

Anti-money laundering and counter-terrorist financing measures

Botswana

8th Enhanced Follow-Up Report &
6th Technical Compliance Rating

September 2022

Follow-up Report





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

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Botswana: 8th FOLLOW-UP REPORT & 6th REQUEST FOR RE-RATING

I. INTRODUCTION

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

II. KEY FINDINGS OF THE MUTUAL EVALUATION REPORT

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

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

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

Table 1. Technical compliance ratings³, May 2017

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

III. OVERVIEW OF PROGRESS IN TECHNICAL COMPLIANCE

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

4. Since the adoption of its MER in May 2017, Botswana has taken measures aimed at addressing the technical compliance deficiencies identified in its MER. As a result of this progress, 28 Recommendations were re-rated (upgraded) to LC and C as highlighted in the Table below.

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

5. This section of the report summarises further progress made by Botswana to improve its technical compliance by addressing the TC deficiencies identified in its MER.

6. ESAAMLG welcomes the steps that Botswana has taken to improve its technical compliance with Recommendations 19, 25, and 26. Following this progress, Botswana has been re-rated largely compliant with R. 19, R.25, and R.26. The rating of NC for R.8, as well as, PC rating for Recommendations 15, 24, 28 and 35 are retained.

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

3.1.1. Recommendation 8 - Non-Profit Organisations (Originally rated NC proposed to retain NC)

7. The main shortcomings identified in the first FUR were that all the measures regulating the activities of NPOs in Botswana under the Societies Act were not for purposes of dealing with the possible exposure of the NPO sector to abuse for TF activities and identification of which NPOs were at risk to be exposed to TF and the kind of measures which could be taken to mitigate the TF risks faced by such NPOs. Also, the requirements under the Societies Act were not being used by the Registrar of Societies to assist the Office to understand the possible exposure of the sector to the TF risk. No awareness was being done on TF risks to the NPO sector.
8. Since the adoption of the MER Botswana has amended the Financial Institutions Act 2022 to in order to introduce measures intended to regulate activities of the NPOs in line with FATF requirements. Among others, the revised law mandates NPO supervisors to undertake the risk assessment of the NPO sector, come up with measures to mitigate the identified risks, requires NPOs to conduct their finances through formal financial institutions and provides for sanctions in the event of breach of obligations by the NPOs.
9. It has also been noted that Botswana conducted a sectoral risk assessment of NPO (Botswana Risk Assessment Report for Non-Profit Organisation, February 2020) Although authorities shared the Risk Assessment Report, the submission by the authorities to address criterion 8.1(a) does not indicate the source of information that authorities in Botswana used to identify the features, and types of NPOs which by virtue of their activities or characteristics are likely to be at risk of terrorist financing abuse. Due to lack of information provided by authorities in the analytical tool, reviewers could not determine whether Botswana has identified a subset of organisations that fall within the FATF's definition of NPO and the extent to which they are likely to be at risk of terrorist financing abuse. It is noted that the NPO Risk Assessment Report has identified the nature of threats that may be posed by terrorist entities. Nevertheless, Botswana's NPO Risk Assessment Report is limited in its scope, as it has only considered the risk of TF abuse of NPOs that arises from using the banking sector. As a result, this falls short of meeting the requirements of criterion 8.1(b). Save the Financial Intelligence Act 2022, Botswana has not indicated which other laws or regulations such as Society's Act have been reviewed to address requirements of c.8.1(c). Furthermore, section 49(3) of the FI Act 2022 is focused on all NPOs which may be exposed to both ML and TF but falls short of targeting the subset of the NPO sector that may be abused for terrorism financing.
10. There is no evidence that Botswana can periodically or has reassessed the NPO sector by reviewing new information on the sector's potential vulnerabilities to terrorist activities to ensure effective implementation of measures. The identified deficiencies in this criterion are major. **Hence criterion 8.1 is not met.**

