a competent authority in specific cases upon proper authority. • There is need for accountable institutions to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate request. • It is recommended that, as a matter of urgency, financial institutions should be required to implement wire transfer requirements in a manner consistent with the FATF Special Recommendation VII. • It is recommended that recordkeeping and wire transfer obligations be enforceable in a manner consistent with the FATF Standards.
3.6 Monitoring of transactions and relationships (R.11 & 21)	• Accountable institutions should be required to pay special attention to transactions that have no apparent or visible economic or lawful purpose. • Instead of just examining transactions for purposes of complying with STR reporting obligations as is the current situation, accountable institutions should be required to examine as far as possible the background and purpose of such transactions and to set forth their findings in writing. • In addition, accountable institutions should be required to keep such findings available for competent authorities and auditors for at least five years. • It is recommended that financial institutions be required to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations and apply countermeasures. • The authorities should require accountable institutions to pay special attention to transactions that have no apparent economic or visible lawful purpose; examine background and

	purposes of transaction and document such findings in manner that is useful to competent authorities.
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• It is recommended that the authorities pass into law the Money Laundering and Financing of Terrorism (Prevention) Bill to provide for a direct STR reporting regime. • It is recommended that reporting obligations for ML/TF should cover, at minimum, the designated predicate offences and financial institutions consistent with the FATF Glossary. • There is need for effective outreach programmes to all financial institutions to make them aware of applicable reporting obligations and mechanisms to submit such reports. • Swaziland FIU should provide adequate feedback consistent with the Guidelines of the FATF. • Swaziland FIU should keep and maintain detailed statistics on STRs received and disseminated. • Tipping off prohibition in relation to STR information should also apply to TF and the reporting stage. • There is need to safeguard authorised disclosure of details of staff of accountable institutions who filed STRs.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	• It is recommended that the authorities pass into law the Money Laundering and Financing of Terrorism (Prevention) Bill to provide for obligations to accountable institutions to establish and implement internal rules.
3.9 Shell banks (R.18)	• Authorities should create direct obligations prohibiting accountable institutions from establishing relationships or conducting transactions with shell banks.
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29,	• It is recommended that the authorities designate a competent authority with adequate functions and responsibility to enforce compliance with AML/CFT obligations.

17 & 25)	• It is recommended that all financial institutions be subject to AML/CFT obligations consistent with the FATF Standards. • The designated authority should be well structured, funded and appropriately skilled with operational independence and autonomy. • Supervisors/regulators should undertake effective AML/CFT awareness raising programmes to ensure that all financial institutions are aware of their responsibilities under the relevant AML/CFT measures. • It is recommended that broad, proportionate, dissuasive and effective sanctions for non-compliance be put in place, including detailed statistics on sanctions issued. • It is recommended that sanctions cover both natural and legal persons, including directors and senior management of accountable institutions. • Designated competent authority with responsibility for AML/CFT supervision should issue enforceable guidelines to all accountable institutions. • Keep and maintain detailed on the number of inspection undertaken and findings thereof to enable review of the effectiveness of the AML/CFT system.
3.11 Money value transfer services (SR.VI)	• There is need for designation of competent authority with appropriate powers and resources to license or registered MVT service operators including mobile phone and postal money or value transfers. • All MVT service providers such as those provided by the Postal Office and mobile phone network provider be subject to AML/CFT obligations. • There is need to put in place enforceable systems to monitor all MVT service operators and ensure compliance with the FATF Recommendations. • It is recommended that licensed or

