Anti-money laundering and counter-terrorist financing measures

Eswatini

Mutual Evaluation Report

June 2022

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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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MUTUAL EVALUATION REPORT

of

Kingdom of Eswatini

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Executive Summary

1. This report summarises the AML/CFT measures in place in Eswatini as at the date of the onsite visit, [24 May – 4 June 2021]. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Eswatini's AML/CFT system, and provides recommendations on how the system could be strengthened.

Key Findings

a) Eswatini has demonstrated low level of ML/TF risk understanding owing to the recent nature of the NRA commenced in 2016. Since the NRA was not yet approved by Cabinet as at the onsite visit, the results have not been shared with the public and private sectors. In addition, Eswatini has demonstrated an underdeveloped risk understanding specific to legal persons, legal arrangements and NPOs.
b) The National AML/CFT Strategic Plan 2018-2022 was not developed and implemented based on any risk understanding. As a result, the authorities could not demonstrate that their objectives and priorities were aligned to the existing risks in the country since the draft NRA results. While Eswatini has a fairly strong domestic coordination, there is no evidence that such coordination is targeted towards combating high ML/TF risks and priority areas.
c) While the quality of EFIU's financial intelligence is considered reasonably good and has a potential to support the operational needs of LEAs, it was used by the LEAs more for pursuing predicate offences than ML/TF. The EFIU enjoys a wider access to information held by competent authorities, though some challenges were experienced at some agencies. There has been no strategic analysis produced to assist LEAs to identify and target high-risk activities.
d) LEAs have limited access to a wide range of information and do not have adequate capacity to enable them to initiate and support their investigations on ML/TF. As a result, they do not prioritize parallel financial investigations to pursue proceeds of crime.
e) The legal framework does not adequately provide for reasonable measures to enable identification and verification of a BO. The scope of a BO in Eswatini includes a legal person. This has created limited appreciation of the BO concept by accountable institutions which are obligated to obtain such information as in most cases they mixed identification of BO with that of a shareholder. Due to BO information being obtained only to a limited extent by accountable institutions, LEAs have significant challenges in accessing the information in a timely manner when conducting investigations.
f) Eswatini has specialised units in the DPP, the REPS and ACC, responsible for criminal asset recovery. To a large extent, Eswatini has used non-conviction based forfeiture against criminal proceeds and instrumentalities of crime consistent with the country's risk profile. However, Eswatini does not proactively pursue confiscation of criminal proceeds using its conviction-based

processes hence confiscation of property of corresponding value has not been pursued.

g) Eswatini demonstrated a low level of understanding and implementation of currency and BNIs declaration system requirements at ports of entry and/or exit necessary to manage and mitigate the risks through a coordinated manner.

h) Eswatini does not prioritise TF matters owing largely to lack of TF risk understanding and operational capacity to prevent any TF activities. There has been no successful investigation and prosecution of TF cases in the country. In addition, Eswatini did not demonstrate that they understood the type of NPOs which are considered as posing higher TF risks and was unable to show monitoring processes and outcomes in place.

i) The legal and institutional frameworks and processes for implementing UNSCRs on TF and PF have delays. The overall process for receipt from a competent authority and dissemination of the Lists to FIs and DNFBPs for implementation is slow. The supervisors do not supervise and monitor their regulated entities for compliance with TFS obligations. As a result, FIs and DNFBPs have underdeveloped understanding and application of the TFS obligations.

j) Banks, in particular, those that are foreign-owned, and large and foreign-owned MVTS have a better understanding of their ML risks and AML obligations than the rest of the financial institutions and they generally apply adequate mitigating measures. Banks and MVTS demonstrated a good understanding of their reporting obligations and are the biggest reporters of STRs. However, there is limited understanding and application of BO, PEPs, TF, TFS, VAs and VASPs by FIs. DNFBPs generally do not understand and apply AML/CFT obligations.

k) CBE has a fairly good understanding of ML risks in its sectors compared to other supervisors whose understanding was limited. Risk-based AML/CFT supervision is relatively new. While CBE has just begun to implement risk-based supervision, FSRA is yet to begin implementation. Supervisory activities are more pronounced in banks than in the non-bank financial sectors. Generally, inspections across all FIs are infrequent with inadequate scope and intensity. This has been exacerbated by inadequate human resources in the AML/CFT departments of both CBE and FSRA. Supervision of DNFBPs has not yet started owing to lack of supervisory capacity including funding of the supervisors. Market entry controls to screen out criminality are fairly adequate but hindered by insufficient BO information collected and verified.

l) Eswatini has the legal and institutional frameworks to execute MLA and extradition requests as well as other forms of international cooperation. The low number of outgoing MLA and extradition requests is not consistent with the threat of high cross border proceeds generating crimes identified in Eswatini. Eswatini's ability to share beneficial ownership information is critically limited as the collection of such information is still at low levels.

m) Competent authorities in Eswatini suffer from acute resource shortages which has undermined their ability to exercise their mandates and demonstrate acceptable levels of effectiveness across the AML/CFT system.

Risks and General Situation

2. Eswatini undertook a National Risk Assessment (NRA) in 2016 and was still in the approval stages during the onsite. The draft NRA established that a significant percentage of criminal proceeds which are laundered in Eswatini are from within the country mainly from the following crimes: corruption (in particular, in the public sector), tax evasion, fraud and illicit drug trafficking. The country borders Mozambique and South Africa and is also a member of the Common Monetary Area (CMA) with Lesotho, Namibia and South Africa. In view of its geographical position and trade links with its neighbouring countries, Eswatini is also exposed to foreign ML threats arising from smuggling of goods and cash including drug trafficking. The criminal proceeds are suspected to be channelled, mainly, through the real estate sector. While most of the formal financial transactions go through the banking sector, there is widespread use of cash and a large informal economy including informal transportation of physical cash across the border.

3. Eswatini faces the risk of TF, although this is generally considered low by the authorities. Assessors are of the view that the risk of TF can be higher as TF threats and vulnerabilities were not adequately assessed in Eswatini. The country faces TF threats arising from neighbouring countries where there are active terrorist groups, cross border activities, influx of foreign nationals from high-risk countries and the vulnerabilities in the NPO sector, hawala operators, high usage of cash, porous borders and cash withdrawals abroad using credit cards with unknown intended purpose. The authorities' understanding of overall TF risk was limited in view of the inadequate analysis done during the NRA exercise.

Overall Level of Compliance and Effectiveness

4. Since its last assessment in February 2010, Eswatini's AML/CFT regime has undergone notable reforms. This includes strengthening of the legal and institutional frameworks for combating ML and TF. The country amended the MLTFP Act, 2011, which is the primary law dealing with AML/CTF, to broadly criminalise ML in line with the Palermo and Vienna Conventions. Eswatini also introduced regulations intended to implement targeted financial sanctions on TF. The Eswatini Financial Intelligence Unit (EFIU) core functions, which were previously performed by the Central Bank, are currently performed by an independent and autonomous FIU located in a different office premises. Eswatini has also established and constituted a National Task Force comprising of the Council and Technical Committee, intended to develop national AML/CFT policies and strategies, and to ensure their effective implementation. The country has undertaken an NRA which will enable it to develop policies and undertake national coordination informed by identified risks, although it is yet to be approved. Despite efforts to strengthen the legal and institutional frameworks, significant TC shortcomings were noted, in particular for the transparency regime applicable to legal persons, the national cooperation and coordination, targeted financial sanctions relating to terrorist financing (TF) and proliferation financing (PF), supervisory measures and failure to comply with the preventive measures in general, in addition to poor maintenance of statistics. In addition, there are still technical deficiencies affecting, in particular, the TF offence and the regime applicable to NPOs at risk of TF abuse.

5. Limited understanding of risks impacts negatively on the effectiveness of several aspects of Eswatini's AML/CFT arrangements. Fundamental improvements are needed in Eswatini to strengthen ML/TF identification and coordination, ensure that financial intelligence is fully exploited, ML/TF investigation and prosecution including coordination among LEAs, confiscation of proceeds of crime, implementation of preventive measures by FIs, the supervision of these institutions, international cooperation, transparency of legal persons and legal arrangements and the framework and practices related to targeted financial sanctions.

Assessment of risk, coordination and policy setting (Chapter 2; IO.1, R.1, 2, 33 & 34)

6. Eswatini commenced undertaking a NRA to identify, assess, understand and mitigate its ML/TF risks in 2016. The draft NRA Report was still being considered for approval at the time of the on-site meetings. However, during the onsite Assessors noted a limited understanding of ML risk by various agencies, in particular, the LEAs, which had led to low ML cases being identified, investigated and prosecuted compared to predicate offences. Regarding the TF risk, the assessors noted that there was little to no understanding of TF risks across all the competent authorities, supervisors and the private sector. This was attributed to failure by Eswatini to adequately assess TF threats and vulnerabilities during the NRA exercise. There were inadequate measures in place to identify and consequently understand the TF risk. Further, Eswatini had not conducted a risk assessment for legal persons and arrangements in order to fully understand the extent to which the sector could be misused for ML. Additionally, the authorities could not demonstrate that they understood how NPOs can be abused for TF purposes and take remedying measures to those identified to be exposed to such risk. The NRA exercise also did not cover assessment of the TF risks relating to the NPO sector. Eswatini recognized the potential ML/TF risks from emerging technologies such as VAs and VASPs and had taken initial steps to identify them but was yet to develop a full-fledged understanding of such risks.

7. Although Eswatini developed a National AML/CFT Strategic Plan (2018-2022), to assist in implementing some of the AML/CFT requirements, the Strategic Plan was not informed by identified risks. Further, assessors noted that the country is yet to develop a National AML/CFT/PF Policy which is informed by the risks identified during the NRA exercise.

8. AML policy cooperation and coordination to address Eswatini's ML risks are fairly strong both at political, policy and operational levels. Eswatini's domestic co-ordination is driven by the National Task Force comprising the Council, at policy level, and the Technical Committee, at operational level, which together comprise the country's main AML/CFT policy development tool. While the Technical Committee comprises representatives from most key AML/CFT stakeholders, it can benefit from incorporating representatives from other key stakeholders such as the Registrar of Companies, Immigration, Housing and Urban Development, and Natural Resources as members of the Committee. Although Eswatini has wide-ranging arrangements in place for AML coordination and cooperation at both policy and operational levels, policy coordination and cooperation to address TF and PF risks is inadequate.

Financial intelligence, ML investigations, prosecutions and confiscation (Chapter 3; IO.6, 7, 8; R.1, 3, 4, 29–32)

9. The EFIU is the central national agency responsible for receiving and analysing Suspicious Transaction Reports (STRs) and other relevant information from accountable institutions and disseminating financial intelligence to competent authorities to help in identifying potential cases of ML, TF and associated predicate offences. Assessors noted that the budget of the EFIU is inadequate to enable it to fulfil its core functions. In addition, the EFIU is inadequately resourced, resulting in failure by the EFIU to perform some of its functions, like strategic analysis.

10. Financial intelligence from the EFIU is used to a very limited extent on ML investigations, and the LEAs do not effectively request financial intelligence from the EFIU to support their ongoing investigations or to identify and trace proceeds of crime. The competent authorities in Eswatini have limited access to a wide range of information to enable them to initiate and support their investigations on ML/TF and to identify and trace proceeds of crime linked to ML/TF. The EFIU receives STRs mainly from the banking sector, and is yet to start receiving cash threshold reports. It also receives reports on incoming and outgoing currency declarations from SRA although the currency and BNI regime in Eswatini is not being effectively implemented due to technical and human capacity challenges. Further, the EFIU does not directly access some publicly-held databases and has no access to privately-held information. This was considered by the assessors as posing a limitation to the core functions of the EFIU. This is exacerbated by the fact that the EFIU is not a member of the Egmont Group of FIUs and has signed MoUs with few FIUs which are only from the ESAAMLG region.

11. Despite a relatively well-established AML/CFT legal and institutional framework being in place, Eswatini to a lesser extent identifies and investigates ML, on the basis of the financial intelligence and information provided by the EFIU (as noted above) and from other sources (supplied through ongoing investigation of predicate offences, amongst others). The REPS and the ACC have administratively set up specialised units to undertake investigations that are aimed at criminal asset recovery; however, their efforts are not consistent with Eswatini's risks. These may be attributable to non-existence of prioritization measures, limited parallel financial investigation and inadequately capacitated (human resources) units to effectively carry out their functions.

12. Eswatini has not successfully prosecuted a ML case, therefore, the extent of the effectiveness, proportionate and dissuasiveness of sanctions imposed could not be demonstrated by the authorities.

13. Eswatini does not pursue confiscation of criminal proceeds as a policy objective. Although there is a fair achievement in confiscating, this appeared to be mainly on predicate offences rather than ML cases. The country has, however, set up specialised units in the DPP, the REPS and ACC to effectively and efficiently deal with criminal asset recovery under the Prevention of Organised Crime Act. Confiscation of proceeds from foreign and domestic predicate, and proceeds based abroad has been achieved to a very limited extent and mainly using non-conviction-based forfeiture which only targets a specific property rather than perpetrators and the value of tainted property. Eswatini uses tax proceedings to recover tax based on disseminations from EFIU but this has been to a very limited extent.

14. Eswatini has used its cross-border currency and BNI declaration system to intercept and seize cash at the ports of entry and/or exit, but given the rate and the number at which interceptions

and seizures have been made, the rate at which confiscation measures have been applied are quite limited.

Terrorist and proliferation financing (Chapter 4; IO.9, 10, 11; R. 1, 4, 5–8, 30, 31 & 39.)

15. Eswatini has a legal framework for the criminalization of TF, albeit, with moderate shortcomings. For instance, the financing of individual terrorist and terrorist organisation . While there is adequate institutional framework to deal with TF matters in Eswatini, the authorities, across the board, could not demonstrate that they understand the country's TF risks and that they have put adequate mitigating measures in place to combat TF risk. All, including the REPS who are mandated to investigate TF, mistook TF with terrorism. It was further noted that the authorities do not prioritize TF investigations as evidenced with one case where investigations stalled from 2016 and were only revamped at the time of the on-site. The approach to this case and to TF investigations in general was of grave concern to the assessors as there were clear indications that not all TF cases might be identified. Eswatini had not adequately conducted a TF risk assessment to enable the authorities identify, assess, understand and mitigate TF risks. As a result, the Authorities have not developed policy and strategies on how to assist in identifying and mitigating the TF risks. Furthermore, there are no clear laid out processes for the Intelligence Unit to share TF intelligence information with the Counter Terrorism Unit which is supposed to be the TF investigating Unit. Both Units are under the REPS and have different mandates, with one to gather TF intelligence and the other to investigate the TF intelligence, this was not happening and instead the Units were working in silos.

16. Eswatini has enabling legal provisions to implement targeted financial sanctions (TFS) under the UNSCR 1267 and UNSCR 1373 (and their successor resolutions). However, the assessors noted that the TFS are not effectively implemented without delay. Further, Eswatini does not effectively communicate all designations to the accountable institutions. While Eswatini has established the United Nations Security Council Resolutions Implementation Committee, it has not started to be effective. There are limited mechanisms to identify assets and funds held by designated persons.

17. Eswatini does not have a legal and institutional framework to address the risk of TF relating to NPOs identified as posing higher risk, although they are registered as legal persons through the office of Registrar of Companies. The country has not identified the subset of NPOs that, based on their characteristics and activities, are at risk of TF abuse. The country has also not conducted TF investigations and prosecutions thus, the extent to which terrorists, terrorist organisations and terrorist financiers can be deprived (whether through criminal, civil or administrative processes) of assets and instrumentalities related to TF activities could not be ascertained.

18. Eswatini's framework to implement the relevant UN counter-proliferation financing sanctions is weak. The country relies on Anti-Money Laundering (United Nations Security Council Resolutions) Regulations 2016 to address UNSC Resolutions to implement TFS relating to proliferation financing (PF) but there is no legal basis as the Primary legislation, being the MLFTP Act, 2011, as amended does not provide for PF. TFS are not being implemented without delay. Assessors further noted low appreciation and awareness of PF by supervisory authorities and the private sector.

Preventive measures (Chapter 5; IO.4; R.9–23)

19. The MLFTP Act, 2011 as amended in 2016, is the primary legislation providing the legal framework for application of preventive measures for both FIs and DNFBPs in Eswatini. The FIs and DNFBPs subject to AML/CFT obligations are consistent with the scope of entities covered under the FATF Standards. There is generally a fair understanding of ML risks and AML obligations across the FIs, with the banking sector portraying a better understanding than the rest of the FIs. While the understanding of the ML risks was mainly due to their participation in the NRA exercise, they have also conducted internal risk assessments and took corresponding mitigating measures. Nonetheless, Assessors noted limited understanding of AML/CFT obligations relating to BO, targeted financial sanctions, PEPs, in particular, domestic and international organization PEPs, VAs and VASPs. Across the board, there was limited understanding of TF risk and CFT obligations.

20. To a greater extent, FIs which are banks and large mobile money service providers apply customer identification and verification measures and ongoing due diligence are generally performed although limitations in obtaining BO information represent the most serious deficiency across all FIs. Non-bank FIs do not adequately apply such measures. All FIs do not effectively apply measures for PEPs, TFS, VAs and VASPs. FIs are relatively more successful in implementing measures related to record keeping, correspondent banking relationships, new technologies, wire transfers. and measures related to countries with high risk.

21. There was low understanding of ML/TF risks and AML/CFT obligations among the DNFBP sector. Additionally, DNFBPs generally do not apply CDD and record-keeping measures. This was attributed to absence of AML/CFT supervision in the DNFBP sector.

22. The obligation to file suspicious transactions to the EFIU is well understood and applied to some extent by the banking sector and large MVTS. However, the same cannot be said about other financial institutions and DNFBPs which have over the period under review either filed a negligible number of STRs or not filed at all. STRs relating to TF are negligible across the board.

Supervision (Chapter 6; IO.3; R.14, R.26–28, 34, 35)

23. Financial sector supervisors and DNFBP regulators in relation to lawyers and accountants in Eswatini apply fairly adequate market entry controls to prevent criminals and their associates from holding or being a beneficial owner of a significant interest or holding a management function in financial institutions or law/accounting firm. However, the process is less effective when it comes to identifying beneficial owners and nominee shareholders. Supervisors of other DNFBPs have inappropriate and ineffective licensing and registration systems in place with real estate agents and motor vehicle dealers not subjected to a licensing regime.

24. CBE, has a fairly good understanding of the general ML risks in the financial sector while understanding of ML risks by FSRA is less developed. Both have not conducted sectoral risk assessments and generally had a lower level of understanding of the ML/TF risks that exist at individual financial institution level. The EFIU, which is currently the de facto sole AML/CFT supervisor of all DNFBPs in Eswatini had not started supervision and therefore demonstrated a low level of understanding of the risks both at sector and at individual institution level. Understanding of TF risk is low for all supervisors. The financial sector supervisors have reasonable supervisory frameworks to monitor AML/CFT compliance for the financial institutions

that they supervise. The Financial supervisors are at varying stages of implementing risk-based approaches to AML/CFT supervision. RBA implementation by FSRA is embryonic and still appreciating the concept and as such, has not started applying it. However, CBE is just starting implementing RBA and is still in the early stages. Supervisory programmes and allocation of resources are yet to be informed by ML/TF risks. The scope and intensity of AML/CFT supervision is also uneven among the different sectors, and is not commensurate with the risk profiles of the different financial institutions. Additionally, effectiveness of supervision is severely hampered by inadequate staff dedicated for AML/CFT for all supervisors.

25. The MLFTP Act, 2011 provides supervisors with a wide range of remedial measures and financial sanctions to enforce compliance with AML/CFT obligations in their sectors. However, financial supervisors have only applied limited sanctions or remedial actions in case of non-compliance with AML/CFT requirements but not always effective, proportionate or dissuasive. Limited inspections and scope affect financial supervisors' ability to issue effective and dissuasive sanctions. The impact of the sanctions or remedial actions was low given the repeat breaches identified. Sanctions were not being extended to individual officers and directors of financial institutions for AML/CFT breaches even in instances where the institution had repeat breaches. DNFBPs supervisors have not started AML/CFT supervision of their accountable institutions and hence have not yet issued any AML/CFT related sanctions or remedial actions.

26. Financial supervisors are generally successful in promoting a clear understanding of AML/CFT obligations. However, they need more focused and sector-specific guidance and typologies for the financial sector to enhance the sectors' understanding of the ML/TF risks that they face and of their AML/CFT obligations, particularly with respect to the reporting of suspicious transactions and TF red flags. They can also benefit from employing more human resources in their AML/CFT departments to promote AML/CFT understanding among the accountable institutions.

Transparency and beneficial ownership (Chapter 7; IO.5; R.24, 25)

27. Basic information on legal persons and legal arrangements, except for partnerships, is readily available both to the public and competent authorities. However, the existing measures and mechanisms are not sufficient to ensure that accurate and up-to-date information on BO is available in a timely manner. While there is only a requirement for accountable institutions to ascertain the identity of a BO, in practice, the collection of BO information by such entities and other competent authorities is also still a challenge. Besides, the concept of BO is not well appreciated by the authorities and this is further complicated by the fact that the MLTFP Act defines BO to include a legal person.

28. Eswatini has not undertaken a ML/TF risk assessment of all forms of legal persons and legal arrangements to understand the sectors' vulnerabilities and possibly prevent them from abuse. As a result, there is limited understanding within the public and the private sectors of the inherent and residual risks associated with legal persons and arrangements. To a large extent, Eswatini has not implemented adequate mitigating measures to prevent misuse of legal persons and arrangements for ML/TF purposes.

29. Trusts services in Eswatini are offered mainly by lawyers and accountants and they regard information, including BO on trusts they create as privileged requiring the authorities to obtain court subpoenas to get access. Trustees are not required to file any annual returns and the notaries

are under no obligation to obtain BO information or any information on control of trusts. The available information maintained on BO of trusts is hence not adequate, accurate and current.

30. To a less extent, the authorities have imposed sanctions on legal persons where the legal provisions have been contravened such as fraudulent filings and appointment of directors. No sanctions have been issued for the failure to update company records and the filing of annual returns. The sanctions available and applied by the authorities are not effective, proportionate and dissuasive.

International cooperation (Chapter 8; IO.2; R.36–40)

31. Eswatini has a legal basis to provide and seek mutual legal assistance (MLA), extradition and other forms of cooperation to and from other countries in relation to ML, TF and associated predicate offences, although there are still some gaps in the laws. The Minister of Justice and Constitutional Affairs, through the office of the DPP, is the Central Authority mandated to execute outgoing and incoming MLA and extradition requests.

32. The requests for MLA and extradition are, however, not processed in a timely manner. Outgoing requests for MLA have only been made in a limited number of instances, which is inconsistent with Eswatini's risk profile and the authorities have not adequately demonstrated that seeking international cooperation in the investigation of ML, associated predicate offenses, and TF is a priority. Eswatini is able to provide information to counterparts through the use of informal channels and a number of bilateral and multilateral agreements entered into between competent authorities in Eswatini and their foreign counterparts. However, this is done to a very limited extent in practice. Bilateral arrangements have been entered into only with few countries in the region. Eswatini has not provided or sought any BO information for legal persons and arrangements to and from other foreign countries. There is no case management system for monitoring progress on requests for MLA and extradition, therefore no comprehensive statistics is kept in relation to requests made and received. There has also been no feedback from foreign countries regarding the quality and constructiveness of the assistance provided.

Priority Actions

The country should take the following actions:

a) Review and continue to update the NRA findings and ensure that they take into account new emerging risks. This update should include comprehensive assessment of legal persons and legal arrangements, ML risks posed by the informal economy, TF threats and vulnerabilities in the country, including NPOs that are exposed to TF abuse. In so doing, Eswatini should expand the stakeholders involved to include all relevant AML/CFT authorities. Subsequently, ensure that authorities develop mitigating controls to address those risks.

b) Ensure that the National AML/CFT Strategic Plan, policies and priorities are informed by the risks identified through the NRA process. Build capacity of competent authorities to implement the National AML/CFT Strategic Plan and promote domestic coordination that is targeted to high ML/TF risk and priority areas.

c) Prioritise provision of adequate human, including training and financial resources to the REPS, ACC, DPP's Office, EFIU, CBE and FSRA in order to strengthen their operational capacity.
d) Ensure that the LEAs have sustainable capability to conduct parallel financial investigations when investigating predicate offences, consistent with the country's risk profile. EFIU and LEAs should have access to a wide range of information to enable them to initiate and support their investigations on ML/TF and to identify and trace proceeds of crime linked to ML/TF. Develop AML/CFT policy and strategies that will guide ML/TF investigations.
e) Proactively pursue the confiscation of proceeds of crime consistent with the ML/TF risk profile of the country including confiscation of property of corresponding value.
f) Develop a national strategy that will guide domestic TF investigations and prosecutions and build capacity among competent authorities to detect, prioritize, investigate, mitigate and disrupt TF incidences through well-coordinated and collaborated operations, including in relation to cross-border TF risks.
g) Develop and operationalise sufficient mechanisms and coordination to implement UNSCRs relating to TF and PF without delay.
h) Conduct and prioritize targeted outreach activities and issue specific guidance on PEPs, TF red flags, TFS, identification and verification of UBOs, STRs, VAs and VASPs in order to enhance ML/TF risk understanding and promote compliance with AML/CFT obligations by FIs and DNFBPs, and address technical compliance deficiencies in relation to higher risk areas such as PEPs.
i) Both financial and DNFBP supervisors should fully adopt a risk-based approach to supervision and increase the frequency and intensity of outreach and inspections for FIs and DNFBPs. Ensure that all DNFBP supervisors are made aware of their supervisory responsibilities as set out in the AML/CFT Act and that they start implementing the same without delay, including extending AML/CFT supervision and regulation to the real estate sector and lawyers.
j) Eswatini should develop a strategy that should enable the country to prioritise execution of MLA and extradition requests based on the risk of high proceeds generating crimes. The country also needs to build a case management system to monitor progress and efficiency of its system on international cooperation. Further, the collection of BO information should be enhanced to allow the country to be able to share it where relevant. This includes revising the definition of BO to align it with the FATF Standards.

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings[1]

IO.1	IO.2	IO.3	IO.4	IO.5	IO.6	IO.7	IO.8	IO.9	IO.10	IO.11
Low	**Low**	**Low**	**Low**	**Low**	**Low**	**Low**	**Low**	**Low**	**Low**	**Low**

Technical Compliance Ratings[2]

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

[1] Effectiveness ratings can be either a High- HE, Substantial- SE, Moderate- ME, or Low – LE, level of effectiveness.

[2] Technical compliance ratings can be either a C – compliant, LC – largely compliant, PC – partially compliant or NC – non compliant.

MUTUAL EVALUATION REPORT

Preface

33. This report summarises the AML/CFT measures in place as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system, and recommends how the system could be strengthened.

34. This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by the country, and information obtained by the evaluation team during its on-site visit to the country from 24 May - 4 June 2021.

35. The evaluation was conducted by an assessment team consisting of:

- Ms. Lillian Chiyesu-Mubialelwa, DEC, Zambia, law enforcement expert;
- Mr. Titus Mulindwa; Bank of Uganda, financial sector expert;
- Mr. Masautso Ebere, FIU Malawi, financial sector & FIU expert[3];
- Mrs. Makatleho Patricia Thobei, Home Affairs, Lesotho, legal expert;
- Mr. Edwin Mtonga, FIU Malawi, observer; and
- Mr. Vilho Nkandi, NAMFISA, Namibia, observer.

with the support from the ESAAMLG Secretariat of Messrs John Muvavarirwa (Team Leader); Mofokeng Ramakhala (Assistant team leader), Joseph Jagada and Phineas Moloto. The report was reviewed by Mr. Calvin Habasonda, Zambia; and the FATF Secretariat.

36. Eswatini previously underwent a FATF Mutual Evaluation in 2010, conducted according to the 2004 FATF Methodology. The 2010 evaluation report was published and is available at www.esaamlg.org.

The Mutual Evaluation concluded that the country was compliant with one Recommendation; partially compliant with 11; and non-compliant with 36. One Recommendation was rated not-applicable. Eswatini was neither rated compliant nor largely compliant with any of the 16 Core and Key Recommendations.

[3] Mrs. Laura Laroche from FIU Mauritius who was supposed to be an FIU Expert could not attend both the on-site and face-to-face meetings due to COVID-19 and other restrictions but assisted in the TC analysis.

1. ML/TF RISKS AND CONTEXT

37. The Kingdom of Eswatini (Eswatini) got its independence from Britain on September 6th, 1968. It is a small landlocked country in southern Africa, which is bordered on the north, west and south by South Africa and on the east by Mozambique. The total land mass of Eswatini is 17,360 square kilometres. The capital city is Mbabane. Eswatini is a member of the African Union (AU), Southern Africa Customs Union (SACU), Common Market for Eastern and Southern Africa (COMESA), Southern Africa Development Community (SADC), Commonwealth of Nations, Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), United Nations (UN), and Common Monetary Area (CMA) with Lesotho, Namibia, and South Africa. Under the CMA, the Eswatini Lilangeni[4] (the domestic currency) is pegged at par to the South African rand, which is also legal tender in the country.

38. The population of Eswatini is approximately 1.2 million, with about 25% in urban areas. Eswatini is divided into four (4) regions namely Hhohho, Manzini, Lubombo, Shiselweni with each region headed by a Regional Administrator appointed by the King. Majority of the population is ethnic Swazi. The country's official languages are Siswati and English, although English is mostly used to conduct Government and commercial business. Christianity, with a mixture of traditional beliefs, is predominantly practiced.

39. Eswatini is a lower middle income[5] country with the 2019 GDP estimated at USD 4.472 billion[6]. The economy is closely linked to that of South Africa. Imports to, and exports from South Africa are estimated at more than 85 percent and about 60 percent respectively. The economy of Eswatini is fairly diversified. Agriculture, forestry and mining account for about 13 percent of Eswatini's GDP whereas manufacturing (textiles and sugar-related processing) represent 37 percent of GDP. Services – with government services in the lead – constitute the other 50 percent of GDP. The financial sector contributes around 3.4 percent to GDP, dominated largely by the security sector, commercial banks and insurance business.

40. Eswatini has a bicameral Parliament which consists of the Senate and the House of Assembly. Eswatini is a "monarchical democracy" with a dual governance system, in which democracy and traditional monarchy function concurrently. The King, as Head of State, holds supreme executive powers. The Prime Minister, appointed by the King, is Head of Government and chairs the Cabinet. The King also appoints 10 of the 76 members of the House of Assembly (the lower house of Parliament) and 20 of the 31 members of the Senate (the upper house). Duality extends to land tenure, where title deed and communal land systems coexist. Communal land, known as Swazi Nation Land, is held in trust for the people by the King. Swazi Nation Land, minerals, customary law, and the sovereign wealth fund Tibiyo Taka Ngwane are excluded from the purview of the "modern" system and reserved for the King-in-Council (iNgwenyama)[7]. The

[4] As of the onsite, 1 E = 0.068 USD and 1 USD = E14.71. USD values in this report have been converted at these rates.
[5] IMF, 2017
[6] World Bank, 2020
[7] World Bank (2020)

House of Assembly is presided over by a Speaker who is elected by the members from amongst their number.

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

42. Eswatini is a common law jurisdiction. The structure of the judiciary system consists of the Supreme Court which is the highest court in the country, the High Court, Magistrate Courts and other specialized courts, such as Commercial Courts, Industrial Courts and Swazi Courts. The Supreme Court is headed by a Chief Justice and is the highest court of appeal and also hears constitutional matters. The judges of the superior courts (Supreme and High Courts) and the specialist tribunals are appointed by the King on the advice of the Judicial Service Commission ("JSC") and Magistrates are appointed by the JSC. Officers (President) of the Swazi Courts which administer Swazi law and custom are appointed by the King independently of the Judicial Service Commission.

1.1. ML/TF Risks and Scoping of Higher Risk Issues

1.1.1. Overview of ML/TF Risks

ML/TF Threats

43. The highest ML threats in Eswatini stem from proceeds of drug trafficking[8], corruption, tax evasion, fraud and smuggling of goods. There are, however, no clear estimates of the amounts which are likely to be proceeds generated from most of the crimes. Corruption is a major threat and between 2011 and 2018 a total of 583 cases were identified by the authorities. It is mainly attributed to collusion between corporate clients and state-owned entities and most often takes the form of procurement corruption[9]. The World Bank Enterprise Survey (2016) found that about 50 percent of surveyed firms cited that gifts were expected to be offered to secure government contracts in Eswatini. On the other hand, the National Corruption Perception Survey (2017) conducted by the Eswatini Ministry of Justice and Constitutional Affairs found that 93 percent of respondents perceived corruption to be a major issue in Eswatini mainly caused by poverty, unemployment and greed. The Global Competitiveness Report (2017-2018)[10] ranks Eswatini 122 of 137 countries on incidence of corruption.

44. Tax evasion, mostly common in the securities and banking sectors, is another major crime in Eswatini posing higher ML risks. Tax evasion in the securities manifests mainly through local individuals who invest outside Eswatini especially the CMA region where there is free flow of funds between the countries, and through regular transactions in bills of exchange presented as payment for goods or services performed where such transactions are presented as not subject to

[8] Overseas Security Advisory Council Bureau (OSAC), 2019 highlighted prevalence of drug-related crimes, in particular dagga.

[9] Eswatini scored 34/100 (deteriorated from 38/100 in 2018) and is ranked 113 out of 180 countries in Transparency International Corruption Perception Index (2019). – Where 0 is highly corrupt and 100 is very clean. ESAAMLG Typologies Report on Procurement Corruption in the Public Sector and Associated Money Laundering, 2019 noted that most countries in the region including Eswatini perceive construction sector to be most vulnerable to procurement corruption.

[10] World Economic Forum, 2017

taxation. The draft NRA report noted that it is mainly because most companies in Eswatini are subsidiaries of companies abroad. The extent of the proceeds, however, could not be determined. Additionally, it was noted that import car dealers (mostly Asians) evade tax by using personal bank accounts and cash payments to conduct business transactions.

45. Large parts of the country's borders are shared with South Africa (est. 90%). 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 for cross-border criminal activities and an attractive transit route for trafficking of drugs and goods involving South Africa, Mozambique and Botswana[11]. The UNODC World drug report (2019) cites Eswatini as among the most important African countries for cannabis (also known as dagga or marijuana or locally as Swazi gold or green gold) cultivation and production[12]. Dagga is grown throughout Swaziland by small-time farmers primarily as a cash crop, and smugglers are routinely captured at the border areas with South Africa. Occasionally, passengers are arrested attempting to smuggle other drugs (heroin, cocaine, methamphetamines) through Swaziland's porous borders. Eswatini is a transiting corridor for trafficking drugs from Mozambique to South Africa including smuggling of cigarettes/tobacco falsely declared in containers, commercial vehicles or hidden in passenger vehicles[13]. The proceeds of drug trafficking laundered in Eswatini are also significant, and derive predominantly from domestic activity.

46. [14]On the other hand, credit and debit cards frauds, identity theft and collusion of employees with outside parties were also identified in the draft NRA report as some of the prevalent crimes in Eswatini. Fraud is also common among Immigration officials where illegal passports are easily issued to undeserving people, for example in the case of the White widow who was linked to terror attacks in Kenya.

47. TF is generally considered as low in Eswatini, mainly due to a limited understanding by the authorities that there have not been any recent terror attacks in the country and the absence of any external attack involving Eswatini nationals or organizations. Although no direct TF instances were identified in the country, there have been developments recently in the neighbouring countries which potentially increase the TF risk profile of the country such as suspected terror attacks that happened in South Africa and Al-Shabaab attacks in Mozambique. Potential funds layering through credit cards transactions mostly in Asia with unknown intended purpose, huge inflow of funds for some charitable organisations (NPOs), high usage of cash, existence of porous borders and influx of foreign nationals from high risk countries and existence of the hawala system may potentially heighten TF risk in Eswatini.

48. The ML/TF threat from other countries cannot be easily defined. While some countries have been identified as being the source of proceeds of crime laundered in Eswatini, the

[11] https://clubofmozambique.com/news/man-arrested-after-police-find-multi-million-rand-heroin-haul-from-mozambique-via-swaziland-to-south-africa/

[12] https://wdr.unodc.org/wdr2019/prelaunch/WDR19_Booklet_5_CANNABIS_HALLUCINOGENS.pdf

[13] FATF Repot on Illicit Trade in Tobacco (ITT), 2012 and ESAAMLG Report on *"Smuggling of Cigarettes and Associated Money Laundering in the ESAAMLG Region, 2018*

[14] NRA 2016 pages 8, 36

authorities' assessment of the foreign ML threat is less detailed and comprehensive than their analysis of the domestic threat.

ML/TF Vulnerabilities

49. Eswatini is a cash economy and usage of cash greases the informal economy, both of which provide avenues for ML/TF activities and facilitating untraceable and anonymous transactions. The draft NRA report highlighted a widespread usage of cash in the purchase of real estate, in casinos, motor vehicle sales and in some instances, cash gained from illegal activities is sometimes used to buy commercial goods. This is also fuelled by porous borders which allow for widespread cross-border cash and goods smuggling to and from neighbouring countries.

50. The main channels to launder the proceeds of crime are the FIs, in particular banks, casinos, real estate and investment policies and schemes. The banking sector was identified in the draft NRA report as the main sector at risk of being used to launder proceeds derived from corruption. Despite the centrality of the banking sector in the financial services sector, the controls were identified in the NRA as not being commensurate with the risk profile of the banking sector. MVTS, although not very significant, are vulnerable to ML/TF and are preferred by drug traffickers when they pay for drug sales made.

51. The real estate sector is highly vulnerable to ML and the risk is not adequately mitigated, mainly because the sector is not regulated nor supervised for AML/CFT. The sector is highly cash intensive, especially in the buying and selling of the untitled Swazi National Land. Further, the real estate business is exposed to high risk clients, in particular domestic PEPs who buy properties using illicit proceeds. Linked to this, the NRA exercise identified lawyers as facilitating some of the transactions in the real estate sector and also them not being supervised for AML/CFT make them vulnerable.

52. Dealers who import second hand motor vehicles, mostly Asians and foreigners from other countries considered by the authorities as posing higher ML/TF risk such as Somalia, Ethiopia, Nigeria, Pakistan, India and China, in addition to high usage of cash, are also suspected of by-passing the formal financial system to send money through the hawala system to their countries of origin.

53. Legal persons and legal arrangements are inherently vulnerable to misuse for ML/TF purposes. Despite, the extent of the vulnerability has not been assessed. Eswatini does not have effective arrangements in place for obtaining and retaining beneficial ownership (BO) information.

54. The NPO sector also poses some TF vulnerabilities. Eswatini has not undertaken an assessment in order to identify the features and types of NPOs which by virtue of their activities or characteristics are likely to be at risk of being abused for TF.

55. Although most offences have elements of ML, investigations seem to be mainly on predicate offences as opposed to ML and there are no successful ML cases prosecuted. Insufficient skilled human resources dedicated to ML/TF financial investigations by the competent authorities may also represent an AML/CFT vulnerability especially considering the risk profile.

1.1.2. Country's Risk Assessment & Scoping of Higher Risk Issues

Country Risk Assessment

56. Eswatini conducted its first NRA exercise in 2016 to identify, assess and understand its ML/TF risks. During the on-site visit, the draft NRA report was going through an approval process. The NRA process incorporated most of the relevant stakeholders from public and private sectors. It was coordinated by a sub-committee of the Technical Committee comprising of the Ministry of Finance, EFIU, CBE and the FSRA. The process involved the setting-up of eight thematic working groups which reviewed and analysed information collected from relevant authorities by way of a questionnaire. The questionnaire aimed at collecting quantitative and qualitative data on ML and TF with the view to examining inherent and residual risks, mitigating measures and consequences. Interviews were also employed in the study to clarify some of the responses given in the questionnaires. Other sources of secondary data used were previous MER, ESAAMLG progress reports, and the FATF Recommendations. The NRA process was done in three phases; Preparation, Launch and Initial Assessment phase; Data Collection, Analysis and Drafting phase, and conclusions and recommendations phase. Assessors, however, raised a concern that the NRA exercise had taken long to complete (close to 5 years) and some of the data and information used was outdated and therefore failed to capture some of the evolving ML/TF risks.