11. In regards to 8.2, Botswana has not indicated whether there is a clear policy to promote accountability, integrity and public confidence in the administration and management of the NOP sector. There is a legal obligation to conduct outreach and educational programmes in Botswana (section 49(3) of the FI Act 2022). It is noted in c.8.1(c) that the outreach has been conducted to raise and enhance awareness, but from the materials provided by Botswana there is no indication that the high-level meeting of Christian churches held on 19 February 2022 and the AML/CFT Awareness Training for Non-Profit Organisation by the Registrar of Societies on 19th February 2022 targeted the high risk NPOs nor the donor community.
12. There is a legal obligation for authorities to work with NPOs to develop and refine best practices to address commission of a financial offence risks and vulnerabilities, to protect such a non-profit organization from financial offence abuse. However, reviewers could not determine how collaboration during the risk assessment enabled supervisory authority to work with NPOs to develop and refine best practices to address terrorist financing risk and vulnerabilities and thus protect them from terrorist financing abuse as there is no evidence provided in this FUR nor a relevant section to this effect in the Risk Assessment Report.
13. NPOs are mandated by law to conduct transactions through regulated financial channels, wherever feasible. There is no evidence that steps have been taken to encourage all NPOs to conduct transactions through formal channels, but the discretion to determine what is feasible has been left to the regulated sector (section 52(a)(vii) of the Financial Intelligence Act, 2022). **Hence c.8.2 is partly met.**
14. Botswana further amended the FI Act to introduce section 49(3)(c) of FI Act 2022 which puts emphasis on conducting targeted supervision and monitoring of NPO at the risk of commission of a financial offence. The obligation is thus, cast in broad terms, since financial offence includes not only TF but ML and associated predicate offences. There is no indication that steps have been taken by supervisors to demonstrate that risk-based measures apply to NPOs at the risk of terrorist financing abuse. **Hence c.8.3 is partly met.**
15. In regards to c.8.4, it is noted that, save what is prescribed by the FI Act, there is no evidence that appropriate authorities have monitored the compliance of NPOs with the requirements of this Recommendation including risk-based measures applied under criterion 8.3. Botswana is able to impose sanctions under section 51(4) of the Financial Intelligence Act 2022 however, the range of sanctions is limited to administrative fines, deregistration and/or delicensing. Moreover, the section has not prescribed sanctions that may be imposed on persons acting on behalf of these NPOs. (See also section 9(1) of the Societies Act 2022). **Hence c.8.4 is partly met.**
16. In regards to c.8.5 Botswana amended its Counter-Terrorism Act to enhance co-operation, co-ordination and information-sharing among others. Section 41(m) of the Counter Terrorism Act 2014, as amended, is limited in scope as coordination and

information sharing is only intended to be among investigating authorities and for purposes of terrorism cases not terrorist financing. On the other hand, the MOU signed by appropriate authorities, though not a binding document enables the sharing of information by appropriate authorities that hold relevant information on NPOs. The MOU also focuses on the MOU being intended to share information with the Registrar of Societies and not among appropriate authorities or organisations that hold relevant information on NPOs. While the role of BPS to investigate TF is noted, there is no evidence that Botswana has investigative expertise and capability to examine those NPOs suspected of either being exploited by or actively supporting terrorist activities or organisations.

17. Moreover, it was noted that section 51(1)(a) (ii) of FI Act 2022 does not empower competent authorities in Botswana to have full access to information on the administration and management of particular NPO which information may be obtained in the course of an investigation. What the section purports to enable, is that NPO should maintain proper record keeping of financial statements and issue annual financial statement. which should be swiftly availed to a competent authority upon appropriate authority. This is just but part of the requirement of this sub-criterion.
18. There is also no provision made about accessing programmatic information in the course of investigation as section 8 of the Society Act does not address the requirement of this sub-criterion. However, Botswana can use its general investigative power in this regard, though Botswana has not alluded to this in its submission. Furthermore, mechanisms alluded to in addressing c.8.5(d) are not relevant for prompting sharing of information with competent authorities, in order to take preventive or investigative action as envisaged in this criterion, but appear to address requirements of Recommendation 6. **Hence c.8.5 is partly met.**
19. In regards to c.8.6, it was noted that Botswana uses the office of DPP as appropriate point of contact but this appears to be limited to where a criminal proceeding or investigation has commenced in a foreign country which would trigger the DPP to respond. There are no other appropriate point of contact (such as the Registrar of Societies) identified, to respond to international requests for information where a particular NPO is suspected of terrorist financing or involvement in other forms of terrorist support in particular, where this may not require formal procedures. **Hence c.8.6 is partly met.**

Weighting and Conclusion

20. Botswana has reviewed the Financial Intelligence Act in order to enable the NPO sector to comply with the AML/CFT measures of the country. Whereas Botswana has demonstrated that it conducted a risk assessment of the NPO sector the submission made fall short of indicating the source of information that authorities in Botswana used to identify the features, and types of NPOs which by virtue of their activities or characteristics are likely to be at risk of terrorist financing abuse. Thus, reviewers

could not determine whether Botswana has identified a subset of organisations that fall within the FATF's definition of NPO and the extent to which they are likely to be at risk of terrorist financing abuse. The NPO Risk Assessment Report has identified the nature of threats that may be posed by terrorist entities but falls short to assess how terrorist actors can abuse or abuse the NPOs through using the banking sector. It is also noted that section 49(3) of the Financial Intelligence Act 2022 is focused on all NPOs which may be exposed to both ML and TF but falls short of targeting the subset of the NPO sector that may be abused for terrorism financing. There is no evidence that Botswana can periodically or has reassessed the NPO sector by reviewing new information on the sector's potential vulnerabilities to terrorist activities to ensure effective implementation of measures. Botswana has not indicated whether there is a clear policy to promote accountability, integrity and public confidence in the administration and management of the NOP sector.

