



FIRST ROUND MUTUAL EVALUATIONS - POST EVALUATION PROGRESS
REPORT OF LESOTHO

Covering the period August 2017 – July 2018

KINGDOM OF LESOTHO

I BACKGROUND INFORMATION

1. ESAAMLG evaluated the anti-money laundering and combating the financing of terrorism (AML/CFT) laws, systems and structures of the Kingdom of Lesotho from 29th November to 10th December 2010. The Mutual Evaluation Report (MER) was approved by the Council of Ministers in September 2011.

2. Tables 1 and 2 below contain the ratings obtained by the Kingdom of Lesotho with regard to all Recommendations.

TABLE 1: Core & Key Recommendations rated NC & PC

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| Rated NC |
| R1, R5, R10, R13, R23, R26, SRI, SR III, SRIV |
| Rated PC |
| R3, R35, R36, R40, SRII, SR V |

TABLE 2: Other Recommendations rated NC & PC

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| Rated NC |
| R8, R9, R11, R12, R15, R16, R17, R21, R24, R25, R29, R30, R32, R33, R34, SRVI, SRVII, SRVIII, SRIX |
| Rated PC |
| R2, R6, R14, R18, R27, R28, R31, R37, R38, R39, |

3. Previously, Lesotho was reporting annually. However, in view of its slow progress the Council of Ministers resolved at its meeting in September 2014 that the country should be reporting bi-annually starting from March 2015. In line with the March 2015 decision of the Task Force, a letter was sent to Lesotho Authorities expressing ESAAMLG's concern of the slow progress noted in implementation FATF Recommendations and the ESAAMLG membership requirements.

4. Through the post evaluation monitoring process, ESAAMLG noted that Lesotho had not been making sufficient progress since it was evaluated. In view of the prolonged failure to implement recommendations contained in the MER, the Council of Ministers, at its meeting in Victoria Falls, Zimbabwe, September 2016 resolved to send a High Level Mission to Lesotho. After consultations, the Authorities agreed to host the Mission from 7th – 8th April 2017.

5. Following the ESAAMLG High Level Mission which visited Lesotho, a report was prepared and presented during the April 2017 meeting in Arusha which was later approved by the Council at the September 2017 meeting in Zanzibar, Tanzania. The report outlined a number of recommendations.

6. The Task Force noted that Lesotho had made sufficient progress in addressing most of the recommendations by the Assessors through the passing of the Money Laundering and Proceeds of Crime (Amendment) Act, 2016 (MLPC Act (as amended)) and issuing of the Money Laundering and Proceeds of Crime Regulations in June 2017 for implementing the requirements under the MLPC Act (as amended) and UNSCRs 1267 and 1373. However, the Task Force noted that there were still remaining deficiencies and that in respect of some of the short-term recommendations set out by the High Level Mission, Lesotho had missed the targets and it was directed to take the necessary measures to have the timelines adjusted.

7. It was agreed at the April 2018 meeting that Lesotho would present its next progress report on both the High Level Mission and MER recommendations at the Task Force meeting in September 2018. In accordance with the ESAAMLG Mutual Evaluation Procedures, Lesotho has submitted its twelfth progress report which covers all FATF Recommendations rated PC and NC and a separate progress report on the High Level Mission.

8. In the course of the discussion of its reports Lesotho claimed that there were matters that had not been taken into account in reviewing their progress. The Group advised Lesotho to formally present these matters in the PEIP format for consideration at the April 2019 meeting. In the interim, below is the analysis of its reports submitted to the Review Group.

I. ANALYSIS OF PROGRESS

2.1 On Key and Core Recommendations

9. Building Block V – International Cooperation

9.1 International Conventions (R.35-Rated PC)

Assessors recommended Lesotho to fully implement the Palermo, Vienna and Suppression of Terrorism Conventions. The Authorities should also put in place comprehensive measures for mutual legal assistance and the implementation of UNSCR 1267 and 1373 and comprehensive measures to develop and evaluate national projects aimed at the prevention of transnational organized crime and

the amendment of the Drugs of Abuse Act.

At the Arusha 2018 meeting, it was noted that Sections 14(18D) 20(5) of the MLPC Amendment Act provides the imposition of administrative sanctions for legal persons that commit offences and the FIU or a sector supervisory authority impose a financial penalty not exceeding M1,000,000.00 against such persons. Section 20(1) of the same Act provides jurisdiction extending to an offence that is committed on board a vessel that is flying the flag of Lesotho or registered under the laws of Lesotho. Some mechanisms for implementing UNSCR 1267 and 1373 have been put in place for in the Money Laundering and Proceeds of Crime Regulations 2017. However, the other outstanding issues for the implementation of the aforementioned conventions including the amendment of the Drugs of Abuse Act are not addressed. Lesotho did not submit update on this recommendation since the April 2018 meeting.