57. The major proceeds generating crimes identified in the draft NRA report include drug trafficking, corruption, tax evasion, fraud and smuggling of goods and thus pose the greatest ML threat to Eswatini although the extent could not be established. The NRA exercise established the real estate, motor vehicle dealers and lawyers as posing a high ML vulnerability while the banking sector, accountants, casinos and dealers in precious metals and stones were identified as having medium/high vulnerabilities. High usage of cash was identified as a vulnerability. The NRA exercise did not adequately assess the ML/TF exposure of MVTS. The authorities generally believe that trade-based money laundering and informal value transfer or underground transactions, illegal forex trading, crypto trading and Ponzi schemes exist in Eswatini although the extent of the ML/TF threat has not been assessed in the country. The 2016 NRA exercise did not include a comprehensive risk assessment of TF threats and vulnerabilities.

58. Eswatini has a fair understanding of the risks that were identified in the draft NRA report. However, the understanding is not uniform across the different agencies. Those agencies that did not participate in the NRA exercise showed very little to no understanding while those that participated portrayed varying level of understanding which were to a greater extent conflicting. The understanding is further hindered by the fact that the assessment was not comprehensive enough to cover all relevant sectors such as NPOs, legal persons and arrangements, bureau de changes and illegal forex dealing. Eswatini has not yet officially communicated the results of the NRA exercise as it is still going through the approval process. However, validation workshops were held and those institutions that participated in the NRA exercise also attended the workshop. Assessors, however, noted that some agencies, such as CBE and FSRA have already started using the initial results of the NRA exercise to help put in place measures to better mitigate the ML/TF risks identified.

Scoping of Higher Risk Issues

59. In deciding what issues to prioritise for increased focus, the Assessors reviewed material provided by Eswatini on their national ML/TF risks, and information from third-party sources (e.g. reports of other international organisations). The assessors focused on the following priority issues:

a. *Public sector corruption*: Assessors examined the extent to which proceeds of corruption are being laundered and explore the most vulnerable sectors. In this context, the assessors focused on how well the authorities combat the laundering of proceeds of corruption in terms of number and types of investigations and prosecutions undertaken and the volume and value of proceeds confiscated. Special attention was paid to determining the extent to which investigations, prosecution and confiscations pursued reflect the country's ML/TF risk profile including establishing how well financial intelligence is used to initiate and pursue ML investigations and prosecutions relating to corruption. Assessors also sought to establish the capacity and expertise of LEAs to effectively detect, investigate, and prosecute ML/TF arising from corruption, as well as the use of parallel financial investigations initiated with each investigation commenced on corruption.

b. *Other high proceeds generating crimes*: Assessors paid attention to other high proceeds generating crimes highlighted in the draft NRA report, in particular, tax evasion and drug trafficking. Assessors focused on the methods used by criminals to evade tax and how the proceeds generated from tax evasion are laundered. Also, given drug trafficking as a transnational crime, the Assessors sought to determine the ways by which proceeds of drug trafficking are being laundered and the extent to which all forms of international cooperation have been used to effectively detect, trace and confiscate the proceeds of drug trafficking into and out of Eswatini. Assessors also established the capacity and expertise of LEAs to effectively detect, investigate, and prosecute ML/TF relating to tax evasion and drug trafficking including the level of confiscations of related funds or assets. Assessors also sought to establish the prevalence of environmental crime risks and risks of laundering via trading of precious metals and stones sectors, including its exposure to be used as a transit route to or from its neighbouring countries. There was, however, no evidence provided to the assessors suggesting that this was an issue in Eswatini.

c. *Use of Financial Intelligence, Investigation, Prosecution and Confiscation*: Given the limited information coming from the NRA exercise on the extent of usage of financial intelligence information by LEAs, the assessors sought to establish the extent to which the EFIU is disseminating financial intelligence and other relevant information and how this was used in investigations to develop evidence and trace criminal proceeds related to money laundering, predicate offences and TF. This included the number of cases investigated, prosecuted and convicted for money laundering and predicate offences resulting from the financial intelligence disseminated by the EFIU. Assessors further determined the extent to which cases are prioritized for investigation.

d. *Usage of cash and cross-border cash couriers*: Assessors explored suppressive and preventive efforts to combat ML/TF through the informal sector (e.g., cash-based including Hawala type activity) and how well financial inclusion products were used to promote usage of the formal financial sector. There was also an increased focus on the effectiveness of customs and border controls to detect and deter cash smuggling in and outside Eswatini.

e. *Risk understanding, risk mitigation & application of a risk-based approach*: The Assessors identified the nature of ML and TF threats and vulnerabilities and the extent to which the various sectors, institutions and governance structures understood the ML/TF risks and AML/CFT obligations. They explored whether the authorities had focused enough on high risk financial institutions and DNFBPs, in particular, banking sector and real estate agents, lawyers (including where they provide trust and company services) and casinos. Assessors put more focus on the financial institutions and DNFBPs' understanding of the ML/TF risks and obligations relating to cash transactions monitoring, cross-border wire transfers, foreign remittances, and high-risk relationships (e.g. PEPs, transaction monitoring and reporting, TFS, record-keeping) among others. The assessors' attention also focused on the extent to which supervisors apply risk-based approach to ensure AML/CFT compliance by the private sector and take enforcement action against non-compliance. with AML/CFT obligations.

f. *TF issues*: The team assessed the extent to which TF cases have been identified, assessed, investigated and prosecuted in Eswatini, and the level of understanding by relevant competent authorities of the TF threats and vulnerabilities. Assessors further focused on the private sector's and supervisors' understanding of the obligations related to TF and TFS and the adequacy of controls put in place to mitigate the risks.

Areas of lower focus

60. The assessment team devoted lesser attention to non-deposit taking credit providers such as SACCOS and micro-lenders whose sources of funds are through contributions by participants or direct deductions from client salaries. These have small asset size and number of participants are lower and, in most cases, they have lower limits of loans or savings that a participant can access. Their vulnerabilities to ML/TF were therefore considered to be low.

1.2. Materiality

61. Eswatini's Gross Domestic Product as at December 2019 was USD4.472 billion. The economy is predominantly driven by agriculture, forestry, mining (13% of GDP), manufacturing (37% of GDP) and services (50% of GDP). Sugar and soft drink concentrate are the largest foreign exchange earners. South Africa is the main trading partner of Eswatini accounting for 90% of Eswatini's imports and 60% of the exports. Economic activity, as measured by real GDP, expanded by 2.4 percent in 2018 (compared to 2.0 percent in 2017) before contracting by 1,3% in 2019[15]. Eswatini's currency is pegged to the South African rand. With South Africa, Botswana, Lesotho and Namibia, Eswatini is a member of the Southern African Customs Union (SACU) and over the last decade has received annual customs revenues of about 12 percent of GDP. These revenues are critical to support the external balance and the currency peg and to finance the government budget (about 40–45 percent of tax revenue)[16].

[15] CBE Annual Report, 2019

[16] IMF Article IV Consultation, 2019

62. The financial sector in Eswatini is developing and dominated by the retirement funds with an asset size of USD 4 billion (40% owned by one large state-owned pension fund), distantly followed by the banking sector with asset size of about USD 1.85 billion (about 30% of GDP), and insurance (USD0.4 billion). Two main pension fund institutions represent 81.6 per cent of the assets of the industry and 64.8 per cent of GDP. The financial services sector, although small, provides a wide variety of financial instruments and constitute the more formal financial services. With a total financial asset base of about USD 6 billion in 2020, the financial sector assets constitute about 136 percent of GDP. 50% of the total financial sector assets are in the pension fund sector. Of the 5 operating commercial banks, three are subsidiaries of South African banks and they control about 80% of the banking assets, two are locally-owned banks. Eswatini has one locally owned Building Society. South African banks dominate the domestic banking system, and South African financial markets are the main destination of Eswatini's large financial outflows. While the size of the DNFBPs sector is not known, the real estate sector is lucrative and booming, especially in the Swazi communal land.

1.3. Structural Elements

63. The key structural elements needed for an effective AML/CFT regime are present in Eswatini. It is a politically and institutionally stable country, based on accountability, transparency, rule of law and independent judiciary. Responsibility for developing and implementing AML/CFT policy and strategies in Eswatini is given to the Task Force, comprising of the Council and the Technical Committee, whose roles are well defined.

1.4. Background and Other Contextual Factors

64. Eswatini has identified corruption, mainly through misuse of public resources, as one of the high ML threats to Eswatini. Discussions with the authorities shows that Eswatini is implementing structures and systems to prevent the threat of corruption.

65. The findings of FinScope (2018) revealed that 85%[17] of Swazi adults are financially included, propped by high usage of mobile money services. Nevertheless, Eswatini is characterised by a relatively high usage of cash. This may be attributed to a very high informal sector representing about 70%. In 2017 Eswatini developed a Financial Inclusion Strategy (NFIS), which is a roadmap of actions, agreed and defined at the national level and followed by stakeholders to achieve financial inclusion objectives.

1.4.1. AML/CFT strategy

66. Eswatini has an AML Strategy (2018-2022) that was developed in 2018 and which assists in the implementation of some of the AML requirements. The Strategy is currently being reviewed to align it with the ML/TF risks identified in the draft NRA report and to include the financing of terrorism and proliferation (TF/PF). The country is also in the process of developing a National AML/CFT/PF Policy that is informed by the identified risks. Although Eswatini has developed strategies for financial inclusion as a way of promoting greater access to formal financial services, the strategies had not been linked to the AML/CFT policies.

[17] Eswatini State of Financial Inclusion Report, 2019

1.4.2. Legal & institutional framework

67. The Money Laundering and Terrorism Financing (Prevention) Act, 2011 is the primary legislation that seeks to criminalise money laundering and terrorist financing and provides preventive measures as well as institutional arrangements. The Act was amended in 2016 to address some gaps that were identified in the previous MER for Eswatini undertaken under the 2004 FATF Methodology. Since its last mutual evaluation in 2010, Eswatini has also taken major steps in strengthening both its legal and institutional framework on AML/CFT. This includes passing the following laws and regulations: Anti-Money Laundering (United Nations Security Council Resolutions) Regulations, 2016; Medicines and Related Substances Control Act, 2016; Prevention of Organised Crime Act, 2018; Police Service Act, 2018; Witness Protection Act, 2018; Suppression of Terrorism (Amendment) Act No. 11 of 2017 and Sexual Offenses and Domestic Violence Act 2018. The country has also issued several Guidelines and circulars. It further strengthened the institutional frameworks of several agencies.

68. Eswatini's institutional framework for AML/CFT encompasses the following institutions:

Relevant Ministries and Co-ordinating Bodies

a) **Ministry of Finance** – is responsible for AML/CFT policy formulation. The Ministry receives advice from the National Task Force Council on all AML/CFT matters. The Ministry receives EFIU's budget proposals and recommends the budget allocations to Parliament.

b) **Ministry of Justice** – is the central authority for outgoing international co-operation (MLA/extradition). The DPP and AG's Office fall under the control of the Ministry.

c) **Ministry of Home Affairs** – administers national population registry and immigration. Works closely with other government agencies to combat crime in general, including presence in all national borders. Ministry also supervises NPOs.

d) **Ministry of Foreign Affairs and International Cooperation (MoFAIC)** – 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.

e) **Ministry of Natural Resources and Energy** – is responsible for development of policy on precious stones and metals. It houses the Minerals Management Board which registers and licenses dealers in precious stones and metals.

f) **Ministry of Trade, Industry 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 including registration of NPOs.

Criminal Justice and Operational Agencies

a) **National Task Force on AML/CFT** – is the main AML/CFT policy making body in Eswatini established under s.38 of the Money Laundering and Financing of Terrorism (Prevention) Act, 2011. It comprises the Council and the Technical Committee. The Council advises the Minister on all AML/CFT policy issues and comprises of the AG, CEO FSRA, Commissioner General SRA, Commissioner Anti-Corruption, Commissioner of Police, EFIU Director, DPP, CBE Governor, Principal Secretary Ministry of Finance. It is chaired by the Governor of CBE. The Technical Committee is the operational organ of the Task Force which develops and implements the AML/CFT policies and strategies including coordinating all AML/CFT activities in Eswatini. It reports to the Council. Members of the Technical Committee include representatives from all the Council agencies and from Ministry of Foreign Affairs, Bankers Association, President of the Law Society and three representatives from accountable institutions appointed by the Minister.

b) **United Nations Security Council Sanctions Implementation Committee**- the Committee is responsible for implementation of United Nation Security Council Resolutions, namely 1267(1999), 1373, 1718 and proliferation financing as provided in the Anti-Money Laundering (United Nations Security Council Resolutions) Regulations, 2016.

c) **The Eswatini Financial Intelligence Unit** (EFIU) – it is Eswatini's FIU. It is an independent and autonomous central national agency responsible for receiving and analysing and any other information from accountable institutions designated under the MLFTP Act, 2011 and follows up on any other information relevant to the analysis before disseminating the results of the analysis to relevant competent authorities. In terms of its functions, as set out under Part 5 of the MLFTP Act, 2011, the EFIU is also required by law to supervise and enforce compliance with regard to accountable institutions that are not supervised by a supervisory authority (e.g., real estate agents, trust and company service providers and the motor vehicle dealers. However, during on-site it was noted that EFIU was supervising all DNFBPs). The EFIU is governed by a non-executive board of directors appointed by the Minister of Finance. The primary purpose of the Board is to monitor and review the administrative performance of the EFIU and provide policy direction as provided under s.27 of the MLFTP Act, 2011 as amended.

d) **The Royal Eswatini Police Service (REPS)** – is responsible for investigation of crime in general. Its Fraud and Commercial Crimes Unit investigates

ML/TF cases. The Anti-Terrorism and Organized Crime Department is responsible for TF investigations.

e) **The Office of the Director of Public Prosecutions (DPP)** – responsible for prosecution of all criminal cases including ML/TF.

f) **The Office of the Attorney General (AG)** – the AG's office is located in the Ministry of Justice. The AG serves as the principal legal advisor to government.

g) **Eswatini Revenue Authority (SRA)** – 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 controlling movement of goods and people into and out of Eswatini.

h) **The Anti-Corruption Commission (ACC)**- is the primary authority which investigates corruption and ML cases related to proceeds of corruption.

i) **Intelligence State Security Services (ISSS)** – is responsible for the domestic and foreign intelligence and counter-intelligence security including identification of terrorism and terrorist financing cases.

j) **Registrar of Companies** – licenses and registers legal entities.

Financial Sector Supervisors

a) **Central Bank of Eswatini (CBE)** – is responsible for licensing, supervising and regulating AML/CFT and prudential activities undertaken by banks and other financial institutions under its administration (bureaux de change, building society (jointly with FSRA), MVTS including mobile money providers, etc.).

b) **Financial Services Regulatory Authority (FSRA)** – established in terms of s.3 of the FSRA Act, 2010, FSRA is a prudential and AML/CFT regulatory and supervisory authority for all non-bank financial services providers in Eswatini (credit & savings institutions, insurance companies, retirement funds and capital markets along with other non-bank financial institutions).

DNFBP Sector Supervisors and Self-Regulatory Bodies

a) **Eswatini Gaming Board** – regulates and supervises the casino sector.

b) **Law Society of Eswatini (LSE)** - was established through an Act of parliament to regulate legal profession (lawyers, advocates, notaries etc.) in the country.

c) **Eswatini Institute of Accountants (EIA)** – is responsible for supervision of accountants and auditors.

d) **Minerals Management Board** – is responsible for supervision off precious stones and metals dealers.

1.4.3. Financial Sector and DNFBPs

69. The financial sector in Eswatini is small but relatively well diversified and developing. Financial institutions in Eswatini provide a wide range of financial services including acceptance of deposits, lending, micro-financing, foreign exchange, capital markets activities, underwriting, asset management, securities trading, financial advisory services, insurance services and mobile money services. In 2020, financial services asset size accounted for 136 percent of Eswatini's GDP.

70. Eswatini's financial sector is dominated by securities and funds management firms, distantly followed by the banking sector. Total assets of the securities and funds management firms amounted to E63.3 billion (USD4.3 billion) representing 72% of total financial assets) as at December 2020. The sector is highly concentrated with 60 percent of the assets being managed by the pension & retirement fund which is systemically significant with a 49 percent industry assets-to-GDP ratio. Two of the retirement funds own the majority of the assets. About 41% of the industry's retirement funds assets are invested in foreign equities, mainly in the Johannesburg Stock Exchange (JSE). Players in the retirement & insurance funds include insurance companies, insurance brokers, insurance agents, retirement funds, retirement fund administrators, medical schemes and medical scheme administrators while the capital market players include collective investment scheme managers, investment advisers, trustees, exempt dealers, stockbrokers, and securities exchanges. The credit & savings institutions, which include savings and credit cooperative societies (SACCOS), building societies, credit providers, debt counsellors, credit bureaus and money lenders, have a small contribution but are increasingly emerging as a dynamic, and important, component of the financial sector with the capacity to more appropriately meet the financing needs of the small and medium scale sector.

71. There are three foreign-owned and two locally-owned commercial banks in Eswatini. One of the local banks is wholly owned by government. The Building Society also provides banking services. Total banking sector assets amounted to USD 1.85 billion as of December 2020 representing 30% of the total financial assets in Eswatini. 90 percent of the banking sector assets are attributable to foreign banks. Banks generally face higher inherent risks, mainly due to their larger customer base, higher transaction volume and the cross-border nature of some transactions. They offer a wide range of products and services and serve a broader spectrum of corporate and individual customers, including higher risk customers such as PEPs and high net worth individual customers.

72. Table 1.1 illustrates the number of financial sector players and distribution of financial sector assets.

Table 1.1. Overview of the Financial Sector (as of 31 December 2020)

Type of Institution	Number of entities	Total Assets (Ebillion)	Total Assets (USD Billion)	AML/CFT Supervisor	FATF Glossary Activity
Banks	5		1.850	CBE	1-8, 10, 13

MVTS[18]	3		0.38	CBE	4
Bureau De Changes	2		0.163	CBE	13
Capital Markets	**(28)**	**26.63**	1.8		
CIS	7	E8.19	0.56	FSRA	9-11
Investment advisers	14	E18.47	1.26	FSRA	8,9,11
Trustees	2			FSRA	9
Exempt dealers	1			FSRA	8
Stockbrokers	3			FSRA	8
Securities exchanges	1			FSRA	8
Retirement & Insurance Fund	**184**	**E36.7**	2.5		
Insurance firms[19]	11	E5.4[20]	0.4	FSRA	12
Insurance brokers	29	-		FSRA	12
insurance agents				FSRA	12
Re-Insurers	1			FSRA	12
Beneficiary funds	3			FSRA	11
Corporate agents	26			FSRA	11
Retirement funds (foreign)	38	-		FSRA	8,9,11
Fund administrators	6	-		FSRA	8,9,11
Retirement funds (local)	68	-		FSRA	8,9,11
Medical Aid funds	3	-		FSRA	12
Credit & Savings	**173**				
Credit providers	108			FSRA	2
Credit bureaus	2			FSRA	
SACCOS	59			FSRA	2
Building societies[21]	2	E2.9	0.211	FSRA/CBE	1,2, 5-7, 13
Debt counsellors	2			FSRA	
VASPs					i,ii, iii

Source: information provided by the Swazi authorities

73. Forex exchange transactions are mostly conducted through banks, as authorized dealers. However, there are also two small standalone forex bureaus. The country has not assessed the ML/TF risk of forex bureaus. Eswatini offers money remittance services (MVTS) through commercial banks, mobile money service providers and a standalone bureau (offering both forex exchange and money remittance services and licensed as Authorized Dealer with Limited Authority). Those MVTS affiliated to commercial banks and offered by standalone agents are inherently high risk due to the cross-border nature of their products and transactions unlike the mobile money transactions that are limited to the domestic market. The public and private sectors

[18] include mobile money service providers

[19] There are seven firms offering life insurance policies

[20] This figure is inclusive of re-insurance, short term and long-term insurance

[21] One of the building societies is operated as a bank taking deposits and providing forex exchange. The banking activities are monitored by CBE. However, FSRA is the primary regulator.

interviewed indicated that cross-border MVTS is one of the channels used to pay suppliers of drugs/dagga in Eswatini. The NRA exercise did not assess the risks of this sector as well neither were there sectoral or thematic risk assessments conducted by the supervisor to identify and fully understand the level of exposure of the sector to ML/TF. The draft NRA report acknowledges existence of a growing black market for forex exchange and informal money value transfers although the extent of the exposure could not be determined during the interviews. Further, there was a growing concern by the authorities relating to increasing cases of pyramid schemes until 2020. In Eswatini, there is evidence of crypto (virtual assets) transactions that take place in the country, however these are crypto exchanges based in South Africa. While the authorities advised that there are currently no known VASPs based in the country, the VAs transactions are considered to be avenues through which illicit funds are cleaned. The authorities are yet to assess and fully understand the extent of the threat in the country.

74. All the DNFBP sectors exist in Eswatini, and are all covered by the AML/CFT regime. The DNFBP sector is vulnerable to ML/TF mainly because AML/CFT supervision has not yet started.

Table 1.2 - DNFBPs in Eswatini

Industry	Number	Designated AML/CFT Supervisor	Current AML/CFT Supervisor
Casinos	3	Eswatini Gaming Board	EFIU
Real estate	unknown	Nil	EFIU
Legal practitioners[22]	237	Law Society of Eswatini	EFIU
Notaries and conveyancers	20	Law Society of Eswatini	EFIU
Accountants and auditors	527	Eswatini Institute of Accountants	EFIU
Precious stones dealers	2	Minerals Management Board	EFIU
Car dealers	22	Nil	EFIU

Source: information provided by the Swazi authorities

75. Among the covered DNFBPs, the **real estate** industry in Eswatini is most significant in terms of ML vulnerability. While the NRA considered the sector as growing at a very high pace, it acknowledges that the size of the industry is not known mainly due to the fact that the sector is neither regulated nor supervised. There is no legal requirement for a person to be licensed as a real estate agent. Instead, any person, whether a registered company or anonymously as an individual, can trade as a real estate agent. Most players in this industry are into buying and selling or development of property in the communal land controlled by the traditional leaders (Swazi National Land). No title deeds are issued on such properties. The NRA exercise acknowledged the construction of multi-million properties in this land and expressed serious concern that almost all transactions are strictly cash-based whose sources are difficult to trace. Similarly, there is also an increase in the formal real estate transactions within urban areas. Although this appears to be more systematic, the absence of regulation and supervision is a serious cause of concern as the AML/CFT internal controls are non-existent.

76. **Lawyers** were rated as high risk in the draft NRA report. This was mainly due to the nature of transactions which they handle, including managing of client money or trust funds, securities or other assets, registration of business entities and creation of trusts (TCSP services).

[22] TCSP services are offered by lawyers

Conveyancers and notary publics facilitate transactions in sale or purchase of real estate and most transactions are cash based. The authorities and the private sector agreed that fraud, corruption and tax evasion schemes exist in this sector mainly due to their exposure to abuse by PEPs and other high net worth clients. While the LSE is the designated regulator and supervisor for the lawyers, it has not started its supervisory role leaving the sector highly vulnerable to ML.

77. The assessment team agreed with the authorities that the risk of **casinos** was medium/high mainly due to its size and lower number of customer base, most of which are local. However, its cash intensive nature and inadequate AML/CFT controls makes it attractive for cleaning proceeds of crime including foreign proceeds. There are only two licensed **dealers in precious stones and metals** in Eswatini and assessors concluded that this industry is less vulnerable to ML. Dealing in precious stones and metals appears not to be a lucrative business in Eswatini mainly due to limited resources. As a result, informal dealers are less noticeable. Further, **accountants and auditors** are regarded as posing lower ML risk mainly due to the limited services that they offer and the high level of professionalism within the sector. However, like other DNFBPs, neither the EFIU nor the Eswatini Institute of Accountants (EIA) have not started supervising the sector for AML/CFT thus creating a vulnerability.

78. The AML/CFT legal regime in Eswatini recognises **motor vehicle dealers** as accountable institutions. Two categories of dealers were identified, *local* motor dealers and *import/grey* car dealers. The local dealers were recognised in the draft NRA report as less risky as most of their transactions are done through financial institutions. This was not the case with import/grey car dealers who were assessed in the NRA exercise as highly vulnerable to ML. The import/grey car dealing business is lucrative and operated by foreign nationals, in particular Asians who buy and sell second hand cars. The business is highly cash intensive as the majority of the cars are sold strictly on cash. In some instances, buyers are allowed to continue using the dealer's name in the registration book despite change in ownership. Dealers are mostly known in the country for not opening bank accounts. As a result, authorities are not aware of how purchases in foreign jurisdictions are funded. The sector is highly vulnerable to underground or informal value transfer systems and hawala business. Additionally, the EFIU, who is supposed to be the default AML/CFT supervisor has not started supervising the sector.

79. When assessing the effectiveness of preventive measures and AML/CFT supervision, the assessors attached the highest importance to banks, followed by real estate agents and MVTS involved in cross-border transactions. The securities, insurance, mobile money, casinos, and lawyers were considered to be at a medium level of importance. Less importance was attached to accountants/auditors and dealers in precious stones and metals.

1.4.4. Preventive measures

80. The MLFTP Act, 2011 as amended in 2016, is the primary legal instrument setting out the preventive measures (including customer due diligence, reporting, and record-keeping) which apply to all accountable institutions in Eswatini. The Act further designates motor vehicle dealers as accountable institutions. It empowers the Minister of Finance to issue regulations (s.92) and supervisory authorities to enforce compliance with and implementation of the provisions of the Act using other enforceable means. Pursuant to s.35 of the MLFT(Prevention) Act, the FSRA has issued regulatory guidelines relating to this area. The AML/CFT regulatory guidelines issued by CBE in 2016 were not issued pursuant to s.35 hence have no force of law (see R.10). Eswatini has

also promulgated the Anti-Money Laundering (UNSCR) Regulations 2016 which introduces prevention measures on targeted financial sanctions (the UNSCR 1267(1999), 1373 and 1718).

81. Eswatini's legal framework provides exemption for CDD for occasional transactions below E2,500 (USD170), unless if the transactions are suspicious. This exemption is, however, not based on proven low risk of ML/TF.

1.4.5. Legal persons and arrangements

The legal persons

82. Legal persons in particular companies and non-profit organisations are created under the Companies Act, 2009 which also establishes Registrar of Companies to facilitate their incorporation in Eswatini. Information on the creation and types of legal persons that can be created is publicly available through online platform at government website[23]. There are three types of companies that can be formed in Eswatini. These are; a company limited by shares, a company limited by guarantee and an unlimited company. These companies can either be private or public companies. S.16 of the Companies Act 2009 goes further to define a private company and details activities it is permitted or prohibited to perform and the consequences of non-compliance which may warrant it to be treated as a public company. Partnerships may also be created and incorporated as companies limited by shares. A non-profit organisation may be incorporated as a company limited by guarantee in terms of s. 17 of the Companies Act, 2009.

83. S. 15(2) of the Company's Act, 2009 details features of a company deemed to be a local company and s.18 of the Companies Act details features of a foreign company which is eligible to be incorporated in Eswatini. Table 1.3 indicates the number of each type of legal person registered in Eswatini.

Table 1.3 - Types and Number of Companies in Eswatini

Type of Legal Persons	Number
Private companies	16855
Public companies	140
Company limited by shares	10671
Company limited by guarantee	1
Domestic association incorporated as a company limited by guarantee	0
Foreign associations incorporated as a company limited by guarantee with Eswatini presence	0
Unlimited company	0
Partnerships	0
Foreign Partnerships with Eswatini presence	0
Non-Profit Organizations	736

Source: information provided by the Swazi authorities

Legal arrangements

84. Trust are a creation of common law in Eswatini. These are testamentary trust and trust inter vivos. The case law in Eswatini demonstrates that a trust is created by a person, the settlor, when

[23] http://www.gov.sz/index.php/departments-sp-1596706154?id=522

assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose[24]. It was noted during the onsite that trusts are created by notaries who are also the custodians of the trust deeds. There is no legal requirement to register trusts and information on their creation is not publicly available.

1.4.6. Supervisory arrangements

85. The responsibility for supervision and oversight of financial institutions is shared between CBE and FSRA. CBE is responsible for licensing and supervision of banks, MVTS and forex bureaus (including the building Society) for both prudential and AML/CFT purposes. MVTS providers are either affiliated to banks or standalone. Those that are affiliated to banks are supervised by CBE as part of the financial products/services of banks. Mobile money service providers are also licensed and supervised by CBE.

86. The FSRA is responsible for AML/CFT and prudential supervision and licensing of non-bank financial institutions (credit and savings, retirement and insurance, and capital market institutions). FSRA is the primary supervisor for the building society.

87. Both CBE and FSRA have broad range of powers to supervise and monitor compliance of FIs with AML/CFT requirements, including powers of off-site surveillance, and on-site visits and inspections.

88. All DNFBPs are present in Eswatini. Trust and company services are largely provided by lawyers and accountants. With the exception of real estate agents and TCSPs who have no regulators, all other DNFBPs are subject to licensing/registration by their relevant authority or self-regulatory body. The same authorities are also required by s.31 of the MLFTP Act to be the AML/CFT supervisors *(see table 1.2 for list of authorities responsible for AML/CFT supervision of the various DNFBPs).* Those that do not have relevant authorities are automatically supervised by the EFIU. However, during the on-site visit, AML/CFT supervision for all DNFBPs had not started. There was confusion among supervisors in the interpretation of s.31 where all DNFBP supervisors and the EFIU were under the impression that the section gives power to EFIU to solely supervise all DNFBPs for AML/CFT.

1.4.7. International cooperation

89. Eswatini has ratified all the international instruments relevant to AML/CFT, which it has domesticated to support its international cooperation requirements. The legal framework for extradition and MLA is set out in the Criminal Matters (Mutual Assistance) Act, 2001 and the Extradition Act, 1968, which are not unduly restrictive. In addition, Eswatini has entered into bilateral and multilateral agreements (e.g., the Harare / Commonwealth MLA Scheme and South African Regional Police Chiefs Cooperation Organisation (SARPCCO) as well as with other countries) to facilitate international cooperation. In Eswatini, ML/TF are extraditable offences in terms of s.90 of the MLFTP Act, 2011.

90. The LEAs and the AG's Office through DPP (which handles MLA and extradition requests) have made and received requests on cases with their foreign counterparts but few cases are related to ML and no case on TF. The EFIU has signed eleven MoUs with other FIUs in the

[24] Nelly Msibi and another v FNB Swaziland and Another

ESAAMLG region to facilitate exchange of information. No MoUs have been signed with counterparts outside the ESAAMLG region. As at the date of the onsite visit, the EFIU had exchanged information with counterparts in South Africa and Botswana. CBE is a member of the CMA together with South Africa, Lesotho and Namibia which enables it to exchange information regularly though mostly, prudential. Other supervisory authorities have not demonstrated that they effectively cooperate and exchange information with foreign counterparts.

2. NATIONAL AML/CFT POLICIES AND COORDINATION

2.1. Key Findings and Recommended Actions

Key Findings

(a) Eswatini authorities have a fair understanding of the ML threats (high proceeds generating crimes) and vulnerabilities arising from inadequate AML/CFT measures implemented by accountable institutions and competent authorities. However, the understanding of the predicate offence generating the highest proceeds in Eswatini was not commonly shared among different stakeholders. While the understanding was mainly limited to the findings of the NRA exercise launched in 2016, delays in finalising the NRA exercise may have impacted on understanding of the evolving ML/TF risks in the country. Further, understanding of TF risk is low across the spectrum.

(b) Eswatini has identified the high proceeds generating predicate offences and fairly understand some of the channels used to move the proceeds. However, the extent of the proceeds is not known and the country does not have adequate measures to mitigate the ML/TF risks. The country has not yet developed a national AML/CFT Policy which would assist the authorities to address the identified ML/TF risks. Similarly, although the country has developed a National AML/CFT Strategic Plan in 2018, it was not informed by any identified ML/TF risks in the country. On this basis, the priorities and objectives of the competent authorities are currently not based on the risks identified in the country.

(c) Eswatini has not yet conducted a risk assessment for legal persons and arrangements to better understand the extent to which the sector can be misused for ML.

(d) Eswatini has not assessed the NPO sector to identify those NPOs which are likely to be at risk of terrorist financing abuse including the nature of threats posed by terrorist entities to those NPOs.

(e) Eswatini enjoys fairly good AML coordination driven by the National Task Force, comprising of the Council and the Technical Committee. There is good political commitment in the country on AML matters as reflected by the National conference (indaba) on AML/CFT and the NRA organized by the Task Force. Effective coordination at the Technical Committee level is, however, hindered by the exclusion of some key stakeholders from the Committee. Limited AML cooperation was also noted among competent authorities. Further, Eswatini does not have good coordination at national level on TF/PF. This has negatively impacted on the identification of TF as well as the cases. Eswatini established a UNSCR Implementation Committee which is intended to enhance the framework in terms of implementing the UN designations. However, the Committee is yet to start effectively coordinating the relevant stakeholders in this regard.

(f) Eswatini recognized the potential ML/TF risks from emerging technologies such as VAs and VASPs and has started taking initial steps to identify and assess the risks. The country is yet to develop a full-fledged understanding of such risks.

(g) Eswatini is yet to raise awareness on ML and TF to private sector pending approval of public release of the draft NRA findings.

Recommended Actions

(a) Promote a shared understanding of ML/TF risks amongst all stakeholders (public and private sectors) at a national level through targeted stakeholder engagements centred on the results of the ML/TF risk assessment. This includes improving the understanding of how the proceeds of corruption are laundered in the country and vulnerabilities relating to the geographic regions or corridors most exposed to cash smuggling;

(b) Prioritize development of the National AML/CFT Policy that is informed by the identified ML/TF risks and subsequently review the National AML/CFT Strategic Plan to ensure that the priorities and objectives of the competent authorities are based on identified risks.

(c) Review and update the current draft NRA Report to incorporate the ML/TF risks that have evolved since 2016 in order to enhance the level of understanding of ML/TF risks in Eswatini. The updated report should include an in-depth assessment of legal persons and arrangements, VAs, VASPs and the informal sector, in order to fully understand potential ML risks they pose, and apply appropriate mitigating controls to address the identified risks. Further, the country should conduct an assessment of TF risk taking into account all relevant factors such as NPOs likely to be abused, extent of the hawala system, high usage of cash and cash smuggling across porous borders, Ponzi schemes, effects of foreign nationals from high-risk countries, terrorism threats from neighbouring countries and use of debit and credit cards in foreign jurisdictions, among others.

(d) Use simplified measures and exemptions based on ML/TF risk assessments.

(e) Incorporate the key stakeholders omitted in the Technical Committee. The Task Force should develop mechanisms that enable regular sharing of relevant information among the competent authorities including co-ordination of TF at national level. Capacitate the UNSCR Implementation Committee to ensure that it effectively coordinates the relevant stakeholders and perform its functions in line with the Regulations. Also ensure that the Regulations are issued under the proper relevant laws for them to have a force of law.

(f) Take adequate actions to promote accountable institutions' awareness of the ML/TF risks identified including TF indicators and other ML/TF typologies. This can be done through prioritizing issuance of guidance in line with Eswatini's risk profile, particularly with regard to the link between the highest proceeds generating predicate offenses and associated ML risks.

91. The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The Recommendations relevant for the assessment of effectiveness under this section are R.1, 2, 33 and 34.

2.2. Immediate Outcome 1 (Risk, Policy and Coordination)

2.2.1. Country's understanding of its ML/TF risks

92. Eswatini began conducting a National Risk Assessment (NRA) exercise to identify, assess, understand and mitigate its ML/TF risks in 2016. The draft NRA Report was still undergoing the approval process at the time of the on-site visit. The NRA exercise was coordinated by the Technical Committee and most institutions in Eswatini participated in the exercise. The NRA primarily took qualitative analysis techniques (although quantitative techniques were used to a lesser extent), relying on the World Bank NRA tool, and focused on threats and vulnerabilities in the country's AML/CFT system. The major challenge was lack or insufficient data/statistics maintained by most agencies in Eswatini. The assessors noted that certain key stakeholders were omitted in the NRA process including the Registrar of Companies, Immigration, Ministry of Foreign Affairs, Ministry of Home Affairs and private sector representatives from the DNFBP sector. The absence of such key stakeholders in the NRA process, like the Registrar of Companies might have created gaps in the information collected during the exercise relating to legal persons and legal arrangements. While these institutions/agencies had no appreciation of the ML risks affecting the country, most, including those that participated in the NRA exercise could not demonstrate that they understood the ML risks beyond what was identified in the draft NRA report. While the draft NRA report adequately captured some of the ML threats and vulnerabilities, assessors were concerned that it had taken long to be finalised.

93. The draft NRA identified drug trafficking, fraud, tax evasion, corruption and smuggling of goods as the predicate offences generating most of the proceeds in Eswatini. However, each agency is looking at ML only from their own perspective and the NRA process did not help to increase common understanding of the ML risks across the relevant agencies.. While tax evasion was considered by the Technical Committee as generating the highest proceeds in Eswatini, it was noted that all the LEAs had a different view and understanding on which of the highlighted predicate offences generated the highest proceeds. All of them considered the predicate offences under their mandate as generating the highest proceeds in Eswatini. This demonstrated an inadequate understanding by LEAs and other Competent Authorities of which one of the predicate offences was the highest proceeds generating and that there might have been inadequate consultation informing the NRA on the risk rating of the crimes. This may affect prioritization in terms of resource allocation. Additionally, the decision by each agency to consider the related crimes as high proceeds generating is judgemental not based on any known or meaningful statistics of proceeds generated. Assessors also questioned some of the factual information at the basis of the NRA conclusions and findings. For instance, while corruption is identified as high proceeds generating offence, it only generated USD5 million in proceeds from 2011 to 2018 (that is an average of USD625,000 per year). Assessors further noted very limited understanding of ML by various agencies, in particular, the LEAs, which had led to very low ML cases being identified, investigated and prosecuted compared to predicate offences *(see IO.7)*.

94. Regarding the TF risk, the assessors noted that there is little to no understanding of TF risks across all the LEAs, supervisors and the private sectors. TF was not adequately assessed in the NRA exercise neither was a risk-rating assigned. The assessors are of the view that there are relatively inadequate measures in place to be able to identify and consequently understand the TF risk. The LEAs responsible for investigating terrorism and terrorism financing do not fully understand the risk of TF in the country. In some occasions assessors noted that TF is often confused with the offence of terrorism which generally led to a narrow view that since there had been no terrorism case in the country, it automatically translates to there being no TF. In this

regard, the TF risk in Eswatini is generally considered as low by most of the authorities, although there is no consistency as some rate it as medium risk, albeit without proper justification. The authorities believe that the suspected terror attacks that happened in 2018 in South Africa and Al-Shabaab attacks in Mozambique have no effect on the country. Some FIs, especially banks, expressed awareness of terrorism developments in Mozambique such as ISIL attacks in Cabo del Gado, potential funds layering through credit cards transactions mostly in Asia with unknown intended purpose, huge inflow of funds for some charitable organisations, and existence of porous borders for the country. They, however, could not demonstrate to what extent these factors could be used in determining the level of TF risks in the country. It is the view of the assessors that these factors, in addition to high cash usage and the growing number of foreigners (some of which are from high-risk jurisdictions and believed to be thriving mostly on the hawala system) may potentially increase TF risk in the country.

95. The authorities, to a limited extent, demonstrated an understanding of the sectors that are most vulnerable to ML. Most pointed out banks, lawyers, real estate and second-hand motor vehicles as most exposed to ML. This was in line with the findings of the NRA exercise. The banking sector was identified as the main channel that is exploited by criminals, especially, if they want to launder huge amounts. The authorities identified banking channels such as cross-border wire transfers and withdrawals in foreign jurisdictions using credit and debit cards as most vulnerable. Although the NRA exercise identified tax evasion as one of the most proceeds generating crime, only CBE and the banking sector demonstrated reasonable understanding of how it happens in the banking sector, that is, through misuse of personal bank accounts to conduct company business transactions and raised it as a major ML concern.