21. There is a legal obligation to conduct outreach and educational programmes in Botswana (section 49(3) of the FI Act 2022) but the outreach or awareness made so far do not show that high risk NPOs or donor community have been targeted. Furthermore, there is no indication that steps have been taken by supervisors to demonstrate that risk-based measures have been applied to NPOs at the risk of terrorist financing abuse. Save what is prescribed by the Financial Intelligence Act 2022, there is no evidence that appropriate authorities have monitored the compliance of NPOs with the requirements of this Recommendation including risk-based measures applied under criterion 8.3.
22. Botswana is able to impose sanctions under section 51(4) of the financial Intelligence Act 2022 however, the range of sanctions is limited to an administrative fine, deregistration and/or delicensing. Moreover, the section has not prescribed sanctions that may be imposed on persons acting on behalf of these NPOs.
23. Submissions made by the Authorities fall short of demonstrating that Botswana police have investigative expertise and capability to examine those NPOs suspected of either being exploited by or actively supporting terrorist activities or organisations. Furthermore, Botswana has not shared a mechanism it uses to target a particular NPO that may fall within the scope of the three itemised scenarios. On the other hand, the legal provisions provided do not target a particular NPO but are general for persons or entities that may fulfill the criteria for national listing.
24. Furthermore, the Registrar of Societies (NPO) has not been identified as one of the competent authorities to respond to international requests for information where a particular NPO is suspected of terrorist financing or involvement in other forms of terrorist support in particular where this may not require formal procedures. While positive developments have been noted to address outstanding deficiencies in Recommendation 8, further shortcomings have been noted and in particular, more weight has been given on the deficiency in criterion 8.1. The deficiencies are therefore major. **Thus, reviewers do not recommend an upgrade for Recommendation 8.**

3.1.2. Recommendation 15- New Technologies (Rated from NC to PC under the 1st FUR – propose to retain the PC rating)

25. The main shortcomings were that the authorities had not demonstrated whether Botswana as a country and financial institutions operating in Botswana had identified and assessed the ML/TF risks that might arise in relation to the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products. Botswana had also not addressed the new requirements of Recommendation 15.
26. Since its 4th FUR Botswana has enacted Virtual Assets Act, 2022 and Financial Intelligence Act 2022 that introduce measures to address VAs and VASPs in line with the requirements of c.15.3-15.11.
27. Botswana has demonstrated new instances where FIs operating in Botswana have identified and assessed the ML/TF risks that might arise in relation to the new products and new business practices. However, Botswana, as a country, has not identified and assessed the ML/TF risks related to the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products. **Hence 15.1 is partly met.**
28. Botswana has not identified and assessed the money laundering and terrorist financing risks emerging from virtual asset activities and the activities or operations of VASPs nor has it applied a risk-based approach on ML/TF risks related to VA activities or operations or activities of VASPs. There is a legal requirement on VASPs (as specified parties) to assess the ML/TF risk and to manage and mitigate the identified risk of commission of financial offences. However, section 13 (1) (a) -(c) of the Financial Intelligence Act, 2022 does not factor in *customers, countries or geographic areas* and falls short of explicitly including requirements of criterion 1.10 (a)-(d). Moreover, the FUR does not indicate how criterion 1.11 has been addressed in c.15.3(c). **Hence 15.3 is not met.**
29. **VASPs** are required to be licensed in Botswana whether they are legal or natural persons. (Section 9 of the Virtual Assets Act 2022). Botswana requires competent authorities to take the necessary legal or regulatory measures to prevent criminals from holding, or being the beneficial owner of, or controlling interest, or holding a management function in, a VASP (as a specified entity), [section 49(1)(a) of Financial Intelligence Centre Act 2022]. However, criminal associates are not legally barred by this requirement. **Hence, 15.4 is mostly met.**
30. There is no evidence that Botswana has taken action to identify natural or legal persons that carry out VASPs activities without the requisite licence and as a result, no sanctions have been applied in terms of section 31 of the Virtual Assets Act 2022. **Hence 15.5 is not met.**