	registered MVT service operator maintain a current list of its agents which must be made available to the designated competent authority. • The authorities should ensure that sanctions for non-compliance with AML/CFT obligations for MVT service provision are dissuasive, proportionate and effective as required by applicable criteria under FATF Recommendation 17 (Sanctions). • The authorities should implement measures set out in the Best Practice Paper for SR.VI for MVT service sector.
4. Preventive Measures – Non-Financial Businesses and Professions	• It is recommended that the authorities pass into law the Money Laundering and Financing of Terrorism (Prevention) Bill, 2009 to extent AML/CFT obligations to DNFBPs consistent with the FATF Standards. • The authorities should refer to the criteria of the FATF Recommendations on preventative measures to ensure consistency between the recommendations made and the requirements under each FATF Recommendation for Post-Evaluation Monitoring and Implementation Process.
4.1 Customer due diligence and record-keeping (R.12)	• All DNFBP operating in the country should be subject to AML/CFT obligations and effective supervision for compliance. • The recommendations for customer due diligence and record-keeping made for financial institutions equally apply for DNFBPs.
4.2 Suspicious transaction reporting (R.16)	• It is recommended that DNFBPs are subject to and effectively implement requirements of the FATF Recommendations 13 -15 and 21 to address the deficiencies identified in Section 3 of this report. • The authorities in the Kingdom of Swaziland should develop and undertake effective AML/CFT outreach programmes in the DNFBP sector.

4.3 Regulation, supervision and monitoring (R.24-25)	• It is recommended that the Money Laundering and Financing of Terrorism (Prevention) Bill be enacted to provide for competent authority, functions and powers to enforce AML/CFT obligations. • There is need for designation of competent authority with responsibility to ensure AML/CFT supervision and monitoring. • It is recommended that the authorities put in place necessary legal or regulatory framework to prevent criminals or their associates from holding or being beneficial owners or controlling interest. • It is recommended that the authorities issue guidelines to ensure compliance with applicable AML/CFT measures.
4.4 Other non-financial businesses and professions (R.20)	• It is recommended that the authorities should consider applying all relevant FATF Recommendations to non-financial and professions in a manner consistent with the FATF standards.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	• It is recommended that legal practitioners be required to verify information received from clients for purposes of registering legal persons on their behalf. • It is recommended that the Registrar of Companies be required to obtain and verify information on beneficial ownership and control of legal persons applying for registration. • The authorities should amend the Companies Act to make it a requirement for the Registrar of Companies to establish the legal and/or natural beneficial owner of shares where the shareholder is a body corporate. • The Registrar of Companies should be provided with resources to automate its record filing system improve efficiency on keeping, maintaining and timely access to the records by the public, law enforcement agencies and other

	supervisory authorities • It is recommended that there be an obligation to disclose to the Registrar of Companies or any other competent authority on whose behalf shares are being held and the number of shares held. • It is recommended that where corporate directors are involved directly or indirectly in the running of a legal person, measures be put in place for identification of the beneficial owner of the corporate directors. • There is need for measures to identify beneficial owners on whose behalf nominee shareholders have been appointed. • It is recommended that the authorities put measures in place to prevent the possible misuse of bearer shares.
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	• Recommended Action for R33 also apply to registration of trusts with the Registrar of Companies as required under R34.
5.3 Non-profit organisations (SR.VIII)	• It is recommended that the authorities implement effective measures for NPO sector consistent with SR.VIII.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	• The authorities should pass into law the Money Laundering and Financing of Terrorism (Prevention) Bill which provides for national cooperation and coordination by giving legal status to the National Task Force on AML/CFT.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	• It is recommended that the Kingdom of Swaziland ratify the Palermo Convention. • It is recommended that the authorities pass into law the Money Laundering and Financing of Terrorism (Prevention) Bill which provides for the minimum designated categories of offences set out under the FATF Glossary to enable effective implementation of the both the Vienna and Palermo Conventions. • It is recommended that the authorities amend the laws on drugs and

	psychotropic substances to be consistent with the requirements of Article 3(1) of the Vienna Convention. • The authorities should enact laws which provide for witness protection, assistance to and protection of victims. • The Kingdom of Swaziland should consider enacting laws that enhances cooperation with law enforcement authorities to enable them to among other things gather information from members of organised criminal groups for purposes of carrying out their investigations and evidence gathering and in deserving situations to offer immunity from prosecution to persons offering such information. • It is recommended that the authorities consider developing a Training Programme for law enforcement authorities charged with the prevention, detection and control of offences covered by the Palermo Convention. • It is recommended that the authorities make clear provisions relating to extradition or mutual legal assistance requests involving fiscal matters. • The authorities must implement the provisions of s29 of the Suppression of Terrorism Act to give effect to the freezing mechanisms under the UNSC S/RES/1267 and 1373. • The Kingdom of Swaziland should ratify and implement the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 24 February 1988.
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	• It is recommended that the authorities amend Criminal Matters (Mutual Assistance) Act to provide mutual legal assistance to non-designated countries. • It is recommended that the authorities amend the Schedule to the Serious