96. Real estate was identified by most public and private entities as where most illicit proceeds laundered are destined. This was mostly related to purchase of communal rural land (Swazi land) and buildings in urban areas. While this was common knowledge with the majority of the entities met, most could not explain the sources of the funds. However, only a few such as the banks and some of the LEAs clearly identified proceeds generated from corruption by PEPs and other public sector officials (some of whom are said to withdraw very huge amounts of cash in the name of funding state functions) and proceeds from sale of the locally grown dagga, as the main sources. One bank indicated that proceeds from sale of dagga were mostly being repatriated from neighbouring countries, and further indicated that the funds are channelled through MVTS (especially, MoneyGram/Western Union). Additionally, banks, view pyramid and other Ponzi schemes operating in Eswatini as contributing in the generation of illicit proceeds that could also be laundered in the real estate and other sectors.

97. Based on the meetings with the authorities, it was also clear that cash payments are the preferred channel for moving the criminal proceeds for laundering through purchase of second-hand motor vehicles, real estate and in casinos. In addition, the proceeds are smuggled by cash couriers to foreign destinations. A few demonstrated an understanding of the effects of porous borders in the movement of cash. However, there are no estimates available to gauge the magnitude of the proceeds being laundered including in-depth understanding of the vulnerabilities relating to the geographic regions or corridors most exposed to cash smuggling or the foreign jurisdictions where most proceeds ended up (although Asian nationals were identified in the case of grey motor vehicles).

98. Notwithstanding the inherent ML risks relating to legal persons and arrangements (Trusts), Eswatini has not yet conducted a risk assessment for legal persons and arrangements in order to fully understand the extent to which the sector can be misused for ML, for example, types of corporate structures most misused or vulnerable for ML. This was clearly demonstrated by very low understanding of the BO concept across the board.

99. The authorities could not demonstrate that they understood how NPOs can be abused for TF purposes. Further, the NRA exercise did not assess the TF risks relating to the NPO sector.

Although the Authorities did not believe that NPOs pose any TF risk, the FIs indicated some typologies of huge flows of funds to the local NPOs which could be a vulnerability.

100. There are no known VASPs in Eswatini. VASPs operate from neighbouring countries. Eswatini recognized the potential ML/TF risks from VAs and VASPs and had taken initial steps to identify them but was yet to develop a full-fledged understanding of such risks. VAs and VASPs were considered as high-risk, in particular, by banks because they were not regulated. During the on-site meetings, the authorities indicated that they were in the process of assessing the inherent ML risks relating to VAs and VASPs and that they had started conducting an internal research project which was still on-going during the on-site. The research would inform the country on the ML/TF risks posed by VAs and VASPs.

2.2.2. National policies to address identified ML/TF risks

101. In 2018 Eswatini's AML/CFT National Task Force developed a National AML/CFT Strategic Plan (2018-2022) whose main areas of focus were on research/data collection, enforcing compliance with international standards, lobbying and advocacy, collaboration and cooperation, and capacity building. While, to a lesser extent, it assisted in the implementation of some of the general AML requirements such as capacity building, Assessors noted that the National AML/CFT Strategic Plan was not informed by the ML/TF threats and vulnerabilities identified in the country such as high proceeds generating crimes (e.g. corruption) and vulnerabilities in specific sectors (e.g. real estate sector). Further, the National AML/CFT Strategic Plan does not cover the financing of terrorism and proliferation (TF/PF) mainly because TF risk was not adequately assessed during the NRA exercise. While the authorities indicated that they were reviewing the National AML/CFT Strategic Plan based on ML/TF risks identified, assessors also noted during the on-site that Eswatini is yet to develop the National AML/CFT/CPF Policy. Eswatini regards the findings of the NRA exercise as a starting point for the review and development of coordinated ML/TF policies and strategies.

2.2.3. Exemptions, enhanced and simplified measures

102. Eswatini's legal framework provides exemption for CDD in cases where (a) the transaction is part of an existing and regular business relationship with a person who has already produced satisfactory evidence of identity and; (b) if the transaction is occasional and not exceeding E2,500 (USD170), unless if in both scenarios the transaction is suspicious. The authorities, however, could not demonstrate that the exemption for occasional transactions below E2,500 is based on proven low risk of ML/TF. The threshold of E2,500 (USD 170) is considered to offer a negligible risk of ML/TF as the quantitative transaction amount is sufficiently low and forms part of the Financial Inclusion Strategy. However, authorities should be able to explain why this threshold was identified and provide further explanation to support the (likely) conclusion that these transactions are low risk.

103. FI supervisors require entities under their purview to perform risk assessment of their customers and activities on an annual basis. Further, they have issued AML Guidelines requiring FIs to apply EDD measures to all higher-risk business relationships, customers and transactions. FIs, in particular banks and large foreign owned non-bank FIs, apply EDD measures in respect of certain customers (e.g., PEPs, correspondent banking relationships, etc.) and transactions (e.g., cash and cross-border wire transfers) which they have identified as posing higher ML risk *(see IO.4).*

104. Banks and mobile money service providers apply simplified due diligence on certain customers and transactions in order to promote financial inclusion. For example, the Swazi ID is the only KYC document required for account holders whose turnover at any given period is E5,000.00 (USD340) and below. As these measures are targeted at increasing financial inclusion,

they are likely lower risk, however, authorities were not able to provide further explanation of how they had come to the conclusion that these services are lower risk

105. DNFBPs do not apply EDD or simplified measures. All customers and transactions are treated the same.

2.2.4. Objectives and activities of competent authorities

106. The objectives and activities of competent authorities in Eswatini are, to a large extent, not informed by any ML/TF risk assessment. The 2018 – 2022 National AML/CFT Strategic Plan is not premised on any identified ML/TF risks. The country is in the process of developing a National AML/CFT Policy which will direct setting of AML/CFT objectives and allocation of resources.

107. Although the EFIU has started to prioritize analysis of crimes identified in the draft NRA Report, it is yet to use the information for strategic analysis *(see IO.6)*. The LEAs have also not started using financial intelligence to assist them in prioritizing their financial investigations. LEAs use financial intelligence primarily to drive predicate investigations, as opposed to ML investigations *(see IO.7)*.

108. On transparency of basic and beneficial ownership, competent authorities and accountable institutions in Eswatini access basic information on legal persons from the Registrar of Companies. While the office of the Registrar of Companies has started to provide an online platform where institutions can connect to access its database for the verification of basic information on legal persons, it has not started to collect and keep UBO information with regards to both domestic or foreign owners of legal persons since it is not a legal requirement in Eswatini *(see IO.5)*.

109. The FSRA and CBE are in the early stages of implementing risk-based supervision and therefore allocation of resources has not been informed by the risks identified *(see IO.3)*.

2.2.5. National coordination and cooperation

110. AML/CFT policy cooperation and coordination to address Eswatini's ML risks are fairly strong. Although Eswatini has wide-ranging arrangements in place for AML/CFT coordination and cooperation at both policy and operational levels, policy coordination and cooperation to address TF risks is inadequate.

111. Eswatini has established and constituted a National Task Force comprising of the Council and Technical Committee. The Task Force is aimed at having in place measures to prevent and detect ML/TF through promoting coordination among the different organs of Government (the EFIU, investigatory authorities, supervisory authorities and other agencies including the private sector) at the same time furthering the understanding and effective implementation of existing policies and laws in combating ML/TF.

112. The Council is a policy making body whose role is to advise the Minister on AML/CFT Strategies and Policies and other legislative and practical initiatives necessary to secure compliance with international AML/CFT Standards. It comprises all key stakeholders at policy making level from the relevant AML/CFT stakeholders and is chaired by the Governor of the Central Bank. The Council meets regularly on a quarterly basis. The Council advised that it would use the findings of the NRA to review the current Strategy and develop Policies to promote effective cooperation and coordination of implementation programmes based on the identified ML/TF risks.

113. At operational level, Eswatini established a Technical Committee of the Task Force to implement the decisions of the Council. While the Technical Committee comprises representatives from most key AML/CFT stakeholders, assessors are of the view that it can benefit from incorporating representatives from the Registrar of Companies, Immigration, Ministries of Home Affairs, Housing and Urban Development, and Natural Resources as members of the Committee.

The Committee meets on a monthly basis and some of its roles include development of National Strategies and implementation of National AML/CFT Policies in addition to facilitating collaboration of all AML/CFT stakeholders in Eswatini. Further, the Technical Committee is mandated to coordinate the national risk assessments. In this regard, the Committee coordinated the NRA which was commissioned in 2016.

114. The Task Force has demonstrated effectiveness by successfully organizing a National conference (Indaba) on AML/CFT in July 2019 which brought together 230 participants from public and Private sectors including representatives of NGOs and international bodies. The main objectives were to raise national awareness on AML/CFT matters and to instill a voluntary compliance culture on AML/CFT requirements in the country. The results of the Indaba were shown in increased demand from various stakeholders for AML/CFT training and this prompted CBE to open up a Training Academy. Additionally, the Task Force coordinated the NRA and the ME exercises. It also played a significant role in the review and amendment of the MLFTP Act, 2011.

115. The assessors, however, noted that co-ordination and cooperation in identifying and investigating of TF cases and in addressing TF risk among the LEAs, other competent authorities and the private sector is hardly in place. Agencies work in silo with no mechanism in place to share information on TF with other agencies. Similarly, at national level, the Task Force has not started to coordinate the relevant stakeholders in order to address TF risks.

116. Cooperation is weak as there are no clear platforms or mechanisms for sharing information, such as on typologies or development of Guidance (such as on TF, RBS) among supervisory authorities in Eswatini. As a result, the supervisory authorities are at prominently varying levels in the implementation of AML/CFT requirements.

117. While Eswatini has established the UNSCR Implementation Committee intended to enhance the framework in terms of timely distribution of the UN updated lists for TF/PF, some members of the Committee are still fairly new and that the Committee is still familiarizing itself with the implementing Regulations. As such, it has not started to sufficiently coordinate the relevant stakeholders in this regard.

2.2.6. Private sector's awareness of risks

118. The private sector, most notably the FIs, including SRBs actively participated in the NRA exercise. While the draft NRA report was still undergoing the approval process, the authorities shared its preliminary findings with some of the private sector entities through the Technical Committee representatives. However, some of the private sector entities had not received the preliminary findings and had limited awareness of the ML risks in Eswatini. Through some supervisory engagements undertaken by CBE and FSRA, banks and some FIs affiliated to international financial groups had more awareness of the risks identified in the country and through their own ML risk assessments, than the other FIs.

119. There is no awareness of risks in the DNFBP sector and as such the sector had no understanding of the ML/TF risks. Supervisory activities in this sector had not yet started.

120. Awareness of TF and PF is hardly in place across the spectrum. Supervisory authorities have not issued specific Guidance on TF typologies and red flags. Additionally, no specific awareness workshops were held on TF and PF with almost all of the private sector representatives met not able to explain to the assessors their understanding of PF.

Overall conclusions on IO.1

121. Although Eswatini has institutional frameworks to coordinate AML domestically, it has not done much to promote understanding of ML/TF risks across the various public agencies and the private sector. There is limited understanding of ML and low understanding of TF, even among

the LEAs. The country has not assessed ML threats and vulnerabilities of legal persons and arrangements, virtual assets, and potential TF abuse of NPOs. The National AML/CFT Strategic Plan (2018-2022) developed by the National Task Force, the objectives and activities of the competent authorities, are to a large extent, not informed by ML/TF risks identified.

Eswatini is rated as having a Low level of effectiveness for IO.1.

3. LEGAL SYSTEM AND OPERATIONAL ISSUES

3.1. Key Findings and Recommended Actions

Key Findings

Financial Intelligence ML/TF (Immediate Outcome 6)

(a) EFIU is an autonomous central national agency responsible for receipt and analysis of financial transaction reports and dissemination of financial intelligence and other information to LEAs for identification and investigation of potential ML/TF and associated predicate offences.

(b) The EFIU offices have adequate measures for physical, personnel and information security but has inadequate financial and human resources which hampers performance of its core functions. Most EFIU disseminations relate to tax evasion and are not in line with other proceeds generating offences, that have been identified as key ML/TF risks for Eswatini, such as corruption and drug trafficking.

(c) While the EFIU produces reasonably good financial intelligence, it is not focusing on predicate offences generating the most proceeds. The use of the financial intelligence by LEAs is minimal and primarily for pursuing investigation of predicate offences. Further, the LEAs do not proactively seek financial intelligence from the EFIU to support their ongoing investigations or to trace and identify assets linked to ML and other financial crimes.

(d) The EFIU has not yet produced strategic analysis report to identify emerging risks and to help LEAs to identify and pursue potential ML/TF cases.

(e) There is limited level of domestic cooperation and exchange of information in Eswatini such that LEAs seldom request the EFIU for information to assist with their operations. Further, LEAs rarely conduct joint ML investigations.

(f) The EFIU is not a member of the Egmont Group, and relies on exchanging of information mainly with FIUs with which it has MoUs within the ESAAMLG region.

ML investigation and prosecution (Immediate Outcome 7)

(a) Eswatini has criminalized the offence of ML and to some extent, there are mechanisms in place to identify potential ML cases. However, the number of ML cases investigated and prosecuted are still very low as LEAs focus more on investigating predicate offences.

(b) The Authorities have not developed AML/CFT strategies and policy to guide ML investigations and prosecutions. As a result, the Authorities have not been investigating and prosecuting ML as per the country's risk profile in order to mitigate ML risks.

(c) The FECU under REPS, the ACC and the Office of the DPP have inadequate capacity to identify, investigate and prosecute ML and this has affected the number and quality of ML investigations and prosecutions conducted by the respective institutions.
(d) Eswatini uses other criminal justice measures such as civil asset forfeiture where ML investigations cannot result in successful prosecution. However, in practice, LEAs have opted to use such measures as they are easier to prove, thereby substituting and diminishing the importance of ML investigations and prosecutions.
(e) It is not possible to determine whether the range of available sanctions for ML cases are in practice effective, dissuasive, and proportionate as at the time of the onsite, the authorities had not yet successfully prosecuted a ML case.

Confiscation (Immediate Outcome 8);

(a) The confiscation regime in Eswatini, although it has started to develop, is still at a very low level. It lacks risk-based policies and strategies to target confiscation of property laundered, and proceeds from associated crimes according to the risk profile of the country;
(b) Eswatini does use tax proceedings to recover tax based on disseminations from EFIU but this has been to a very limited extent.
(c) Eswatini could not demonstrate that it has used confiscation as an effective, proportionate and dissuasive sanction against undeclared or falsely declared currency or BNIs. There were no clear processes laid down to coordinate declaration of cross border movement of currency and BNIs amongst competent authorities.
(d) The additional Units set-up to implement civil forfeiture with the coming into force of the POCA, are still to be fully resourced to effectively pursue their mandate.

Recommended Actions

IO.6

(a) Authorities should take urgent steps to address EFIU's inadequate level of financial and human resources to enable it to produce and support LEAs with quality and relevant financial intelligence and other information to pursue ML/TF cases.
(b) The EFIU should take the necessary steps to increase its access to the widest possible range of information including key law enforcement databases such as information held by the Registrar of Companies, Home Affairs Ministry, Natural Resources and Energy Ministry, Lands Ministry, Motor Vehicle Authority, and Public Procurement Authority to help enrich the financial intelligence it produces. This can be achieved through signing of MoUs that will enable access to information held by the relevant government ministries, departments and agencies.

(c) LEAs should prioritise the use of financial intelligence through proactively making requests for information to the EFIU and seeking financial information from other sources for purposes of initiating and supporting investigation of ML/TF and predicate offences.
(d) Conduct outreach sessions and provide guidance and feedback to accountable institutions to capacitate them to detect and report suspicious transactions and improve on the quality of STRs reported to the EFIU consistent with the risks facing the sectors.
(e) Develop strategic analysis in order to identify emerging risks and typologies, which will assist LEAs to pursue potential ML/TF investigations.
(f) The authorities should build the capacity of LEAs including considering mentorship programs for LEAs on the use of financial intelligence and improve inter-agency cooperation through MoUs and task forces to pursue ML/TF cases.
(g) The EFIU should expedite the process of joining the Egmont Group for increased exchange of information with other FIUs including those outside the ESAAMLG region.

IO.7

(a) The Authorities should develop AML/CFT policies or strategies to address the prioritization of ML investigations and prosecutions in order to mitigate ML risks.
(b) LEAs should ensure that parallel financial investigations in all investigations of proceeds generating predicate offences are conducted.
(c) The FECU under the REPS, the ACC and the Office of the DPP should be capacitated with adequate human and financial resources to improve their effectiveness in ML investigations and prosecutions. Further, capacity building should as a matter of priority be provided to officers under the FECU, ACC and Office of the DPP.
(d) LEAs should ensure that the use of alternative measures be only applied where a ML investigation has been pursed but where it is not possible for justifiable reasons, to secure a conviction. As the current practice of preferring easier to prove charges diminishes the importance of investigating and prosecuting the ML offence.
e) The Office of the DPP should ensure ML prosecutions are presented before the Courts of Law in a timely manner.

IO.8

The Kingdom of Eswatini should;

(a) Develop a comprehensive national policy on asset forfeiture, which should ensure that the country prioritises confiscations of proceeds, instrumentalities and property of corresponding value arising from identified high proceeds generating offences.
(b) Through SRA, develop policies and strategies to proactively engage in depriving criminals of ill-gotten property through its tax system;

(c) Through SRA's Customs and Excise department review the current policy and strategy to comprehensively address confiscation of undeclared currency and BNIs at border posts;
(d) Develop a case management and asset management systems for property subject to confiscation;
(e) Develop coordination and monitoring mechanism amongst Customs and Excise Unit, the REPS, the EFIU and the DPP with clear strategy on the implementation and enforcement of the declaration system on cross border movement of currency and BNIs;
(f) Eswatini should have documented policies and procedures to prioritise confiscation of property from the identified significant proceeds generating crimes.

122. The relevant Immediate Outcomes considered and assessed in this chapter are IO.6-8. The Recommendations relevant for the assessment of effectiveness under this section are R.1, R. 3, R.4 and R.29-32.

3.2. Immediate Outcome 6 (Financial Intelligence ML/TF)

Background and Context

123. The EFIU was established in 2010 and initially operated under CBE. It only started operations as an independent and autonomous central national agency in 2017. The mandate of the EFIU entails receiving and analysing STRs and other relevant information from accountable institutions and disseminating financial intelligence to competent authorities to help in identifying potential cases of ML, TF and associated predicate offences. It has three departments, namely Monitoring and Analysis, Compliance and Administration. Audit services are provided by the Ministry of Finance. The EFIU is inadequately resourced both in terms of number of staff and budget allocation. During the on-site, the EFIU had 15 staff against an establishment of 28, with only 4 being financial analysts. The EFIU receives an annual budget allocation of about 27% of the requested amount. It is the view of the assessors that the allocation is inadequate and seriously limits the effective operations of the EFIU in fulfilling its core mandate. The EFIU is not yet a member of the Egmont Group of FIUs and this has limited cooperation and exchange of information with other FIUs, in particular those outside the ESAAMLG region.

3.2.1. Use of financial intelligence and other information

124. The EFIU and competent authorities in Eswatini have powers to access financial intelligence and other relevant information held by accountable institutions and public institutions necessary to develop evidence and trace criminal proceeds related to ML, associated predicate offences and TF. The sources are, however, considered limited. Competent authorities use financial intelligence from the EFIU or from other sources in their investigations to a very limited extent, with a few ML investigations (and none on TF) having been conducted by the LEAs based on the financial intelligence reports. LEAs also do not effectively request financial intelligence from the EFIU to support their ongoing investigations or to identify and trace criminal assets or tax evasion. The assessors based their conclusions on a variety of elements including: sources of

financial information and statistics provided by EFIU on disseminations to LEAs, STR statistics; statistics on cross-border currency and BNIs, and discussions with relevant LEAs.

Use of Financial Intelligence and Other Information by the FIU

125. The EFIU receives STRs from FIs, DNFBPs and other supervisory authorities as its main type of financial intelligence. However, lack of reporting by the majority of FIs and almost all DNFBPs limits EFIU's ability to obtain effectively information on potential suspicious transactions necessary to effectively detect potential criminal activities and share accurate, timely and quality financial intelligence.

126. Apart from STRs, the EFIU also has access to information which it receives from other competent authorities and uses to add value to its analysis. The Customs Office submits to the EFIU a monthly report on the incoming and outgoing currency declarations. However, assessors found that the cross-border transportation of currency and BNI regime of Eswatini was not being effectively implemented due to inadequate technical and human resources at the points of entry (see IO.8). Other reports received include monthly cross-border foreign exchange transactions submitted by CBE, monthly reports on debit and credit cards transactions done outside the country, quarterly Terrorist Property reports and adverse media reports on bank clients. EFIU has not started receiving other key reports such as cash threshold reports. Moreover, the EFIU does not have a timely access to the information held by the company registry and Home Affairs database for passports, other identification details and other publicly-held databases, which may be good and quicker sources of intelligence. This is further complicated by inadequate cooperation agreements in place to facilitate this exchange of information between relevant government institutions and the EFIU (see 3.2.4 below). While the EFIU can indirectly access some of the information through banks or upon request, this was not considered to be timely and could potentially present challenges to investigations and confiscations as the assets may dissipate before the information is accessed. Assessors further noted that the EFIU does not have access to a wide range of commercially-held data, thereby impinging severely on its capacity to enrich its financial intelligence. Assessors also view the lack of availability of BO information as another factor that negatively affects the EFIU's ability to properly analyse and share accurate and timely intelligence.

127. The EFIU can exercise its power to request for additional information from accountable institutions, supervisory authorities and LEAs which it can also use for its analysis. During the period 2017 to 2020, the EFIU sent a total of 189 requests for additional information to accountable institutions as shown in Table 3.1 amid concerns raised by the EFIU on the quality of STRs received from accountable institutions.

Table 3.1 Requests for Additional Information by the EFIU

Period	No. of requests for additional information	Turnaround time
2017/18	28	Within 2 working days
2018/19	78	Within 2 working days
2019/20	83	Within 2 working days

128. The average response time to obtain the requested information is two working days. The type of additional information requested from the banking sector is mainly to clarify the reasons for the suspicion, provision of bank statement for a specific period, and explanation of purpose of some transactions and their linkage with other transactions.

129. Requests for additional information were also made to the SRA and REPS. While SRA on average responded within 3 hours, the authorities did not specify the turnaround time by the REPS. Delays may be a major limitation for the EFIU to produce good financial intelligence at domestic level.

Use of Financial Intelligence and Other Information by LEAs

130. LEAs at all levels access and use financial intelligence and other information to identify and trace proceeds, and to support investigations and prosecutions of predicate offences, but do so to a very limited extent for ML/TF purposes.

131. The Royal Eswatini Police Services (REPS) is the main investigatory body responsible for the investigation of both ML and TF cases in Eswatini. The Anti-Corruption Commission (ACC) also plays an important role in the investigation and prosecution of ML, although that role is restricted to ML cases predicated on corruption-related offences.

132. REPS, ACC and SRA receive financial intelligence disseminations from the EFIU. They also use inter-LEA referrals, walk-in and anonymous informants, reports of the Auditor General and Parliamentary Public Accounts Committee, and media reports as source of information to initiate case development and investigations. The information accessed by LEAs includes tax information provided by SRA to REPS and ACC through requests or referrals. Apart from this, only the SRA indicated that it also accesses information in time owing to its MoUs with the REPS, EFIU, Deeds Registry, Ministry of Natural Resources, Public Procurement Authority, Motor Vehicle Authority, Registrar of Companies, Eswatini Communications Commission, and banks. However, the LEAs do not have access to commercially-held databases and UBO information and have not requested for such information from FIs which limits the extent of their investigations. The SRA indicated that it sometimes requests for information from CBE on ownership of legal entities based outside Eswatini but could not demonstrate that it had received such information and used in its investigations. The REPS using their powers makes requests for information to FIs and DNFBPs and get response within 7 days although they face difficulties with most lawyers on the premise of client-lawyer privilege.

133. The LEAs mainly use the financial intelligence and other information for investigations of predicate offences, especially tax crimes. During the period under review, the LEAs were barely investigating ML and TF cases although there were a number of disseminations by EFIU to LEAs on cases with ML component. In addition, LEAs neither pursue parallel financial investigations nor prioritise identification of ML when conducting investigations on predicate offences.

134. During the period from 2017 to March 2021, a total of 494 intelligence reports were sent to the SRA, the REPS, the ACC and the ISSS. The assessors noted a decrease in the total number of disseminations since 2019 and the EFIU attributed this to improved skills of the analysts over the years, feedback from the LEAs, and reduction of operations due to the Covid-19 pandemic.

Table 3.2 - Disseminations by EFIU to LEAs from 2017 to Mach 2021

Competent Authority	2017	2018	2019	2020	2021	Total
SRA	60	121	53	47	15	**296**
REPS	46	92	18	10	2	**168**

ACC	11	7	2	0	0	**20**
ISSS	0	0	7	3	0	**10**
Total	**117**	**220**	**80**	**60**	**17**	**494**

135. The SRA was the main recipient of financial intelligence reports with 60% of the total disseminations, all related to tax matters. While the SRA has used the intelligence from the EFIU mainly for tax assessment purposes only, the authorities indicated that they reported two cases to the REPS with ML elements. However, according to the REPS no ML investigation predicated on tax evasion has been conducted despite the offence being one of the highest proceeds generating crime (see IO.7).

136. The rest of the intelligence reports produced by the EFIU were sent to the REPS (34%), the ACC (4%) and the ISSS (2%). The financial intelligence was used to investigate predicate crimes only and none was used to pursue ML/TF investigations.

137. A breakdown of the disseminations by predicate offences has been provided below:

Table 3.3 - Disseminations by Predicate Offences for the period 2017- March 2021

Predicate Offence	No. of Disseminations
Tax Fraud	296
Dagga Trading	78
Fraud	56
Bribery and Corruption	20
Pyramid schemes	39
Illegal Forex	3
Terrorist Financing	2

138. The most prevalent predicate offences reported in the dissemination reports were tax fraud, dagga trading, fraud and pyramid schemes and to a lesser extent, corruption. Although they are to some extent consistent with the country's risk profile, data provided by the REPs on ML investigations indicated that from 2014-2019, only five ML investigations were conducted (4 predicated on fraud and 1 on drug trafficking). On the other hand, while the ACC reported they have conducted 164 ML investigations predicated on corruption from 2016 to 2020, none were successfully prosecuted. None of them however concerned tax fraud. Two disseminations on TF were sent by EFIU to REPS (ISSS). However, the LEAs responsible did not demonstrate that they had used the financial intelligence to investigate terrorist financing and terrorism cases. While the EFIU has been able to disseminate cases with ML component, the LEAs have inadequate capacity to identify and investigate potential ML cases (*See. IO7*).

139. While LEAs in Eswatini reported inter-LEA referrals, walk-in and anonymous informants, reports from the Auditor General and Parliamentary Public Accounts Committee and media reports as other sources of information to initiate investigations and to further case development, the authorities did not demonstrate as to how these sources are optimally used to produce financial intelligence that is useful for investigating ML and TF. LEAs also have the power to obtain financial intelligence from accountable institutions, either directly or via EFIU. However, there were little statistics showing that the LEAs had requested information from the EFIU although LEAs indicated that they can access most of the information directly from accountable institutions

and other public institutions. Further, information held abroad may be difficult to access in the absence of bilateral arrangements with international counterparts and also given that EFIU is not a member of the Egmont Group. (see IO.2).

3.2.2. STRs received and requested by competent authorities

140. In the last four years, the EFIU received STRs and other types of reports from accountable institutions which it uses to develop its financial intelligence. However, among the other reports that the EFIU receives, assessors noted that the EFIU does not receive reports on large cash transactions (cash threshold reports) and electronic funds transfer reports which may also assist in developing financial intelligence.

141. The FIU receives STRs in three ways, the Web Format STR Forms, encrypted emails and paper-based STR Forms. The Web Format STR Form was introduced in 2018 and is currently used by banks. Information is automatically loaded and registered directly into the SFIU database, allowing for direct and secure communication channels between the EFIU and the banks. Other accountable institutions, as well as banks can also use encrypted emails, introduced in 2020 due to the Covid-19 pandemic. Manual paper-based filing is also still available to all accountable institutions. The table below indicates that the number of STRs received by the EFIU for the period 2017-2020 were 8,885.

Table 3.4 - STRs filed to EFIU from 2017- to March 2021

Year	2017	2018	2019	2020	2021	Total
Number Reported	754	1893	2005	3184	1046	8,885

142. While the volume of STRs has been constantly increasing over the years, ninety-three percent (93%) of all the STRs received by the EFIU were from the banking sector. The remaining seven percent (7%) came from the MVTS and to a lesser extent from SACCOs, the insurance sector, money lenders, the securities sector, a casino and CBE *(see IO.4)*. This means that STRs from the majority of the accountable institutions were negligible despite the fact that most of those accountable institutions (such as real estate, lawyers, casinos, accountants etc.) were identified as having either high or medium-high vulnerability to ML risks. This may be attributed to lack or inadequate supervision and therefore inability of the accountable institutions to detect suspicious transactions. Despite the increase in the number of STRs reported each year, the EFIU agreed with the assessors that the level of STRs may not be commensurate with Eswatini's risk profile. The EFIU indicated that about seventy percent (70%) of the STRs filed were on tax related crimes while the rest of the predicate offences shared the remaining 30%. This, to some extent, may not be commensurate with the risk profile of Eswatini given that corruption, drug trafficking, frauds were also identified as high proceeds generating offences in Eswatini. This may be an indicator that detection of other crimes may be a challenge to the accountable institutions (*See IO4*).

143. According to EFIU, the quality of STRs received from the banks was fairly good and improving over the years. This was mainly due to feedback sessions that the EFIU holds on a quarterly basis with Compliance Analysts of the banking sector focusing mainly on the quality of STRs submitted by the Analysts and how they can be improved. The EFIU expressed concern on the poor quality of STRs submitted by the rest of the accountable institutions which are still at

infancy stage of compliance with their reporting obligations. Interviews with the FIs indicated that the 48-hour period legally required for filing of STRs hinders them from providing detailed information to the EFIU especially on the reasons for forming suspicion (*see IO.4*).

144. Both accountable institutions and assessors were concerned that, apart from the feedback on the quality of the STR given to analysts quarterly and acknowledgement of receipt of STR, the EFIU had not provided any other feedback to the specific accountable institutions, including on the outcome of the STR submitted. The assessors view feedback given to the accountable institutions as inadequate. Additionally, EFIU has not issued guidance to accountable institutions on reporting of STRs and ML/TF red flags. Lastly, the assessors noted with concern that only around five percent (5%) of the STRs submitted by accountable institutions had resulted in disseminated reports to LEAs. This is considered to be low, bearing in mind that the majority of the STRs come from banks and banks submit fairly good quality STRs. The authorities attributed this to limited number of Analysts in the EFIU.

Other Reports Received

145. Apart from STRs filed by accountable institutions, the EFIU also receives monthly reports from the Customs Office, monthly cross-border foreign exchange transactions submitted by CBE, monthly reports on debit and credit cards transactions by banks, quarterly Terrorist Property reports and adverse media reports on bank clients. This information forms part of EFIU database and is used to enrich financial analysis. The EFIU indicated that it started requesting for information on debit and credits cards on monthly basis from January 2021 as a response to the growing number of cases reported by banks on transactions outside the country especially East Asia linked to debit or credit cards held by their customers. The authorities wanted to understand the scheme as to what was behind such type of transactions in terms of types of customers involved and amount of funds being deposited in Eswatini and not used in the country but in East Asia. Only three FIs had such transactions and they filed Debit or Credit Cards reports to the EFIU as follows:

Table 3.5 –Debit/Credit Cards Reports received by EFIU (Jan – June 2021)

Institution	**Number of transactions**
Institution A	554
Institution B	2 458
Institution C	7 057
Total	**10 069**

146. The EFIU closely monitors individuals and entities under UN sanctions lists and it has always received nil reports from the accountable institutions particularly the FIs. The received reports are contained in the table below:

Table 3.6 – Terrorist Property Reports received

Number of Reports Received	**2017**	**2018**	**2019**	**2020**	**2021**	**Total**
	1	**3**	**6**	**7**	**8**	**25**

147. The following table shows the number of other reports received by EFIU

Table 3.7 – Number of Reports Received from 2017-2021

Type of Report	Year					
	2017	2018	2019	2020	2021	Total
Cash Declaration	-	-	10	-	37	47
Cross Border Forex	-	-	-	33 666	90 020	123 686

3.2.3. Operational needs supported by FIU analysis and dissemination

148. EFIU's financial analysis and dissemination support the operational needs of relevant LEAs on investigation of predicate offences to some extent but to a lesser extent on ML/TF investigations, prosecution and the confiscation of criminal proceeds.

149. The EFIU has developed reasonably good ICT infrastructure and structures on physical protection of the information in its possession. Despite receiving STRs from few accountable institutions and having inadequate analysts, the EFIU has been able to produce reasonably good financial intelligence and information to help LEAs initiate or support their investigations and trace proceeds of crime.

150. The EFIU uses i2 analytical software tool to process STRs and other information it receives and perform tactical and operational financial analysis. The EFIU indicated that it would have preferred to have an advanced analysis software such as goAML to ensure thorough analysis of STRs, all the information in its database and the Cash Threshold Reports which are yet to be filed by the accountable institutions. There are guidelines and work procedures (SOPs) in place to determine the scope of the information to be included in an intelligence report and the timeframe. EFIU prioritises its analysis and dissemination based on the findings of the draft NRA (e.g., increased focus on tax offences, drug trafficking and corruption). Upon request from LEAs but also spontaneously, EFIU requests additional information from accountable institutions in Eswatini.

151. All the analysts at the EFIU are fairly skilled in financial analysis having undergone an attachment at the FIC, South Africa in 2019 and training in data analysis, operational analysis, strategic analysis, i2 Analyst Notebook, I-Base system, and mutual evaluation. In addition, the analysts have a blend of background experience in commercial crimes and fraud investigations as well as financial sector operations and supervision. The EFIU advised that the average handling time of an STR was between 3 to 5 working days, which appeared adequate. However, this may increase, given the increase in the number of reports submitted and the corresponding resource constraints in the EFIU.

152. Generally, the EFIU uses all transactions and other information from accountable institutions, SRA, CBE, and the internet to enrich the quality of the financial intelligence and other information for use by LEAs. The EFIU provided samples of its disseminations, which were found to be of a reasonable quality. As indicated earlier, quality could be improved if the EFIU has a wider access to sources of information including public and private databases. The quality could further be improved if the EFIU gets the right number of analysts and other operational staff. In this regard, the EFIU indicated that the current establishment of 28 was way too low to enable it support the needs of LEAs in line with the risk profile facing the country. The EFIU regarded a

staff compliment of 75 to be appropriate out of which 28 would be financial analysts and 17 compliance and prevention officers.

153. The EFIU makes both spontaneous disseminations and disseminations upon request to support the operational needs of competent authorities. In that respect, out of the 494 intelligence reports which were disseminated by the EFIU for the period 2017-2021 (*see Table 3.3*), a total of 459 were disseminated spontaneously while the remaining 35 reports were sent to competent authorities upon request.

154. On the basis of the information provided by the authorities, the financial intelligence packages produced are mostly used to initiate investigations into predicate offences, especially on tax crimes. During the period under review, the LEAs barely investigated ML and TF cases with none having been taken to court for prosecution.

155. While the SRA, REPS and ACC collectively affirmed that the intelligence package produced by the EFIU was of good quality with clear activity pattern, investigative leads, relationships among subjects of interest and criminal profiles of the subjects forming the basis for the submission to the relevant LEA, they have not demonstrated in practice that they effectively use the disseminations in initiating ML/TF investigations. For example, there were no new connections, natural and legal entities, financial and real assets and financial transactions that were previously unknown to LEAs, foreign financial transactions, bank accounts and assets located both in Eswatini and abroad identified based on the financial intelligence from EFIU.

156. While the SRA, being the main beneficiary of financial intelligence disseminations, had initiated investigations on the 296 intelligence reports disseminated by the EFIU, only 40 cases (13% of the total disseminations received) had been fully investigated and finalised on the predicate offence with tax assessment amounting to E73 million. There were, however, no investigations on ML (*See Table 3.2 and IO7 on investigations by SRA*).

157. Assessors also raised concern on the number of cases that were closed by REPS and ACC (total of 51cases) extensively on the basis that the funds indicated in the disseminations were from legitimate sources *(See Tables 3.10 and 3.11 on ML investigations initiated by LEAs predicated on fraud and corruption offences respectively)*. While this may point to the possibilities of disseminations not addressing the needs of respective LEAs, it also raises a concern on the competence of the LEAs to use the financial intelligence information provided to them by the EFIU. While LEAs focused on the legitimacy of the source of funds, they seemed not to also consider other key factors such as the intended purpose of the funds and BOs. The EFIU agreed with the view of the assessors that the LEAs are only using the "source of funds" reason as an excuse to close cases prematurely. Additionally, it also takes long for cases to be finalised, especially given that eighty-four percent (84%) of the cases were disseminated between 2017 and 2019 yet only eighteen percent (18%) were closed. This may be attributed to lack of expertise and resources by the LEAs *(see IO.7).*

Table 3.8 - Status of Investigations initiated by LEAs

	Number of Disseminations	Under Investigation	Closed Cases	Investigation Finalised (Cases)
SRA	296	256	0	40
REPs	168	128	40	0
ACC	20	9	11	0
ISSS	10	10	0	0

158. It was observed from the interactions with authorities in Eswatini that TF is another area that has not benefitted from the use of financial intelligence. Authorities responsible for TF investigation have not demonstrated that they have in any way used the EFIU to provide information that would have assisted in their investigation.

159. In view of the findings above, assessors are of the view that the LEAs are not converting financial intelligence into usable investigative ingredients for ML, TF or with the exception of SRA to some extent, predicate offences.

160. The frequency with which competent authorities has requested information from the EFIU demonstrates minimal use of financial intelligence to support their operational needs.

Table 3.9 - Requests for Information made to the EFIU from 2017- March 2021

Competent Authority	2017	2018	2019	2020	Total
Royal Eswatini Police Services	5	5	18	15	**43**
Anti-Corruption Commission	0	2	1	7	**10**
Intelligence State Security Services	1	1	4	2	**8**
Eswatini Revenue Authority	0	0	0	1	**1**
Central Bank of Eswatini	0	0	0	1	**1**
Financial Services Regulatory Authority	0	0	0	2	**2**
Total	**6**	**8**	**23**	**28**	**65**

161. The number of requests made to the EFIU do not correspond to the number of disseminations made and the risk profile of the country. For instance, tax crimes and corruption were identified as high proceeds generating crimes in Eswatini but only one request was made by SRA and ten by ACC over the four years. This shows that the scope and volume of information requests do not correspond to the needs of these LEAs. Although the LEAs indicated that they can obtain information directly from the FIs, DNFBPs and other public institutions, the extent to which this is done could not be established.

162. The EFIU has not started conducting strategic analysis to proactively identify new ML/TF patterns and trends. This was attributed to lack of adequate resources in the EFIU. It is the view of the assessors that the absence of strategic analysis impacts negatively on the sharing of information to identify ML/TF risks, inform coordinated interventions, and promote a shared understanding of the risks facing the country.

3.2.4. Cooperation and exchange of information/financial intelligence

163. The EFIU and competent authorities in Eswatini cooperate and exchange information/financial intelligence, to a limited extent. LEAs in Eswatini (especially SRA) make

use of inter-agency cooperation and joint investigations but these have not yielded results in terms of ML investigations (see IO7). In addition, there is hardly any cooperation on TF related investigations.