31. NABFIRA is designated to regulate and supervise VASPs (as specified parties) in terms of section 49(1)(b) of the Financial Intelligence Act, 2022. The section seeks to ensure that VASPs are subject to adequate regulation and risk-based supervision or monitoring by a competent authority, including systems for ensuring their compliance with national AML/CFT requirements. But there is no evidence that a risk-based supervision or monitoring by NABFIRA, including systems for ensuring VASPs' compliance with national AML/CFT requirements has been performed in line with requirements of c.26.6. Furthermore, deficiencies identified in c.15.3 can hinder the implementation of risk-based supervision in c.15.6. **Hence 15.6 is partly met.**
32. There is no evidence that competent authorities and supervisors have established guidelines and have provided feedback to VASPs in order to enable them apply AML/CFT/CPF measures. **Hence 15.7 is not met.**
33. The sanctions mentioned in sections 46, 48 and 49, are noted. However, the following are shortcomings:
- (a) The scope of section 46(1) is limited to sanctioning a specified party (VASP) to the extent that the breach would be with regards to reporting obligation in section 45 of the Financial Intelligence Act 2022. Failure by VASPs to comply with obligations in Recommendations 10-23 is not covered in the Act;
 - (b) The sanction in section 48 of the FI Act is relevant for c.15.8(b); and
 - (c) There are no sanctions in section 49(2)(a).
34. Deficiencies noted in Recommendation 35 also have a cascading effect on 15.8(a). On the other hand, sanctions applicable to senior management are proportionate and dissuasive (section 48 of the Financial Intelligence Act 2022). **Hence c.15.8 is partly met.**
35. The FIA Act 2022, in Schedule 1 has been amended to include a VASP as a specified party subject to ML/TF prevention measures of Rec 9 to 21 though there are limitations noted. The minimum threshold to conduct CDD for specified party (VASP) is P10,000 (USD 837) and this is within the confines of the Recommendation 10 threshold. However, there was no information in the AT that a financial institution includes a VASP under the Financial Intelligence Act. This therefore means there is no obligations on VASPs to legally comply with the requirements of Recommendation 16 to the extent of being excluded under section 42 of the Financial Intelligence Act 2022. **Hence 15.9 is partly met.**
36. With respect to c.15.10, it was noted that there is a legal requirement to ensure that specified parties and accountable institutions comply with targeted financial sanctions measures in criteria 6.5(d), 6.5(e), 6.6(g), 7.2(d), 7.2(e) and 7.4(d). (Regulations 10(3), 11(5) and 15(4) of Financial Intelligence (Implementation of United Nations Security Council Resolutions) Regulations, 2022.

37. Based on the above observation it was noted that in respect of c.7.3, supervisors do not have an express obligation to monitor and ensure compliance by specified entities with proliferation financing measures, this is considered as part of the broader supervisory roles under the Financial Intelligence Act 2022. Thus, deficiencies noted in Recommendation 35 in respect of imposing a range of sanctions for non-compliance with the Act or regulations made under the Act have a cascading effect on c.15.10. **Hence 15.10 is mostly met.**
38. Botswana is able to rapidly provide the widest possible range of international cooperation in relation to money laundering, predicate offences, and terrorist financing relating to virtual assets, as noted in the analysis made in respect of Recommendations 36-40 and given subsequent changes to its legal and institutional frameworks to address outstanding deficiencies in R.37, 39 and 40. Thus measures applicable in Recommendation 36-40 apply in respect of c.15.11. In particular NBFIRA has the legal basis to exchange financial services information with similar agencies outside Botswana. **Hence c.15.11 is met.**

Weighting and Conclusion

39. Botswana has made positive developments in addressing deficiencies in Recommendation 15. In this regard, Botswana amended the Financial Intelligence Act to comprehensively deal with new technologies and products that may be introduced by the FIs. Moreover, Botswana enacted the Virtual Assets Act 2022 to deal with virtual assets and virtual assets service providers. However, the legal and institutional frameworks for VASPs are still at the nascent stage, and therefore, the country has not yet assessed the risks inherent with VASPs nor has it applied a risk-based approach based on the identified risks. There have not been any VASPs identified and therefore no sanctions have been applied so far, even for those that may be operating without a license. The shortcomings therefore, do not warrant a re-rating.
40. **Reviewers therefore, recommend that the PC rating for Recommendation 15 should be retained.**

3.1.3. Recommendation 19- Higher Risk Countries (Originally rated with NC and was rerated to PC – proposed to upgrade to LC)

41. The main shortcomings under the MER/FUR were that the provisions of the Financial Intelligence Act were silent on enabling Botswana to apply counter-measures proportionate to the risks when called upon to do so by the FATF or independently of any call by the FATF to do so. Apart from what is communicated to FIs from FATF through the website Botswana has not indicated that there are also measures in place to ensure that financial institutions are advised of concerns about weaknesses in AML/CFT systems of other countries.