	Offences Act to provide for the minimum designated categories of offences set out under the FATF Glossary. • It is recommended that the authorities remove the exemption created by s24. • The DPP's Office should establish effective mechanisms to deal with mutual legal assistance requests in a timely, constructive and effective manner and be able to properly account for the manner in which each one of the requests is handled. • The authorities should put in place measures to deal with requests involving fiscal matters. • It is recommended that the Criminal Matters (Mutual Assistance) Act be amended to provide for situations where more than one jurisdiction request assistance for the same information. • It is recommended that the authorities put measures in place to determine the time it takes to provide assistance on provisional measures including confiscation. • The authorities should ensure that property of corresponding value is included in the definition of property. • It is recommended that the authorities maintain comprehensive statistics on the number of mutual legal assistance requests received, the nature of the assistance required, date of acknowledgment of receipt of the request, the number of requests acceded to, number of requests rejected and where possible the reasons, time taken to respond to the requests and when the responses were dispatched.
6.4 Extradition (R.39, 37 & SR.V)	• It is recommended that the authorities amend the Extradition Act and Fugitive Offenders Act to allow extradition with countries not covered under the two Acts. • The authorities should have measures in place to ensure that extradition requests relating to offences of money laundering are dealt with without undue delay. • The authorities should maintain

	comprehensive statistics on the requests for extradition received, acceded to, declined and where possible the reasons for declining and the time taken to consider and process the requests.
6.5 Other Forms of Co-operation (R.40 & SR.V)	• It is recommended that the authorities put in place mechanisms that allow widest possible range of exchange of information with counterparts. • It is recommended that the authorities put in place measures to protect the use of exchanged information. • The CBS, the RIRF and other law relevant law enforcement authorities should be given statutory powers to provide the widest possible range of international cooperation including the authority to conduct enquiries on behalf of counterparts. • The authorities should put in place effective measures to keep comprehensive statistics on information exchange requests and responses to enable the country to assess effectiveness of the measures in place.
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	• The authorities should provide adequate resources to capacitate institutions involved in the fight against money laundering and terrorist financing. • The authorities should maintain detailed statistics on ML/TF activities to enable them to undertake assessment of the effectiveness of AML/CFT systems.
7.2 Other relevant AML/CFT measures or issues	• There are no comments for this section.
7.3 General framework – structural issues	• There are no comments for this section.

Table 3: Authorities' Response to the Evaluation (if necessary)

Relevant sections and paragraphs	Country Comments

Annex 2: Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others.

Post Office
Customs (Swaziland Revenue Authority)
Immigration (Ministry of Home Affairs)
Office of Auditor-General
Swaziland Institute of Accountants
Central Bank of Swaziland (Financial Regulation Department)
Directorate on Corruption and Economic Crimes Office
Royal Swazi Police
Attorney General's Office
Office of the Director of Public Prosecution
Bankers Committee
Commercial Banks
Swaziland Security Intelligence
Ministry of Foreign Affairs and International Cooperation (Legal Division)
Investment Promotion Agency
Ministry of Justice
Registrar of Companies
Registrar of Deeds
Gaming Board of Control
Casino
Insurers and brokers
Department of Cooperatives
Coordinating Assembly of Non Governmental Organisations
Trade and Licensing (Ministry of Trade and Commerce)
Capital Market Development Unit
Registrar of Insurance
Real estate agent
Law Society of Swaziland
Geology Department (Ministry of Natural Resources and Energy)
Ministry of Home Affairs (NGO and Religious Affairs Unit)
Swaziland National Task Force on AML/CFT

Annex 3: Copies of key laws, regulations and other measures

Money Laundering (Prevention) Act, 2001

PART II
MONEY LAUNDERING PROHIBITED

Offence of money laundering

3. A person who, after the commencement of this Act, engages in money laundering, commits an offence.

Offence committed by a person other than a natural person

4. Where an offence under section 3 is committed by a person, other than a natural person, who at the time of the commission of the offence, acted in an official capacity for or on behalf of such body of persons, whether as a director, manager, secretary or other similar officer, or was purporting to act in such capacity, that person is liable to punishment for that offence, unless he adduces evidence to show that the offence was committed without his knowledge, consent or connivance.