164. EFIU meets with LEAs on a quarterly basis in relation to disseminations made and their usefulness. The meetings were found to be a way of providing feedback rather than for exchange of information. Despite, it was not clear to what extent the meetings had improved the level of cooperation and coordination between the EFIU and the LEAs, in particular in the investigation of ML/TF offences. The low numbers of predicate offences, lack of ML/TF cases investigated by the LEAs and the low requests for intelligence information from LEAs demonstrate the low level of cooperation and information sharing between the EFIU and the LEAs. The EFIU has entered into bilateral agreements through MoUs for cooperation with a limited number of competent authorities (ACC, CBE and SRA). There are no mechanisms in place to facilitate exchange of information, requests, assistance and feedback on use of financial intelligence with the other LEAs. There is little cooperation among LEAs. This is mainly due to absence of clear mechanisms to exchange information. For example, there are no forums put in place bringing together LEAs to discuss issues of common interest. Additionally, most LEAs have not signed MoUs among themselves which outline how they would cooperate. While SRA had entered into MoUs with eight government ministries and agencies, ACC only had MoUs with CBE, EFIU and FSRA, and REPS has MoUs with SRA, CBE and Bankers Association of Eswatini. It was clear during the interviews that the agencies mandated to investigate TF and terrorism were disjointed and had been working in silos.

165. While the EFIU has a mechanism for LEAs to provide feedback on each dissemination made, through a tear-off slip page at the end of the dissemination report, it did not receive feedback from most of its recipients on the usefulness of the financial intelligence provided to either initiate or support financial investigations and ML/TF cases. Although the LEAs gave positive feedback on the quality and value of the reports received, only the SRA provided specific feedback on how the intelligence received had initiated or supported tax-related investigations. This lack of specific feedback from the other LEAs deprives the potential of the EFIU to improve the quality and the relevance of the financial intelligence disseminated and ultimately the reports filed by the reporting institutions.

Overall conclusions on IO.6

166. Competent authorities in Eswatini (REPS, SRA, and ACC) use financial intelligence to a limited extent and mainly use it to initiate and support predicate offences investigations. The banks submit most of the STRs to the EFIU followed distantly by the MVTS providers. Even though DNFBPs are subject to reporting requirements, they (except one casino) do not file STRs with the EFIU and the reporting is not commensurate with the materiality of the sectors like in the case of MVTS and real estate (see IO4). With the EFIU practically not having a wide range of information sources, the production of financial intelligence is heavily impacted.

167. The analytical function of the EFIU is seriously hampered by human and financial resource constraints and as a result the EFIU had not conducted strategic analysis to identify trends and patterns, and inform stakeholders on emerging risks. There were no ML cases that had been prosecuted based on the dissemination and requested information from the EFIU (see IO7).

Cooperation and exchange of information/financial intelligence at domestic level is very low with no exchange of TF information among investigative agencies.

Eswatini is rated as having a low level of effectiveness for IO.6.

3.3. Immediate Outcome 7 (ML investigation and prosecution)

Background and Context

168. LEAs in Eswatini have enabling powers to pursue all crimes, ML inclusive. Generally, the legal and institutional framework to fight crime is well established and, to a lesser extent, LEAs use some investigative techniques to investigate ML and associated predicate offences. Despite there being adequate legal framework to pursue ML, LEAs have investigated very few ML cases and there has not been any successful prosecution. The low number of cases investigated and prosecuted is mainly attributed to limited resources and capacity to effectively identify, investigate and prosecute ML. The Assessors noted that although most cases had elements of ML, LEAs tend to pursue investigations of predicate offences only.

3.3.1. ML identification and investigation

169. ML cases that are investigated mostly emanate from investigations of predicate offences, with fraud and corruption offences on the high side; reports from both the Public and Private sectors; open sources; anonymous reports; disseminated reports from the EFIU and reports from the general public.

170. LEAs with the primary responsibility to investigate ML and associated predicate offences are the REPS, and the Anti-Corruption Commission (ACC). The REPS is the designated Authority and has the general mandate to investigate all types of ML cases. The ACC plays an important role in the investigation and prosecution of ML cases predicated on corruption or offences under the PCA and/or any other offences which may be identified during a corruption investigation. Furthermore, the Eswatini Revenue Authority (SRA) is mandated to pursue all tax crimes and refer cases with potential ML to the REPS for further investigations. As highlighted above, REPS, ACC and the SRA are the three LEAs in Eswatini that identify and investigate proceed generating crimes. A detailed analysis on the three investigative wings is as provided below;

a) The Royal Eswatini Police Service (REPS)

171. The REPS is mandated to prevent and detect all crimes and enforce all laws in Eswatini. It has several Units that investigate ML and its associated predicate offences. These include: the Narcotic Drugs Unit; Intelligence Unit; Counter Terrorism Organised Crime Unit; and the Financial and Economic Crimes Unit (FECU).

172. The FECU is a specialized Unit dedicated to investigate ML/TF matters and within the Unit, there is the Financial Assets Forfeiture Investigation (FAFI), a specialized Unit that deals with asset identification and recovery. The FAFI was established after the enactment of the Prevention of Organised Crimes Act no.11 of 2018 and is responsible for the analysis and evaluation of asset forfeiture and ML cases, conducting lifestyle audits, scrutinizing financial intelligence from the EFIU for investigation and conducting frequent liaison with the Asset Forfeiture Unit (AFU) at DPP's office on asset forfeiture and recovery measures. To achieve this

mandate, the Unit works closely with other stakeholders such as the EFIU and the office of the DPP.

173. The FECU has a staff compliment of 58 broken down as FEC – 38 and FAFI – 20. Of the 20 officers under the FAFI, five officers are stationed at the Head Office with four stationed at each of the four (4) Regional offices of the REPS. This is against the proposed staff compliment of 70. The Assessors noted that staff compliment of the FECU was not adequate compared to number of cases they are handling and the deployment of additional officers as per the proposed structure would mitigate the gap.

174. Some officers deployed in the FECU have received AML training to aid in the identification and investigation of ML cases. This included, training in Asset Forfeiture, ML and financial investigations, cyber training, investigating white collar crimes, computer and network investigations, trade-based ML, etc. However, the Assessors noted that the staff turnover at the REPS is very high and those who have been trained in investigations of financial and economic crimes leave the organisation for better offers outside the Police Service. This leaves the organization with the task of constant recruitment and training of new officers whose stay in the organization is not guaranteed and at the same time requiring more capacitation. Further, it was noted that officers attached to the Unit have little knowledge on financial investigations and as a result, ML investigations are not being prioritized. This was also confirmed during discussions held with the Authorities.

175. The REPS treat all potential ML cases received from informants like any other predicate offence investigation, in that, once a complainant comes in with a potential ML case, they are referred to the FECU and a statement is recorded. The Senior Desk Officer in consultation with an officer specialized in ML investigations then makes a determination as to which department to refer the case to. The docket is then registered in the occurrence book at both the front desk and in the FECU before being given to the Unit Commander who analyses the docket and gives guidance on what sort of investigations need to be conducted. The Unit Commander will also indicate if a parallel financial investigation has to be ensued. In cases of high proceed generating predicate offences such as drug cases, the investigators will photocopy the docket and forward it to the specialized Units, i.e., the Narcotics Drugs Unit and the Financial Asset Forfeiture Unit for further investigations. As regards cases where it is a pure fraud, the cases are addressed directly to the Unit Commander under the FECU where they are registered, accordingly.

176. Although the process of receipt of potential ML cases was clearly explained, the Authorities could not outrightly demonstrate at what point parallel financial investigations are commenced in reports received from other sources with the exception of reports from the EFIU where they instantly commence parallel financial investigations. The Assessors further noted that the officers in the FECU had limited capacity to identify ML and to this effect, the Unit concentrated more in investigating predicate offences. This was also evidenced with a case which the Authorities provided to the Assessment team where facts on the ground clearly indicated that the offence of ML could have been preferred but the Unit only charged for the predicate offence.

177. All cases investigated by LEAs in Eswatini are prosecuted by the DPP. In 2019 the Authorities adopted the practice of conducting prosecutor guided investigations. Though the practice was still in its initial stages, the Assessors noted that in some cases, the DPP guided the investigative teams on what charges could be preferred before an arrest could be effected. Further,

the DPP's office had in some instance reviewed some dockets and made a determination if a case was ready to proceed to Court or whether it still required further investigations.

178. Table 3.10 shows the total number of ML cases predicated on the offence of fraud investigated and prosecuted during the period 2016 – 2020

Table 3.10 - ML cases predicated on the fraud offence investigated and prosecuted from the EFIU and other sources

Year	No. of cases Investigated	No. of Investigations with ML Component	No. of ML prosecution initiated	No. of ML Convictions
2016	471	-	01	0
2017	543	03	01	0
2018	631	04	01	0
2019	619	06	02	0
2020	508	24	02	0

179. The FECU has only investigated and prosecuted ML cases predicated on the offence of fraud. Table 3.10 shows that during the period January, 2016 – December, 2020, the Unit received and investigated thirty-seven (37) cases with a ML component out of the two thousand seven hundred and three (2703) fraud cases which were under investigations. Of the thirty-seven (37) cases with a ML component investigated, only six (6) cases are at prosecutions stage. The number of ML investigations increased in the year 2020 despite the outbreak of the covid pandemic due to officers having received training in financial investigations improving their capacity to identify more ML cases. In addition, the setting up of specialized units such as the FECU to investigate ML helped in the identification of potential ML cases. However, despite the measures put in place, the low numbers of ML cases investigated over a five-year period clearly demonstrated that the REPS had limited capacity to identify and investigate potential ML cases.

180. The FECU demonstrated that it works closely with the EFIU and that there are mechanisms in place to enable it to request for additional information from the EFIU. During the period under review, the FECU made several requests to the EFIU relating to financial profiles of suspects being investigated mainly for the offences of fraud, drug trafficking and theft of motor vehicles. Furthermore, the disseminations received from the EFIU by the FECU were of such good quality and detail that in some instances, they did not need to request for more information as the reports were adequate to assist with an investigation. However, despite the reports from the EFIU being regarded to be of good quality by all LEAs, the FECU failed to demonstrate that it effectively used the information to carry out ML investigations. Of all the disseminations received by the FECU, it did not prefer a charge of ML in any of the cases at the time of the commencement of the investigations. The FECU did not demonstrate that it effectively uses the intelligence received from EFIU to commence ML investigations. Cases were also presented by the authorities where from the evidence it was quite clear that the persons involved in addition to being charged with the predicate offences could have been successfully charged with the offence of ML as well but they did not proceed to do so. Case in Box 3.1 below clearly illustrate this weakness.

181. At the time of the on-site visit, the FECU had received one hundred and sixty-eight (168) disseminations covering the period from 2017 to 2020 and these disseminated reports had to some

extent assisted in initiating new investigations. As shown in Table 3.8, of the one hundred and sixty-eight (168) disseminated reports, fifty-one (51) reports were closed, thirteen (13) were being prosecuted, seizures had been made in four (4) cases and forfeiture orders had been made in two (2) cases.

Box 3.1: Potential ML case where the Authorities charged for the predicate offence only

Four (4) Chinese Nationals were engaged in an unlawful gambling business whereby they distributed gambling machines around the country without a gambling licence (Contravening Section 5 (1) (b) of the Trading Licence Order of 1975). They were arrested and charged for the said criminal transgression and were found guilty and convicted by the Manzini Magistrate Court. Proceeds of their criminal activity which included four vehicles and a sum of E205, 312.60 were preserved and eventually forfeited to the state upon moving an application at the High court.

Financial intelligence on the suspects was sought from the EFIU and feedback was provided which gave leads that ML could have committed. However, despite there being clear evidence that proceeds from this offence had been laundered into buying of cars and other properties, the Authorities charged for the predicate offence only and further pursued the civil route to forfeit the proceeds of crime.

b) The Anti-Corruption Commission (ACC)

182. The ACC commenced operations in 2008. It derives its mandate and responsibilities from the Constitution of Eswatini, the Prevention of Corruption Act No 3 of 2006 and other pieces of legislation. It has a staff compliment of about forty-three (43) officers and of these, sixteen (16) officers are responsible for conducting investigations nationally. In 2020, the ACC established a dedicated Administrative Asset Tracing and Forfeiture Unit to deal with ML/TF investigations. The dedicated Unit currently has three (3) officers who carry out ML investigations predicated on corruption and/or any other offences arising from a corruption investigation. The ACC conducts parallel financial investigations in all the cases it investigates. This is done after the Complaints Review Committee (CRC) which comprises of officers with legal, financial investigations, procurement, and IT professional backgrounds has analysed and evaluated all complaints received and has identified and recommended cases which can be investigated. The CRC recommends cases according to the nature of complaint and align each recommendation with the relevant section of the law. It is also responsible for identifying cases of ML, which investigation is then authorized by the Commissioner and assigned to the Asset Tracing and Forfeiture Unit. Despite the Authorities clearly indicating how cases with potential ML are received and analysed, the ACC as was the case with the REPS, could not demonstrate at what point parallel financial investigations commence in such cases.

183. Eswatini is yet to successfully prosecute a ML case predicated on corruption. This was noted to be of serious concern cconsidering that corruption was identified as one of the high proceed generating offence during the country's risk assessment. The low number of cases being considered for investigations and prosecution shows that the Authorities have not prioritised ML investigations predicated on corruption. Further, the three (3) officers dedicated to investigate ML countrywide are not enough to effectively and efficiently identify and carry out in depth ML investigations predicated on corruption arising from throughout the country. The DPP's office did not adequately demonstrate that it had the capacity to efficiently prosecute successfully investigated cases as some of the cases still pending prosecution dated as far back as 2012.

Table 3.11 shows ML cases investigated by the ACC.

Table 3.11 - ML Investigations from 2016 to 2020

Year	No of cases investigated with ML component	Closed due to insufficient investigative evidence	No. of ML prosecution initiated	Cases successfully prosecuted	No. of cases with Seizures	No. of cases with forfeiture orders	Cases pending investigations
2016	29	5	2	0	0	0	24
2017	31	2	2	0	0	0	29
2018	32	6	1	0	0	0	26
2019	56	2	0	0	0	0	54
2020	16	0	0	0	0	0	16

184. Investigators under the Asset Tracing and Forfeiture Unit have received training in financial investigations and this to a limited extent has improved ML identification and investigations.

185. Further, despite there being no successful prosecution of a ML case predicated on the offence of corruption, the ACC demonstrated that of the ML cases identified it had successfully investigated the cases and passed the files to the DPP for prosecution. Box 3.2 summarises some of the cases.

Box 3.2. ML Investigations conducted by the ACC CASES

Case 1
In 2012, the Accountant General had audited the Public Broadcaster and discovered that main clients of the Public Broadcaster were targeted by the Marketing Officers who diverted government funds into private accounts. When an investigation was instituted, it revealed a short fall of about E3 million (USD 214 285.71).
This investigation led to the arrest of the marketing employees and money laundering charges were preferred. The suspects' cars bought with the proceeds were seized and detained as exhibits.

Case 2
In 2012 the Auditor General sought to audit the Commonwealth Parliamentary Association (CPA) as the body was receiving public funds. This was met with resistance by the Executive of the CPA, who took the matter to court. The CPA lost the case as the Court found in favour of the Auditor General.
After this legal battle a whistle-blower armed with the Auditor General's report approached the ACC and surrendered the information. The ACC lodged an investigation which established that a sum of about E 5 million (USD 357 142.86) had been fraudulently stolen from government. Five people were charged for cheating public revenue (S. 24 of Prevention of Corruption Act) and ML offences.

Case 3
Allegations of fraudulent conduct took place at one of the mobile phone companies, wherein a sum of One Million Two hundred and Fifty-Three Thousand Five Hundred Emalangeni (E 1 253 500.00)/ (USD 89 535.71) was stolen by one of the entity's senior managers. A financial investigation was initiated and it was discovered that the accused attempted to transfer funds into a personal account held with a foreign jurisdiction bank. The accused has approached the court to challenge the MLA processes and the evidence sought from the foreign jurisdiction. One person was charged with the offences of Fraud and ML.

c) The Swaziland Revenue Authority (SRA)

186. The SRA, compliments ML investigations in relation to tax crimes. The SRA recently established the Investigations and Intelligence Unit. With tax evasion having been identified as one of the high proceeds generating predicate offences in Eswatini, the Investigations and Intelligence Unit of the SRA has scaled up measures in the prevention of tax crimes. In this regard, the SRA has signed MoUs with Government Agencies, the EFIU and LEAs. Further, the SRA closely works with the AFU under the DPP's office. However, no ML cases predicated on tax evasion had been successfully investigated and prosecuted.

187. The SRA demonstrated that it had identified and investigated VAT fraud cases and these were mostly perpetrated through claiming of VAT refund using fake documents. However, the SRA indicated that cases of such nature take long to be finalized in court, citing a case which had commenced in 2016 but had still not been concluded at the time of the on-site visit.

188. The occurrence of cases of under declaration, false declaration and non-declaration relating to smuggling of goods was also cited as frequently happening. Smuggling of goods is highlighted as one of the high-risk offences but the Authorities could not demonstrate that there are further financial investigations done to identify any proceeds generated by these offences.

189. The Assessors noted that the SRA made use of inter-agency co-operation and joint investigation teams in some of the cases where ML would have been identified. This allowed officers to share expertise and techniques in investigating ML cases. The SRA further demonstrated that they had successfully conducted investigations of non-declaration of goods contrary to the provisions of section 81 of the Customs and Exercise Act and sanctions had been imposed to offenders. Whereas there was only one case where financial investigations had been pursued, the Authorities demonstrated that they were able to apply administrative sanctions on offenders and this had led to the confiscation of goods *(See detailed analysis under IO 8)*. In as much as it is appreciated that the Authorities have conducted investigations into tax crimes, the Authorities could not demonstrate that they conduct adequate financial investigations into such cases.

3.3.2. Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

190. As highlighted above, Eswatini conducted its NRA in 2016. Even though the report has not been adopted, the draft NRA identifies fraud, drug trafficking, corruption, tax evasion and smuggling of goods as major sources of illicit proceeds. During the onsite, the Assessors noted that the investigative authorities had different views and understanding of which one of the highlighted predicate offences was the highest proceed generating with all of them stating the predicate offence under their mandate as generating the highest proceeds. This demonstrated that the LEAs had no clear understanding of which of the predicate offences was generating the highest proceeds in the country nor has there been adequate consultation informing the NRA on the risk rating of the crimes. As already indicated, the draft NRA report had not been formally adopted at the time of the onsite and the findings on the risks identified had not been adequately shared among LEAs, therefore the Authorities could not demonstrate that the different types of ML activities are investigated and prosecuted in line with the country's threats and risk profile.

191. The REPS identified fraud, corruption, tax evasion and drug trafficking as the highest proceed generating predicate offences in that order. However, ML investigations conducted do not reflect that these cases are being prioritized in terms of the risk profile of the country. Further, the Assessors noted that the REPS had not conducted a ML investigation predicated on tax evasion despite the offence being one of the highest proceed generating crimes.

Table 3.12: cases investigated as per identified predicate offences

Year	No. of cases received	Drug trafficking	Currency smuggling	Fraud	other	No. of Investigations with ML Component				No. of prosecutions initiated with ML component				No. of Convictions with ML component			
						dagga	cash smuggling	fraud	other	dagga	cash smuggling	fraud	Other	dagga	cash smuggling	fraud	other
2016	2264	1783	10	471	0	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
2017	3330	2821	13	496	0	0	0	3	0	0	0	1	0	0	0	0	0
2018	3429	2854	38	537	0	0	0	4	0	0	0	1	0	0	0	0	0
2019	4010	3355	55	600	0	0	0	6	0	0	0	2	0	0	0	0	0
2020	2810	2183	28	599	0	0	0	24	0	0	0	2	0	0	0	0	0

192. Table 3.12, above clearly demonstrates that the REPS did not conduct ML investigations according to the country's risk profile.

193. The ACC identified corruption as the highest proceeds generating predicate offence which is also its main investigation mandate. The ACC further indicated that it pursued parallel financial investigations in all the cases it handled. However, like any other predicate offence identified as high proceed generating in Eswatini, there has been only five (5) ML cases predicated on corruption at prosecutions stage and none of the cases under prosecutions had been concluded in the Courts of Law.

194. As highlighted above and through analysis of statistics provided by the LEAs, it was noted that ML investigations and prosecution pursued were not a reflection of the risks identified by the NRA as the Authorities could not demonstrate that they prioritize ML investigations and prosecutions according to the country's risk profile. Further, the Authorities had not developed AML/CFT policies or strategies to guide ML investigations and mitigate the risks identified in the draft NRA report. The Assessors also noted that the Unit under the REPS mandated to investigate ML offences had not started prioritizing investigations according to risks identified and the authorities submitted that the concept of financial investigation wass fairly new and as a result, parallel financial investigations were not considered in most instances. Although the recent formation of the FAFI was a good initiative, more training on identification of the different types of ML activities and financial investigations was needed.

195. The Assessor noted that the office of the DPP's understanding of ML threats and risk profile was very limited, hence ML prosecutions were not informed by identified ML threats. Furthermore, until recently, Prosecutors were not fully involved in the initial stages of ML investigations as in most instances, the docket was only reviewed by the Prosecutors when investigations had been concluded and with an arrest already effected. Equally, the DPP's office needed further capacitation in terms of identifying the different types of ML activities and prioritizing the prosecution of those offences according to the risk profile of the country.

196. The time taken by Prosecutors to prosecute both the serious predicate offences and ML was also of concern and indicated that there was no prioritization in the setting down for trial of the high-risk offences at the courts. The LEAs met attributed lack of training and awareness on the whole value chain from investigation, prosecution and the courts as a major contributing factor to the lack of prioritization of the high-risk offences and the resultant delay in the finalization of such cases.

3.3.3. Types of ML cases pursued

197. Statistics provided and discussions held with the Authorities revealed that the majority of ML cases pursued related to self-laundering which mostly involved physical cross-border transportation of currency into the country with substantial cash being from drug (dagga) dealing. However, despite its close proximity to larger economies such as South Africa and Mozambique, investigations did not establish linkages to foreign predicate offences. This was not consistent with the country's risk profile which identified activities pertaining to drug trafficking and smuggling of goods as high risk. Further, the authorities had pursued only one case of third-party laundering despite there being cases where third party laundering could have been pursued.

198. The Authorities had not prosecuted any legal person for ML. Therefore, it was difficult to determine whether the authorities in such cases would be able to adequately identify and pursue the BOs of such companies as the understanding of the concept was quite limited among most competent authorities including among the LEAs and FIs where most of such information was supposed to be obtained in terms of the law. Nevertheless, the same cannot be said about obtaining of basic information by LEAs for purposes of investigations as this is obtained from the Office of the Registrar of Companies and the records were kept in electronic form since 2015 and previous records had been captured electronically from the year 2012.

3.3.4. Effectiveness, proportionality and dissuasiveness of sanctions

199. In Eswatini, the law states that a person convicted of ML or TF is liable on conviction to imprisonment for 10 years or to a fine of not less than E100,000 (USD6,800) or both; and in the case of a body corporate to a fine of not less than E250,000 (USD 17,000) or loss of authority to do business or both. The Authorities through discussions held emphasised that if any person was to be convicted for ML and sentenced to a term of imprisonment, it had to be a mandatory term of ten years. However, despite the law providing for this penalty, the Authorities had not successfully prosecuted a ML case. Therefore, the Assessment team were not able to determine if the Courts actually had any discretion when sentencing ML offenders. In the absence of a determined case where discretion had been used by the courts, the assessment team noted that the sanction provision as it currently was and understood by the authorities did not provide for proportional penalties to

be applied by the courts where a term of imprisonment had to be applied. Further, the Assessors could not determine if ML sanctions imposed would be effective and dissuasive.

3.3.5. Use of alternative measures

200. Eswatini made use of their civil asset forfeiture regime as an alternative criminal justice measure where a ML investigation and prosecution had not been successful or possible for justifiable reasons (See a detailed analysis under IO. 8).

201. In addition, the Authorities have also exercised the option of charging suspects with contravention of provisions under the Customs and Excise Act and the provisions of s.41 of the MLFTP Act. The Authorities further demonstrated that offenders had their goods confiscated and sanctions ranging from 5 months – 2 years imprisonment imposed. The Assessors however noted that in some cases due to provisions of certain Acts being easier to prove than a ML case, a lesser charge had been opted for although the circumstances showed that a ML charge could have been easily preferred. This approach was also confirmed by the REPS and the end result was that this approach effectively substituted prosecution for the ML offence, thereby diminishing its importance.

Overall conclusions on IO.7

202. Eswatini has adequate legal and institutional framework to pursue ML and its associated predicate offences. However, ML activities and in particular major proceeds –generating offences are not adequately investigated and prosecuted. This has resulted in failure by the Authorities to mitigate the ML risks identified. The Authorities failed to demonstrate that they can effectively identify the different types of ML cases but focus mainly on investigating predicate offences. Further, Eswatini has not successfully prosecuted any ML case, therefore the extent of the effectiveness, proportionate and dissuasiveness of sanctions imposed could not be determined. Fundamental improvements are needed to demonstrate effectiveness in the identification, investigation and prosecution of the different types of ML cases.

Eswatini is rated as having a low level of effectiveness for IO.7.

3.4. Immediate Outcome 8 (Confiscation)

3.4.1. Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective

203. There is no specific policy set with the objective of pursuing confiscation of proceeds of crime, instrumentalities and property of corresponding value. However, Eswatini has used different pieces of legislation to pursue conviction and non-conviction-based confiscations as a general practice. The convictions have not covered property of corresponding value.

204. Although the enactment of the Prevention of Organised Crime Act of 2018 (POCA), in July, 2018, enabled authorities to administratively set up specialised units with focus on expediting criminal asset recovery processes, these units were still at nascent stage at the time of the onsite and had not done much in identifying, tracing and evaluating property intended for confiscation. These specialised units were set up in the DPP, REPS and ACC.

3.4.2. Confiscation of proceeds from foreign and domestic predicates, and proceeds located abroad

205. The authorities used various pieces of legislation to identify, trace, seize and/or freeze property subject to confiscation. The authorities demonstrated that using these various pieces of legislation had successfully obtained conviction-based confiscation orders in 17 cases for the period 2016–2021. Property confiscated ranged from cash smuggled, house furniture and a house resulting from fraud, vehicles as instrumentalities resulting from drug trafficking, among others. The value of property confiscated was however, not provided save where a determination could be made based on the amount of cash confiscated.

206. On the other hand, pursuant to POCA Eswatini had made exparte applications for preservation of property and later applied for forfeiture of the property using civil proceedings. Table 3.13 illustrates preservation orders and forfeiture orders obtained since POCA came into force in July 2018.

Table 3.13 - Preservation and forfeiture orders under POCA: 2018-2021

2018-2021				
Period	**No. of cases where assets were identified and traced**		**No. of realised preservation orders**	**number of forfeiture orders**
	Domestic	foreign predicate		
2018	7	1	7	0
2019	33	1	33	5
2020	21	2	23	4
2021	4	0	4	6

207. As illustrated from table 3.13, the AFU instituted and was granted preservation orders in 67 out of 68 cases for the period under review. The DPP, through AFU from the 67 preservation orders, successfully applied and obtained 15 non-conviction-based forfeiture orders. Considering that non-conviction-based forfeiture has been lauded as the easiest route to deprive the criminals of their ill-gotten proceeds in Eswatini, this difference between assets that had been restrained/preserved and assets that were ultimately forfeited points to capacity shortcomings in the confiscation regime of Eswatini.

208. Assessors also noted that the prevalent crimes where the DPP instituted civil proceedings were; possession or dealing in dagga at 27 cases, followed by cash smuggling which might also be linked to dealing in dagga at 22 cases, and fraud at 10 cases. Other offences were so negligible to demonstrate that the DPP can effectively use the non-conviction-based confiscation tool to deprive criminals of their ill-gotten assets. Repatriation, sharing of assets or restitution had been done to a negligible extent. One case where restitution to a foreign state was ordered is illustrated in the box below but the authorities did not demonstrate whether the funds were successfully restituted.

Box 3.2: Preservation and Forfeiture Orders with Foreign Predicate

The Sanlam Case:

Sanlam South Africa was defrauded an amount of R7 million by a Nigerian and a Ghanaian nationals resident in Eswatini. An amount of R4 million was transferred to an account of a Swazi

lady who was a girlfriend to one of the suspects. The account was held at Bank X in Eswatini. After being transferred into the account, the funds were quickly wired out of Eswatini. Upon the fraud being discovered and investigated, a balance of six hundred and forty-nine thousand two hundred and eighty-one emalangeni thirty-five cents (R649 281.35) remaining in the account was successfully preserved and subsequently forfeited through the non-conviction-based asset recovery process. By then the suspects had eloped the country. The Asset Recovery Committee resolved that the money be paid back to the complainants in South Africa.

209. The confiscation regime of Eswatini faces challenges in establishing the value of assets recovered under the new criminal asset regime (POCA: Part VII and XI). During the onsite authorities could not indicate evaluation done on the assets that were subject to civil forfeiture except, in one case where an immovable property (a house) situated in the rural area was evaluated but the evaluation did not include movable assets in the house that were also subject to forfeiture.

210. Although SRA has the mandate to initiate confiscation of non-declared goods under s.81 of the Customs and Excise Act, records provided by SRA showed that the institution does not comprehensively keep and maintain its records. Thus, Eswatini could not demonstrate that it can effectively detect and detain non-declared goods with the aim of eventually confiscating them to the state. Records provided to Assessors indicated that in 2020 only 5 non-declarations of goods were detected and eventually confiscated and in 2021 only 3 non-declarations of goods were detected and eventually confiscated. The records for the period 2016-2019 were not made available indicating challenges in maintaining the records up to date and in a comprehensive manner.

211. Furthermore, of the 296 disseminations made to SRA by the EFIU between 2017 and 2021, only 40 disseminations (representing 13%) were finalized and assessed for tax, which amounted to E74 million (USD5,030,600). But the SRA had been able to use its tax system to recover an amount of E8,154,427.00 (USD522,983.20) in only 6 cases for the period 2016 to 2021. The amount recovered is very small, when one considers tax assessments raised that spanned for four years. Thus, Eswatini has, to a limited extent been able to use tax assessment process to pursue and recover proceeds of crime.

212. Inspections of parcels at the Eswatini Post Office have assisted to a large extent in recovering contraband intended for out-ward dispatch from Eswatini. The authorities through specific case examples were able to demonstrate to what extent they had been able to disrupt delivery of parcels containing dagga. Inspections of parcels between 2016 and 2020 had resulted in fifteen (15) parcels being detained by the Police after being suspected by the Post Office staff to be containing contraband. Upon examination, the parcels were discovered to be containing dagga which is widely trafficked and is one of the high proceeds generating crimes in Eswatini. The parcels were destined for different countries such as Germany, Canada, United Kingdom, Switzerland, China, USA and Taiwan. Although further investigations were conducted on the origins of the parcels in Eswatini, they did not yield any success as both the physical and postal addresses plus names of senders on the parcels were discovered to be false.

213. For the period under review Eswatini has demonstrated one instance where the country was able to confiscate proceeds located abroad and this is illustrated in box 3.3 below.

Box 3.3: Confiscation of proceeds located abroad

PHALALA FUND CASE:

The government of the Kingdom of Eswatini developed a Civil Servants Medical Referral Scheme around the year 2008/2010. The Phalala project was meant to assist the Eswatini citizens who would otherwise not have access to specialist medical care to secure such either within the Kingdom of Eswatini or outside the Kingdom. Between the years 2008 and 2010 about Four Million Six Hundred and Seventy Thousand Emalangeni (E 4 670 000.00)/ (USD 333 571.43) fraudulently paid to an account in the foreign jurisdiction as a result of false claims and in collusion with local public officials. Investigations were instituted locally and in the foreign jurisdiction. This led to the identification of a property that was purchased with the proceeds and the bank accounts that were used to deposit the government's funds. The property and the funds were put under a Preservation Order, which led to the High Court granting of a Forfeiture Order. The immovable property in the foreign country was then sold to realise the value in monetary terms. A total amount of Two Million Nine Hundred and Ninety-Nine Emalangeni was (E 2 999 999.00)/ (USD 214 285.64) was eventually repatriated to the Government of Eswatini Consolidated Account.

3.4.3. Confiscation of falsely or undeclared cross-border transaction of currency/BNI

214. Eswatini uses a written declaration system for all travellers entering or leaving the country with more than E15,000.00 (USD 1,020) or equivalent in cash or BNIs. SRA has developed *cross border cash declaration Form A to* be completed by all travellers. The form however, does not have the fields to complete when a person is carrying BNIs. Failure to report is a criminal offence (see R.32). Where an authorised officer has reasonable grounds to believe that cash or BNIs found in the course of an examination or search, may afford evidence as to the commission of an offence under s.41 of MLFT(Prevention) Act, an unlawful activity, a ML offence or an offence of TF, the officer is empowered to seize the cash. A SOP is in place to guide this process.

215. For the period under review Eswatini indicated that it had been able to intercept and seize undeclared cash crossing into or out of Eswatini. In one instance authorities (SRA) indicated that it had encountered 48 cases of non-declared South African Currency (ZAR) totalling R2,019,156.00 (USD137,264). Eswatini was able to secure convictions in 45 cases and 3 cases were still pending in court as at onsite. In another instance of seven (7) cases SRA was able to intercept USD 35,097.00. However, in two of these instances there was no evidence that the seized cash was ever confiscated. There was also no evidence that authorities took extra step to investigate whether the seized currency could have afforded evidence of a money laundering offence, a terrorist financing offence or any other predicate offence. Despite the fact that the Customs and Excise department sends reports to the EFIU on declarations made at ports of entry and exit, the office had not shared with the EFIU information on undeclared or falsely declared currency. On the other hand, Eswatini had used non-conviction-based confiscation to confiscate undeclared cash seized at border posts. Six (6) out of twelve (12) cases resulted in forfeiture of undeclared currency using civil proceedings.

216. Furthermore, it was worth observing the regions, in Eswatini, which recorded the highest number of undeclared currency interceptions and seizures vis-à-vis the flow of traffic. The table below is indicative of the same:

Table 3.14: Interception of undeclared currency per region: 2016-2021

Number of interceptions	Region	Border post	Traffic volume	Bordered country
6	Hhohho	Ngwenya	426, 635	South Africa
		Matsamo	251,594	
38	Shiselweni	Lavumisa	137,108	
11	Lubombo			Mozambique

Source: SRA

217. The traffic volume of the three busiest border posts sampled indicated that Ngwenya and Matsamo situated along South Africa border have the heaviest traffic flow compared to Lavumisawhich is also situated along South Africa border. There was no traffic volume information on the border post along Mozambique. The highest recorded undeclared interceptions, at 38 were in Shiselweniregion which is home to Lavumisaborder post, followed by Lubomboat 11 and the least of them was Hhohho at 6.

218. It can therefore, be noted from the forgoing that at their busiest, and highest traffic flow border posts, Eswatini's capacity to detect undeclared cross border transportation of currency is limited. This may be due to the fact that officers authorised to man these border posts were not provided with adequate equipment such as scanners and canines that would enable them to efficiently detect and seize undeclared currency. There was also no evidence of strategy in place to man the border posts consistent with the traffic volume and the inherent risk of cross border transportation of undeclared currency.

219. Confiscation measures regarding undeclared cross border movement of currency and BNIs have therefore, being achieved to a limited extent and the measures applied have not been effective, proportionate and dissuasive.

3.4.4. Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities

220. There was no evidence to suggest existence of national policies making confiscation of proceeds of crime a priority and objective of the country. The magnitude of high proceeds generating crimes has necessitated new developments in the way criminal assets associated with ML are being investigated, prosecuted and managed. The authorities have taken administrative decisions to have specialised investigating units in REPS (CID), ACC (see IO. 7) and at the DPP's Office to focus on ML investigations and detecting, identifying, tracing and confiscating criminal assets from high proceeds generating crimes. However, at the time of the on-site, these Units had been recently formed to make great impact on recovery of proceeds of crime. The resources of these Units were still quite limited (see IO. 7) and the authorities had not come up with a common strategy and national policy on addressing the high proceed generating crimes.

221. Preservation and forfeiture applications that have been done through AFU demonstrated low effectiveness by Eswatini to recover assets consistent with the risk profile of the country. There was no indication from AFU that there were prioritised cases the Unit had handled based on the risk profile of the country. Majority of preservation and forfeiture orders related to trafficking

in dagga, cash smuggling and fraud excluding other major proceeds generating offences such as tax evasion, corruption and bribery. From the high proceeds generating offences highlighted in the draft NRA report, the authorities are aware of these offences but could not demonstrate to the assessors that policies and strategies are in place to prioritise these offences as means of mitigating the ML/TF risks associated with them. Thus, Eswatini's confiscation results are not entirely consistent with ML/TF risks or national AML/CFT policy and priorities.

Overall conclusions on IO.8

222. Although Eswatini has demonstrated its desire to deprive criminals of ill-gotten property through preservation and forfeiture orders relating to predicate offences, namely drug trafficking, fraud and tax evasion, the volume forfeited to the State is not commensurate with the frequency of these offences. Eswatini has shown to a very limited extent that it can pursue confiscation of proceeds of crime located abroad. Confiscation of property emanating from ML/TF has not been pursued. The country has also not confiscated property of corresponding value. Eswatini is able to use its tax system to recover proceeds of crime but the amounts recovered were very low and not commensurate to the amounts assessed for tax to be recovered. The declaration system for cross border movement of currency and BNIs has not been used optimally to deter criminals as there has been a limited number of confiscations as well as interceptions and seizures of currency due to limited resources The confiscation results are not commensurate or consistent with the risks posed by significant proceeds generating crimes in the country. These deficiencies warrant fundamental improvements of the confiscation regime.

Eswatini is rated as having a low level of effectiveness for IO.8.

4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

4.1. Key Findings and Recommended Actions

Key Findings

TF investigation and prosecution (Immediate Outcome 9)

(a) Eswatini in its draft NRA report did not adequately assess the risk of TF and, as a result, the authorities do not have a clear understanding of the TF threat and TF risk profile of the country.

(b) There is no national policy or strategy on TF.

(c) The Counter Terrorism and Organized Crime Unit within the REPS that deals with terrorism including terrorist financing investigations have inadequate capacity to identify and investigate TF cases.

(d) There is no mechanism for cooperation or coordination by the LEAs in dealing with TF integrated with, or used to support national strategies.

(e) Authorities could not demonstrate that the sanctions imposed on natural or legal persons for the offence of TF are effective, proportionate and dissuasive as no case of TF has been successfully investigated and prosecuted.

(f) The authorities have not applied any other criminal justice measures to disrupt TF activities where it has not been possible to secure a TF conviction.

Targeted financial sanctions related to TF and non-profit organizations (Immediate Outcome 10)

(a) It takes days to implement targeted financial sanctions by authorities in Eswatini from the time communication on the same would have been made by a relevant UNSC sanction committee and this defeats a without delay process.

(b) Eswatini has not undertaken any work to identify which NPOs are at risk of abuse for TF.

(c) There is no legal and institutional framework to monitor NPOs at the risk of TF nor are there mechanisms on risk-based approach.

(d) There has not been TF cases that warranted the competent authorities to seize or freeze assets and instrumentalities related to terrorist activities

(e) Authorities could not demonstrate how TF vulnerabilities identified in Eswatini could be addressed to mitigate TF risk.

(f) Eswatini had not identified NPOs which by virtue of their activities or characteristics are likely to be at risk of TF abuse, which will serve as the basis for monitoring and oversight of the sector.

Targeted Financial Sanctions Related to PF (Immediate Outcome 11)

(a) Eswatini does not have mechanism that would enable it to implement targeted sanctions on proliferation finance without delay. The country could not also demonstrate that it has been able to identify designated persons or entities in regards to this.
(b) It could not be established with certainty that FIs and DNFBPs can appreciate distinction between TFS that relate to TF and PF as Eswatini uses same set of regulation in its attempt to implement TFS.

Recommended Actions

TF Offence (Immediate Outcome 9)

(a) Eswatini should adequately assess its TF risks and take measures, including developing national policies and strategies to ensure that appropriate and proportionate measures are in place to assist in identifying, investigation and prosecution of TF cases.
(b) Authorities should capacitate the Counter Terrorism and Organized Crime Unit with adequate financial and human resources to enable the Unit effectively investigate TF cases. Further, authorities should ensure that officers responsible for TF investigations receive adequate training and capacity building, with a focus on TF risks and methods.
(c) Eswatini should establish a coordinated multi-agency framework comprising of all relevant entities to address issues of TF and to further promote effective exchange of TF information.
(d) Eswatini should amend its laws to address gaps identified in the criminalization of the financing of terrorist organisation and individual terrorist financiers.
(e) The Authorities should develop mechanisms to facilitate information and intelligence sharing and cooperation with its neighbouring countries, including Mozambique and South Africa, to enable detection of potential TF and any links to actors or networks within Eswatini.
(f) Eswatini should ensure that financial investigations are considered in connection with every terrorism investigation and that TF investigations are also pursued proactively and concluded in a timely fashion.