42. Subsequent to its 4th FUR Botswana enacted the new Financial Intelligence Act, 2022 and the country is now enabled to apply counter-measures proportionate to the risks when called upon to do so by the FATF or independently of any call by the FATF to do so. Furthermore, this Act empowers the Financial Intelligence Agency to advise specified parties and accountable institutions on the concerns about weaknesses in AM/CFT/CPF of other countries. However, Botswana has not indicated the manner in which this may be communicated. **Hence 19.3 is mostly met.**

Weighting and Conclusion

43. Botswana meets the requirements of Recommendation 19 except that the country has not yet prescribed the manner in which the advice, on concerns about weaknesses in the anti-money laundering and counter financing of terrorism systems of other countries, shall be relayed to specified parties.
44. On the basis of the foregoing, **Reviewers recommend that Recommendation 19 be upgraded from PC rating to LC.**

3.1.4. Recommendation 24- Transparency and Beneficial Ownership of Legal Persons (Originally rated with PC – PC rating is proposed to be retained)

45. The main shortcomings under the MER/FUR were that Botswana had not done a ML/TF risk assessment to determine the kind of risks associated with the legal persons created in Botswana. The companies Act did not cater for beneficial ownership information. It was not clear how the issue of bearer shares had been dealt away with. There were no provisions requiring appointees to disclose the identity of their nominator or ultimate beneficiary to the company or to any relevant registry, nor is there a requirement for them to be licensed or any other mechanisms identified to regulate such appointments. the sanctions in the Companies Act had not been enhanced after the adoption of the MER and therefore they were not proportionate. There were no legal provisions expressly providing LEAs with powers to obtain beneficial ownership information on behalf of their foreign counterparts. There was no formal framework for monitoring the quality of assistance requested from other countries on basic or beneficial ownership information.
46. Subsequent to its first FUR, Botswana conducted a sectoral risk assessment of the legal persons and amended the Companies Act in February 2022 to give more powers to competent authorities in accessing information held by companies created in Botswana.
47. The sectoral risk assessment on legal persons is titled “The ML & TF Risk Assessment for Legal Persons and Arrangements in Botswana”. It appears to have been completed in February 2020 and approved in December 2021. In the report, it is noted that when conducting the risk assessment, the Working Group relied mostly on case studies from Law Enforcement Agencies (LEAs) and Financial Intelligence Agency as well as information from one-on-one discussions with banks and legal professionals as well as, expert judgment from CIPA, BoB and NBFIRA to conduct the assessment. The

sectoral risk assessment report cited three (3) case examples on the misuse of legal persons in Botswana. The overall rating for TF was considered low as opposed to medium high for ML. Apart from partnerships which are creatures of common law and companies or public corporations created the report does not appear to have assessed misuse of other legal persons such as foundations, or associations that are not engaged in business. **Hence c.24.2 is partly met.**

48. In regards to c.24.8 Botswana introduced amendments in the Companies Act (Amendment), 2022, where section 6 of the Companies (Amendment) Act 2022 now require a director who is a resident in Botswana to be accountable to any competent authority for providing all basic and beneficial ownership information and further assistance to the authorities. However, there is no explicit requirement in section 6 of the Companies (Amendment) Act 2022 on whether a secretary of the company or accountant who are also mentioned in the Act are required to be resident in Botswana to provide the information as no further information was provided in this regard. **Hence 24.8 is mostly met.**
49. In regards to c.24.10, Botswana amended section 11 of the Companies Act and introduced a new provision where in section 3 of the Companies (Amendment) Act 2022 competent authorities shall be readily allowed access to basic and beneficial owner information held by the Registrar. It is however, not explicitly stated how timely this information can be obtained by law enforcement from other relevant parties other than the Registrar. **Hence, c.24.10 is Mostly met.**
50. Botswana has not provided a copy of the Collective Investment Undertakings (Amendment) Act 2021 nor the relevant section addressing the deficiency. Reviewers could therefore not determine how this deficiency has been addressed. **Hence, c.24.11 is not met.**
51. In respect of c.24.12 Botswana amended its Companies Act and in its section 21, the Companies (Amendment) Act 2022 requires nominee shareholders or directors to disclose the identity of their nominator to the Director for inclusion in the register. (). The word “Director” is not defined and reviewers could not determine whether it implies that the disclosure is made to the company director or some other Director. **Hence, 24.12 is partly met.**
52. It was noted in the previous FURs that under section 492 of the Companies Act 2007 Botswana had confined imposition of sanctions to criminal penalties only. Upon conviction of a person fines range from P10,000 (USD797) to P200,000 (USD15938) and a term of imprisonment for 5 years in the case of a natural person. The amended Companies Act 2022 has complemented the sanction regime by introducing administrative sanctions whose penalty should be a fine not exceeding P250,000 (USD19,920) or deregistration of a company. The violations prescribed in Section 25 of the Companies (Amendment) Act, 2022 address deficiencies that were outstanding