Conclusion

The recommendation is not sufficiently addressed.

9.2 Mutual Legal Assistance (R.36 and SRV/ratings PC and PC)

The Assessors recommended that Lesotho should enact legislation to fully implement mutual legal assistance measures that ensure effective and timely execution of requests from foreign States; put in place measures to facilitate the taking of witness statements on behalf of a foreign State; and facilitate the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country; and maintain statistical information on mutual legal assistance matter.

At the Arusha 2018 meeting, it was noted that Lesotho passed the MLA in Criminal Matters Bill as law. The Act is currently in effect and in force since January 2018. According to the Act, MLA can be rendered on serious offences matters for which the maximum penalty is not less than 12 months of imprisonment and whether the crime is committed in Lesotho or a foreign jurisdiction. Section 8(2)(b)(ii) of the Act signifies measures to facilitate the taking of witness statements on behalf of a foreign State. However, the law is not clear on the issue whether the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country could be facilitated. The Authorities also indicated that statistics on MLA is being kept though it is manual. Though the law meets the threshold in relation to offences committed in Lesotho by embracing all the designated categories of offences

under the FATF Standards, applicability of a similar threshold on foreign serious offences is a concern as other jurisdictions may have lesser maximum penalty than what is prescribed under the Act. If Lesotho continues in using the dual criminality principle for rendering MLA, the Review Group advised the Authorities to remove the threshold under the definition of serious offences under Section 2 of the Act. Lesotho did not submit update on this recommendation after the April 2018 meeting.

Conclusion

The Recommendation is not sufficiently addressed.

9.3 International cooperation and exchange of information (R.40 and SRV/ratings PC and PC)

The Assessors recommended that Lesotho should extend the powers of the DCEO to enter into MOUs with its counterparts to enable exchange of information should clearly be provided for under the Prevention of Corruption and Economic Crimes Act. The Authorities should also maintain comprehensive statistics of the requests for information received from their counterparts.

Conclusion

The Recommendation is not addressed.

9.4 Ratification and implementation of UN instruments (SRI-rated NC)

See the analysis made on Para. 9.1 above.

Conclusion

The Recommendation is not sufficiently addressed.

9.5 International cooperation (SRV-Rated PC)

See the analysis made on Paras.9.1-4 above.

Conclusion

The Recommendation is not sufficiently addressed.

2.2 On Non-Key and Non-Core Recommendations

10. BUILDING BLOCK II PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

10.1 Shell banks (R.18-Rated PC)

The Assessors recommended that the Authorities should require financial

institutions to satisfy themselves that respondent financial institutions in a foreign jurisdiction do not permit their account to be used by shell banks. They should also prohibit financial institutions to enter into, or continue correspondent banking relationships with shell banks. The Authorities should further carry out supervision programmes that would enable them to ascertain the nature and measures taken by banks to satisfy themselves that the respondent banks do not allow use of their accounts by shell banks.

The Authorities indicated that Financial Institutions (Anti- Money Laundering & Combating of Financing of Terrorism) Regulations to address the above deficiencies is at a drafting stage since 2015.

Conclusion

The Recommendation is not sufficiently addressed.

10.2 Special attention to higher risk countries (R.21-Rated NC)

The Assessors recommended that the Authorities should require Financial Institutions and DNFBPs to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations. Moreover, Financial Institutions and DNFBPs should be advised of concerns about weaknesses in the AML/CFT systems of other countries and require them to take effective measures to counter such business relationships or transactions. Further, the MLPCA should be amended to make provision for the possibility of applying appropriate counter measures where a country continues not to apply or insufficiently applies the FATF Recommendations.

Section 16(4) of the MLPC Amendment Act adequately requires financial institutions and DNFBPs to apply specific measures in relation to business relationships and transactions emanating from high risk jurisdictions.

Conclusion

The Recommendation is addressed.

10.3 DNFBPs – regulation, supervision and monitoring (R.24- rated NC)

The Assessors recommended Lesotho to ensure that the FIU is operational and

well-resourced to enable it to issue guidelines. The Authorities should take the necessary legal or regulatory measures to ensure that criminals or their associates are prevented from holding or being beneficial owner of a significant or controlling interest, holding a management in or being an operator of a casino. They should also ensure that there are effective systems for monitoring and ensuring compliance by DNFBPs with national AML/CFT requirements. Lesotho should further operationalise and provide adequate resources, including the Casino Board of Control, to enable it to undertake its supervision and regulation functions properly undertake effective AML/CFT awareness raising programmes in the DNFBPs sector.