Targeted Financial Sanctions Related to TF and non-profit organizations (Immediate Outcome 10)

(a) Eswatini should develop comprehensive mechanism to implement targeted financial sanctions without delay.
(b) Eswatini should expedite completion of work intended to set up legal and institutional framework for the NPO sector.
(c) Eswatini should identify NPOs which by virtue of their activities or characteristics are likely to be at risk of TF abuse and implement risk-based monitoring and oversight of the sector.
(d) Eswatini should develop mechanism that would ensure coordinated effort in depriving assets and instrumentalities used or intended to be used in terrorism activities.

Targeted Financial Sanctions Related to PF (Immediate Outcome 11)

(a) Authorities should amend the existing statutory instrument to implement TFS on PF without delay.
(b) Authorities should issue necessary regulations and guidelines that specify the obligations of the accountable institutions regarding the implementation of UNSCRs related to combating PF without delay and begin conducting awareness workshops for FIs and DNFBPs in this regard.
(c) Eswatini should develop mechanisms to enable competent authorities monitor compliance with implementation of targeted financial sanctions relating to financing of proliferation.

223. The relevant Immediate Outcomes considered and assessed in this chapter are IO.9-11. The Recommendations relevant for the assessment of effectiveness under this section are R. 1, 4, 5–8, 30, 31 and 39.

4.2. Immediate Outcome 9 (TF investigation and prosecution)

Background and Context

224. Eswatini has adequate legal and institutional framework to investigate suspicious terrorist activities including terrorist financing. In the draft NRA report, the authorities did not rate the risk associated to TF in the country and during the on-site it was noted that the Authorities could not demonstrate that they fully understood the risk of TF in the country. Further, the REPS who are mandated to investigate TF lacked adequate skills and resources to successfully identify and investigate the different types of TF activities which Eswatini might be exposed to.

225. The Intelligence State Security Services (ISSS) under the REPS is responsible for the domestic and foreign intelligence and counter-intelligence security including identification of terrorism and terrorist financing cases.

226. The analysis and processing of TF suspicious activities was being done by EFIU, and the Intelligence Unit under REPS as part of its day to today Police work. The Intelligence Unit was also responsible for gathering intelligence and investigating cases on terrorism as well as identifying TF from disseminated reports received from the EFIU. The Counter Terrorism Organised Crimes Unit, a division under the Criminal Investigation Department of REPS was the Unit responsible for receiving and investigating the TF intelligence reports from the Intelligence Unit.

227. The mandate of the Counter Terrorism Organised Crime Unit is to prevent and combat TF, acts of terrorism and organized crime (TOC).

228. Although there is adequate institutional framework to deal with TF matters, the authorities could not demonstrate that they employ a coordinated approach when dealing with such cases. For instance, during the onsite, it was noted that the Intelligence Unit and the Counter Terrorism Organised Crimes Unit, which are both units under the REPS did not coordinate when dealing with TF matters.

4.2.1. Prosecution/conviction of types of TF activity consistent with the country's risk-profile

229. As highlighted above, Eswatini in its draft NRA report does not fully identify the risks associated with TF. As a result, the TF risk is not understood among the relevant public and private stakeholders. Interactions with different LEAs showed that there was a low understanding of TF and TF risk, even with REPS which is mandated to gather intelligence and investigate cases related to TF.

230. During the onsite visit, the authorities were of the view that TF is of low risk in Eswatini but this could not be backed by any supporting information as it was noted that the authorities were looking at terrorism cases and not TF. Further, it was noted that the authorities were basing the low risk on the absence of any known terrorist activity having occurred before. Considering that Eswatini shares its borders with South Africa and Mozambique, countries which have a significant TF risk, the authorities had not taken sufficient steps to understand the TF risk profile of their country, let alone prosecuting and having offenders convicted consistent with the country's risk profile.

231. At the time of the on-site visit, Eswatini had not prosecuted any TF case and was in the process of investigating one possible TF offence. However, the investigation of this case had also taken long to complete having started in 2015. Further, it did not appear that there was much emphasis placed on the offence of TF or TF activities in the investigation and prosecution of criminal offences. This is based on the fact that the case which was under investigations had stalled and was only relooked at prior to the onsite visit. The Assessors noted that the lack of attaching seriousness to TF investigations was due to the low understanding of the TF offence and in a few occasions, confusing TF with the offence of terrorism. This generally led to the conclusion that since there had been no such offences occurring in the country, it automatically translated to there being no TF occurring in the country.

232. This misunderstanding was held by a number of institutions met, including FIs and DNFBP sectors. This generally had implications in the identification of suspicious transactions relating to TF by such institutions contributing to limited investigations and prosecution of such cases.

233. The end result was that Eswatini could not demonstrate that it effectively identified, investigated and prosecuted the different types of TF activities in line with the TF risk-profile of the country.

4.2.2. TF identification and investigation

234. The Authorities could not demonstrate that they understand the TF risk profile of the country, therefore, the identification and investigation of TF in Eswatini was low. Further, they could not clearly demonstrate that when investigating TF, they were able to identify the specific roles played by TF financiers.

235. The Intelligence Unit within the REPS, and the EFIU are responsible for the identification of TF and where a case has been identified, the matter is referred to the Counter Terrorism Organised Crimes Unit or the Financial and Economic Crimes Unit both under the REPS for further investigations. The Intelligence Unit has a staff compliment of around 200 officers, who among other duties in the REPS are also responsible for TF intelligence gathering. Although, during the interaction with the Unit there were disclosures that the officers in the Unit had been trained on TF, the next to nil investigations did not reflect adequate skills to identify and properly investigate TF cases.

236. Despite the Authorities indicating that the Police can use a wide range of investigative techniques when gathering intelligence and conducting investigations in TF cases, it was noted that the focus is more on the identification and gathering of intelligence on terrorism and not TF.

237. At the time of the onsite, the FECU indicated that the Unit had identified and investigated ten (10) suspected TF cases from the reports disseminated by the EFIU. However, further clarification with the Authorities revealed the cases bordered on externalization of funds by some Asian nationals who were running supermarkets in Eswatini. Investigations in the said matter have since stalled as requests for information from foreign jurisdictions was not availed. Taking into account that the TF risks were not fully understood, it was difficult for the assessment team to make a determination if indeed these were TF cases with the little information provided on the said cases. It was further noted that the Authorities had not prioritized TF identification and investigations.

238. The Units responsible for TF intelligence gathering and investigations had limited intelligence gathering tools and resources availed to them. For instance, the Intelligence Unit had no budgetary allocation to aid the gathering of intelligence as it relied on the overall budget allocated to the REPS. Further, the EFIU also indicated limited financial resources as one of the major challenges it was facing.

239. At the time of the onsite visit, the Intelligence Unit under the REPS had identified one case as a potential TF case. However, it was noted that the authorities had not prioritised the case. The manner the case had been handled indicated that the Authorities lacked capacity to handle TF cases with the urgency required. In addition to substantial intelligence information having been collected by the Intelligence Unit, the case had not been passed on to the Counter Terrorism Organised Crimes Unit for the formal investigation to be commenced.

Box 4.1 - TF case investigated

In 2015, the Intelligence Unit under the REPS received an information request from one of their cooperating partners on a subject who was in possession of a Swaziland National Identity Document. The said subject had earlier on been denied entry into one of the Middle East countries from his home country which was also in the Middle East and the reasons for the refusal had not been disclosed. Also, worth noting was that the subject had also sent money amounting to Twenty-Five Thousand Rands (R25 000.00 or USD 1,700) from his South African Bank Account to his nephew who was fighting alongside ISIS in the Middle East country to which the subject had previously been denied entry.

Preliminary information gathering done by the requesting State on the subject had established that the target had moved to Eswatini where he was using his original name but now in possession of a Swazi National Identity Card and a passport. Investigations by the Intelligence Unit later revealed that the ID and passport were illegally obtained suggesting that there was collusion of some sort with the Immigration officials, who had issued him the ID Card. No further investigations had been conducted on the case from 2015 to the time of the onsite and the subject was still in Eswatini and still using the illegal documents.

4.2.3. TF investigation integrated with –and supportive of- national strategies

240. Eswatini could not demonstrate that it effectively identified TF as a mitigating strategy to combat terrorism. However, despite the Authorities having not developed national strategies on TF, there was the Terrorism and Organised Crime Strategy of 2016/2021 in place.

241. Although the strategy had four main objectives, they mainly focused on investigation of terrorism and terrorists and not on TF. Therefore, TF investigations are not integrated with and were not supported by national strategies. The four objectives of the strategy deal with preventing

the occurrence of acts of terror and organized criminal activities; strengthening the Police Services' capabilities to protect the country against terrorism and organised crime; ensuring readiness of response systems to mitigate the occurrence of a terror attack and its impact; and to pursue, arrest and prosecute perpetrators of terrorist and organized criminal activities and disrupting syndicates involved in such criminal acts.

4.2.4. Effectiveness, proportionality and dissuasiveness of sanctions

242. The legal framework provides for TF sanctions. However, the Authorities had not yet prosecuted and convicted any person of terrorism or TF charges. Therefore, the effective, proportional and dissuasive implementation of the sanctions and any other measures to deter TF activities could not be determined.

4.2.5. Alternative measures used where TF conviction is not possible (e.g., disruption)

243. At the time of the onsite, Eswatini had not investigated or prosecuted any TF cases that would require the use of alternative measures such as disruption of TF activities, where it had been not practicable to secure a TF conviction.

Overall conclusions on IO.9

244. Eswatini failed to demonstrate that it had assessed and understood the country's TF risks. Further, the authorities could not demonstrate that they effectively identified, and investigated terrorist financiers or addressed TF through other alternative measures. Fundamental improvements are needed to address the deficiencies identified under this IO.

Eswatini is rated as having a low level of effectiveness for IO.9.

4.3. Immediate Outcome 10 (TF preventive measures and financial sanctions)

4.3.1. Implementation of targeted financial sanctions for TF without delay

245. Eswatini has enabling legal provisions to implement targeted financial sanctions (TFS) under the UNSCR 1267 and UNSCR 1373 (and their successor resolutions) (see R.6). However, TFS are not effectively implemented without delay as it takes at least eighteen (18) days to communicate designations to the accountable institutions. Further, Eswatini has not effectively communicated all designations to the accountable institutions, with only one communicated since 2016. Although Eswatini established the *United Nations Security Council Resolutions Implementation Committee* in line with the requirements of Regulation 4 of the Anti-Money Laundering (United Nations Security Council Resolutions) Regulations 2016, most of the Committee members are fairly new and hence have not started to be effective.

246. The major shortcoming identified is that it takes long for Eswatini to communicate designations to the accountable institutions. Once the Eswatini Permanent Mission in New York receives designations from UN, it writes a letter and send it together with the designations through DHL to the Ministry of Foreign Affairs and International Cooperation (MoFAIC) in Eswatini. Authorities advised that the diplomatic bag usually takes about two weeks to reach the MoFAIC. Upon receipt of the list by the MoFAIC, it takes at least two days for MoFAIC to draft a memorandum notifying the Ministry of Finance on the designations. The Ministry of Finance in turn requires at least two days to draft a letter notifying relevant competent authorities, such as CBE, FSRA, EFIU indicating what they are expected to do. It was not established with certainty

how long it takes for supervisory authorities to communicate designations to entities under their purview. While this process used in practice does not follow the mechanism set out in the Anti-Money Laundering (United Nations Security Council Resolutions) Regulations, 2016 both processes are ineffective as they do not allow for the implementation of TFS without delay. The authorities indicated that FIs and DNFBPs were advised to frequently check on the EFIU website for any updates on TFS. There was inconsistent appreciation of this approach across FIs and DNFBPs, with most of them not aware of the link as there was no guidance issued by the EFIU to educate the accountable institutions on how to access the link.

247. Regulation.4 of the Anti-Money Laundering (United Nations Security Council Resolutions) Regulations, 2016 establishes the United Nations Security Council Resolutions Implementation Committee with a mandate to implement UNSCRs 1267/1373/1718 and successor resolutions. While the Committee was established, the majority of the members met during the on-site visit were fairly new and had not met to discuss how they would implement TFS as stipulated in the Regulations. The assessors noted that the Committee is yet to start effectively understanding and performing its function. Eswatini has also not reported any terrorist property that it has identified and frozen.

248. The Regulations requires a third-party state which requests designation of a person pursuant to Resolution 1373 to give details of the designation through the Swazi Mission in that country or in its absence, through the MoFAIC. Eswatini has not received a request for designation from another country or requested any other country to make a designation. Therefore, effectiveness of the current structure in implementation of UNSCR 1373 could not be determined.

249. Since 2016, only one designation was communicated by the Ministry of Finance through CBE to the banking sector. However, the FIs met during the on-site, in particular, banks, MVTS operating under banks, larger insurance and securities firms, had a fair understanding of their TFS screening obligation and can implement sanctions without delay. This is mainly due to the extensive use of their in-house and other public screening software used during on-boarding and as and when the list is updated. Nevertheless, the majority seemed not to understand the freezing and reporting measures to be taken when a positive match is flagged. Additionally, their screening effort is hindered by limited UBO information in their databases and is a major limitation to an effective implementation of TFS. Other FIs and DNFBPs, however, do not have an understanding of their obligations (see IO.4).

4.3.2. Targeted approach, outreach and oversight of at-risk non-profit organisations

250. NPOs are registered as legal persons through the office of Registrar of Companies. They are regarded as companies limited by guarantee. Eswatini has not identified the subset of NPOs that, based on their characteristics and activities, are at risk of TF abuse as required under R.8.

251. At the time of the onsite Eswatini had not identified the NPOs that are at-risk of TF abuse. It was also noted that Eswatini NPO sector does not have a designated supervisor which would in turn conduct oversight of at-risk NPOs on a risk-based approach. Authorities indicated that they were in the process of developing a Bill that seeks to administer and/or regulate the NPO sector. While there is an informal NPO umbrella body (CANGO) in Eswatini formed in 1983, this is only voluntary and as of the onsite date about 80 NPOs had registered with the body. The Body advised that only one percent of these are foreign NPOs with Eswatini presence. The office of the Registrar of Companies did not have statistics on the number of NPOs, registered as companies limited by guarantee, operating in Eswatini.

252. Eswatini has not yet started inspection and monitoring of NPOs on a risk sensitive basis for any potential TF abuse despite their inherent risk and reports of huge international capital inflows to the NPO sector. Further, the authorities have not yet commenced engaging and/or doing outreach to the NPO sector to sensitize it on TF risks, neither are they aware of the potential TF risks that may be faced by the NPOs. The NPO sector also did not participate in the NRA exercise commissioned in 2016. In this regard, it is the assessors' view that NPOs do not understand their vulnerabilities to TF risks and the kind of measures they could be taking to protect themselves from the possible exposure to terrorist abuse.

4.3.3. Deprivation of TF assets and instrumentalities

253. Eswatini had not conducted TF investigations and prosecutions despite one positive match reported by one of the banks. It was therefore not possible to ascertain the extent to which terrorists, terrorist organisations and terrorist financiers are deprived (whether through criminal, civil or administrative processes) of assets and instrumentalities related to TF activities.

4.3.4. Consistency of measures with overall TF risk profile

254. Assessors noted that there was low understanding of TF risks across all the agencies, supervisors and the accountable institutions. Eswatini had not adequately assessed its TF threats and vulnerabilities. Assessors view abuse of credit cards and influx of foreigners from high-risk countries, potential underground value transfers, extensive use of cash, porous borders, potential abuse of MVTS and terrorism threat in neighbouring countries as having potential to increase TF risk profile in Eswatini. The interviews held with the authorities show that Eswatini had not taken CFT measures that are consistent with the TF risk profile of the country.

Overall conclusions on IO.10

255. Eswatini does not have the appropriate legal and institutional infrastructure to effectively deal with NPOs at the risk of being abused for TF. The country did not demonstrate its ability to deprive terrorists, terrorist financiers and terrorist organisations of TF assets and instrumentalities during the period under review (2016 to 2020). There is low understanding of TF risk in Eswatini and counter financing of terrorism measures in place are not commensurate to the TF vulnerabilities observed during the on-site which displayed a potential increase of TF risk profile of Eswatini. TFS on TF are not implemented without delay as it takes at least eighteen (18) days to communicate designations to the accountable institutions.

Eswatini is rated as having a low level of effectiveness for IO.10.

4.4. Immediate Outcome 11 (PF financial sanctions)

4.4.1. Implementation of targeted financial sanctions related to proliferation financing without delay

256. Eswatini relies on Anti-Money Laundering (United Nations Security Council Resolutions) Regulations 2016 to address UNSC Resolutions on Proliferation Financing (PF). Analysis made under Recommendation 7 established that the power to implement PF measures under these regulations is inconsistent with the Primary legislation, being the MLFTP Act, 2011, as amended and this negatively impacts on effectiveness. Notwithstanding this shortcoming, competent authorities' approach to implement PF measures appeared to be similar to implementing TF targeted financial sanctions. Thus, shortcomings identified under core issue 10.1 above equally apply under this core issue. In particular, TFS for PF are not being implemented without delay.

4.4.2. Identification of assets and funds held by designated persons/entities and prohibitions

257. Eswatini has limited mechanisms to identify assets and funds held by designated persons. As discussed under IO.4, banks and other large FIs have sanctions screening software with sanctions lists embedded which they could use to screen companies and individuals on the sanctions lists. However, no accounts or transactions, including false positives, have been identified or frozen in relation to PF. Other FIs and DNFBPs have no awareness with the implementation of TFS hence may not be able to identify any assets or funds held by designated persons/entities and any prohibitions.

4.4.3. FIs and DNFBPs' understanding of and compliance with obligations

258. From discussions with the private sector, banks and other large FIs with foreign ownership have sanction-screening systems that automatically alert them on the UNSC sanctions including on PF. However, their level of understanding of PF is very limited. Such FIs would make general references to UN-related obligations on sanctions without distinguishing between TF and PF. Other smaller FIs and DNFBPs have no understanding of PF. There was no awareness done to the private sector by the EFIU or any other supervisory authority nor guidance issued by the authorities to help them to be conversant and to comply with the requirements relating to PF.

4.4.4. Competent authorities ensuring and monitoring compliance

259. The assessors noted that while the supervisors met during on-site did not demonstrate appreciation of PF, the inspections conducted and awareness undertaken by them did not also include TFS relating to PF. Supervisors of DNFBPs have not started supervision and as such have no mechanisms in place to ensure compliance by DNFBPs in the implementation of TFS relating to PF.

Overall conclusions on IO.11

260. The power to implement TFS relating to PF has no legal basis. Accountable institutions are not aware on how the Regulations on TFS relating to PF have to be implemented. Provisions of the regulations make no distinction between TFS on TF and PF. Accountable institutions have no understanding on what action to take in case of a positive match. This was also exacerbated by the fact that authorities have not issued guidance on the implementation of TFS on PF to accountable institutions. Ensuring and monitoring of compliance by accountable institutions with the obligations on PF's TFS was non-existent.

Eswatini is rated as having a low level of effectiveness for IO.11.

5. PREVENTIVE MEASURES

5.1. Key Findings and Recommended Actions

Key Findings

Financial Institutions

(a) FIs generally have a fair understanding of their ML risk and AML obligations. Large and foreign-owned banks and MVTS affiliated to banks, , however, have a better, yet still developing, understanding than other non-bank FIs. Some larger banks tend to apply standards beyond domestic requirements, mainly as a result of the sophisticated IT solutions or databases provided by their parent companies. However, FIs' understanding seems to be more limited with regards to UBO, and PEPs , targeted financial sanctions, in particular, domestic and international organization PEPs due to the limitation in the legal definition of a PEP in Eswatini.

(b) All sectors had a low appreciation of TF risks and CFT obligations and this could be due to lack of awareness and guidance by the supervisory authorities.

(c) Application of AML/CFT mitigating measures by FIs and DNFBPs in Eswatini is uneven. The majority of the FIs and DNFBPs have not put in place adequate measures to mitigate the specific ML/TF risks that they are facing. The limited understanding among some FIs and all the DNFBPs on specific ML/TF risks that they are facing is a major obstacle to effective risk mitigation.

(d) Generally, DNFBPs' understanding of ML risks and AML/CFT obligations is underdeveloped and mitigating measures are not risk-based with the exception of casinos where implementation of mitigating measures is emerging. This could be due to lack of AML/CFT compliance supervision and awareness on their obligations.

(e) Application of CDD and record-keeping and ongoing due diligence measures have mainly been applied by banks and MVTS affiliated to banks, to some extent, commensurate with their risks. However, limitations in obtaining BO information represent the most significant deficiency among all the FIs and DNFBPs. The other non-bank FIs do not adequately apply CDD, record-keeping and ongoing due diligence measures commensurate with the risks they face. DNFBPs apply basic CDD measures during establishment of business relationships and when conducting financial transactions and these are not commensurate with the risk profile of the DNFBP sector.

(f) The application of EDD measures has been achieved to a minor extent by FIs and to a negligible extent by DNFBPs. The focus on rule-based compliance affects implementation of EDD by non-bank FIs. Targeted measures to address high risk situations are affected by legal deficiencies relating to PEP definition

and UBO requirements as well as low understanding of obligations on TFS and high-risk countries.

(g) Generally, banks meet reporting obligations to some extent and file with the EFIU STRs that mainly relate to tax evasion and corruption while other FIs and the DNFBPs fail to do so commensurate with their risk profiles. However, inadequate Analysts in some banks allowed for a backlog of alerts which could be potentially reported as suspicious. Further, reporting of suspicious transactions relating to TF is very low across all FIs and non-existent among the DNFBPs

(h) There are lapses relating to tipping-off obligations especially among banks where some customers are contacted after submitting an STR on the matters reported to EFIU even before commencement of investigations by LEAs.

(i) Banks and larger MVTS apply internal control programmes to some extent while non-bank FIs (excluding MVTS) apply controls to a limited extent. Internal controls are non-existent in the DNFBPs, except in casinos where they are applied to a very limited extent.

Recommended Actions

(a) Improve ML/TF risk understanding of large and foreign-owned banks and MVTS affiliated to banks and develop ML/TF risk understanding by other non-bank FIs and DNFBPs through regular ML/TF risk assessments, using findings of the NRA exercise as a basis. Risk assessment should be extended to ML/TF risks associated with VAs and VASPs. Strengthen understanding of AML/CFT obligations among FIs and develop the same among DNFBPs, in particular, relating to UBO, TFS, PEPs, and TF through targeted awareness programs and issuing of specific guidance to relevant FIs and DNFBPs.

(b) Ensure that accountable institutions (other than banks and MVTS affiliated to banks) detect and file STRs on transactions containing funds suspected of being involved in criminal activities or financing of terrorism consistent with the risk profile of the products and financial services they offer. This can be achieved by issuing guidance on STRs including TF red flags. Further, FIs should appoint adequate Analysts to ensure that alerts are attended to in a timely manner and where relevant, STRs generated are timely filed with the EFIU.

(c) Ensure that non-bank FIs, smaller FIs and DNFBPs have AML/CFT internal control programmes including staff screening, audit assurance and on-going training programmes on AML/CFT requirements. Training should include obligations on tipping-off.

(d) Ensure legislative frameworks are in place which set out clearly how a PEP is defined and the UBO requirement. Alongside this, guidance for the regulated sectors should be improved to ensure EDD is being applied in higher risk situations including in relation to TFS and PEPs.. Additionally, the country should have legislative/regulatory actions to address gaps relating to VAs and VASPs.

(e) FIs and DNFBPs should be provided with access to reliable, independent source data (at Ministry of Home Affairs or other institutions) that can be used for a more effective verification of customer's identity information.

261. The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The Recommendations relevant for the assessment of effectiveness under this section are R.9-23.

5.2. Immediate Outcome 4 (Preventive Measures)

262. As at the on-site date, Eswatini had 5 banks, 3 of which were large and foreign-owned commercial banks in terms of asset size controlling 80% of the banking assets. The total asset size of the banking sector was USD1.85 billion. During the same period, there were 3 MVTS including those that are affiliated to banks (offered by banks) and standalone. Money changing business is to a greater extent offered by banks as authorised dealers (ADs) and to a lesser extent by 2 standalone bureaux de change as authorized dealers with limited authority (ADLAs), of which one has a foreign affiliation. Non-bank FIs under FSRA have asset size of USD4 billion, 82% of which is controlled by two pension funds, one of which is government owned. Funds are deducted from source, mostly, salaries. Real estate agents are not licensed and hence their numbers are not known. (*See table 1.1 and 1.2 on details of FIs and DNFBPs*). Based on the relative risk and materiality in the context of Eswatini as explained under chapter 1, the positive and negative aspects were weighted most heavily for banks, heavily for real estate agents and ADLAs , moderate weight was given to insurance, lawyers and casinos, and low weight to securities, mobile money, microfinance, dealers in precious metals and stones and accountants.

5.2.1. Understanding of ML/TF risks and AML/CFT obligations

263. There is varied understanding of ML/TF risks and understanding of AML/CFT obligations between the FIs and DNFBPs and across the FIs. The FIs have a fair understanding of ML/TF risks and AML/CFT obligations. The DNFBPs showed a low level of understanding of ML/TF risks and AML/CFT obligations. Within the FI sectors, there is also varied understanding of AML/CFT obligations and ML/TF risks and this is attributed to the size (i.e. small or big entity), ownership/control (e.g., local or foreign), sophistication of the products or services offered, and maturity of compliance monitoring by the AML/CFT supervisors.

Financial Institutions

264. The FIs in Eswatini have varied understanding of the nature and level of ML/TF risk exposure. The understanding of the ML/TF risk was mainly determined by two factors, firstly, on the basis of results of the NRA exercise and to a lesser extent, FIs' ML/TF risk assessments. Whereas there was generally a fair understanding of ML risks across the FIs, assessors noted a better understanding in the banking sector, in particular, those banks that are foreign-owned and MVTS affiliated to banks than the rest of the FIs. The banking sector's and MVTS affiliated to banks' understanding of ML risk was further enhanced by the mandatory requirement from CBE to conduct risk assessments towards the end of each year, results of which were submitted to the central bank.

265. To a greater extent, the banking sector and MVTS affiliated to banks' understanding was mainly as a result of their participation in the NRA exercise. Consequently, most of the banks and

MVTS affiliated to banks demonstrated that they knew the general ML threats and vulnerabilities in line with the findings of the NRA exercise. In particular, the awareness workshops undertaken just before the on-site meetings by CBE to the banking sector on the results of the draft NRA report, to some extent impacted positively on the banks' understanding of the ML risks prevailing in the country. Banks highlighted tax evasion, corruption (especially relating to public sector procurement), fraud, and drug trafficking (mainly dagga, commonly referred to as "green gold") and pyramid schemes as some of the main proceeds generating offences in Eswatini, consistent with the findings of the NRA exercise. They further indicated that majority of the proceeds of such criminal activities were mainly channelled through the real estate sector. They also considered MVTS, casinos, ADLAs, second hand motor vehicle dealers, NPOs who receive large donations from high TF risk countries, domestic PEPs and non-face to face customers as vulnerable areas. Some of the high-risk factors highlighted by banks include large cash transactions, cross-border wire transfers, and cloning through credit/debit cards transactions done in some parts of East Asia.

266. There is limited understanding of ML risk within the insurance ADLAs, microfinance institutions, standalone MVTS (including mobile money service providers), and securities firms particularly risks specific to their own sectors and institutions. Although they participated in the NRA exercise and the larger non-bank FIs had conducted their own internal risk assessments, there was little demonstration of ML risks understanding. For instance, the standalone MVTS could mention the proceeds generating offences in Eswatini as identified in the draft NRA report such as drug trafficking proceeds channelled through this sector but could not adequately explain how they happen and to what extent they impact on their business operations and /or the sectors. The majority of the larger securities companies identified Collective Investment Schemes (unit trusts) as highly vulnerable to abuse by the local PEPs but could not adequately explain the extent of the exposure.

267. Across all FIs, there was generally a fair understanding of AML/CFT obligations as set out in the MLFTP Act. Banks and MVTS affiliated to banks, however, portrayed a better understanding than the other FIs, with some larger banks tending to apply standards going beyond domestic requirements in certain instances, mainly due to their sophisticated IT solutions or databases from parent companies. Nonetheless, assessors noted limited understanding of AML/CFT obligations relating to UBO, targeted financial sanctions and PEPs, in general. While the larger banks and MVTS affiliated to banks could reasonably explain their understanding of EDD, local banks and non-bank FIs were only limiting it to identifying source of funds and senior management approval for high risk clients, without specifying the need to also identify source of wealth and on-going monitoring of client relationship. The non-bank FIs could not explain circumstances under which EDD should be applied with most viewing it as only applying to PEP relationships.

268. There is low understanding of TF risk and CFT obligations by all FIs in Eswatini. Most FIs consider the risk of TF as low in their institutions based on the fact that there has not been any incident of terrorism. This greatly limits their understanding of TF risk in their specific entities. While some of the FIs, especially banks and MVTS affiliated to banks, expressed awareness of terrorism developments in Mozambique, potential funds layering by Eswatini bank customers through credit cards transactions mostly in Asia with unknown intended purpose, huge inflow of funds for some charitable organisations, and existence of porous borders for the country, they could not demonstrate to what extent these factors could expose their institutions to TF. This lack of understanding may have been attributed to lack of awareness and specific guidelines on TF red flags by the supervisory authorities.

269. ML/TF risks associated with VASPS and VAs have not been identified, assessed and understood by the FIs. However, banks highlighted that few cross-border cryptocurrency transactions had been undertaken by some customers. The legal and regulatory framework for VAs and VASPs is not yet in place and thus no AML/CFT obligations are in place in this regard.

DNFBPs

270. DNFBPs have little to no understanding of the ML/TF risks and AML/CFT obligations that apply to them. Lawyers, accountants and casinos consider that the MLFTP Act requires the implementation of due diligence, record keeping and the reporting of suspicious transactions; however, the understanding of such requirements is lacking. All DNFBPs lack understanding on their ML vulnerabilities such as the high usage of cash neither are, they aware of ML threats such as corruption and the extent to which illicit proceeds can be channelled through their sectors. DNFBPs have not performed ML risk assessments to determine the inherent risk factors applying to them. Real estate agents and attorneys do not identify the ML risks associated with real estate. Given indications from the banking sector that most criminal proceeds are channelled through the real estate sector, assessors considered the sector as highly vulnerable to ML. Generally, this is compounded by absence of AML/CFT supervision of the sector.

5.2.2. Application of risk mitigating measures

271. Application of AML/CFT mitigating measures by FIs and DNFBPs in Eswatini is uneven. Unlike non-bank FIs and DNFBPs, large and foreign-owned banks and MVTS affiliated to banks had to some extent put in place adequate measures to mitigate the specific ML/TF risks that they were facing. The limited understanding among non-bank FIs and all the DNFBPs on specific ML/TF risks that they were facing was a major obstacle to effective risk mitigation.

272. To some extent, banks and MVTS affiliated to banks applied mitigating measures commensurate with their risks. They had developed and implemented AML/CFT policies and procedures that were fairly commensurate with the identified risks. They further indicated that they have sophisticated customer profiling and transaction monitoring systems (AML/CFT applications/software) which enable analysis and classification of customers into different risk categories when they are on-boarded. Assessors, however, noted limited profiling on an on-going basis, that is, in cases where customer profile changes. Large insurance and securities companies profile their customers, and they, together with banks and MVTS affiliated to banks use public software/databases such as World-Check and Siron AML or in case of banks, their own internally developed systems, to identify and screen high risk customers, in particular PEPs and those listed on the UN sanctions. Banks and MVTS affiliated to banks implement enhanced due diligence if the risk is high or to address risk warnings flagged by their systems. They have High Risk Committees in place who approve relationships of high-risk customers before the customer is on-boarded. However, the FIs did not demonstrate that there are adequate measures in place to identify and mitigate risks relating to domestic and international organization PEPs (the majority of the FIs in Eswatini do not appreciate the concept of international organization PEPs which is attributed to the deficiency in the AML law). While some of the banks, MVTS affiliated to banks and some large insurance companies indicated that they maintain and rely on their own manual domestic PEP list other FIs like insurance and securities indicated that they rely on those gazetted by the government. These, however, were found to be narrow as the gazetted list is mostly limited to government Ministers and a few other senior government officials. This limitation has a negative

bearing on adequate monitoring of all PEP relationships in the context of Eswatini and thus mitigating measures not adequately applied to all PEPs. This makes the mitigating measures in place not being fully commensurate with the type and extent of risks relating to PEP and other high-risk customers. As for mitigating measures relating to mobile money, the service providers set transaction limits or measures, including daily, monthly or annual limits and on wallet sizes that limit the exposure to risks. However, these measures are not necessarily specific for, or effective in, mitigating ML/TF risks as they apply equally to all individuals without taking into account the ML/TF risk exposure of each customer or product.

273. Smaller insurance and securities companies, ADLAs and standalone MVTS do not have adequate mitigating measures in place, as they fail to adequately assess their ML/TF risks specific to their institutions. Their AML/CFT policies and procedures were assessed to be mostly rules-based, not risk-based. These FIs have not started effective profiling, screening and monitoring of customers mainly due to absence of adequate systems. For example, ADLAs have no system in place to monitor individuals who can conduct several transactions at different branches.

274. All DNFBPs, generally, apply negligible risk mitigating measures with only casinos showing a better application of measures such as use of an automated customer identification system which captures photos and links that with all the customer information and transactions, and setting of internal gambling limits such that the system flags every customer transaction from E50,000 and above.

5.2.3. Application of CDD and record-keeping requirements

275. CDD measures applied by banks and other larger FIs are to some extent reasonably effective. Customer identification and verification measures and ongoing due diligence are generally performed by FIs although limitations in obtaining BO information represent a significant deficiency across all the FIs. Additionally, record keeping measures are relatively more effective at most of the banks and FIs which are foreign-owned. Banks and MVTS affiliated to banks demonstrated a better implementation of these requirements than the other FIs while DNFBPs do not effectively apply CDD and record keeping measures.

276. Most FIs, banks in particular, demonstrated that to some extent they implement identification measures and verify information obtained, and refuse business relationships or transactions if the CDD process cannot be completed. To achieve this purpose, banks generally use other established sources to verify clients' identity, such as national registries and third-party screening (e.g.; credit bureaus). Some banks (especially larger banks) and MVTS (mobile money and MVTS affiliated to banks) providers indicated that they have a direct access to the database of the Ministry of Home Affairs (national registry) where they can verify client's identity online. However, non-bank FIs and locally-owned banks mainly rely on certified copies by notaries or use of judgment by their officers on key features of the National IDs and the assessors determined this kind of verification of customer identity to be less satisfactory.

277. Supervisory authority findings, in particular for banks, portrayed breaches related to shortcomings in the CDD process, such as missing, incomplete or outdated information on customers including on high risk customers. Although during on-site, some banks indicated that they were in the process of remediating the KYC information, the gaps identified by the supervisors point to failures by some banks to conduct periodic review of customer documents, data and information collected under the CDD process to update it.

278. Majority of the non-bank FIs are not yet linked to the national registry database and have insufficient access to other reliable, independent source data that can be used for verification purposes and this limits effective verification of certain clients. While some of these FIs (such as insurance and securities) indicated that they physically go to or call the Ministry of Home Affairs to verify clients whom they suspect to be high risk, and this process is not consistent for all clients and is not regularly applied given its manual nature. Therefore, most non-bank FIs rely on data provided by the customer with no further verification conducted. Further, the non-bank FIs have not adequately demonstrated that they periodically monitor and review customer identification information, such as expired passports and work permits, and changes in address or shareholders, among others. Similarly, deficiencies regarding CDD process were also noted by financial supervisors for non-bank FIs (FSRA and CBE).

279. Reports of fraudulently issued documents through collusion with some Immigration officials were noted in the draft NRA report and during the interviews. Although the authorities highlighted that there were government initiatives to address such breaches, FIs could not demonstrate if they have verification mechanisms to detect them.

280. Generally, the identification of UBO is a challenge for FIs in Eswatini, many of which, including banks, did not demonstrate a proper understanding of the concept thereof. Most FIs relied on and were satisfied with customer declaration specifying BO or consider the beneficial owner to be the natural person(s) owning 25% or more of the shares of a legal person or legal arrangement available from the Companies Registry database. However, it was clear during onsite that the Companies Registrar only maintains basic information on shareholders and has not started maintaining UBO information. Apparently, most FIs mistaken shareholders as beneficial owners. Very few banks and insurance companies, mostly with foreign affiliation, indicated that they take advantage of their group affiliation to seek information on UBOs in case of foreign shareholders. However, effectiveness in this regard could not be demonstrated.

281. Application of record keeping requirements is by FIs is satisfactory to some extent. Banks and other FIs (insurance securities, and MVTS) have systems in place to obtain and maintain records of the information/data generated from customers and in certain instances use services of third-party vendors for record keeping and maintenance. Some FIs such as locally-owned securities firms were in the process of replacing manual record keeping systems with electronic systems. However, inspection findings by CBE and FSRA indicated that, among others, the FIs did not keep registers to keep track of movement of customer files. The inspection reports also indicated that PEP customers were not adequately identified, which means that such types of records are also not maintained and kept. During interviews with assessors, CBE indicated that missing of information in some customer files was one of the non-compliance areas noted during inspections of FIs under its purview. While most of the FIs indicated that they keep records for five years or beyond, during interviews with the assessors they could not satisfactorily demonstrate that they consider record-keeping from the time of completion of a transaction, neither could they demonstrate that, in addition to records obtained through CDD measures, they also adequately maintain account files, business correspondence, and results of any analysis undertaken and following the termination of the business relationship or after the date of occasional transaction.

282. DNFBPs do not apply CDD and record-keeping measures effectively but only conduct CDD as part of their routine business procedure. They do not verify the identification documents presented by customers let alone source of funds. Some of them such as real estate agents and

lawyers, rely on banks to verify their clients since they purport that payments would only be done through the bank. Casinos conduct ongoing monitoring of customer transactions to a limited extent, and mainly not for AML/CFT purposes. Further, record keeping by DNFBPs is limited to transaction records and client identity documents.

5.2.4. Application of EDD measures

Politically Exposed Persons

283. Banks, MVTS affiliated to banks, insurance and securities companies recognise the obligation placed on them by the AML/CFT legislation to apply EDD measures on PEPs. They consider PEPs as high-risk customers, and to some extent conduct EDD measures. Risk-management systems and measures to determine whether a customer is a PEP are effective to some extent. However, across all FIs, such systems are not effective in determining whether a BO is a PEP. Additionally, most FIs do not identify existing customers who become PEPs during the course of the relationship. Generally, FIs have difficulties in effectively identifying domestic PEPs and their associates and do not seem to have an understanding of international organization PEPs. This is mainly because their screening systems and databases do not necessarily include such PEPs. Apart from lean domestic PEP lists maintained by, mostly banks, others only rely on either public knowledge or customer declarations. This is exacerbated by weaknesses in the definition of PEP provided in the MLFTP Act which is deficient (see R.12) although FIs with a developed understanding of risk, in particular foreign-owned banks, seem to go beyond the legal requirement and apply higher standards as provided in the FATF Standards or by their parent companies. Failure to effectively identify domestic PEPs is a cause of concern especially given the level of corruption in Eswatini which was identified in the draft NRA report as one of the high-risk crimes. Overall, the weaknesses in the identification of PEPs, their associates, existing clients who become PEPs and BOs who are PEPs lead to a possibility of quite a number of PEPs in FIs' client database remaining unidentified and therefore EDD not applied on them.