in the MER under this criterion. Thus, the sanctions as they stand currently are proportionate and dissuasive. **Hence, c.24.13 is met.**

53. In respect of c.24.14 it was noted that although CIPA has the website which is public and can be accessed by foreign competent authorities, Botswana has not guided reviewers on how the website can facilitate access by competent foreign authorities to basic information held by the companies registry. It is also noted that there is no express provision for CIPA to exchange information on shareholders. Notwithstanding, the above deficiencies it is considered that Botswana can generally provide international co-operation in relation to basic and beneficial ownership information, on the basis set out in Recommendations 37 and 40. **Hence, 24.14 is Mostly met.**
54. In regards to 24.15, Botswana has not indicated a formal framework or mechanism on how it should monitor and/or monitors the quality of assistance it receives from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad. There has been no change since the MER. **Hence c.24.15 is partly met.**

Weighting and Conclusion

55. Although Botswana has undertaken a risk assessment on legal persons, the Risk Assessment report on has a very limited information/analysis on whether the assessment covered associated ML/TF all types of legal persons that can be created and operate in Botswana.
56. In regards to bearer shares there was no sufficient information to determine how the issue of bearer shares has been dealt away with.
57. Moreover, Botswana has not indicated a formal framework or mechanism on how it should monitor and/or monitors the quality of assistance it receives from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad. Based on the foregoing, these deficiencies are moderate.
58. Reviewers **thus, recommend that the rating of PC for Recommendation 24 be retained.**

3.1.5. Recommendation 25- Transparency and Beneficial Ownership of Legal Arrangements (Originally rated with PC – propose to upgrade to LC)

59. The main shortcomings under the MER/FUR were that there was no requirement to keep, obtain and keep accurate and up-to-date information on any natural person exercising ultimate effective control over the trust. The Trust Property Control Act did not specify whether Botswana requires trustees to also keep basic information of the other regulated agents of trust and service providers to the trust including investment

advisors or managers, accountants, and tax advisors. The scope of section 16A of the Trust Property Control Act does not include all the information required under c.25.1.

60. Subsequent to its 5th FUR, Botswana amended the Financial Intelligence Act to designate trusts as accountable institutions for the purpose of complying with AML/CFT obligations. Section 51(1)(b) of the Financial Intelligence Act 2022 requires trustees of a trust, to obtain and hold adequate, accurate and current information on the identity of — (i) the settlor, (ii) a trustee, (iii) a protector, if any, (iv) a beneficiary of a trust, a class of beneficiaries or any other natural person exercising ultimate effective control over a trust, and (v) other regulated agents of, and service providers to the trust, including investment advisors or managers, donor, accountants and tax advisors and that in terms of section 51(3) of this Act, the requirement is to keep record of information obtained herein for 20 years. However, Botswana has not provided further information and/or evidence on whether “information on the identity” includes basic information of other regulated agents. **Hence, c.25.1 mostly met.**
61. The same section 51(1)(b) of the Financial Intelligence Act 2022 requires that information held pursuant to this Recommendation is adequate, accurate and current, but there is no requirement to have it updated on a timely basis. **Hence c.25.2 is mostly met.**
62. Furthermore, the Financial Intelligence Act 2022 introduced section 51. (4) which ensures that trustees as accountable institutions in Botswana are legally liable for any failure to perform the duties relevant to meeting their obligations. Administrative sanctions are proportionate and dissuasive for failing to comply. However, deficiencies identified in c.25.1 and c.25.2 may have an impact in holding trustees liable for failure to comply with some requirements under this Recommendation. **Hence, c.25.7 is mostly met.**