The FIU Lesotho issued two guidelines on Money Laundering (Accountable Institutions) 2013 and Money Laundering (Politically Exposed Persons) 2015. However, the remaining deficiencies other than the issuance of Guidelines by the FIU are not addressed.

Conclusion

The Recommendation is not sufficiently addressed.

10.4 Feedback to financial institutions (R 25-rated NC)

The Assessors recommended that the Authorities should provide adequate and appropriate feedback to the accountable institutions. They should also issue guidelines to accountable institutions to assist them in reporting STRs. Lesotho issued the Money Laundering Accountable Institutions Guidelines 2013 and Money Laundering and Proceeds Regulations 2017

Conclusion

The Recommendation is not fully addressed.

10.5 Resources and statistics (R.30 & R.32-Rated NC)

The Assessors recommended that the Authorities should provide adequate resources to relevant competent Authorities to ensure effective implementation of the MLPCA. All relevant competent Authorities should also maintain up to date comprehensive statistics to enable the Authorities to undertake reviews of the AML/CFT systems in the country.

Conclusion

The Recommendation is not sufficiently addressed.

11. BUILDING BLOCK IV – NATIONAL AND INTERNATIONAL

COOPERATION

11.1 National co-operation and coordination (R.31-Rated PC)

The Assessors recommended that the Authorities should expedite the law which enable the establishment of an FIU to come into operation. Lesotho should also ensure that the FIU becomes a custodian of national coordination and cooperation on AML/CFT. Through overtime, the Authorities should further conduct reviews on the effectiveness of the AML/CFT system in the Kingdom of Lesotho.

Legal Notice No. 68 of 2011 published in June 2011 established the FIU Lesotho which is currently operational. The Authorities indicated that the FIU is the national custodian of coordinates AML/CFT issues. However, they have not yet completed the NRA to review the effectiveness of the AML/CFT system in Lesotho.

Conclusion

The Recommendation is not sufficiently addressed.

11.2 Mutual legal assistance (R.37-Rated PC)

The Assessors recommended that Lesotho should dispense with the requirement of dual criminality as a pre-requisite for rendering mutual legal assistance in particular for less intrusive and non- compulsory measures

Conclusion

The Recommendation is not addressed.

11.3 Mutual legal assistance on confiscation & freezing (R.38-Rated PC)

The Assessors recommended that the Authorities should redefine serious offences from a maximum term of imprisonment of not less than 24 months to 12 months in order to provide for the full range of predicate offences for money laundering and facilitate effective mutual legal assistance relating to the identification, freezing, seizure, or confiscation of laundered property from, proceeds from, instrumentalities used in, or instrumentalities intended for use in, the commission of any ML/FT or other predicate offences.

See the analysis under Paragraph 5.2.

Conclusion

The Recommendation is not sufficiently addressed.

11.4 Extradition (R.39, 37 & SR.V-Rated PC)

The Assessors recommended that Lesotho should put in place specific legislation outlining procedures to facilitate effective and simplified extradition procedures and measures to ensure that dual criminality is not a pre-requisite for extradition, particularly on less intrusive and non-compulsory measures. The Authorities should also ensure that requests and proceedings relating to ML are handled without undue delay and specific time frames are prescribed for responses to extradition requests. Comprehensive statistics on extradition requests received, granted and time taken to process the requests should further be kept and maintained by the Authorities.

Conclusion

The Recommendation is not sufficiently addressed.

1. BUILDING BLOCK V – LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

11.5 Legal Arrangements – Access to beneficial ownership and control information (R.34-Rated PC)

The Assessors recommended that Lesotho should enact legislation that provides for the administration and regulation of trusts and other legal arrangements. It should also strengthen the existing measures on verification of the identity of trustees, settlers and beneficiary owners of trusts by lawyers who apply for registration of the trusts and ensure that the Deeds Registry Office prevents the unlawful use of trusts for purposes of ML/TF. It should further implement reliable database with accurate and up to date information held by the Deeds Registry Office.

Conclusion

The Recommendation is not addressed.