284. Where clients are identified as PEPs, banks, MVTS affiliated to banks and other foreign affiliated FIs (securities, insurance and ADLAs) take some EDD measures including establishing source of funds and wealth, seeking senior management approval through the High-Risk Committee and to some extent on-going monitoring of such a relationship. Such measures also extended to identified family members and associates. However, the other non-bank FIs do not effectively apply EDD measures on identified PEPs. For instance, the systems which the standalone MVTS providers use, in particular mobile money providers, cannot adequately identify high-risk clients such as PEPs during on-boarding stage hence application of EDD measures is very limited.

285. DNFBPs do not identify PEPs and hence do not apply EDD measures. They treat all customers in the same manner.

Correspondent Banking relationships

286. Banks with CBRs have adequate measures for identifying and mitigating risks related to such relationships and transactions. Prior to establishing a correspondent relationship, banks ensure that they understand the nature of the business activities of the correspondent bank. In addition, the banks conduct due diligence on the correspondent or respondent bank in terms of legal status, ownership structure, annual financial reports and media reports. Further, the banks

also assess AML /CFT controls of the correspondent institution, obtain senior management approval before establishing a new relationship, verify the identity of the correspondent institution's customers, verify the management structure to determine if the owner is a PEP and to verify if the institution is not a shell bank. The jurisdiction in which the correspondent relationship is in is taken into account to prevent transacting with a sanctioned country. The correspondent banking relationships are closely monitored and reviewed annually or earlier based on some changes or other factors. At the time of the onsite visit, a bank indicated that only one CBR was refused because of insufficient provision of KYC information. Between 2018 and 2019, Eswatini had four CBRs terminated (de-risked) due to lack of profitability of the CBR services/products[25].

Cross-border Wire transfers

287. Cross-border wire transfers are mostly done by banks through SWIFT and are generally adequate to a greater extent. Eswatini treats all CMA EFT transactions as cross-border. FIs providing wire transfer services adequately ensure that necessary originator and beneficiary information is included when initiating, forwarding, or receiving a wire transfer. Where an outgoing transfer is rejected by the recipient bank due to incomplete information, FIs seek to complete the information and resend the transfer. Similarly, FIs reject wire transfers received if necessary, information is lacking. Similar information requirements apply for domestic wire transactions.

288. Assessors were also advised of one cross-border wire transfer product which is done through one of the biggest retail supermarkets. This allows deposits to be made through selected Shoprite stores in either South Africa or Lesotho and funds collected in selected Shoprite supermarkets in Eswatini or vice-versa. The product has a daily and monthly limit of E4,000 (USD272) and E25,000 (USD 1,700) respectively and can be used by non-citizens upon production of necessary KYC documents. Assessors noted that there were adequate wire transfer controls in place for this product.

New technologies

289. Prior to introducing new products, FIs conduct ML/FT risk assessments and submit reports of such exercises to their supervisory authority and they outline the controls in place to help in mitigating ML/TF exposure. FIs hold sessions with the supervisors where they give a comprehensive presentation of the product's specifications to ensure that there is a clear understanding of ML/TF risks and their mitigating measures. The measures are meant to prevent both new and pre-existing products from being used for ML/TF purposes. FIs, such as Money Value Transfer Service providers, apply daily and monthly cash thresholds to help in checking ML/TF unusual transactions.

290. DNFBPs have low knowledge on AML/CFT requirements on new technologies hence apply no EDD on new technology products.

Targeted Financial Sanctions relating to TF

291. Implementation of TFS obligations among the FIs was varied. Some FIs (banks, larger insurance and securities firms) made use of external software providers to perform automatic screening embedded in their core banking systems against the updated UNSCR lists. This is mainly

[25] ESAAMLG De-Risking Follow-Up Report – April 2021

done during on-boarding and regularly as and when a new list is received. However, deficiencies relating to obtaining BO information by most institutions implied that they were not in a position to ensure that TFS were applied towards designated persons that are beneficial owners. Further, FIs indicated that they do not frequently and timely receive UNSCRs lists from the authorities. Although the EFIU indicated that it has on its website a link of the UNSCR and expect FIs to visit the website on a regular basis, there is no demonstration that this is effectively done and enforced. The EFIU had not issued requisite Guidance to assist accountable institutions to better understand their obligations. Most were not aware of the Regulations issued on TFS and as such did not know what action to take in cases of a positive match or a hit. While some indicated that they would report to the police, others indicated that they would advise their Head Offices and no further action would be taken such as making a report to the EFIU or freezing the assets (*refer to IO.10*).

292. There was no understanding and implementation of TFS obligations among the other non-bank FIs and DNFBPs.

High Risk Jurisdictions

293. Banks, MVTS affiliated to banks and insurance firms took reasonable measures to identify high risk countries when establishing business relationships and conducting occasional transactions and as such took reasonable EDD measures towards business relationships and transactions with natural and legal persons from countries for which this was called for by the FATF. To get information on high risk countries, the FIs used their sanctions screening as well as the FATF website to develop a list of high-risk countries called for by the FATF while some identified high-risk countries through their institutional risk assessments. The EDD measures included identifying specific country risks and determining whether they were within their risk appetite. Other FIs, demonstrated low to no knowledge of the FATF designated countries on FATF List.

294. The DNFBPs do not apply EDD measures on customers and transactions from high risk jurisdictions. This was mainly due to lack of understanding of the required controls.

5.2.5. Reporting obligations and tipping off

295. Generally, banks and larger MVTS report suspicious transactions to some extent. Reporting by non-bank FIs (excluding large standalone MVTS) was negligible while DNFBPs were not reporting suspicious transactions. The nature of proceeds reported in STRs were heavily skewed towards tax evasion (70%) and only a few (30%) shared among the other high-risk predicate offences identified in the draft NRA report such as corruption, fraud, drug trafficking, bribery, illegal forex dealing and pyramid scheme activities. The reason for this could be that the banking sector found it easier to flag from their systems the use of personal accounts for business purposes to evade tax. Since the banks filed a lot of STRs to the EFIU, then the STRs to be analysed by the EFIU were mainly relating to tax evasion. Some banks and larger MVTS ranked drug trafficking highly consistent with the NRA results which showed drug trafficking as generating the highest proceeds followed by fraud, corruption, tax evasion and smuggling of motor vehicles and other goods. STRs relating to TF were close to nil across the board.

296. Banks and larger MVTS generally had a good understanding of, and moderately applied, their reporting obligations to EFIU. This was mainly due to their ability to identify such transactions and use of automated monitoring systems which triggered alerts on suspicious

behaviours outside set parameters. Such alerts were investigated and where there was sufficient evidence of suspicion, filed with EFIU. However, some banks, whom CBE regarded as posing a higher ML/TF risk, indicated that they had a backlog of alerts which they couldn't investigate on time because of limited analysts and as such could not report meaningful number of STRs commensurate with their risk profile. This is an area of concern considering that the inadequacy of analysts has the potential to affect timeliness, number and quality of STRs filed with the EFIU.

297. The number of STRs reported across the board, however, appeared to be generally low and not in line with the sectoral risk profile (see table below). Notwithstanding, since 2017, there had been a general increase of STRs reported by banks with a substantial increase reported in 2020, which could possibly be explained by supervisory focus and outreach to this sector. About 93% of all STRs were filed by banks while 6% were filed by MVTS, in particular, the large mobile money service provider. The remaining l% was shared among insurance and securities companies, money lenders, SACCOs, and casino. Reporting by non-bank FIs was significantly low and not commensurate with their ML/TF risk profiles.

298. Where a transaction is denied/not completed by all FIs and DNFBPs due to insufficient satisfaction with the CDD information provided by the customer, such incidents were not considered for filing with the EFIU as required.

299. Underreporting by some FIs was mainly attributed to inadequate guidance and awareness by supervisory authorities on the red flags. Most of the smaller FIs in the insurance and securities sectors were not aware as to where to report STRs with some indicating that they report to the police while stand-alone foreign exchange bureaus indicated that they were obliged to report all PEPs to the EFIU. However, there was no evidence that they have reported such and may point to possible defensive reporting.

300. Across the board, filing of TF related STRs was very negligible, basically due to lack of guidance on TF red flags and limited understanding of TF risk by FIs and DNFBPs. There were 2 STRs relating to TF that were filed with the EFIU by the MVTS sector in 2018 and 2019.

301. Almost all FIs indicated that they had confidentiality clauses in their policies against tipping-off. However, the effectiveness of the preventive measures could not be fully demonstrated. Possibilities of tipping off were noted in some of the FIs, in particular banks, who indicated few cases where after filing an STR they further engaged the customer in order to rectify the issues reported, even before investigations by LEAs commenced. They, however, clearly indicated to the assessors that they would use different reasons to close the customer's account and they further highlighted that the main cause would be delays by the LEAs to conduct investigations on the STR submitted and absence of feedback from the EFIU on specific STRs submitted. This was a weakness likely to tip-off the customer who could potentially move the laundered assets which could have been targets for freezing, seizure and confiscation.

Table 5.1: STRs filed by accountable institutions to the EFIU from 2017 to March 2021

Accountable institution	**Number of STRs submitted to EFIU**					
	2017	**2018**	**2019**	**2020**	**2021**	**Total**
Banks	729	1730	1830	2981	1014	**8284**
MVTS	25	163	172	192	31	**583**
Insurance	0	0	0	5	0	**5**
Securities	0	0	1	2	0	**3**
SACCOs	0	0	10	2	0	**2**
Money Lenders	0	0	1	2	0	**3**
Casino	0	0	0	0	1	**1**
Real Estate Agents	0	0	0	0	0	**0**
CBE				3		**3**
TOTAL	**754**	**1893**	**2005**	**3184**	**1046**	**8,885**

302. According to EFIU, better quality reports were filed by the banks although there was still room for improvement (*see IO.6*). On the other hand, banks and other FIs raised concern on the 48 hours legal requirement to file STRs which they viewed as stringent and resultantly affecting quality of the STRs submitted to the EFIU. This concern was echoed by the Eswatini Bankers Association.

303. The reporting of suspicious transactions by DNFBPs was very low with only one STR submitted by a casino over the period under review and none from the real estate sector. Most DNFBPs were not aware of where and how to report a suspicious transaction. While accountants indicated that they would report suspicious transactions to the Eswatini Institute of Accountants, lawyers indicated that they would report to their partners. Similarly, real estate agents indicated that they would report suspicious transactions to the Central Bank wing on AML/CFT. There was no filing of STRs by real estate sector even though the sector's ML/TF risk profile was considered high and this is a concern to the assessors. With the exception of casinos, all the other DNFBPs expressed lack of knowledge on the requirements to prevent tipping-off. This was attributed to lack of understanding of AML/CFT obligations mainly due to weak supervisory actions in this sector.

5.2.6. Internal controls and legal/regulatory requirements impending implementation

304. Banks and larger MVTS in Eswatini applied, to some extent, internal controls and procedures to comply with AML/CFT requirements. Non-banks FIs (excluding larger MVTS) applied, to a limited extent, AML/CFT internal control measures not commensurate with their sizes and nature of transactions they conduct. With the exception of casinos, DNFBPs do not have AML/CFT internal control programs.

305. Banks and larger MVTS interviewed had internal monitoring units/functions which implement AML/CFT obligations. They all had compliance officers at senior level and those met on-site portrayed knowledge of AML/CFT issues. Foreign-owned banks demonstrated a better application of the measures in their AML/CFT internal control programmes than the locally owned

banks. The resources which they applied to implement board-approved AML/CFT policies and controls were proportionate to their sizes, complexity, business activities and risk profile. However, monitoring of alerts in some of the banks lagged behind due to inadequate staff.

306. All banks and larger MVTS met on-site applied a three lines of defence model of risk management. The business units, namely the front office, customer-facing activity, are the first line of defence in charge of identifying, assessing and controlling the risks of their business during on-boarding and on an on-going basis. The second line of defence includes the Risk and the Compliance function which is responsible for AML/CFT. The third line of defence is an independent internal audit function which provides assurance on the adequacy of the AML/CFT programme. Nonetheless, effectiveness of the audit function of some banks on AML/CFT issues was questionable based on repeat findings by CBE which are not identified in the audit reports.

307. The non-bank FIs (excluding larger MVTS), did not have adequate internal controls that were commensurate with their ML/TF risk profiles. This impacted on their ability to effectively implement AML/CFT obligations.

308. Banks and larger FIs with dedicated compliance functions organized and conducted AML/CFT related training for all their staff on an annual basis including senior management, board members, agents, as well as introductory training for new staff. Training was generally provided by compliance officers and in some instances with the assistance of the supervisors, in some instances done at the Academy owned by CBE. However, the scope of training given to staff was inadequate across the board on some key obligations such as TFS, UBO, TF, PF *(see core issue 3.1 above).* Smaller FIs did not seem to provide adequate training to their staff. They also did not conduct training on an on-going basis or where there was a significant change in regulatory requirements.

309. All FIs screened their employees mainly during the recruitment process though application was not consistent across the FIs. Banks and larger FIs applied stricter screening measures including requiring the employee to obtain a police clearance and referral letters from former employers. Smaller FIs simply relied on the applicant's self-assessment/declaration. While screening seemed to be fairly adequate for new employees, on-going screening of existing employees was a challenge to all the FIs, with the exception of banks and MVTS affiliated to banks. Screening measures tended to be more developed in the banking, MVTS affiliated to banks and parts of the insurance sector and less robust in other FIs.

310. Casinos fairly applied internal control programmes which included AML/CFT policies, appointment of compliance officer at senior management level, provided training and refresher training to all staff including new employees and senior management. However, there was a gap in that board members were not subjected to training. Casinos also screened new staff during the recruitment process. The real estate sector, though significant, and together with other DNFBPs did not have adequate AML/CFT internal control programmes.

Overall conclusions on IO.4

311. Overall, there is no satisfactory level of understanding of ML/TF risks and implementation of preventive measures by banks, MVTS and real estate agents as the sectors weighed heavily in the assessment. The level of understanding of risks and obligations by the banks is to some extent reasonable although the risk mitigating measures are not considered as adequate and commensurate with the risks. On the other hand, the level of understanding of risks and obligations

and the application of mitigating measures by stand-alone MVTS's is to a limited extent while the same is lacking among the real estate agents. Application of CDD and EDD measures especially regarding PEPs by both FIs and DNFBPs is not satisfactory. The obligation to file suspicious transactions to the EFIU is applied to some extent by the banking sector and large MVTS providers. However, the same cannot be said about other FIs and DNFBPs which have over the period under review either filed negligible number of STRs or not filed at all. While there is evidence of potential tipping-off among the banking institutions, the EFIU is also not adequately providing guidance to the reporting institutions. In general, the application of internal controls is only satisfactory to some extent among the banking sector and the application is to a limited extent among non-bank FIs such as stand-alone MVTS's, and almost non-existent among the DNFBPs. There are concerns regarding determination of PEP status of clients, application of PEP requirements, and understanding and application of UBO requirements. PEP and UBO are some of the major aspects which do not meet the FATF Standards in Eswatini and impact on the effectiveness of implementing AML/CFT preventive measures. Overall, fundamental improvements are needed.

Eswatini is rated as having a low level of effectiveness for IO.4.

6. SUPERVISION

6.1. Key Findings and Recommended Actions

Key Findings

Financial Sector Supervisors

(a) Supervisors of FIs have established specialised AML/CFT units but are under-resourced to properly carry out their supervisory functions.

(b) Except for verification of beneficial owners and nominee shareholders, the CBE and the FSRA apply fairly adequate market entry requirements (which includes ongoing checks on fitness and propriety) to prevent criminals and their associates from holding or being a beneficial owner of a significant interest or holding a management function in financial institutions (FIs). However, the involvement of PEPs in the appeal process raises concerns over the independence of the CBE to apply the licensing rules as required.

(c) The CBE demonstrated a better understanding of ML/TF risks facing the sectors and institutions under its purview than the FSRA. Both CBE and FSRA rely on risk assessments conducted by accountable institutions to understand firm-specific assessments (although these were deemed inadequate) and the results of the NRA to develop an understanding of ML/TF risks in their sectors and within their entities. Financial supervisors' understanding of ML/TF risks is, however, hindered by the fact that they have not yet conducted sectoral risk assessments. TF understanding is underdeveloped across the supervisors. Moreover, limited co-operation between domestic competent authorities is still a challenge to all supervisory authorities.

(d) Financial supervisors have demonstrated a low understanding of risks posed by VASPs and VAs. The CBE is engaged in a VASPs research project to enable the CBE to better appreciate the risk associated with VASPs and VAs.

(e) The financial sector supervisors are in the early stages of implementing AML/CFT risk-based supervision but the scope and intensity of the inspection is inadequate and not commensurate with the risk profiles of the different financial institutions. Consequently, there has been limited identification of non-compliance areas and resultant enforcement actions in the form of remedial actions and sanctions.

(f) Due to inadequate inspections undertaken, the supervisors have not identified non-compliance areas effectively with the result that there has been limited enforcement actions taken. This has led to limited impact of their supervisory actions on the compliance levels of their respective supervised entities.

(g) The financial sector supervisors have not demonstrated that they applied available remedial actions and sanctions in an effective, proportionate and dissuasive manner owing to inadequate nature and extent of inspections conducted.

(h) Financial supervisors are fairly successful in promoting a clear understanding of AML/CFT obligations through outreaches and trainings although capacity issues remain a concern. Additionally, the supervisors have not issued more focused and sector-specific guidance and typologies for the financial sector to enhance their understanding of the ML/TF risks that they face and of their AML/CFT obligations, particularly with respect to the reporting of suspicious transactions and TF risk red flags.

Designated Non-Financial Businesses and Professions (DNFBPs) Supervisors

(a) Lawyers and accountants are subjected to fairly adequate market entry controls. The rest of the DNFBPs have no appropriate and effective licensing and registration systems in place to prevent criminals from holding or being a beneficial owner of a significant interest or holding a management function in the DNFBPs. Real Estate Agents are unregulated and not licensed in Eswatini as they currently do not have a licensing authority.
(b) AML/CFT Supervision for DNFBPs has not yet started owing to lack of supervisory capacity including human, financial, technical and systems necessary to supervise and monitor compliance with AML/CFT requirements by the respective regulated entities.
(c) DNFBPs' supervisors displayed a generally very low or no understanding of ML/TF risks faced by the entities and/or persons they supervise.
(d) In the absence of any inspections conducted and therefore non-compliance issues identified, there has been no enforcement action taken and therefore the Assessors could not determine whether the remedial actions and sanctions under the law are proportionate, dissuasive and effective.
(e) With the exception of the EFIU, none of the DNFBP supervisors have undertaken any awareness-raising/outreach activities to promote awareness and understanding of ML/TF risks and AML/CFT obligations.

Recommended Actions

Eswatini should take the following actions:

Financial Sector Supervisors

(a) Eswatini should urgently provide resources to AML/CFT supervisors to enable them to supervise and monitor their respective entities effectively.
(b) The CBE and FSRA should strengthen market entry controls by verifying ultimate beneficial owners and nominee shareholders.
(c) The CBE should clarify through legal or other measures the specific role of involvement of politically exposed persons in the licensing process to ensure that there is autonomy and operational independence in the process.
(d) Supervisors should conclude sectoral risk assessment to strengthen the understanding of ML/TF risks of the sectors and specific institutions under their purview. Further, the CBE should conclude the VASPs and VAs research project

to contribute to the evolving understanding of ML/TF risks associated with this sector.

(e) Fully implement AML/CFT risk-based supervision and ensure that sufficient resources are proportionately allocated and supervisory activities (in terms of number of inspections, scope and intensity) are focused on those entities or areas facing higher ML/TF risks.

(f) Supervisors should adequately apply risk-based inspections to identify non-compliance areas and apply a wide range of remedial actions and sanctions in a dissuasive, proportionate and effective manner.

(g) Supervisors, collectively and individually, should issue more focused and specific guidance to accountable institutions including on suspicious transactions reporting, TFS, TF and PF in order to promote a clear understanding of their AML/CFT obligations.

DNFBP Supervisors

(a) Strengthen the licensing and registration regime for all DNFBPs (with the exception of lawyers and accountants).

(b) Prioritize subjecting of real estate agents and motor vehicle dealers to registration/licensing requirements both at onboarding stage and subsequently when the licence is issued.

(c) DNFBP supervisors should develop, consolidate and maintain an understanding of ML/TF risks at a sectoral and institution level.

(d) On the basis of the identified risks, DNFBP supervisors should commence supervision of DNFBPs as a matter of priority including off-site and onsite surveillance, RBS, training, issuing guidance and issuing of remedial actions or sanctions for non-compliance. The relevant supervisors should be made aware of their supervisory obligations as set under s.35 of the MLFTP Act.

(e) Adequate resources should be provided to DNFBP supervisors to enable them to develop capacity and effectively undertake AML/CFT supervisory responsibilities including expanding the frequency and depth of AML/CFT inspections.

(f) The DNFBP supervisors should commence and enhance outreach programmes to the respective entities and provide fit-for-purpose guidance in order to promote their understanding of AML/CFT obligations and ML/TF risks.

312. The relevant Immediate Outcome considered and assessed in this chapter is IO.3. The Recommendations relevant for the assessment of effectiveness under this section are R.14, R. 26-28, R.34, and R.35.

6.2. Immediate Outcome 3 (Supervision)

Introduction

313. As highlighted under IO.4, effectiveness of supervision was determined on the basis of the level of importance of each of the sectors. As such, assessors assigned the highest importance to

the banking sector, real estate and ADLAs while moderate importance was assigned to the Insurance, lawyers and casinos and low importance to securities, mobile money, microfinance, dealers in precious metals and stones and accountants.

314. The financial sector supervisors have reasonable supervisory frameworks to monitor AML/CFT compliance for the financial institutions that they supervise and are at varying stages of implementing risk-based approaches to AML/CFT supervision. While RBA implementation by FSRA was embryonic, CBE is just starting implementing RBA and is still in the early stages. Supervision of DNFBPs has not started despite some being identified in Eswatini's NRA as high risk. A number of DNFBP supervisors do not know or even appreciate their supervisory responsibilities under the law. The EFIU which is presumed to have (overall) supervisory responsibility for all DNFBPs has inadequate resources to fulfil its responsibilities. This is despite the very clear requirements of s.35(1) of the MLFTP Act, 2011 which requires AML/CFT supervision to be the responsibility of a supervisory authority with respect to the accountable institution under their supervision and the EFIU to only supervise accountable institutions without an allocated supervisor. In this regard, casinos should be supervised by the Eswatini Gaming Board, precious stones and metals by the Minerals Management Board, lawyers and advocates by the Law Society of Eswatini (LSE) and accountants and auditors by the Eswatini Institute of Accountants (EIA). The EFIU is mandated by the law to supervise only the Real Estate Sector, Motor Vehicle Dealers and Trust and Company Service Providers (TCSPs).

315. Based on the foregoing, the situation obtaining during on-site was that Eswatini had three AML/CFT supervisors, CBE for banks, bureaux de change, credit institutions, MVTS (including e-money providers); FSRA for insurance and securities sectors, building society; and EFIU for all DNFBPs.

6.2.1. Licensing, registration and controls preventing criminals and associates from entering the market

316. Generally, FI regulators, (i.e., CBE and FSRA), apply fairly adequate processes to prevent criminals and their associates from holding a significant function in FIs in the banking, securities and insurance sectors. Each regulator has detailed information-gathering fit & proper requirements that are applied to applicants, proposed shareholders and senior management of new and existing institutions under their purview. However, the process is less effective when it comes to identifying and verifying beneficial owners, which tend to be confused with shareholders and nominee shareholders as systems to identify them are not adequate.

317. Both regulators perform fit and proper assessments in respect of shareholders, directors, senior management (including compliance officers) of FIs at the point of market entry and on an on-going basis when changes occur. The fit and proper assessments include the evaluation of fitness and propriety of shareholders, directors and senior managers with particular regard to criminal records, in addition to checking for financial integrity including the legitimacy of the source of funds. This information is used to determine if the applicant is suitable for participating in the sectors. During the licensing process, the FI regulators request and review several documents, such as the memorandum and articles of association and certificates of incorporation verified with the Registrar of companies. Other documents assessed include the applicant's policies, procedures, organogram, capital structure, address of business (mainly to avoid shell banks) and where the FI is foreign, a letter of good standing from foreign regulator providing no

objection to operate a FI in Eswatini. Based on the assessment of documents provided, the regulators request to meet the applicant's owners and/or senior management in person. It is also part of the approval process for the regulator to conduct an onsite inspection of the FI before it is allowed to commence operations. The challenge faced by the regulators is to identify and conduct fit & proper test on beneficial owners and nominee shareholders. Both regulators, to a large extent, appear to depend on self-declarations by applicants with limited independent verification.

318. To assess the suitability of owners and senior management, both CBE and FSRA collect, as part of their vetting process, background, work experience and regulatory records of natural persons, including a mandatory criminal background check (at times involving Interpol), tax clearance certificate, bank statements, credit reference bureau reports, and where necessary, seek information from foreign supervisors. In cases where a person under assessment has committed a crime, the regulators reject the application or the specific shareholder or senior manager who has a criminal record although they seem not to take into account the time the criminal offence was committed or the gravity of the crime. These stringent measures have led to two (2) applicants to abandon their licence applications to FSRA in 2019 when the Authority made further enquiries regarding their shareholding structures.

319. Regulators screen applications and verify submitted information using a number of sources, including open-source materials (such as newspaper articles and online resources), third-party screening which include letters of good standing from the REPs and counterparties providing assurance that the applicant has no linkages with other criminal associates. For instance, since 2017, CBE has, as part of its licensing process, been screening natural and legal persons against the TFS list using their internal sanctions screening tool. Although CBE does not have a list of PEPs, they have set some parameters in the screening tool with capabilities of screening for all types of PEPs. The tool has been fairly effective as part of the screening process. On the other hand, FSRA has not demonstrated that it screens against TFS or other criminal databases but relies mostly on open source information to identify any linkages with criminal associates.

320. Where the regulator is not happy with the information submitted by the applicant or where the applicant fails the fit & proper test, the regulator rejects the application. For example, FSRA rejected 12 applications from 2015 to 2020 where the directors and shareholders failed to pass the fit & proper test. Three of the directors were rejected due to integrity issues. Similarly, from 2017 CBE rejected one bank application while two bank applicants withdrew their applications after failing to provide full information requested by CBE. Additionally, in May 2017, CBE rejected an application for approval to appoint a board member for one of the banks due to fitness & probity concerns. While the numbers of rejections and withdrawals may not be much, the highlighted examples point to the fact that, to some extent, the market entry controls are working.

321. While the market entry processes for CBE are generally adequate, assessors noted that the appeal process to higher authorities by aggrieved new market entrants to higher authorities may provide a loophole where market entry requirements may wittingly or unwittingly be compromised by those adjudicating the appeal process, especially, where PEPs are involved. Box 6.1 is a case which demonstrates how CBE's elaborate licensing processes and criteria were compromised as a result of the involvement of PEPs. It involves an applicant who was issued a provisional license without full market entry requirements before it was revoked and subsequently re-issued following intervention from the higher offices.

Box 6.1. – Licensing Case Example

CBE revoking and re-issuing a licence to applicant X with fit & proper concerns

On 17th September 2018, CBE granted a licence to applicant X subject to, *inter alia*, the requirements to provide adequate proof of the source of funds or wealth of its initial start-up capital. Applicant X failed to fulfil the material conditions. Other gaps identified include governance and operational policies without the necessary board approval; absence of evidence of a proper functioning governance structure; policies lacking in content and poorly crafted. Noting that the source of funds was not clear and in view of the other gaps identified, in October 2020 CBE revoked applicant X's provisional licence in terms of s.16 of FIA. Thereafter applicant X lodged a written appeal to higher offices against the revocation of its provisional licence. The higher office recused itself and appointed another higher office to adjudicate over applicant X's appeal case. The appeal was decided in favour of applicant X and CBE was directed to re-instate applicant X's licence in January 2021. At the time of the onsite meetings, applicant X was yet to commence its operations but had not provided the missing information.

322. The PEPs influence in CBE's licensing mandate, like in the above case, raises some questions on the robustness of safeguards to prevent criminality in the banking sector, in particular where the missing information is material in the licensing process.

323. Upon granting licences, regulators require and rely on, *inter alia*, information from the licensees about any changes which could affect the licensing conditions such as changes in senior management, directors or shareholders. quarterly updates of institutional profiles (offsite inspections), review of corporate governance matters during onsite inspections to identify and detect any breaches to market entry requirements, or to verify and confirm suitability of approved applicants on an on-going basis. In the case of FSRA, the ongoing vetting and monitoring of changes in senior management and institutional shareholding is further enhanced by the fact that all FIs under its purview are required to be re-licensed on an annual basis where full fit & proper test is conducted. CBE only renews licenses annually for forex bureaus and MVTS providers.

324. While unauthorised activities are less common in the banking, securities, and insurance sectors in Eswatini, both CBE and FSRA have implemented measures such as compliance checks in collaboration for law enforcement agencies, use of adverse media coverage, complaints from the public, whistle-blowers, intelligence from other law enforcement agencies and supervised entities in detecting unlicensed activities to monitor and identify any unlicensed or illegal business activity and take immediate action against such. For example, in 2018 CBE identified an unauthorised and illegal deposit-taking scheme (pyramid scheme) which they investigated and issued a Cease-and-Desist Order and a Freezing Order and the entity was put under liquidation.

325. In the DNFBP sector, lawyers and accountants are subjected to fairly adequate market entry controls. For lawyers, the Law Society of Eswatini (LSE) request character references with respect to the suitability of applicants from existing lawyers. Licenses are only issued to applicants who have gone through the Bar examinations and have a certificate of Good Standing (fidelity certificate) issued by a registered auditor. For lawyers and attorneys from foreign jurisdictions, the LSE involve Immigration department and further require a certificate of Good Standing from the originating country. The LSE receive information from courts if an advocate or lawyer is convicted of a criminal offence. Accountants are also required by their professional practice to be vetted both

on entry and on a continuous basis. The Eswatini Institute of Accountants (EIA) performs adequate background checks and verifies relevant documents with the Ministry of Home Affairs. On this basis, EIA rejected two applications while the LSE struck off one attorney. However, the SRBs have not been able to demonstrate that they have taken additional measures to verify individuals being the beneficial owners of a significant or controlling interest or holding a management function of an accounting or law firm. They also do not have systems in place to identify applicant's linkages with criminal associates.

326. The rest of the DNFBPs, the precious stones and metals dealers, TCSPs and casinos have no appropriate and effective licensing and registration systems in place to prevent criminals and their associates from holding or being a beneficial owner of a significant interest or holding a management function in the DNFBPs. Apart from collecting basic information there is no further action to ensure fitness and propriety of shareholders, management, directors and beneficial owners at the licensing stage and on an on-going basis. Licensing documents are not verified with independent sources such as the Registrar of Companies and Home Affairs. No effort is made to determine and assess changes in directorship or profiles of the company. Additionally, there is a poor or non-existence of a sanctioning regime.

327. Real Estate Agents are unregulated and not licensed in Eswatini as they currently do not have a licensing authority. While a few of the players in these sectors operate with only a trading license issued by the Registrar of Companies, the majority operate without any form of licensing.

6.2.2. Supervisors' understanding and identification of ML/TF risks

328. The ability to identify and the level of understanding of ML/TF risks varies among the supervisors, with CBE demonstrating a better understanding of ML/TF risks facing the sectors and institutions under its purview than the FSRA and EFIU. The supervisors' understanding of ML/TF risks is based mainly on the draft NRA report, where they all participated. Across the board, the understanding of threats or vulnerabilities specific to TF is low.

329. Some of the supervisors have in recent years made use of information obtained from their supervisory activities and private sector input to further develop their understanding of ML/TF risks. All financial supervisors were able to point out the main risks and some typologies prevalent in Eswatini.

330. Overall, CBE demonstrated a fair understanding of the inherent ML/TF risks faced by its supervisory population in Eswatini using the draft NRA report as a starting point, though it could be further strengthened. The CBE contributed to the NRA with respect to the financial sector risk assessment and uses the NRA to inform its understanding of risks. It has also made use of information obtained from its supervisory activities to further develop and sharpen its understanding of ML/TF risks. CBE was able to point out the main threats (tax evasion, fraud, smuggling, drug trafficking and corruption) in line with the findings of the NRA exercise and how they affect the banking sector.

331. CBE has not conducted a sectoral risk assessment neither has it conducted typologies studies to identify and understand risks in the different sectors under its purview. However, it builds its identification and understanding of ML/TF risks in the different sectors and specific individual institutions mainly through the use of a mandatory Risk and Compliance Return completed by all institutions on an annual basis. The Risk and Compliance Return has a series of

questions aimed at collecting data relating to mainly AML/CFT preventive control measures and governance issues, needless to say that the Return is not comprehensive enough to capture all the preventive measures and is heavily dependent on information provided by the institutions with inadequate mechanism in place to verify the accuracy of the information and whether the threats and vulnerabilities have been correctly identified. Further, while it does not capture TF issues, it is uniformly applied across all institutions without taking into account the uniqueness of different sectors. Interviews held with CBE showed that the data collected using the Return is fed in the Risk Calculation Tool which is used to risk-rate each institution. Based on this and notwithstanding the weaknesses of the Return highlighted above, CBE was able to identify the banking sector as posing the highest risk followed by MVTS and lastly, ADLAs. Within the banking sector, CBE identified local banks as causing a higher ML/TF risk than the foreign owned banks. Nonetheless, given the limited information collected by the annual Return, the ratings may not be fully accurate and taking into consideration the evolving nature of ML/TF risks, it may not capture risks regularly as they evolve.

332. Additionally, CBE makes use of on-site and off-site inspections and other supervisory works such as institution specific engagements including quarterly meetings held with compliance officers to supplement its understanding of risks in the sector and different institutions. However, given the limited scope of the inspections, and limited number of analysts in the AML/CFT department, its effectiveness may be a cause of concern. CBE has also put in place a Cross Border Transaction Reporting system to monitor and understand risks relating to cross-border trends such as high movement of capital into Eswatini. Identification and understanding of the emerging risks relating to VAs and VASPs is still low. During the on-site meetings, CBE indicated that it had started conducting an internal research project to assess the inherent ML risks relating to VAs and VASPs. The research would inform the country on the ML/TF risks posed by VAs and VASPs. CBE agreed with the assessors that it can benefit more from additional mechanisms to identify and maintain a robust understanding of the sector and institution specific risks through, among others, conducting sectoral, thematic and institutional risk assessments, media coverage analysis and international developments reports to determine if there are new risks (e.g., the Panama Papers) and more typologies studies including on TF. Currently, CBE receives very limited risk information from other competent authorities on prospective risks in the financial sector, as a result of insufficient structures for information sharing between competent authorities and failure by the EFIU to conduct strategic analysis. This weakens CBE's ability to anticipate and understand new and emerging risks.

333. FSRA understands the ML risks in the securities, insurance and other sectors it supervises, albeit to a limited extent. FSRA primarily relies on the findings of the NRA exercise as the main source of ML/TF risk information. The FSRA further relies on the risk assessments conducted by individual institutions under its purview and other supervisory activities to supplement its understanding of the risks. Nonetheless, identification and understanding of TF risks is underdeveloped.

334. The FSRA has not conducted any stand-alone sectoral and institution-specific ML/TF risk assessments. Although during the interviews, FSRA highlighted both securities, insurance and credit associations sectors as medium risk, there is no detailed analysis conducted by FSRA to inform the basis of the ratings. The assessors noted that in order to develop its understanding of the risks in different sectors, FSRA had just commenced a sectoral risk assessment which was still ongoing during the onsite meetings.

335. FSRA also makes use of risk assessments conducted by individual institutions to enhance its understanding of entity specific risks although this has assisted its understanding to a very limited extent. It was noted that most of the institutions under the FSRA had not conducted such risk assessments and moreover, for those that have, the scope and intensity of such assessments is inadequate. This poses a challenge to FSRA to effectively identify and maintain an understanding of the ML/TF risks subsisting in different institutions. FSRA has recently developed an analytical tool that aims to risk-rate products, services, customers and distribution channels. While this is a positive development, the tool, is generic and still needs to be mapped to the different sub-sectors under the purview of FSRA including taking into consideration the size and complexity of each institution, among other factors which would inform FSRA of the level of inherent risks.

336. FSRA indicated that it also takes advantage of the on-site inspections that it conducts to help in understanding the risks in the institutions. While this would assist FSRA to identify and understand the risks, the number of inspections done by FSRA are quite few and limited in scope. For example, FSRA has only done one inspection in the life insurance sector since 2016. This seriously limits its understanding of the inherent risks in the sector. Further, the use of adverse local and international media to identify some potential high-risk areas as well as obtaining information about the current typologies of crime is not effectively used by FSRA to enhance its understanding of ML/TF risks that can affect its sectors and institutions. Moreover, limited cooperation with other domestic competent authorities is still a challenge, not only to FSRA but across the board.

337. The EFIU, which is currently the de facto sole AML/CFT supervisor of all DNFBPs in Eswatini demonstrated a low level of understanding of ML/TF risks both at sector and at institution specific levels. EFIU does not have a risk assessment method to assess the ML/TF risk of its supervised entities. The only information available on sector risk is contained in the draft NRA report, which identifies the real estate, lawyers and motor vehicle industries as having relatively high inherent risk.

6.2.3. Risk-based supervision of compliance with AML/CFT requirements

338. The financial sector supervisors (CBE and FSRA) have reasonable supervisory frameworks to monitor AML/CFT compliance for the financial institutions that they supervise. Both supervisors have started applying risk-based approaches to AML/CFT supervision though at varying levels of implementation. The scope and intensity of AML/CFT supervision is also uneven among different sectors, and is not fully commensurate with the risk profiles of the different financial institutions. Additionally, the numbers of dedicated resources for AML/CFT supervision and AML/CFT specific inspections are generally inadequate for all supervisors.

339. The DNFBP supervisory authorities including the EFIU have not yet started supervision of the DNFBP sectors and are yet to develop and implement an AML/CFT risk-based supervision framework.

Central Bank of Eswatini (CBE)

340. CBE has an AML/CFT risk-based supervision manual developed in 2018 and reviewed in January 2020, which informs its supervisory action including the calendar of inspections. CBE is now gradually transitioning to implementing risk-based supervision. The process has, however,

just begun and thus the application of risk-based AML/CFT supervision has not yet been fully developed.

341. There is a specialist AML compliance section within CBE Financial Regulation Division responsible for AML/CFT and comprises of two (2) analysts, one (1) team leader and one (1) manager. All of them are directly involved in enforcement activities including outreach and engagements, examinations/ inspections, recording supervisory findings, monitoring and managing follow-up activities. The department does not seem to sufficiently allocate its resources on a risk sensitive basis to supervise the eleven (11) institutions under its purview. For example, in 2020 an analyst would be allocated to conduct an inspection of a high-risk bank for 120 days.

342. Annually, all institutions under CBE are required to complete and submit an AML/CFT Risk & Compliance Return (self-assessment questionnaire) to the supervisor. Analysts at CBE capture the submitted data in an AML/CFT risk assessment tool/risk matrix to calculate the risk of an institution. The tool calculates the inherent risk, the structural risk exposure and the residual risks based on the information contained in the institutional profile and the self-assessment return. The assessment methodology comprises of a calculation of a number of factors that feed into the overall calculation of the net ML/TF risk, to wit, structural, governance, customer type, product, delivery channels, and geographic risks. The results of the tool enable the supervisor to risk rate an institution and thereafter guide the analyst in the development of a supervisory calendar and informs the activities of onsite inspections and off-site surveillance. Assessors noted that development of the risk assessment matrix started in 2020. Apart from the risk rating in the assessment plan, other triggers for the supervisory action include intelligence from prudential supervisors, adverse media and reports from internal audit.

343. CBE applies different supervisory tools to licensed institutions in accordance with the inherent risks of the respective sectors. On-site inspections and desk-based (off-site) reviews are the primary tools used for supervising and monitoring the extent to which registered banks and other institutions falling under CBE's regulatory framework are complying with their AML/CFT obligations. CBE also uses supervisory Workshops and Compliance meetings as supervisory tools for low-risk institutions. The results of the engagements are an Examination Report to the institution incorporating supervisory recommendations and remedial actions to be addressed within a stipulated timeframe (mostly 6 months). According to CBE, institutions rated high risk are subjected to full scope inspections while less intensive supervisory tools are used for lower-risk sectors and institutions, that is, those rated medium and low risk are subjected to supervisory workshops and compliance meetings, respectively.