Weighting and Conclusion

63. Botswana has addressed the outstanding deficiencies in R25 but the Financial Intelligence Act 2022 has not been explicit as to whether “information on the identity” includes basic information of other regulated agents. The Act does not require information to be updated on a timely basis although there is a requirement to keep it current. This shortcoming may result in some trustees to escaping consequences of their liability to comply with this Recommendation. However, Botswana has already been rated compliant or mostly compliant with almost all the criteria in this Recommendation therefore, the forgoing identified are minor and as such the overall rating warrants an upgrade **from PC to LC for Recommendation 25.**

3.1.6. Recommendation 26- Regulation and Supervision of Financial Institutions (Originally rated NC and was rerated to PC- proposed to be upgraded to LC)

64. The outstanding deficiency on R.26 was that there was no requirement for supervisors to review the risk profiles at regular intervals and also when there were major events or developments that might alter the ML/TF risk relevant to the FIs.

65. Subsequent to the 5th FUR Botswana amended the Financial Institutions Act to impose a legal obligation on a supervisory authority to review the assessment of the money-laundering terrorist financing and financing of proliferation risk profile of a specified party or accountable institution, including risks of non-compliance periodically, and when there are major events or developments in the management and operations of a specified party or accountable institution. However, Botswana has not indicated how each of the supervisory authorities reviews the assessment of the ML/TF risk profile of a specified party or accountable institution in order to ensure the implementation of this provision. **Hence, c.26.6 is mostly met.**

Weighting and Conclusion

66. Botswana has addressed the outstanding deficiencies in R26 but deficiencies identified in c.26.6 are minor and as such the overall ratings may warrant **an upgrade from PC to LC.**

3.1.7. Recommendation 28- Regulation and Supervision of DNFBPs (Originally rated NC and was rerated to PC- no rerating is proposed)

67. The outstanding deficiencies were that there were no requirements for supervisors to have systems in place to monitor AML/CFT compliance of reporting entities. The law still fell short of meeting the requirements of criterion 28.4 for real estate agents. Botswana had not developed and implemented risk-based supervision of DNFBP sectors/institutions. While some DNFBP supervisors indicated that they conducted ML/TF risk assessment, the authorities did not provide the reports. For this reason, it was not possible to determine whether they risk profiled and ranked the entities to indicate which ones were of high ML risk and required increased focus. So, it was not possible to determine that supervision of DNFBPs was performed taking into account ML/TF risk profile of DNFBPs and that there was a degree of discretion allowed to them under the risk-based approach, when assessing the adequacy of the AML/CFT internal controls, policies and procedures of DNFBPs are taken into account.
68. Subsequent to the 5th FUR Botswana amended the Financial Intelligence Act which requires specified parties to be subject to systems for monitoring compliance with AML/CFT requirements of the Financial Intelligence Act 2022. In terms of section 2 of the Financial Intelligence Act 2022 the specified parties means persons listed in Schedule I which includes all categories of DNFBPs as defined in the FATF general glossary. **Hence, 28.1 is met.**
69. It has also been noted that the new Financial Intelligence Act 2022 requires competent authorities to take the necessary legal or regulatory measures to prevent criminals from holding, or being the beneficial owner of, or controlling interest, or holding a management function in, a real estate profession (which has been lacking in this sector in the previous FURs). [section 49(1)(a) of Financial Intelligence Centre Act 2022]. However, criminal associates in terms of section 49(1)(a) of the FI Act 2022 are not

legally barred by this requirement and again deficiencies identified in Recommendation 35 to deal with failure to comply with AML/CFT requirements have a cascading effect on c.28.4. **Hence, 28.4 is partly met.**

70. The new Financial Intelligence Act 2022 imposes a legal obligation on supervisory authority to conduct risk-based supervision of anti-money laundering, counter financing of an act of terrorism and counter-financing of proliferation and counter illicit dealing in arms or ammunition on a specified party (section 49(1)(e) of the Financial Intelligence Act 2022). Although there is a legal obligation on a supervisor to ensure the frequency and intensity of on-site and off-site AML/CFT supervision, the legal obligation does not require supervision of DNFBPs to be on the basis of their understanding of ML/TF risks. There is also no evidence that the supervisor has to take into consideration the characteristics of the DNFBPs, in particular their diversity and number.
71. Based on the information provided by Botswana in the current FUR there is no evidence that Botswana has performed supervision of DNFBPs on a risk-sensitive basis. The following documents were perused (16.1, 16.6, 16.8 and 17.0) and they do not bear evidence of risk-based supervision performed. There was no document submitted labeled 16.9. There was also no supporting document to demonstrate how the Master has performed the supervision on the two Trust Service Providers. **Hence 28.5 is partly met.**