7. BUILDING BLOCK VI – SPECIAL RECOMMENDATIONS

11.6 Wire transfer rules (SR.VII-Rated NC)

The Assessors recommended Lesotho to ensure that wire transfers (domestic and cross-border) conducted by the Post Office in the form of money transmission orders are subject to relevant provisions of the Exchange Control Regulations and Rules, Wire Rule Book of the Adhesion Agreement and amend s22 of the MLPCA to include all wire transfers irrespective of the name of the accountable institution carrying out the transaction. The current listing of banks is too restrictive. It should also ensure that where technical limitations prevent the full originator information accompanying a cross-border wire transfer from being

transmitted with a related domestic wire transfer, a record must be kept for five years by the receiving intermediary financial institution of all the information received from the ordering financial institution. The Authorities should also require beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. In addition, where lack of originator information raises suspicion, such information should be reported to the FIU or relevant competent authority. The Authorities should further consider requiring that all incoming cross-border wire transfers irrespective of value contain full and accurate originator information as the current requirements only covers outgoing wire transactions. Lesotho should further provide proportionate, dissuasive and effective sanctions, including administrative sanctions for non-compliance with wire transfer requirements. It should also set up measures to effectively monitor the compliance of financial institutions (e.g. banks and Post Office) with rules and regulations arising from the Exchange Control Regulations, Adhesion Agreement (Wire Rule Book) and MLPCA implementing the requirements under SR.VII.

Section 22 of the MLPC Act has been amended to remove the word “bank” in terms of Section 18 of the MLPC (Amendment) Act, 2016. The other deficiencies have not been adequately addressed.

Conclusion

The Recommendation is not addressed.

Non-profit organisations (SR.VIII)/Rating NC

The Assessors recommended that the Authorities should implement the requirements under SR.VIII.

Regulation 24(2) of the MLPC Regulations provides that non-profit organisations should not be misused by terrorist organisations posing as legitimate entities. In terms of Regulation 24(7) of the Regulations, non-profit organisations should not be misused to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations. While the remaining issues including reviewing of the sector, conducting period assessments, outreaching and conducting effective oversight still remain outstanding.

Conclusion

The Recommendation is not sufficiently addressed.

2.3 REVIEW OF PROGRESS ON ISSUES RAISED IN THE HIGH LEVEL MISSION REPORT

12. The table below highlights the progress made by Lesotho to address the recommended actions of the High Level Mission Report.

| Recommendation | Progress | Conclusion |
|---|---|--|
| <i>Short Terms Actions (March - August 2017)</i> | | |
| Promulgate regulations and guidance to Banks and other Accountable Institutions to Implement UNSCR 1267/1373. This can be done by exploring the possibility of issuing the Regulations in terms of the Money Laundering and Proceeds of Crime (as amended) Act, 2008, and the Penal Code Act, 2012 which criminalizes terrorist financing and terrorism respectively. | Money Laundering and Proceeds of Crime Regulations 2017 incorporates provisions that largely address implementation of UNSCR 1267/1373. However, the necessary guidelines and directives have not been issued. No change | This action plan is not fully completed. |
| The Authorities should harmonize all laws which pose dual AML/CFT obligations on financial institutions including reporting of STRs which should only be done by the FIU. The current parallel AML/CFT regimes in the Central Bank directives which are conflicting with the MLPC Act should be reviewed and amended in line with the FATF requirements. | Though the Authorities indicated that Instructions withdrawing directive by Governor to report STRs to CBL has been issued to the banks, discussions are in progress to amend the Financial Institutions (AMLCFT) Regulations 2015. Thus, the laws have not been harmonized as required. Directive has been withdrawn and amendment regulations | This action plan is not completed. |

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| | pending | |
| Facilitate the operational independence of Lesotho's FIU by allocating sufficient human and financial resources. | The Authorities indicated that it is in process. Work in progress | This action plan is not completed. |
| Accommodate the FIU offices in one location which would allow the FIU's independence in accordance with Recommendation 29 of the FATF | The Authorities indicated that it is in process. | In the discussion that emerged with the Authorities inquired whether it was necessary for the FIU to be in one building if operations were not prejudiced as a result of operating in two separate buildings. The Review Group considered that if operations were not prejudiced as a result of operating in two separate buildings there was nothing wrong. In view of this, it was agreed that Lesotho should be exempted from submitting a progress on the location of FIU's building in two places. |
| Develop mechanisms to enable the FIU to access | The Authorities indicated that FIU has entered into | This action plan is completed. |