344. Since 2016, CBE has conducted two (2) full scope on-site inspections, one (1) targeted inspection, 4 compliance meetings and 2 supervisory workshops. Additionally, CBE has also conducted some pre-trade inspections as part of its licensing process for new FIs. Table 6.1 below shows the distribution of the on-site inspections per sector.

Table 6.1 – CBE AML/CFT Onsite Inspections from 2017-2020

Type of Financial Institution	Number of AML/CFT on-site inspections by CBE (2017-2020)				
	2017	2018	2019	2020	**Total**
Banks	1	0	1	0	2
MVTS	0	0	1	1	2
Bureau de Changes	0	0	0	0	0
Building Societies	0	0	1	0	1

345. Assessors deem the on-site inspections to date as insufficient especially given that CBE's risk assessment matrix for 2020/2021 showed that four of the five banks and one MVTS were rated high risk while the others were rated medium. Although CBE has developed, and continues to develop, its supervisory capabilities on RBS, the inspections, to date, have not demonstrated that high risk institutions are being adequately prioritized for examinations. Inspections are too infrequent to align with each sector's size and identified risk. Further, CBE indicated that the institutions rated high risk are visited annually while those rated medium and low risk are visited at least once within 2 and 3 years respectively. CBE, however, has not yet started implementing this cycle effectively. For example, assessors noted that a bank that was rated low in the risk assessment matrix 2021/2022 has been prioritized for inspection before those rated high and medium risk. Additionally, the inspection cycles seem to be distorted by different annual risk assessments. For example, the banks that were rated high in 2020 have been rated medium or low in 2021. This makes application of the supervisory plan a bit challenging as the cycles are continuously changed on an annual basis.

346. Although the number of full scope on-site inspections are low and less frequent, CBE relies heavily on desk review compliance meetings and off-site inspections for monitoring supervised entities' compliance with AML/CFT obligations. These, however, appear not to be systematically conducted and are less frequent and rigorous, for example, compliance meetings are not as thorough as full scope inspections since no samples are inspected. The challenge is that the information gathered may not be there on the ground. The criteria used in determining the priority of which institutions will receive off-site inspection first, or whether institutions are selected for off-site inspections based on ML/TF risks, are unclear.

347. Based on the inspection reports reviewed and discussions held with CBE and the financial institutions, a number of deficiencies were identified during the inspections. The most prevalent include inadequate CDD, EDD (mostly on PEPs), KYC measures, inadequate reporting of suspicious transactions, poor resourcing of compliance functions, inadequate record keeping and transaction monitoring measures, inadequate policies and procedures and training in addition to limited corporate governance issues. The scope and intensity of inspections, however, appear insufficient. Inspection reports reviewed by the assessors show that a number of significant areas are not covered during the inspections, such as, UNSCRs/TFS, beneficial ownership information of legal persons and arrangements, correspondent banking relationships, financial secrecy, TF and

PF, new technologies, higher risk countries, tipping-off and confidentiality. Further, the areas that are covered during the inspections are not adequately assessed as in certain instances only one aspect is considered leaving out the rest. For example, inspections on CDD do not go deeper to cover anonymous accounts, occasional transactions, persons acting on behalf of customers, purpose and intended nature of business relationship, specific measures on legal persons and arrangements, timing of verification, existing customers, simplified due diligence, failure to satisfactorily complete CDD among others. MVTS that are part of the bank or operated by bureau de changes like MoneyGram or Western Union, despite CBE agreeing with the assessors that they pose a high inherent ML/TF risk, has not been adequately inspected. The compliance meeting on one of the bureau de change which also offer MVTS product did not even focus on the MVTS product. The same applies to other potentially high-risk cross border products or channels and financial inclusion products. CBE inspections can benefit from enhancing the areas to be covered during the inspections.

348. The AML/CFT supervision of VASPs is still under policy formulation and therefore has not started, with a significant focus currently on research by the CBE and outreach. In CBE's opinion, VASPs pose a potential ML/TF risk.

Financial Services Regulatory Authority (FSRA)

349. FSRA has developed an AML/CFT Risk-Based Supervision (RBS) Manual and an AML/CFT Inspection Manual which were both issued in December, 2020. This notwithstanding, FSRA's implementation of the RBS is still embryonic and FSRA is still appreciating the concept.

350. AML/CFT supervision is generally integrated into the broader framework of prudential supervision. The supervisory inspection programme, including on-site and off-site inspections, general monitoring, follow-up measures is not planned or undertaken according to the identified ML/TF risks of individual FIs or specific sectors. The challenge with such a model is that prudential risks may overshadow ML/TF risks and thus the frequency and intensity of ML/TF supervision is not sufficiently determined on the basis of ML/TF risks.

351. The FSRA has recently established an AML/CFT unit within the Legal Division whose sole responsibility is to develop and implement an effective AML/CFT regulatory and supervisory framework, administer off-site surveillance and on-site examinations, provide guidance to FIs, enforce corrective action on non-compliant FIs and maintain stakeholder relations. The Unit is however under capacitated as currently it only has two (2) AML/CFT officers. FSRA agreed with the assessors that the current staff compliment is insufficient to effectively supervise 362 institutions under its purview and advised that it has commenced the process of building capacity. In order to ensure that the FSRA effectively supervises FIs, the prudential staff has to some extent also been capacitated on AML/CFT supervision to assist the AML/CFT unit during inspections. Prudential supervision and monitoring are done jointly with the AML/CFT officers. Invariably, this approach has been less effective and not commensurate with the number and risk of institutions and the size of the sectors under FSRA AML/CFT surveillance.

352. Most of the prudential inspections done by FSRA have a small portion on AML/CFT. There are, however, few instances where AML/CFT inspections were done independently and a separate report issued to the relevant institution. In its supervisory activities, the FSRA conducted a number of onsite inspections across the regulated sectors between 2015 to 2019 to identify whether financial institutions are complying with their AML/CFT obligations and whether

financial institutions have adequate and effective risk management measures in place, as shown in Table 6.2 below.

Table 6.2 – FSRA AML/CFT Inspections from 2015 - 2019

Type of Financial Institution	Total no. of Entities	Number of AML/CFT on-site examinations				
		2015	2016	2017	2018	2019
Lending	173	1	5	1	4	2
Life Insurance	7	0	1	0	0	0
General Insurance	5	0	1	0	0	1
Insurance brokers	29	0	2	2	0	2
Securities	28	5	9	7	3	2
Retirement Funds	106	2	3	0	0	0
Total		**7**	**21**	**10**	**7**	**7**

353. As can be noted from Table 6.2, a total of 52 AML/CFT inspections were conducted from 2015 up to the time of the on-site visit in June 2021. These include a joint inspection done on the Building Society by FSRA and CBE with technical expertise from EFIU. Some of the most prevalent deficiencies identified include inadequate employee awareness, absence or weak compliance functions, policies not in place, poor identification and verification programmes and poor record-keeping. Assessors, however, noted that some sectors such as pension funds, collective investment schemes, Trustee custodians and asset managers have not been inspected for AML/CFT despite some of them having inherent high ML/TF risk exposure. This is mainly attributable to inadequate supervisory resources at FSRA. Moreover, the inspections conducted are less intense and do not adequately cover all the key AML/CFT elements. For example, one inspection undertaken in 2016 for an insurance company only covered four areas being AML/CFT Policy, Compliance Officer, staff screening and training.

DNFBPs

354. The presumed DNFBP supervisory authority (the EFIU) has not yet started AML/CFT supervision to monitor AML/CFT compliance over its supervisees. The other rightful supervisors (in terms of s.35 of the MLFTP Act, 2011) professed ignorance, during the onsite meetings, of their AML/CFT supervisory obligations. They were unanimously of the impression that EFIU was the rightful supervisor for all the DNFBPs.

6.2.4. Remedial actions and effective, proportionate, and dissuasive sanctions

355. Supervisors have a wide range of remedial measures and financial sanctions available to them to enforce compliance with AML/CFT obligations in their sectors. The sanctions available in terms of s.35 of the MLFTP Act, 2011 range from cautioning, reprimanding, issuing a directive

to take remedial action or to make specific arrangements, issuing a restriction or suspending certain business activities, suspend institution's license and imposing a financial penalty not exceeding E5 million (USD 340,000). Whereas the FI supervisors have to a limited extent applied some of the s.35 remedial and administrative sanctions, supervisor for DNFBPs have not started AML/CFT supervision of their supervisees and hence have not yet issued any AML/CFT related sanctions.

356. Following an inspection, CBE requires the inspected entity with deficiencies to develop a remedial plan for approval before the institution takes steps to address the identified deficiencies. The remedial and/or compliance action plan or follow-up system is to some extent effectively applied by CBE. CBE also requires some institutions to have corrective action plans and to implement a risk-based AML/CFT compliance program. Institutions with gaps identified in the inspection reports are required to submit monthly returns indicating progress made to address each outstanding item. In this regard, CBE reported 6 remedial action plans from 2018 to the on-site date. If an institution fails to submit the return on a monthly basis, CBE enforces compliance by tightening the frequency of submission to every two weeks. If there are no further progress made CBE organizes meetings with the institution's board of directors. Assessors also noted that Internal Audit departments of the concerned institutions are required by CBE to submit reports that validate the level of progress made. Effectiveness is limited in certain instances as some of the outstanding issues take long to be addressed. For instance, one large foreign owned bank had issues identified in 2017. Although it addressed most of the issues, by the time of the on-site meetings, which was 4 years down the line, there were still some material items outstanding. Similarly, a large mobile money service provider which was inspected in 2019 still had, after 1.5 years, thirty-six percent (36%) of the deficiencies identified by CBE still outstanding. This raises concern about the effectiveness of the remedial action. Additionally, both CBE and FSRA have issued warning letters mainly on banks calling upon the institutions to rectify the gaps identified during the inspections. CBE issued five warning letters to various financial institutions between 2017 and 2018. Inspections by the FSRA were very few and of limited scope and intensity. Consequently, key breaches may not have been identified, hence remained unsanctioned. Issuance of Directives by the FSRA is also ineffective given the huge number of breaches in the sectors under FSRA's purview. With the exception of CBE who revoked a bank license for fitness and probity failure (see box 6.1 above) there has not been any other cases where licenses were either suspended or revoked for AML/CFT failures. Assessors also noted that sanctions were not being extended to individual officers and directors of financial institutions for AML/CFT breaches even in instances where the institution had repeat breaches.

357. At the time of the on-site visit, it was noted that both CBE and FSRA, to a limited extent, had issued financial sanctions to some financial institutions for breaches or failure to comply with AML/CFT requirements in terms of the AML/CFT Act. Financial sanctions by CBE were only applied on banks. CBE issued 3 financial sanctions (ranging from E150,000 – E450,000/ USD10,200 – USD30,600) on two foreign owned banks between 2016 and 2017. According to the authorities, the amount of the assessed penalty is guided by the principles laid out in CBE's Enforcement Procedure Guidelines and based on the size of institution and degree of severity of violations. It is the view of the assessors that repeat breaches are not sufficiently taken into account. For example, for the same type of breach, two large foreign owned banks were sanctioned different amounts, with the other being sanctioned less than half of the other bank despite the bank having been subjected to sanctions in the previous year. Assessors are of the view that a higher sanction could have sufficed to dissuade the bank from further breaches. Assessors also noted that some

breaches such as failure to report suspicious transactions by one of the banks could have qualified for a criminal sanction in terms of the Act. No other financial sanctions were issued despite similar breaches being identified in other institutions. FSRA also issued 8 financial sanctions since 2016 ranging from E30,000 (USD2,040) to E400,000 (USD27,200). Assessors were advised that of the 8 financial sanctions, 2 were suspended, 2 were appealed against and 2 were pending as at the on-site date. Only two of E80,000 (USD5,440) and E30,000 (USD2,040) were successfully applied. Again, limited inspections and scope affect FSRA's ability to issue effective and dissuasive sanctions.

358. Table 6.3 shows the remedial actions taken and financial sanctions issued by both CBE and FRSA between 2016-2021

Table 6.3 - CBE and FRSA Remedial Actions and Sanctions 2016-2021

Nature of Remedial Action/ Sanction	Year				
	2016	**2017**	**2018**	**2019**	**2020**
	CBE				
Remedial Action Plans	0	0	2	1	3
Warning Letters		3	2	0	0
Fines	1	2	0	0	0
License Suspension[26]	0	0	0	0	1
	FSRA				
Directives	21	12	7	10	2
Warning Letters	0	0	0	0	0
Fines	0	0	0	0	8

359. Overall, financial supervisors have not demonstrated effective and consistent application of sanctions and remedial measures despite a wide range available to them as provided by the Act. The remedial measures and the severity of sanctions have only been effective, proportionate and dissuasive to a limited extent.

DNFBPs

360. DNFBPs supervisors have not commenced supervision and hence no sanctions or remedial actions were applied.

6.2.5. Impact of supervisory actions on compliance

361. The impact of FI supervisory authorities' actions on their accountable institutions' compliance with AML/CFT obligations varies between CBE and FSRA. Although there is an emerging positive impact, in particular for CBE, the few inspections which were less intense are a drawback on the level of impact on compliance. For example, the levels of STR filing by FIs, in particular under FSRA, is generally low, and this may be attributed to inadequate supervisory actions. Moreover, assessors noted a general low understanding of ML/TF risks and AML/CFT obligations by most FIs including on key areas such as UBO, TF, TFS and PF (see IO.4) and this may again be attributed to inadequate guidance by supervisory authorities. Similarly, supervisors have not issued guidance to FIs on red flags for TF neither have they issued more detailed guidance on detecting and reporting suspicious transactions. As a result, affected institutions seem to only comply with the areas that were identified during inspections as having deficiencies.

[26] Refer to Box 6.1

362. CBE's supervisory actions including remedial action plans, compliance meetings and compliance workshops have to some extent enabled the institutions to address the identified gaps and to instil a culture of compliance in senior management and board of directors. This has seen some institutions addressing some of the identified deficiencies as of the on-site date. The penalties issued by CBE on the two large banks appear to have an impact on the compliance levels of the two banks with scope for more impact across the industry if CBE had enabling laws and policies for the publication of enforcement/disciplinary measures consistent with international practice.

363. CBE also stressed the importance of other communication channels with the industry such as Quarterly Compliance Officer' Forum and meetings with senior bank management. Such contacts enable the CBE to provide feedback and better assess level of compliance and address issues proactively. CBE has also done several awareness to all its sectors which it believes impacted positively on the industry including on improved quality of annual risk assessments and increased number of STRs submitted to the EFIU, in particular, by banks and larger MVTS. Nevertheless, given the higher risks in the banking sector, more inspections have to be performed and stronger sanctions be applied in order to foster a culture of compliance.

364. FSRA believes that its actions have had an effect on the level of compliance in the sectors under its purview. The assessment team, however, finds it difficult to verify the effects of their supervisory actions in these sectors given that the number of inspections and enforcement actions have been low and that some institutions have not been inspected. The limited supervisory measures and remedial actions undertaken by FSRA do not seem to have positive effect on compliance. The number of inspections and the number of supervisory measures are not commensurate with the ML/TF risk profile of the sector. FSRA, however, believes that the engagements it had with the industry such as quarterly meetings, workshops and training have had an impact on the compliance officers' knowledge on AML/CFT. This could not, however, be demonstrated during the interviews with the sector (see IO.4 analysis). As indicated, the number of STRs remained very low and the level of breaches high.

365. The EFIU has not yet undertaken any inspections of any DNFBPs for AML/CFT compliance purposes and, therefore, it was not possible to demonstrate that its supervisory actions have an impact on compliance by accountable institutions under its purview.

6.2.6. Promoting a clear understanding of AML/CFT obligations and ML/TF risks

Financial Institutions

366. Generally, 'financial supervisors' in Eswatini have undertaken a range of outreach initiatives and activities with(in) the sectors which they supervise to promote a clear understanding of AML/CFT obligations and ML/TF risks. These include general awareness-raising initiatives and trainings across the industry. CBE and FSRA have been instrumental in trying to ensure that financial institutions maintain a reasonably good understanding of risks and the mitigating controls. CBE and FSRA have delivered outreach programmes such as holding discussion of AML/CFT issues at regular industry associations meetings, conferences and issuance of advisory circulars, advisory notes and guidance material to accountable institutions. Similarly, both the CBE and FSRA have conducted workshops and seminars as part of the sensitization programmes. They also have on-going training programmes for accountable institutions with the objective of enhancing the effectiveness of financial institutions to implement mitigating controls effectively.

The level of interaction is fairly good and the materials and interactions are generally well received by the supervised entities. However, understanding of ML/TF risks and AML/CFT obligations is more pronounced in the banking sector and large MVTS and lower in the other financial institutions (see IO.4). The supervisors, through the compliance forum, understand the challenges that financial institutions face, for example, the private sector highlighted the challenge relating to the definition of PEPs, which in their view is too wide to have a potential of including more than half of the Eswatini's population. They also have used the forums including the Bankers Association, where CBE is represented, to raise challenges relating to the 48 hours reporting period for suspicious transactions. Although these two issues seem not to have been resolved by the supervisors, there is open dialogue between the supervisors and the private sector including regular feedback.

367. Both supervisors have issued Guidance and Circulars to their sectors. For example, FSRA issued guidance on high-risk jurisdictions, an AML/CFT Guideline to institutions in 2016, a sanctions list circular and on COVID-19 while CBE issued Industry Guidelines in 2016, corporate governance guidelines, 2017, needless to say that there is no recent guidance issued by CBE after 2017. However, assessors are of the view that the guidance is rather insufficient as supervisors have not issued more focused and sector-specific guidance and typologies for the financial sector to enhance their understanding of the ML/TF risks that they face and of their AML/CFT obligations, particularly with respect to the reporting of suspicious transactions and TF.

368. Further, in order to promote awareness in their sectors, both CBE and FSRA have made use of the media to advise the public on various aspects of AML/CFT. For instance, CBE has issued a notice in the local media to conscientize the public on the risks of virtual assets while FSRA issued several media communiques including on MLROs and PEPs.

369. The supervisors have also conducted trainings to promote understanding by financial institutions of their compliance obligations. CBE has conducted ten trainings since 2016 while FSRA has conducted nineteen trainings. Although these are helpful addressing specific internal controls supporting AML/CFT compliance, they seemed to be inadequate mainly due to capacity issues. Additionally, they do not address in depth some of the key concepts such as TF.

DNFBPs

370. The EFIU advised that it reached out to all DNFBPs advising them on what it is and what it expects of the DNFBPs. This, however, was not confirmed by the DNFBPs that were met by the assessment team. Nonetheless, there are no other similar outreach activities and initiatives by DNFBPs supervisors to promote a clear understanding of AML/CFT obligations and risks with the DNFBPs sector in Eswatini. Most, if not all of the accountable institutions in the DNFBPs sector do not have a sound knowledge and understanding of the key ML/TF risks to which they are exposed and AML/CFT obligations as set in the law (see IO.4). There is no general or specific AML/CFT guidance of DNFBPs by their supervisors.

Overall conclusions on IO.3

371. Except for the verification of beneficial owners and nominee shareholders, existing licensing and registration requirements are implemented fairly adequately by the CBE and FSRA albeit with notable political influence in the licensing process of the CBE. The licensing process is less effective when it comes to identifying beneficial owners and nominee shareholders. While lawyers and accountants are subjected to fairly adequate market entry controls, the rest of the

DNFBPs, have no appropriate and effective licensing and registration systems in place. Real estate agents are unregulated and not licensed. CBE demonstrated a better understanding of ML/TF risks facing the sectors and institutions under its purview than the FSRA. Full understanding of ML/TF risks is hindered by the absence of sectoral and inadequate institution-specific risk assessments by financial supervisors. Across the board, the understanding of TF threats and vulnerabilities is relatively low. DNFBP supervisors generally demonstrated very little understanding of ML/TF risk pertinent to their supervisory areas and populace.

372. The financial sector supervisors are in the early stages of implementing AML/CFT risk-based supervision but the scope and intensity of the inspection is inadequate and not commensurate with the risk profiles of the different financial institutions. Consequently, there has been limited identification of non-compliance areas and resultant enforcement actions in the form of remedial actions and sanctions. Supervision of DNFBPs has not started. The financial supervisory authorities have taken remedial actions but there are shortcomings over the range and use of sanctions. There is strong evidence of genuine efforts by the financial sector supervisors to engage their sectors proactively (albeit with gaps on focused and sector-specific guidance and typologies for the financial sector) and some evidence that these efforts have begun to have an impact on AML/CFT compliance.

Eswatini is rated as having a low level of effectiveness for IO.3.

7. LEGAL PERSONS AND ARRANGEMENTS

7.1. Key Findings and Recommended Actions

Key Findings

(a) Information on the creation and types of legal persons is publicly available through the Registrar of Companies website and office. Basic information on the legal persons can be accessed free of charge by the competent authorities whilst members of the public are required to pay a fee. However, such information is not available in the case of partnerships which can exist and carry on business without having to register as a company.

(b) There has not been a specific risk assessment for ML/TF undertaken for legal persons to assist the authorities in identifying, assessing and understanding ML/TF risks involved.

(c) To a large extent, Eswatini has not implemented adequate mitigating measures to prevent misuse of legal persons and arrangements for ML/TF purposes.

(d) Although nominee shareholders and directors are allowed in Eswatini, the authorities have not identified and understood their potential ML/TF vulnerabilities.

(e) The LEAs can access information on legal persons held by the Registrar and the accountable institutions in a timely manner. Apart from information held by banks, it is not clear if the information held by other accountable institutions and the Registrar is updated on a regular basis. Further, only banks have a direct link to the information held by the Registrar of Companies. Additionally, access to BO information is generally a challenge in Eswatini.

(f) The Registrar of Deeds no longer keep information on legal arrangements. This is kept by Notary Public. Trustees are not required to file annual returns and the lawyers did not necessarily obtain information on BO or on control of trusts, or residence of trustees. A court subpoena which may take between 7 to 14 days is required to access information held by lawyers. Therefore, there is no timely access to information on settlors, trustees, and beneficial ownership or natural persons in control of trusts and the available information maintained on BO of trusts was not adequate, accurate and current.

(g) The law empowers the Registrar of Companies to impose penalties for failure to update company information within the prescribed period and late lodging of company documents. The Registrar has not yet issued sanctions for these violations. The Registrar has, however, only issued administrative sanctions for

fraud and convenient incorporation. The sanctions were, however, not effective, proportionate and dissuasive.

Recommended Actions

(a) The authorities should ensure that there is publicly available information on the creation of partnerships that are not required to register as companies for purposes of carrying on business as envisaged under s.21 of the Companies Act.
(b) The authorities should undertake an ML/TF risk assessment to determine the exposure of both legal persons and arrangements, and to ensure that they understand the risks and undertake the necessary actions to address any of the ML/TF risks identified.
(c) The authorities should carry out an assessment of the potential ML/TF risks of nominee shareholders and directors and ensure that mitigation measures are commensurate to the risks identified.
(d) The authorities to ensure that the records and information kept by the Registrar and other relevant institutions including on BO and legal arrangements are up to date and accurate and timely accessible. The authorities should extend direct access to the Registrar's database to other FIs, DNFBPs, supervisory authorities and LEAs.
(e) Ensure the application of effective, proportionate and dissuasive sanctions for non-compliance with information requirements on filing of annual returns and updating of information on directors and shareholders.

373. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The Recommendations relevant for the assessment of effectiveness under this section are R.24-25.[27]

7.2. Immediate Outcome 5 (Legal Persons and Arrangements)

7.2.1. Public availability of information on the creation and types of legal persons and arrangements

374. Eswatini demonstrated that information on the creation and types of legal persons that can be created is publicly available at the Registrar of Companies offices and online through the government website (http://www.gov.sz/index.php/departments-sp-1596706154?id=522). However, such information is not available in the case of partnerships (maximum membership of twenty persons) which can exist and carry on business without having to register as a company as envisaged under s.25 (1) of the Companies Act.

[27] The availability of accurate and up-to-date basic and beneficial ownership information is also assessed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the FATF and Global Forum's respective methodologies, objectives and scope of the standards.

375. The types of legal persons which can be created in Eswatini are varying *(see Table under1.3. Legal persons and arrangements)*. These companies can be private companies or public companies and foreign or local owned. Non-profit organisations operating in the country are registered as companies limited by guarantee. The Registrar of Companies has also developed information, education and communication materials (fliers and pamphlets), conducted workshops and undertaken radio talk-shows to promote public awareness on the processes and procedures for creation of all types of legal persons in Eswatini. There is, however, no such publicly available information on the creation of partnerships that are not required to register as companies for purposes of carrying on business as envisaged under s.21 of the Companies Act.

376. Information on the creation and types of legal arrangements (trusts) which can be created is not publicly available as trusts are created under common law. It is not a legal requirement for the trusts to be registered hence information collected on settlors, beneficiaries or other persons exercising ultimate control over the trust is not publicly available. Trusts are created by notaries who are also the custodians of the trust deeds. The Registrar of Deeds records the full names and dates of birth of the persons named therein. This information can be accessed from the Deeds Registrar upon payment of a prescribed fee. During the onsite visit, the Registrar of Deeds indicated that they used to register trust deeds on acquisition of land under section 15 of the Deeds Registry Act until 2013. Prior to 2013, the Registrar of Deeds would record and keep the full names and dates of birth of persons named in the trust deeds in respect of ownership of immovable property. In 2013 the Supreme Court in the case of Sikhumbuzo R. Mabila NO and Another v Syzo Investment (Pty) Ltd and Others (47/2013) [2013] SZSC 70 (2013) ruled that ownership in respect of immovable property cannot be transferred to a trust as it is not a legal person hence the practice of registering property in the name of a trust in Eswatini is not correct and has no support in law. Following this judgment, the current practice is that the Notary responsible for creating a trust will assign a Protocol Number to the Trust Deed and the Registrar of Deeds simply allocates a file number for purposes of registration of a Title Deed of an immovable property being registered in the name of a trust.

7.2.2. Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

377. Eswatini has not assessed ML/TF risks associated with legal persons and arrangements that are created in Eswatini or foreign companies incorporated in Eswatini. The authorities did not demonstrate that they identify, assess and understand vulnerabilities and the extent to which legal persons existing in Eswatini can be misused for ML/TF purposes. Although the Registrar of Companies explained some of the vulnerabilities that are common in Eswatini, the understanding was considered by the assessors to be limited. The limited understanding was compounded by the fact that the Office of the Registrar of Companies was not included in the NRA exercise and is not part of the National Task Force on AML/CFT, which means the NRA exercise was not well informed of the possible ML/TF risks pertaining to legal persons as observed by the Registrar.

378. During the onsite visit, the authorities indicated that they are aware that some legal entities can be abused for ML and TF. In particular, the Registrar of Companies indicated that private companies limited by shares carry the highest risk since most fraudulent activities including corruption in public procurement involve such companies. The authorities further indicated that NPOs also carry a high risk due to the fact that there had been several instances where the directors had submitted false IDs and proof of residence.

379. The possibility of ML/TF risks existing in the sector is heightened by the fact that at the time of the on-site visit there were a number of foreign companies incorporated in Eswatini. The Office of the Registrar highlighted to the assessors that they had recently seen an increase in applications from foreign nationals who wanted to register companies, some of whom are from countries which could be of high ML/TF risk. The issue of increased influx had already been escalated to Cabinet for a decision to stop registration of companies with ownership from certain foreign nationalities. The assessors, however, could not ascertain whether indeed the cabinet took any action in this respect. The risk posed by such foreign business owners was not properly assessed at the time of the on-site. For example, it was not clear which type of businesses were being targeted by these foreigners. While the authorities raised a concern that most of the foreigners were not using the formal banking system, there was no full assessment to understand the methods that they were using to transfer funds in and out of Eswatini.

380. The authorities indicated that about 70 percent of the business in Eswatini is done outside the formal financial system, hence, outside the regulatory framework. However, as indicated above, the ML/TF risk was not well understood during the on-site.

381. In Eswatini nominee shareholders and directors are allowed. At the time of the onsite there were 10 registered companies which had nominee shares and directors. Notwithstanding their inherent high risk, the authorities could not demonstrate that they had identified and understood their potential ML/TF vulnerabilities. The authorities further indicated that there were no shelf companies in Eswatini although this understanding was not based on a risk assessment. Bearer shares are not allowed under Section 97 of the Companies Act. Companies are required to keep a share register indicating the names of each person holding shares. Furthermore, any transfer of shares are required to be registered indicating the name and address of the transferee including the date of transfer and the amount of shares transferred.

382. One of the key challenges in Eswatini is failure by the authorities to identify and understand the ML/TF risks posed by beneficial owners, in particular, in cases of complex structures involving foreign ownerships. It is not a legal requirement for the Registrar of Companies to obtain BO information on registration, neither is there a central database of information on BO of legal persons and arrangements.

383. Overall, there is still limited understanding by the authorities of the ML/TF risks that legal persons can be exposed to.

7.2.3. Mitigating measures to prevent the misuse of legal persons and arrangements

384. In the absence of a risk assessment, national strategy and action plan informed by identified risks, the assessors could not determine whether the authorities have put in place effective mitigation measures specifically intended to prevent misuse of legal persons and arrangements. However, the Registrar of Companies has put in place certain measures which are aimed at improving the service provision and general conduct of registration of companies. For instance, the records kept by the Companies Registry are both automated and manual such that other competent authorities and FIs can have direct access to basic information online through links to the Registrar's system. Although this has not been implemented by many institutions in the country, assessors view it as good way forward that will allow easy and quicker verification process by users.

385. In order to control against use of fake documents, the Company registration system has been linked to the system of the Ministry of Home Affairs which issues national identities for locals and resident permits. This allows the Registrar of Companies to verify identities of directors, shareholders and subscribers in real time. The assessors, however, noted that the verification process is not consistent and does not verify accuracy of foreign documents. Additionally, Immigration had been highlighted by several institutions met during onsite as having officers who fraudulently issue illegal documents. This may have a huge drawback to the Registrar even if there is a direct link to the database.

386. As indicated above, the issue of influx of foreigners was escalated to Cabinet. In addition to escalating the issue to cabinet, joint investigations were conducted by the Registrar of Companies together with Ministry of Home Affairs. During the on-site visit, these efforts had not translated into tangible mitigating measures against the vulnerability and as such the authorities could not demonstrate that these efforts had effectively mitigated the identified vulnerability.

387. Trust services in Eswatini are offered mainly by lawyers and accountants. Although common law regulates the creation and uses of trusts and spells out the obligations of trustees, these are not adequate to cover AML/CFT requirements. The lack of regulatory authority for trusts has made the authorities complacent on mitigating the ML/TF risks that may be associated with trusts. Although the authorities confirmed during the on-site visit that they were aware that trusts may be used as vehicles for ML/TF, they have not developed any measures to mitigate the risks.

388. As indicated above, there is no legal requirement for the Registrar of Companies to keep BO information. Although some FIs, in particular, banks to a limited extent, collect BO information when on-boarding customers, this has remained a huge challenge in Eswatini. Due to the misunderstanding of BO, accountable institutions might not always be looking for and obtaining the right information on BO.

389. The above measures and practices in some way mitigate the misuse of legal persons. However, Eswatini to a large extent, has not implemented adequate mitigating measures to prevent misuse of legal persons and arrangements for ML/TF purposes.

7.2.4. Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

390. Competent Authorities in Eswatini access basic information on legal persons from the Registrar of Companies and accountable institutions, especially banks. The Registrar of Companies has an online information sharing platform which is currently linked to banks, through which they are able to access the database of the Registrar for verification of basic information on legal persons. Other FIs, DNFBPs and LEAs have not yet been connected and can only access information upon request. This is done by making a formal written request to the Registrar of Companies. This process is free of charge and information requested through a written statement can be accessed timely in less than 48 hours. Information which does not require a written statement can be accessed over the counter. Based on the foregoing, it appears such information is timely available.

391. The general public can access information kept by the Registrar of Companies at a minimal fee of E50.00 (USD3.40). The Registrar of Companies indicated during the interviews that their office processes at least two requests every week. The LEAs view the information as accurate as

they have not had any issues with the information accessed from the Registrar of Companies and have used it, among other things, to pursue cases of ML which were still under investigation and predicate offences like tax evasion. The LEAs further indicated that using their powers they can obtain accurate and current basic information on legal persons from FIs and DNFBPs without a court warrant and on average the information can be provided within 3-5 working days.

392. Obtaining BO information was still a challenge in Eswatini. While the law in Eswatini does not require keeping of BO information for both domestic or foreign owners of legal persons, the same information is also not adequately obtained and verified by the accountable institutions. Additionally, the lack of an accurate definition of BO which allows for a legal person to be a BO may have contributed to the poor appreciation by accountable institutions of the concept of UBO *(See IO.4)*. This greatly limits LEAs' timely access to adequate and accurate BO information.

7.2.5. Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements

393. Trusts are created by Notary Public in Eswatini. Following the Sikhumbuzo Judgment (already referred to above) in 2013, the Registrar of Deeds no longer obtained and kept adequate, accurate and current information on settlors, trustees and beneficiaries of trusts that seek to own immovable property. During the onsite, the lawyers indicated that they regard information, including BO on trusts they create as being protected by attorney-client privilege. Therefore, any competent authority seeking access to such information would be required to get a court subpoena which may take between 7 to 14 days. Based on this, the assessors determined that there is no timely access to information on settlors, trustees, and beneficial ownership or natural persons in control of trusts. In addition, trustees are not required to file annual returns and the lawyers did not necessarily obtain information on BO or on control of trusts, or residence of trustees. Hence the available information maintained on BO of trusts was not adequate, accurate and current.

7.2.6. Effectiveness, proportionality and dissuasiveness of sanctions

394. The Registrar of Companies has administrative and criminal sanctions at its disposal for violations of the provisions of the Companies Act including failure to update basic information collected on legal persons. The Registrar of Companies indicated that during the period under the review, 30 companies were struck off from the company registry, 24 rejected applications and referred 15 cases for prosecution to the office of the DPP. The offences range from failure to update information to fraudulent malpractices including forgery of documents, bribery and embezzlement. It was further indicated, however, that there are cases where the courts have convicted directors with foreign origin and proceeded to order deportation. However, due to absence of financial resources, those deportations had not been carried out in a timely manner in some cases. Apart from striking off companies and rejecting applications for fraudulent malpractices, the Registrar of Companies had not issued any other sanctions including monetary penalties for the failure to update company records and the filing of annual returns. In addition, the Registrar of Companies indicated and, the assessors noted that even though the sanctions as provided under the Companies Act 2005 provided for monetary penalties, they were of very small amounts and needed to be reviewed. The Registrar was also in agreement with this observation and indicated that changes would be proposed in the next amendments to the Companies Act which were being considered. In view of the foregoing, the sanctions available and applied by the authorities were not deemed effective, proportionate and dissuasive.

395. Regarding supervisors of FIs, they have a wide range of supervisory and enforcement measures available to them. However, the overall level of remedial and sanctioned actions was limited. There were no sanctions issued by DNFBP supervisors regarding obtaining of basic and BO information. In general, DNFBPs were not being supervised for AML/CFT compliance (see IO.3).

Overall conclusions on IO.5

396. Not all the information on the creation and types of legal persons in Eswatini is available publicly. The information on the creation of partnerships is not available publicly. Similarly, there is no publicly available information on creation of legal arrangements. Although some agencies have an appreciation of how legal persons can be misused for ML/TF purposes, authorities have not yet assessed vulnerabilities and risks connected to legal persons in order to promote a complete and wider understanding of the risks. Notwithstanding that nominee shareholders are allowed, there are no mechanisms in place to ensure that they are not misused for ML/TF. Whilst LEAs can access basic information from the office of the Registrar of Companies and obliged entities particularly banks, BO information is not easily available as the obliged entities are yet to fully appreciate the concept of BO. The fact that the definition of BO in Eswatini allows for a legal person to be a BO affects the appreciation of the concept of BO by FIs and DNFBPs who in most cases mistake a legal owner for a BO. Although the Registrar has applied sanctions against offending companies for fraudulent filings and appointment of directors, the sanctions available and applied by the authorities were not deemed effective, proportionate and dissuasive. In addition, sanctions provided under the Companies Act are inadequate and require a review.

Eswatini is rated as having a low level of effectiveness for IO.5.

8. INTERNATIONAL COOPERATION

8.1. Key Findings and Recommended Actions

Key Findings

(a) Eswatini has the legal and institutional frameworks to execute MLA and extradition requests as well as to provide informal international cooperation. There are, however, no clear processes and procedures (absence of comprehensive case management system) to record and monitor requests made or received by competent authorities in particular DPP and MoFAIC;
(b) There has been a low number of MLA and extradition requests on high cross border proceeds generating crimes identified in Eswatini. Most of these requests are predominantly to and from South Africa owing to its proximity and strong economic ties, but there has been limited positive feedback secured from South Africa on the requests made;
(c) Eswatini has not provided or sought information on identifying and exchanging basic and beneficial ownership of legal persons and arrangements.

Recommended Actions

(a) Eswatini should develop a strategy that should enable the country to prioritise execution of MLA and extradition requests based on the risk of high proceeds generating crimes;
(b) The country needs to build a case management system to monitor progress and efficiency of its system on international cooperation including on providing BO information;
(c) Eswatini should start to engage South Africa, not only for technical assistance but also to have a common strategy that prioritise fighting financial crimes (namely high proceeds generating crimes to wit, tax evasion, dagga dealing, corruption and fraud) that occur across the borders of these two countries;

397. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The Recommendations relevant for the assessment of effectiveness under this section are R.36-40.

Immediate Outcome 2 (International Cooperation)

398. Due to its sharing borders with Mozambique and South Africa, Eswatini is exposed to a large extent to transnational ML/TF risk emanating from these jurisdictions. As indicated under chapter 1, Eswatini is cited among the most important African countries for cannabis cultivation and production which is illegally sold to its neighbours and other foreign jurisdictions. Moreover, Eswatini has a strong cultural and economic ties with South Africa, where even competent authorities regularly seek forms of international cooperation from. Therefore, the need for international cooperation is of utmost importance.

8.1.1. Providing constructive and timely MLA and extradition

399. Eswatini is able to legally provide MLA and extradition through Criminal Matters (Mutual Assistance) Act 2001 and Extradition Act 1968, respectively. Formal requests are received by the Ministry of Foreign Affairs and International Cooperation (MoFAIC) through diplomatic channels, and are then forwarded to the Minister of Justice and Constitutional Affairs which is the Central Authority for providing both MLA and extradition in Eswatini. The executing agency at the practical level is the office of the DPP and it has a designated desk office (Extradition and Mutual Legal Assistance Unit) that is tasked with undertaking the legal work required for execution of MLA and extradition requests. There are two (2) counsel at this designated desk office who resumed duty in 2019. The two counsel have not been trained in handling MLA and extradition requests. The officers appeared to have limited understanding and appreciation of handling MLA and extradition requests. It was noted during the onsite that there are no mechanisms in place (which may include documented standard operating procedures) to ensure prioritisation and timely response to requests. Furthermore, at the MoFAIC there is no register kept on requests received and transmitted to requesting states. There were also inconsistencies in the manner the Office of the DPP records requests received vis a vis how they attempted to capture the same information in the electronic copy. This was noted to be the result of poor collection and maintenance of statistics. These factors have therefore, hampered Eswatini's ability to demonstrate the constructive and timely manner of responding to requests.

400. Notwithstanding Eswatini's limited ability to demonstrate constructive and timely manner of responding to requests, it was established that for the period 2016 to 2020, Eswatini received and responded to one MLA request from Botswana in relation to a human trafficking offence. The register shows that it took just less than two days to respond informally on the same. On the number of extradition requests received, the statistics from the manual copy submitted and electronic copy do not tally on whether Eswatini received 13 or 11 extradition requests. This may be due to missing information or lack of due diligence on the part of the office responsible for capturing the information. Table 8.1 extracted from a handwritten copy and table 8.2 which is electronic copy have been provided below to illustrate the information gap in the statistics kept and maintained by DPP. Of the extradition requests received, only two requests were said to be finalised, not indicating how they were finalised, that is, whether granted or not granted. There are no documented constraints on the requests that have not been finalised, save in one instance where the fugitive died while in Eswatini. Eswatini has not received feedback from foreign jurisdictions to which assistance was provided, to determine whether the responses were helpful or not. The table below shows statistics on incoming extradition requests. The missing information in the table indicates that Eswatini does not maintain its case management well. Assessors could not determine if the country has been able to constructively and timely respond to these extradition requests due to this information gap.