Weighting and conclusion

72. Botswana meets the requirements of c.28.1-c28.3 but deficiencies identified in c.28.4-c.28.5 weigh heavily on the overall rating of 28.
- 73. Thus, it is recommended that the rating of PC should be retained for R.28.**

3.1.8. Recommendation 35- Sanctions (Originally rated NC and was rerated to PC- no proposed upgrade)

74. The outstanding deficiencies were that the legal and regulatory framework for implementation of requirements of R.6 did not provide for sanctions for non-compliance with the obligation to freeze funds without delay. Botswana has not amended its Counter-Terrorism Act to introduce a specific sanction for this violation. This deficiency remains outstanding. In relation to Recommendation 8, Botswana had not provided information which could assist in determining whether or not NPOs were liable to effective, proportionate, and dissuasive sanctions for violations of their obligations. Sanctions applicable against a reporting entity were administrative in nature as they were imposed by a supervisory authority. Thus, the identified deficiency on criminal sanctions had not been addressed.
75. Subsequent to its 5th FUR Botswana amended the Financial Intelligence Act to enhance the sanctions regime in particular targeting sanctions that may be imposed on targeted financial sanctions in Recommendation 6 as well as sanctions that may be imposed in where there are breaches in the NPO sector. While reviewers note a general provision

which empowers courts and supervisors to impose penalties where there is a contravention of the provisions of the regulations, but a penalty would not have been provided, Botswana has not guided or identified the provisions of the regulations where a penalty has not been provided but for which a penalty should be imposed should there be a non-compliance with the obligations relevant for imposing measures under Recommendation 6 and 8-23.

76. Furthermore, it is common cause that measures under Recommendation 6 may complement criminal proceedings against a designated person or entity, and be adopted by a competent authority or a court, but are not conditional upon the existence of such proceedings⁴. But the penalty imposed in section 5 (1) of the Counter-Terrorism Act 2014 (as amended) is conditional upon criminal proceedings being concluded to determine the guilt or otherwise of committing the offence in the regulations. As such this is inconsistent with the primary objective of making implementation of targeted financial sanctions to be preventive in nature.
77. Although Botswana imposes an administrative fine not exceeding P100, 000.00 for failure to file a return report under the regulations, the phrase “return report” is not defined to enable reviewers to determine how it fits the requirements of the FATF Recommendation (regulation 26 of Financial Intelligence (Implementation of United Nations Security Council Resolutions) Regulations, 2022 and section 63(3) of the Financial Intelligence Act, 2022). In regards to Recommendation 8 deficiencies identified in c.8.4(b) are applicable in 35.1. **Hence, c.35.1 is partly met.**
78. Directors and senior management of specified parties are liable to be sanctioned for failure to comply with AML/CFT/CPF requirement. The maximum amount of penalty that may be imposed in P250,000 (USD19,919) or maximum imprisonment term of 5 years. These sanctions are proportionate and dissuasive. Hence, c.35.2 is met.

Weighting and conclusion

79. Botswana has revised its Financial Intelligence Act to enhance its AML/CFT/CPF sanction regime. Although this is a positive development there are still shortcomings identified. It is noted for instance that the Counter-Terrorism Act 2014, as amended, is applicable to criminal proceedings, but Botswana uses these provisions when imposing sanctions that have to be applicable to preventive measures of Recommendation 6 hence this approach is inconsistent with the spirit behind preventive nature of measures in Recommendation 6.. While Botswana is able to impose sanctions against NPOs in section 51(4) of the Financial Intelligence Act 2022 the range of sanctions is limited to an administrative fine, deregistration and/or delicensing. Other appropriate and dissuasive sanctions such as freezing of accounts and removal of trustees have not been

⁴ FATF Recommendations 2012, (updated October 2021) Section A (2) of IN6

catered to be applicable to be applicable to NPOs that breach the obligations, The shortcomings are therefore, moderate for Recommendation 35. It is **recommended that PC rating of Recommendation 35 be retained.**

IV. CONCLUSION

80. Overall, Botswana has made progress in addressing deficiencies of its technical compliance identified in its MER and FURs to justify re-rating of R. 8 (initially rated NC) to partially compliant as well as, R.19 (initially rated PC), R.25 (initially rated PC) and R.26 (initially rated PC) to Largely Compliant. Deficiencies outstanding in Recommendations 15, 24, 28 and 35, do not warrant an upgrade.

81. Considering the progress made by Botswana since the adoption of its MER, its technical compliance with the FATF Recommendations has been revised as shown in Table 4.1 below.

Table 4.1. Technical compliance ratings, October 2020

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

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

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