Attempts at money laundering, aiding and abetting, conspiracy

5. Any person who attempts or who aids, abets, counsels, or procures the commission of, or who conspires to commit, the offence of money laundering is guilty of an offence.

Penalty for money laundering

6. A person who commits an offence under the provisions of sections 3, 4, or 5 of this Act shall be liable and punishable on conviction, to a fine which shall not be less than twenty-five thousand Emalangeni (E25,000.00) or to imprisonment for a term which shall not be less than six (6) years or to both such fine and imprisonment.

Money Laundering (Prevention) Act, 2001

PART III
ANTI-MONEY LAUNDERING SUPERVISION

The Supervisory Authority

10. The powers of the Supervisory Authority as provided in this Act shall be carried out by the Governor of the Central Bank of Swaziland for that purpose.

Powers of the Supervisory Authority

11. (1) The Supervisory Authority —

(*a*) shall receive the reports issued by any accountable institution pursuant to the provisions of section 13;

(*b*) shall send any such report to the law enforcement authorities if, having considered the report, the Supervisory Authority also has reasonable grounds to believe that a money laundering offence is being, has been, or is about to be, committed;

(*c*) may, if there are reasonable grounds for believing that a contravention or breach of this Act may have occurred, enter into the premises of any accountable institution during normal working hours to inspect any business transaction record kept by that accountable institution

and ask any questions relevant to such record and to make any notes or take any copies of the whole or any part of any such record;

(*d*) shall send to the law enforcement authorities any information derived from an inspection carried out pursuant to the provisions of paragraph (*c*) of this section if the Supervisory Authority has reasonable grounds to believe that a money laundering offence is being, has been, or is about to be, committed;

(*e*) may destroy any note or copy thereof made or taken pursuant to the provisions of paragraph (*c*) of this section within three years of the inspection, save where any such note or copy has been sent to a law enforcement authority;

(*f*) may instruct any accountable institution to take such steps as may be appropriate to facilitate any investigation anticipated by the Supervisory Authority following a report or investigation made under the provisions of this section;

(*g*) may compile statistics and records, provide information to law enforcement authorities and regulatory bodies within or without Swaziland, in accordance with Part V of this Act, make recommendations arising out of any information received, issue guidelines to accountable institutions and advise the Minister with regard to any matter relating to money laundering; and

(*h*) shall create training requirements and provide such training for accountable institutions in respect of the business transaction record-keeping and reporting obligations as provided in this Act.

(2) No criminal or civil liability may be instituted against the Supervisory Authority for things done in good faith in the performance of its duties.

Obligations of accountable institutions

12. An accountable institution shall —

(*a*) keep a business transaction record of any business transaction for a period of five years after the termination of the business transaction so recorded;

(*b*) comply with any instruction issued to it by the Supervisory Authority pursuant to section 11(*f*);

(*c*) permit the Supervisory Authority upon request to enter into any premises of the accountable institution during normal working hours and inspect the records kept pursuant to the provisions of paragraph (*a*) and to make any notes or taken any copies of the whole or any part of any such record and shall answer questions asked by the Supervisory Authority in relation to such records; and

(*d*) comply with the guidelines and training requirements issued and provided by the Supervisory Authority respectively in accordance with section 11(1)(*g*)
or (*h*).

STR Reporting Regime

Money Laundering (Prevention) Act, 2001

Reporting of suspicious business transactions by accountable institutions

s13(1) An accountable institution shall pay special attention to all complex, unusual or large business transactions, or unusual patterns of transactions whether completed or not, and to insignificant but periodic transactions, which are suspicious.