| | | |
|---|---|---|
| <p>financial information from different AML/CFT stakeholders</p> | <p>MOUs with the following institution to facilitate access on financial information: Department of Transport; Department of Immigration, Lesotho Housing Development, Land Administration Authority, Registrar of Companies. Information is accessed manually and automation is ongoing.</p> | |
| <p><i>Medium Term Actions (September 2017 – August 2018)</i></p> | | |
| <p>Amend the following pieces of legislations:</p> <ul style="list-style-type: none"> • Criminal Procedure and Evidence Act, • Penal Code, • Fugitives Offenders Act, • Internal Security (Arms and Ammunition) Act, • Drugs of Abuse Act, • Anti-corruption Act. | <p>Schedule III of the CP&E has been amended to include money laundering and terrorist financing.</p> <p>Still on going</p> | <p>This action plan is ongoing. The threshold issue in considering illicit arms trafficking as a predicate offence for ML is addressed by decreasing the extent of punishment for predicate offence of ML from 24 months to 12 months in view of this, the Review Group concluded that it is not necessary to amend the Internal Security (Arms and Ammunition) Act</p> |
| <p>Enact the Prevention and Suppression of Terrorism</p> | <p>Lesotho has enacted both the Prevention and Suppression of Terrorism</p> | <p>This action plan is completed.</p> |

| | | |
|--|---|---|
| (Anti-Terrorism Bill) and the Mutual Legal Assistance Bills | and the Mutual Legal Assistance in Criminal Acts which are in force and in effect since January 2018. | |
| The Authorities should improve the asset recovery regime for properly freezing, seizing and confiscating ill-gotten funds or properties (including terrorist properties) by developing mechanisms for managing those assets. | The Authorities indicated that this aspect is addressed by UNODC mentorship programme extended to Lesotho. 40 people trained under TOT Program Mentor assigned by UNODC for 18 months | This action plan is continued to be implemented. Further improvement to be made after completing the NRA. |
| Build the capacity of law enforcement agencies to undertake proper financial investigations including the application of parallel and special investigation techniques. | The Authorities indicated that this aspect is also addressed by UNODC mentorship programme extended to Lesotho. 40 people trained under TOT Program Mentor assigned by UNODC for 18 months | This action plan is ongoing. Further progress to be made after completing the NRA. |
| Set up proper and efficient case management system which will also assist the Authorities to collect and maintain comprehensive statistics on AML/CFT matters. | The Authorities indicated that the Ministry of Law has undertaken to address case management system at National Level. The first workshop, organised by Ministry of Law, was conducted in May 2018 for stakeholders as a first step to roll out this process. Budget had been allocated. | This action plan is ongoing |
| Put in place an effective framework for monitoring | Though the Authorities indicated that Money | Progress is noted and this action |

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|---|--|---|
| <p>and supervising the NPO sector on counter financing of terrorism.</p> | <p>Laundering and Proceeds of Crime Regulations 2017 addresses deficiency identified in this regard, the Regulations do not comprehensively cover to regulate the sector to protect it against abuse from terrorist financiers. The Authorities should take necessary measures to ensure that the NPO sector in the Kingdom of Lesotho implement effective counter-financing of terrorism programmes in a manner consistent with international standards.</p> <p>No change</p> | <p>plan is ongoing and Authorities should be encouraged to implement the full requirements of SRVIII.</p> |
| <p>Undertake national risk assessment (NRA) including sectoral risk assessments and risk-based supervision of all reporting entities.</p> | <p>The NRA was completed in June 2018 and approved by Cabinet. Action plan for implementation of the NRA has also been completed</p> | <p>This action plan is largely addressed.</p> |

II. CONCLUSION

12. During the Task Force meeting of April 2018, Lesotho had amended the Money Laundering and Proceeds of Crime (Amendment) Act, 2008 as well as the Penal Code and issued the Money Laundering and Proceeds of Crime Regulations in June 2017 for implementing the requirements under the MLPC Act (as amended) and UNSC resolutions 1267 and 1373. It has also enacted both the Prevention and Suppression of Terrorism and the Mutual Legal Assistance in Criminal Matters Acts which are in force and in effect since

January 2018. The Acts and regulations address most of recommended actions in terms of technical compliance under the Mutual Evaluation Report.

13. In view of the amendment to the MLPC Act to reduce the threshold the Authorities advised that it was not necessary for the Authorities to amend the Internal Security (Arms and Ammunition) Act and Penal Code.

III. RECOMMENDATIONS

14. The Review group recommends the following:

- i. Lesotho should be encouraged to enact and implement the remaining outstanding legal instruments.
- ii. Lesotho should continue reporting bi-annually on the remaining outstanding issues including the areas the Authorities were contending had been addressed but had not been considered by the Review Group. The next report should be submitted two months before the next Task Force of Senior Officials meeting in April 2019.
- iii. The ECG on the way forward on the handling of the High Level Mission recommendation regarding the location of the FIU.