(2) On reasonable suspicion that the transactions described in subsection (1) could constitute or be related to money laundering, an accountable institution shall promptly report such suspicious transactions to the Supervisory Authority.

Financial Institutions Act, 2005

s38(1) No financial institution shall carry out transactions when it knows or suspects to be related to a serious criminal activity until it reports the information regarding the transaction that indicate such activity to the Bank.

Suppression of Terrorism Act, 2008

s27(1) A person shall forthwith disclose to the Financial Intelligence Unit-

(a)the existence of any property in the possession or control of that person which is, to the knowledge of that person, owned or controlled by or on behalf of a terrorist group or specified entity;

(b)any information regarding a transaction or proposed transaction in respect of any property referred to in paragraph (a)

(7) a person who fails to comply with the provisions of this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years.

Activities of Accountable Institutions

Money Laundering (Prevention) Act, 2001

First Schedule

1. "Banking business" and "financial business" as defined in the Financial Institutions Order, 1975.
2. Offshore Banking business.
3. Venture risk capital.
4. Money transmission services.
5. Issuing and administering means of payments (e.g. credit cards, travellers' cheques and bankers' drafts).
6. Guarantees and commitments.
7. Trading for own account or for account of customers in —
   (*a*) money marketing instruments (e.g. cheques, bills, certificates of deposits, commercial paper, etc.);
   (*b*) foreign exchange;
   (*c*) financial and commodity-based derivative instruments (e.g. futures, options, interest rate and foreign exchange instruments, etc.).
8. Money broking.
9. Money lending and pawning.
10. Money exchange.
11. Insurance business.
12. Real property business.
13. Credit unions.
14. Building societies.
15. Trust business.
16. Safe custody services.

Suppression of Terrorism Act, 2001

financial institution means -

"a commercial bank, or any other institution which makes loans, advances or investments or accepts deposits of money from the public"

Prescribed Offences

Money Laundering (Prevention) Act, 2001

Second Schedule

Blackmail.
Counterfeiting.
Drug Trafficking and related offences.
Extortion.
False accounting.
Forgery.
Fraud.
Illegal deposit-taking.
Robbery involving more than E10, 000.00.
Terrorism.
Thefts involving more than E10, 000.00.
Arms trafficking.
Kidnapping.

Annex 4: List of all laws, regulations and other material received

The Constitution of the Kingdom of Swaziland, 2005
Money Laundering (Prevention) Act, 2001
Money Laundering Guide, 2001
Financial Institutions Act, 2005
Suppression of Terrorism Act, 2008
Insurance Act, 2005
Retirement Fund Act, 2005
Insurance Regulations Act, 2005
Retirement Fund Regulations, 2005
Exchange Control Order, 1974
The Central Bank of Swaziland Order, 1975
Companies Act, 2009
Swaziland Post & Telecommunications Cooperation Act
Mining Act, 1958
Mining Regulations, 1958
Legal Practitioners Act, 1964
Accountant Act, 1985
Casino Act, 1963
The Criminal Matters (Mutual Assistance) Act, 2001
The Serious Offences Act (Confiscation of Proceeds), 2001
The Extradition Act, 1968
The Prevention of Corruption Act, 2006
Electronics Records (Evidence) Act, 2009
Officials Secrets Act, 1968
Royal Swazi Police Act, 1957
The Central Bank of Swaziland Order, 1974
Collective Investment Schemes Guidelines, 2007
Cooperative Societies Act, 2003
Cooperative Societies Regulations, 2005
The Pharmacy Act, 1929
Opium and Habit-Forming Drugs Act, 1922
Guidelines for Authorised Dealers in Foreign Exchange
Inspection Reports (Banks), 2010
Inspection Reports (Insurance), 2010
Non-Governmental Organisations Policy, 2005
Customs and Excise Act,
Post Office Act,
Interpretation Act, 1920
Investment Promotion Act, 1998
The Protection of Names, Uniforms and Badges Act, 1969
Bookmakers Act, 1970
Lotteries Act, 19763
Trade and Licensing Order, 1975
Licensing Requirements (Central Bank of Swaziland)
Swaziland Interbank Payment and Settlement System