Table 8.1 Extract from Handwritten copy of Incoming Requests for extradition

Requesting Country	Offence	Date received	Response date	Status
R.S.A	Murder, attempted murder, robberies and rape	-	-	Finalised
U.S.A	Drugs	-	-	Finalised
Botswana	Drugs	-		Pending in Court
R.S.A	Rape	13/07/17		Pending arrest
R.S.A	murder	-	-	-
R.S.A	murder	-	-	-
R.S.A	murder	-	-	-
R.S.A	Rape/ robbery	16/4/18		Pending in Court
R.S.A	murder	8/4/18		Pending arrest
R.S.A	theft	11/1/19		Pending address of queries by requesting state
R.S.A	murder	25/2/19		Pending arrest
Botswana	Possession of dagga	25/5/19		Request for further particulars issued to the requesting state
Botswana	Contempt involving children	-		Surrender order prevailing

Table 8.2 Electronic Copy of Incoming Extradition Requests

Date in	Offence	Requesting State	Date Responded to	Status
2016	Murder, Att. Murder, Robberies and Rape		2016	Finalised
5/08/16	Contravening the Drugs Act	USA	16/03/17	Fugitive requested for further particulars. Eswatini and USA still discussing the matter.
2017	Contravening the Drugs Act	Botswana		DPP's appeal dismissed and Extradition order set aside.

13/07/17	Rape	RSA	5/10/2020	Pending arrest and information received is that he is in the jurisdiction of the Requesting State.
2017	Murder	RSA	11/5/2021	Matter removed from the roll in RSA. The DPP and the requesting state agreed on prosecuting the fugitives in Eswatini.
2017	Murder	RSA	5/10/2020	Pending arrest
26/02/18	Murder	RSA		Fugitive still at large
26/02/18	Escaping from lawful custody, forgery and uttering	RSA	25/05/21	Date set down for appeal
16/04/18	Rape, Robbery	RSA	5/10/2020	Case postponed as witnesses could not travel due to covid-19 travel restrictions.
8/04/18	Theft	RSA	5/10/2020	Fugitive arrested in the requesting state. Notice of withdrawal to be submitted to Eswatini.
5/02/19	Murder and violation of a corpse	RSA	18/08/20	Fugitive passed on

401. It was observed in table 8.1 and 8.2 above that it is not the case that (while it should be) the same information from a handwritten register would also be available in the electronic copy. This shows lack of skills in records management. On the other hand, the electronic copy depicts a scenario where the country was able to complete information on the requests received, offence type, a requesting country, date responded to and the status. Assessors were however, not privy to whether the term "date responded to" relates to when request was granted or refused. But gleaned from table 8.1 and 8.2 above it appears that Eswatini had never formerly and successfully granted extradition requests. There is no evidence based on feedback from requesting country, that the information provided had been useful to achieve the requesting state's objectives.

402. It can be concluded from the foregoing that Eswatini's efforts to provide international cooperation is crippled with a lot of challenges to warrant it worthy of providing constructive and timely mutual legal assistance and extradition across the range of international cooperation requests.

8.1.2. Seeking timely legal assistance to pursue domestic ML, associated predicates and TF cases with transnational elements

403. Requests made by Eswatini for MLA and extradition have predominantly been made by REPS and to a limited extent by ACC during the period under review. It was also observed that Eswatini predominantly seeks MLA and extradition from South Africa. For instance, of the 21 requests on extradition for the period under review, 18 were destined for South Africa and of the 46 requests for MLA 37 were also destined for South Africa. Thus, the importance of Eswatini cooperating with South Africa cannot be overemphasised in this regard. It was however, noted that processes and procedures (in the DPP's office) in executing outgoing requests did not feature the

role played by MoFAIC and therefore it was not possible to establish at what stage the Ministry is involved to formally transmit formal requests through diplomatic channels.

404. In determining whether Eswatini has sought MLA and extradition in appropriate and timely manner, more focus was given to significant proceeds generating crimes, namely drug trafficking, fraud, tax evasion and corruption.

Seeking Mutual Legal Assistance

405. Table 8.3 below illustrates MLA requests to foreign countries based on the above-mentioned crimes.

Table 8.3: MLA Requests made to foreign jurisdictions

No. of requests	Entity requesting	Type of offence request related to	Type of request made	Country requested	Percentage of requests:		Reason for refusal
					Granted	Declined or no response	
20	**REPS**	Fraud	Evidence	SA and other	40%	60%	Not clearly shown
5		Fraud and ML	Evidence		20%	80%	Not clearly shown
1		Fraud and forgery	Evidence		100%	0%	Not clearly shown
2		ML	Evidence		0%	100%	Not clearly shown
2	**ACC**	Corruption & Ml	Evidence		50%	50%	Not clearly shown
1		Fraud and ML	Evidence		100%	0%	Not clearly shown

Source: DPP

406. The scenario depicted by table 8.3 is to the effect that fraud is the highest featuring predicate offence on requests made and 19 out of 20 of the requests were destined for South Africa as noted in the preceding paragraphs. It can be noted from the above table that the percentage where requests are declined or not responded to is generally high. It is suspected that this may be due to poor quality of requests made. In few instances the time frame when requests made, granted or declined has been shown, but it appears a challenge to record the same. A follow up and/or consultation with requested country (SA) were made but nothing appears to have yielded positive results on the outstanding requests made. This may be due to the fact that the mission to address the challenges appeared to be counterpart to counterpart kind of engagement. There is no evidence that the two countries had ever engaged each other at diplomatic level to avert this challenge.

407. Based on the foregoing, it can be concluded that Eswatini is facing fundamental challenges in seeking mutual legal assistance in an appropriate and timely manner.

Seeking Extradition

408. Table 8.4 below illustrates extradition requests to foreign countries based on the above-mentioned predicate crimes.

Table 8.4: Extradition requests made to foreign countries

No. of requests	Entity requesting	Type of offence request related to	Type of request made	Country requested	The year request made	Percentage of requests:		Reason for refusal or non-response
						Granted	Refused	
1	Not shown	Fraud	-	SA	18/8/2017	0%	100%	Queried
1	Not shown	Fraud and ML	-	Mozambique	21/1/2019	0%	100%	Awaiting response
1	Not shown	Theft and ML	-	SA	30/12/2019	0%	100%	Awaiting response

Source: DPP

409. Table 8.4 above shows challenges on Eswatini's system in effectively securing extradition on its high proceeds generating crimes. For the period 2016 to 2021 the country had not been granted any of its extradition requests on high proceeds generating offences. It is concluded that the same challenges that have been identified on outgoing MLA requests apply mutatis mutandis for extradition requests.

410. Based on the foregoing, it can be concluded that Eswatini is facing fundamental challenges in seeking extradition in an appropriate and timely manner.

8.1.3. Seeking other forms of international cooperation for AML/CFT purposes

411. Competent authorities in Eswatini have, to a moderate extent, sought other forms of international cooperation to exchange financial intelligence, supervisory, law enforcement and other information with their foreign counterparts for AML purposes.

Eswatini Financial Intelligence Unit

412. The EFIU exchanges information with its regional counterparts through bilateral arrangements. Apart from South Africa and Botswana, the EFIU makes little use of its cooperation network with other foreign FIUs. While Eswatini is not yet a member of the Egmont network, it has the power to exchange information with foreign counterparts based on the MOUs it concluded with 11 FIUs in the ESAAMLG region. However, since 2017, EFIU only sent 7 requests to its foreign counterparts, of which six were made to FIC South Africa and one request to FIA Botswana. All of these requests related to fraud (3) and dagga dealing (4) with an element of ML and none on TF. The low number of outgoing requests is a concern given Eswatini's risk profile, including porous borders and other high-risk cross-border transactions.

The Royal Eswatini Police Service

413. On a need basis, REPS and its counterparts often utilize i-24/7 Interpol Secure Global Communication System to exchange available information for intelligence or investigative purposes relating to every aspect of criminality including AML/CFT matters. Apart from being the member of INTERPOL, the REPS is also a member of ARINSA pursuant to the Dar es Salaam Declaration on Strengthening Asset Forfeiture for Development, June 2019. REPS also have a MOU with the SAPS on strengthening Police cooperation.

414. The REPS has been able to send requests to its foreign counterparts because of the above documents. Below is the example of one such case:

Box 8.1: Fraudulent Money Order Transfers

On 17 December 2019, entity A was defrauded an amount of E2,514,480.92 (USD170,357.79) through fraudulent money order transfers from Company X in Eswatini to Company Y in another country on different dates and in favour of specified individuals.

Nature of Request/Information Required by the REPS

1) To provide a contact Police Official to liaise with in preparation for a visit to conduct investigations.
2) To secure appointments with specified individuals
3) To facilitate interview(s) and recording of statement(s).

Request and Response Date(s)

The request for assistance was made on 19 Feb 2020. Through fruitful cooperation and collaboration on the investigation, Police in Company Y's country interviewed the recipients of the money orders and provided written statements to the REPS.

Basis of Cooperation:

(1) Membership of an Informal Asset Recovery Inter- Agency Network for Southern Africa (ARINSA)

(2) Constitution of the International Criminal Police Organization-INTERPOL.

The Swaziland Revenue Authority

415. SRA has eight MOUs with its foreign counterparts, namely the South African Revenue Service, the Zimbabwe Revenue Authority, Lesotho Revenue Authority, Unified Botswana Revenue Service, Namibia Revenue Authority, Mozambique Revenue Authority, Seychelles Revenue Commission and Tanzania Revenue Authority.

416. Due to these MOUs, SRA was able to seek information from South African Revenue Service in 2017 and 2019. In the first instance, there was a case which was under investigation where there were related companies to the subject which were based in S.A. The request was concerning imports of the subject which was under investigation. S.A responded positively and timely and the information received helped SRA to come up with additional tax liability.

417. For the second request, there was an ongoing audit where a company based in Eswatini had a subsidiary company based in S.A. The request was aimed at getting tax returns and names of directors of the subsidiary company in S.A. Even though the request was not responded to in a timely manner, SARS eventually responded and the information was of assistance to SRA.

Supervisory authorities

418. The CBE and the FSRA have, to a limited extent, successfully used other forms of cooperation which helped them to identify beneficial ownership during the period under review. On the basis of a MOU, FSRA sent 9 requests to different authorities in S.A, Mauritius and Lesotho between 2019 and 2021 out of which 6 were responded to in a timely manner while 3 were not responded to. These enabled FSRA to establish the identity of the controllers and directors of the holding companies who were subsequently ultimate beneficial owners of the applicant. Similarly, CBE, through INTERPOL Canada, managed to get information including on beneficial ownership for two applicants who intended to open a bank in Eswatini.

8.1.4. Providing other forms of international cooperation for AML/CFT purposes

419. Different competent authorities in Eswatini have provided other forms of international cooperation to exchange financial intelligence, supervisory, law enforcement and other information with their foreign counterparts for AML purposes, albeit, to a lesser extent. This is evidenced by the long periods taken by some of these authorities to respond to their foreign counterparts' requests contrary to the timeliness requirement of this core issue.

Intelligence Unit of the REPS

420. The Intelligence Unit of the REPS received an information request from one of their cooperating partners in regards to one national of another country but who happened to have a national identity document of Eswatini that was illegally obtained. He had earlier been denied entry into the third country from his country of origin. It transpired that he had sent money from his account held in another country, to that third country where there was his relative who was fighting alongside one terrorist group. REPS were requested by their cooperating partner to establish whether he was in Eswatini at the time of investigations, and they succeeded to establish that with the assistance of other local authorities and they shared the information with the cooperating partners who had requested information on him.

Central Bank of Eswatini

421. CBE is a member of the CMA and regularly exchanges information with its CMA counterparts, South Africa, Lesotho and Namibia. They have a Multilateral Monetary Agreement which aims at the management of cross border transactions such that each country takes precautions to ensure that their jurisdictions do not authorise any transaction which may be intended at circumventing the exchange control provisions of another CMA member. In this regard, member countries share experiences or notes on a quarterly basis, on the applications received for processing, in order to ensure that illegitimate or fraudulent transactions are not processed.

Eswatini Financial Intelligence Unit

422. For the period under review EFIU received only 2 requests from the FIUs of Botswana and South Africa. Both requests were responded to in a timely manner, on average within two weeks, and both with positive responses. Although the requests were few, EFIU demonstrated that it can provide other forms of international cooperation.

The Anti-Corruption Commission

423. The ACC has only one MoU with the PCCB of Tanzania. However, it has not been used by the 2 parties. The ACC received one request from the DCEC of Botswana. Although this request was responded to positively, this appears to have been the only occurrence for the period under review and as such assessors could not conclude that the ACC can effectively provide other forms of international cooperation to exchange financial intelligence or other forms of information in a constructive and timely manner.

8.1.5. International exchange of basic and beneficial ownership information of legal persons and arrangements

424. The Registrars of Companies and of Deeds have neither made nor received requests for BO information for the period under review. Similarly, competent authorities have not demonstrated that they have requested and obtained basic BO information on behalf of their foreign counterparts.

The Overall conclusions on IO.2

425. Eswatini has legal and institutional frameworks to execute MLA and extradition requests as well as to provide other forms of international cooperation. To a limited extent, Eswatini has successfully provided and sought international co-operation through both formal channels and other forms of cooperation to pursue criminals and the proceeds in other jurisdictions. The country still faces legal challenges in exchanging beneficial ownership information. These challenges are fundamental.

Eswatini is rated as having a low level of effectiveness for IO.2.

This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in numerical order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

Recommendation 1 – Assessing risks and applying a risk-based approach

This is a new Recommendation which came into force after completion of the First Round of MEs and therefore there was no requirement to assess Eswatini on this in 2010.

OBLIGATIONS AND DECISIONS FOR COUNTRIES

Risk Assessment

Criterion 1.1 – (Partly Met) Eswatini identified and assessed its ML risks through a National Risk Assessment exercise which was launched in 2016. At the time of the on-site the draft NRA report was still undergoing the approval process. The NRA exercise was conducted using the ML/TF Risk Assessment Tool developed by the World Bank. The draft NRA report highlights the most prevalent proceeds-generating predicate offences in Eswatini and the country's exposure to cross-border ML risks, as well as the levels of vulnerabilities and risks of different relevant sectors of the economy. Overall, ML risk for the country was rated Medium-High. In addition, Eswatini's NRA includes a chapter on TF. Although Eswatini identified and assessed the TF threats, the country did not identify and assess the vulnerabilities and consequently there is no rating for TF risk.

Criterion 1.2 – (Met) S.40(2)(b) of the MLFTP Act, as amended, provides that the Technical Committee of the Task Force shall coordinate the national anti-money laundering and countering financing of terrorism risk assessment. S.39(3), as amended, provides for the composition of the Committee. Accordingly, the NRA exercise was coordinated by a sub-committee of the Technical Committee consisting of the Ministry of Finance, the Eswatini Financial Intelligence Unit, the Central Bank of Eswatini and the Financial Services Regulatory Authority.

Criterion 1.3 – (Partly Met) The first National ML/TF risk assessment was completed and undergoing approval process. However, there is no process for keeping the NRA updated between MEs.

Criterion 1.4 – (Not Met) Eswatini conducted an NRA report validation workshop held in October 2019. However, although the workshop was attended by both the private and public sector, it was mainly for purposes of finalisation (validation and adoption) of the risk assessment exercise and not for the sharing of the results of the assessment. The authorities have not demonstrated that they have mechanisms to provide information on the results of the risk assessment to the relevant competent authorities, SRBs, FIs and DNFBPs once the report is approved.

Risk Mitigation

Criterion 1.5 – (Not Met) The country has not applied a risk-based approach in allocating resources and in implementing measures to mitigate its identified ML/TF risks based on the findings of the NRA Report.

Criterion 1.6 – (Partly Met) Under s. 6bis(7)(b) of the MLFTP Act, 2011 CDD is exempted in cases where (a) the transaction is part of an existing and regular business relationship with a person who has already produced satisfactory evidence of identity and; (b) if the transaction is occasional and not exceeding E2,500 (USD170), unless if in both scenarios the transaction is suspicious. The authorities have not demonstrated that the exemption for occasional transactions below E2,500 (USD170) is based on proven low risk of ML/TF.

Criterion 1.7 – (Partly Met) The country identified several areas of higher risk in the NRA and is applying EDD on high-risk activities identified by the FATF such as PEPs. However, the AML/CFT regime has not yet required the FIs and DNFBPs to take enhanced measures to manage and mitigate the identified risks and to incorporate the information into their internal risk assessments.

Criterion 1.8 – (Mostly Met) Paragraph 7.10 (a) of the FSRA AML/CFT Guideline, 2016 allows financial institutions under the FSRA to apply simplified measures where lower risks have been identified through a risk assessment. Similarly, Circular 1/2016 allows banks to apply simplified due diligence based on their risk assessments. There is no similar requirement for other FIs or DNFBPs.

Criterion 1.9 – (Partly Met) S.35 of the MLTFP Act, 2011 gives supervisory authorities responsibility to enforce compliance by financial institutions and DNFBPs with the requirements of the MLTFP Act. This includes enforcing compliance with the obligation for accountable institutions to identify and assess ML/TF risks. Financial institutions supervisors under their specific sector Guidelines further require financial institutions to establish and maintain policies, controls and procedures to mitigate and manage the identified risks. There is, however, no obligation for financial institutions to understand their ML/TF risks. Additionally, there are no legal and regulatory frameworks that specifically require DNFBPs to understand their ML/TF risks and have AML/CFT policies which are approved by senior management. FIs under CBE and the DNFBPs are not required to have appropriate mechanisms to provide risk assessment information to both competent authorities and SRBs.

OBLIGATIONS AND DECISIONS FOR FINANCIAL INSTITUTIONS AND DNFBPS

Risk Assessment

Criterion 1.10 – (Partly Met) S. 6 (1) of the MLFTP Amendment Act, 2016 requires accountable institutions to take appropriate steps to identify, assess, monitor, manage and mitigate their ML/TF risks. Although it includes the following, there is no requirement for financial institutions and DNFBPs to understand their ML/TF risks.

(a) (Met) - Under s. 6(3) of the MLTFP Act as amended and read together with paragraphs 3.2 of the CBE AML/CFT Guidelines and 5.1 (b) of the FSRA AML/CFT Guideline, to create, maintain, update and document the risk assessments.
(b) (Not Met) - There are no provisions requiring financial institutions and DNFBPs to take into consideration all the relevant risk factors in determining the level of overall risk and the appropriate level and type of mitigation to be applied. Paragraph 4.2 of the CBE Guidelines limits the factors to nature and size of the institution only while paragraph 7.10

of the FSRA Guidelines require institutions to have regard to the circumstances of each case, in particular, when intending to apply simplified CDD. Both provisions do not adequately address the requirements of the criterion.

(c) (Met) - Under s.6 (3) of the MLFTP Act, to update regularly their risk assessments.

(d) (Not Met) - Under paragraphs 5.1 (c) (a) of the FSRA AML/CFT Guidelines, FIs are required to have appropriate mechanisms in place for providing risk assessments information to the competent authorities. While the FSRA Guidelines do not require FIs to provide risk assessment information to SRBs, FIs under CBE and the DNFBPs are not required to have appropriate mechanisms to provide risk assessment information to both competent authorities and SRBs.

Criterion 1.11 – (Partly Met)

(a) (Mostly Met) - According to paragraphs 4.3 of the CBE AML/CFT Guidelines and 5.2 (b) of the FSRA Guidelines require financial institutions to develop and implement policies, controls and procedures which are approved by senior management in order to enable them to effectively manage and mitigate the identified risks. There is however, no similar provision for DNFBPs.

(b) (Mostly Met)- Paragraphs 4 (4) of the CBE AML/CFT Guidelines and 5.2 (b) (iii) of the FSRA AML/CFT Guideline require financial institutions to put in place procedures and mechanisms for monitoring implementation of the controls and enhance them, where necessary. However, there are no similar requirements for DNFBPs.

(c) (Partly Met) – While s. 6 (2) (d) (iii) of the MLTFP Act provides for accountable institutions to conduct regular enhanced monitoring of business relationships only for PEPs, it does not make reference to performance of enhanced due diligence where higher risks are identified. Paragraph 7.11 (b) of the FSRA AML/CFT Guideline requires EDD measures to be taken for higher risk scenarios. This is, however, limited to financial institutions under the purview of the FSRA and not all other financial institutions.

Criterion 1.12 – (Mostly Met) S. 6bis (7) (b) of the MLFTP Act, 2011 allows financial institutions and DNFBPs to exempt certain transactions from CDD process and they do so based on their own internal risk assessments (see analysis under c.1.8) unless there is reason to suspect that the transaction is suspicious or unusual.. The exemption, however, is not based on identified lower risks and the country has also not met c.1.9 to 1.11

Weighting and Conclusion

While Eswatini has completed its national ML and TF risk assessment in 2019, it has not identified its TF risks. The authorities have not demonstrated that the country has mechanisms for providing information on the results of the risk assessment to the relevant competent authorities, SRBs, FIs and DNFBPs. There is no process for keeping the NRA updated between MEs. The country has also not applied a risk-based approach in allocating resources and in implementing measures to mitigate its identified ML/TF risks based on the findings of the NRA Report. The authorities have not demonstrated that the exemption for occasional transactions below E2,500 (USD170) is based on proven low risk of ML/TF. The AML/CFT regime has not yet required the FIs and DNFBPs to take enhanced measures to manage and mitigate the identified risks and to incorporate the information into their internal risk assessments. In terms of the risk assessment and mitigation obligations and decisions for FIs and DNFBPs, there are major shortcomings in relation to their existing obligations under the AML/CFT legal framework of Eswatini particularly when it comes to DNFBPs. There is no requirement for FIs and DNFBPs to understand their ML/T risks.

Eswatini is rated Partially Compliant with R.1

Recommendation 2 - National Cooperation and Coordination

In its First Round of Mutual Evaluation Eswatini was rated Non-Complaint with R.2 (formerly R.31). The main deficiencies were that there was no policy, cooperation and coordination mechanism amongst relevant authorities as well as, not well functioning National Task Force on AML/CFT.

Criterion 2.1 – (Not Met) Eswatini does not have national AML/CFT policies which are informed by ML/TF risks.

Criterion 2.2 – (Met) There is established under s. 38 of the MLFTP Act a National Task Force on Anti Money Laundering which shall be the policy making organ for anti-money laundering and counter financing of terrorism in Eswatini. S.s 39 and 40 of the MLFTP Amendment Act, provide for the composition and functions of the Task Force.

Criterion 2.3 – (Met) Eswatini has set up an AML/CFT National Task Force, in terms of s.39 and s.40 of the MLFTP Amendment Act, responsible for coordinating all the relevant stakeholders in the country and exchange of information domestically with each other concerning the development and implementation of the AML/CFT national strategy, policies and activities. The Task Force comprises the Council, at policy level and the Technical Committee, at operational level.

Criterion 2.4 – (Not Met) Eswatini does not have cooperation and coordination mechanisms to combat the financing of proliferation of weapons of mass destruction.

Criterion 2.5 – (Not Met) There is no cooperation and coordination between relevant authorities to ensure the compatibility of AML/CFT requirements with Data Protection and Privacy rules and other similar provisions.

Weighting and Conclusion

Eswatini has established and constituted an AML/CFT National Task Force to coordinate all relevant stakeholders on AML/CFT issues in the country. However, the country does not have national AML/CFT policies informed by ML/TF risks identified. In terms of combating the financing of proliferation of weapons of mass destruction, there are no mechanisms which exist at the domestic level to cooperate and coordinate. Further, there are no mechanisms to ensure the compatibility of AML/CFT requirements with Data Protection and Privacy rules and other similar provisions.

Eswatini is rated Partially Compliant with R.2

Recommendation 3 - Money laundering offence

Eswatini was previously rated Partially Compliant with R.3 (formally R.1and R. 2). The main deficiencies were that the country had not ratified the Palermo Convention; the range of predicate offences provided under the Money Laundering (Prevention) Act did not meet the minimum designated categories of predicate offences under the FATF Glossary; the purpose of engaging in a Money Laundering Activity was not included in the criminalisation of ML; the schedule to the Money Laundering (Prevention) Act provided restrictions to the value of proceeds of crime generated from the crimes of robbery and theft which could be laundered; the penalties provided under s. 6 of the Money Laundering (Prevention) Act applied only to natural persons and

employees of legal persons in their official capacity but did not apply to legal persons; and that the Money Laundering (Prevention) Act did not provide for civil or administrative liability to run parallel with criminal ML proceedings. Another deficiency related to effectiveness which is not part of technical compliance under the 2013 FATF Methodology.

Criterion 3.1 – (Met) The offence of ML is criminalised in terms of s. 4 of the MLTFP Act, 2011. The provisions of the s. are broadly consistent with Article 3(1) (b) and (c) of the Vienna Convention and Article 6(1) of the Palermo Convention. The section provides for the mens rea (based on knowledge and reason to believe) and physical elements (conversion, transfer, concealment, disguise, possession, participation and conspiracy) of the offence of ML.

Criterion 3.2 – (Met) Predicate offences for ML in Eswatini are crimes listed under Schedule 1 of the MLFTP Act, 2011. The Schedule covers all offences in the designated category of offences and as such Eswatini has adopted an all-crimes approach to predicate offences including environmental crime and tax crimes.

Criterion 3.3 – (N/A) Eswatini does not apply a threshold approach but an all-crimes approach to predicate offences.

Criterion 3.4 – (Met) Definition of property under the MLFTP Act, 2011 covers quite a wide range of property regardless of its value and s. 4 (1) (c) makes it an offence to possess, acquire or use property derived directly or indirectly from proceeds of crime

Criterion 3.5 – (Met) The MLFTP Act, as amended, does not set the requirement that a person be convicted of the predicate offence in order for the property to be considered proceeds of crime. S. 4(1)(c) of MLFTP Act, 2011 as amended only require knowledge or reasonable belief that property was derived from an offence.

Criterion 3.6 – (***Met***) In terms of s.3 of the MLFTP Act, 2016. the ML offences apply to all conduct which occurred in another country and which if it had occurred in Eswatini would have constituted an offence.

Criterion 3.7 – (***Met***) S.4(1)(a) of the MLFTPA 2011 refers to 'any person' and does not distinguish between the person committing the predicate offence and the person who is subsequently involved in the laundering, therefore, the ML offence also applies to persons who commit the predicate offence.

Criterion 3.8 – (Met) S. 4(3) of the MLFTP Act, 2011 provides for knowledge and intent required to prove the ML offense to be inferred from objective factual circumstances.

Criterion 3.9 – (Mostly Met) According s. 89 of the MLFTP Act, 2011, natural persons found guilty of ML offences are subject to a fine not less than E100,000 (USD6,800) or to imprisonment for a term of ten years or to both. Although the minimum amount of E100,000 (USD6,800) gives a lee way for the judge to issue proportionate and dissuasive sanctions where a person has laundered huge amounts, however, authorities have not demonstrated how such a discretion can be exercised. Apart from a fine, imprisonment for a term of 10 years is said to be mandatory, and as such this impedes the judge's discretion to impose proportionate and dissuasive sentence for natural persons who commit the ML offence.

Criterion 3.10 – (Met) Legal persons committing offences under the MLFTP Act can be held criminally liable and sanctioned under s.89 of the same Act. Upon conviction, such a body corporate shall be liable to a fine of not less than E250,000 (USD17,000) as a minimum penalty

or loss of authority to do business or both. A natural person acting in his/her official capacity on behalf of the legal person is liable under s.75, of MLTFP Act as amended.

Criterion 3.11– (Mostly Met) S. 4 (1) (d) of the MLFTP Act, 2011 provides appropriate ancillary offences to the ML offence which include conspiracy to commit, attempt, adding and abetting or facilitating the commission of ML. There is, however, no criminalization of the ancillary offence of counselling.

Weighting and Conclusion

Eswatini meets most criteria of Recommendation 3. imposes a term of imprisonment for 10 years, authorities indicated that it is a mandatory penalty. However, if this is the case, the provision is therefore, deemed to be impeding the discretion of the court to impose proportionate and dissuasive sentence against a natural person committing ML offence. Counselling as an ancillary offence to ML is not criminalised in Eswatini.

Eswatini is rated Largely Compliant with R.3

Recommendation 4 - Confiscation and provisional measures

Eswatini was previously rated Partially Complaint with R.4 (formerly R 3). The main deficiencies were that the list of prescribed offences did not cover all designated categories of offences which affected the scope of offences against which provisional measures and forfeiture could be applied; there was no authority to take steps to void actions and the absence of specific provisions allowing identification and tracing of proceeds which might be subject to forfeiture.

Criterion 4.1 – (Partly Met) Confiscation measures in Eswatini extend to property held by the criminal defendant as well as property in the hands of third parties.

(a) Competent authorities are able to forfeit property laundered (s. 57(1) and (2)(a) of MLFTP Act, 2011).

(b) Competent Authorities are able to confiscate proceeds of, including income and gains derived from such proceeds, or also instrumentalities used or intended to be used for the commission of ML and predicate offences (s. 57(1), (2)(a) and (d) of MLFTP Act, 2011).

(c) Competent authorities can confiscate terrorist property, the proceeds, income and gains from such assets; and assets used to facilitate or commit an unlawful activity (s. 57(1), (2)(a), (c) of MLFTP Act, 2011). However, the provisions do not specifically provide for confiscation of property intended or allocated for use in the financing of an individual terrorist, a, terrorist act or a terrorist organisation.

(d) In terms of the proviso to s.57(3) of MLFTP Act, 2011 as amended, the court may instead of ordering the property, or part therein or interest therein to be confiscated, order the person to pay to the State an amount equal to the value of property, part or interest. This limits competent authorities' power to confiscate property of corresponding value as the order prescribes payment of cash only and nothing more.

Criterion 4.2 – (Met) Eswatini has appropriate legislative measures that enable competent authorities to undertake the following:

(a) Identify, trace and evaluate property that is subject to confiscation through applying for property tracking and monitoring orders (including production orders), restraining of

property, search of tainted property (s. 71(b) of MLFTPA, 2011; ss. 45(1), 71(1)(b) of MLFTP (Amendment) Act, 2016.S.

(b) Apply for search warrants and seize any tainted property, restraining orders (applied ex parte) to prevent any dealing, transfer or disposal of property subject to confiscation (ss. 45(1), 49(1), 50, 51 of MLFTP(Amendment), 2016.S.

(c) Courts are empowered to set aside any transactions or conveyances that were initiated or executed to prejudice the ability to freeze or seize or recover property that is subject to confiscation, unless they were executed for a good cause to a person acting in good faith (s. 62 of MLTFP(Amendment) Act, 2016).

(d) Take any other appropriate measures through the wide range of powers they have (see R. 31). S.

Criterion 4.3 – (Met) Rights of bona fide third parties are protected by law (s. 57(5) of the MLFTP(Amendment) Act, 2016).

Criterion 4.4 – (Met) Eswatini has mechanisms in place for managing and disposal, where necessary, of property frozen, seized or confiscated. Eswatini has established, under s.62 bis, the Confiscated and Forfeited Assets Fund where money derived from confiscation or forfeiture orders is credited. (s 62. ter) S. 62 quat establishes the Assets Fund Committee whose functions and powers in so far as administration and management of the Fund are stipulated under s.62 Sep. In terms of s.62. quat, the Minister of Finance reports to Parliament details relating to amounts credited to the Fund, investments made with amounts credited and payments from the Fund.

Weighting and Conclusion

Whilst Eswatini has measures that enable confiscation of property that is the proceeds of, used or intended to be used in the commission of an offence, a money laundering or the financing of terrorism, the provisions do not specifically provide for confiscation of property intended or allocated for use in the financing of terrorism, terrorist acts or terrorist organisations. Confiscation measures in Eswatini extend to property held by the criminal defendant as well as property in the hands of third parties. But the Act appears to limit competent authorities' power to confiscate property of corresponding value.

Eswatini is rated Largely Compliant with R.4

Recommendation 5 - Terrorist financing offence

Eswatini was previously rated Non-Compliant with R. 5 (formerly SR. II). The main deficiencies were that the term 'person' was not defined under the Suppression of Terrorism Act and the definition provided under the Interpretation Act could not be extended to cover an individual terrorist as required under the international and FATF standards. The term terrorism was not defined in order to know whether it included the offence of terrorist financing as a predicate offence for ML. Moreover, the term funds used in s.6 of the Suppression of Terrorism Act was not defined which made it difficult for the assessors to determine whether it met the standard under the TF Convention. The extent to which parallel actions could be used against legal persons was limited only to charities and needed to be broadened.

Criterion 5.1 – (Partly Met) Eswatini criminalises terrorist financing under s.5 (1) of the MLTFP Act, 2011 as amended. Although the word terrorism act is defined in the Suppression of Terrorism Act, 2008 to cover all elements of Article 2(1)(a) of the Suppression of the Financing of Terrorism Convention, 1999,

the definition under s.2 of the Suppression of Terrorism Act has not fully incorporated all the elements of Article 2(1)(b) of the Terrorist Financing Convention 1999 as it is limited to "an act or threat which involves….serious bodily harm to a person". Thus, this paragraph does not take into consideration situations when the act and / or threat causes or is likely to cause serious bodily injury to a person not taking an active part in hostilities in a situation of armed conflict in terms of Article 2(1)(b) of the TF Convention 1999. Furthermore, there was no evidence that acts covered by article 2(a) of the TF Convention were all criminalized in Eswatini, such that their financing would be illegal.

Criterion 5.2 – (Partly Met) In terms of s.5 (1) of MLFTP Act, 2011 the offence of terrorist financing extends to a person who wilfully provides or collects funds or property with the intention that they be used, or having reasonable grounds to believe that they are to be used to carry out an act of terrorism. It does not, however, cover the financing of terrorist organisation and individual terrorist.

Criterion 5.2^{bis} – (Met) S.11(2)(d) of the Suppression of Terrorism Act 2008 as amended prohibits financing the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.

Criterion 5.3 – (Partly Met) The definition of funds under s.2 of the MLFTP (Amendment) Act, 2016 extends to any funds however acquired. This definition covers any funds whether from a legitimate or illegitimate source but does not extend to other assets.

Criterion 5.4 – (Met) s.5(6)(c) of the MLFTP (Amendment) Act, 2011 does not require that the funds be actually used to carry out or attempt a terrorist act or be linked to a specific terrorist act.

Criterion 5.5 – (Met) s.5(4) of the MLFTP Act, 2011 provides for intent knowledge or purpose required to prove TF to be inferred from objective factual circumstances.

Criterion 5.6 – (Partly Met) The penalty, in s.89 (1) (a) of the MLFTP Act, 2011, of imprisonment for a term of 10 years is said to be mandatory, and as such this impedes the judge's discretion to impose proportionate and dissuasive sentence for natural persons who commit the TF offence.

Criterion 5.7 – (Met) Criminal liability and proportionate, dissuasive sanctions apply to legal persons (s. 89 (1) (b) of the MLFTPA, 2011). A legal person convicted of TF offence is liable to a fine of not less than E250,000 (USD17,000) or loss of authority to do business or both. In terms of s.75 of the MLFTP Act, 2011, the liability of the legal person does not absolve the natural person of liability in respect of conduct attributed to the natural person.

Criterion 5.8 – (Partly Met) S. 5 (3) of the MLTFP Act, 2011 includes;

- an attempt to finance terrorism,

- participation as an accomplice to a person committing or attempting to commit the offence
- organizing or directing others to commit the offence

All these qualify as constituting the offence of financing of terrorism. The law does not however criminalise contribution to the commission of one or more TF offence(s) or attempted offence(s) by a group of persons acting with common purpose.

Criterion 5.9 – (Met) Eswatini adopted the "all crimes approach, and therefore the criminalization of terrorist financing under s.5 (1) of the MLTFP Act, 2011 renders it a money laundering predicate offence.

Criterion 5.10 – (Met) In terms of s.5(6)(b) of MLTFP Act 2011 as amended the TF offence applies in Eswatini whether or not the accused was physically in or not in the same country as the terrorist or terrorist group or act of terrorism is situated.

Weighting and Conclusion

Eswatini has criminalised the offence of TF on the basis of the Terrorist Financing Convention,1999. However, s.2 of the Suppression of Terrorism Act has not fully incorporated all the elements of Article 2(1)(b) of the Terrorist Financing Convention. In particular, it does not take into consideration situations when the act and /or threat causes or is likely to cause serious bodily injury to a person not taking an active part in hostilities in a situation of armed conflict. The financing of individual terrorist and terrorist organisation are not criminalised. Financing of individuals who travel to a state other than their state of residence or nationality for purposes of the perpetration, planning or preparation of, or participation in, terrorist acts is also not criminalised. Further, the law does not criminalise contribution to the commission of one or more TF offence(s) or attempted offence(s) by a group of persons acting with common purpose. It appears, also, that acts covered by article 2(a) of the TF Convention are not all criminalized in Eswatini, such that their financing would be illegal.

Eswatini is rated Partially-Compliant with R.5

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

Eswatini was rated Non-Compliant with R. 6 (formally SR. III). The main deficiencies were that: 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 was no effective framework to communicate actions made under the UNSC freezing mechanisms to the financial sector immediately upon such action being taken; the authorities had not issued guidelines to financial institutions that might be holding targeted funds on their obligations in handling such funds under the freezing mechanisms; there were no effective and publicly known procedures for processing delisting requests and unfreezing of funds or assets of de-listed persons; there was no legal framework for unfreezing funds or assets of persons inadvertently affected by freezing mechanisms upon verification that the person would not be a designated person; there was no legal framework to allow access to frozen funds or assets for basic expenses and other services; there were no procedures in place enabling the review or challenging of the freezing decisions; there were also no procedures in place consistent with the TF Convention to protect the rights of bona fide third parties. Eswatini has since introduced Regulations to address the forgoing deficiencies.

Criterion 6.1 – (Partly Met)

(a) Regulation 5(3) of AML (UNSCR) Regulations, 2016 provides that the UNSCR Implementation Committee shall be the competent authority to propose designations to the UN 1267/1989 and 1988 Committees.

(b) There are no mechanisms in the Regulations for identifying targets for designation, based on the UNSCRs criteria.

(c) Regulation 16(1) and (2) of the AML (UNSCR) Regulations, 2016 allow Eswatini to apply an evidentiary standard of proof of "reasonable grounds" as an when making a determination to propose to the relevant Committee constituted either under Resolution 1989 or 1988. Such proposal is not conditional upon the existence of any criminal proceeding.

(d) Eswatini does not follow procedures and standard forms for listing as adopted by committees constituted under Resolutions 1989 and 1988 respectively.

(e) Eswatini does not have a provision in the AML(UNSCRs) Regulations, 2016 to enable it provide as much relevant information as possible on the proposed name; a statement of case detailing the basis for the listing or on whether its status as a designating state should be made.

Criterion 6.2 – (Partly Met)

(a) S.28(2) of the Suppression of Terrorism Act identifies the Minister responsible for national security as having responsibility for designating entities that knowingly committed, attempted to commit, participated in committing or facilitated the commission of, a terrorist act or knowingly acting on behalf of, at the direction of or in association with such entities. This is based on a recommendation from the Attorney-General, the Commissioner or person responsible for the prevention of corruption or other investigative or financial body, in consultation with the Attorney General. On the other hand, regulation 15(5) empowers the Principal Secretary of the Ministry of Finance to designate an entity where the Committee, after examining and giving effect to the request of another country, determines that there are reasonable grounds to designate a particular entity. This is however, in conflict with section 28(2) of the Suppression of Terrorism Act which enjoins the Minister of Internal Security to exercise this power and as such null and void to the extent of such inconsistency.

(b) In terms of s.28(1) of the Suppression of Terrorism Act the Attorney-General, the Commissioner or person responsible for the prevention of corruption or other investigative or financial body are entrusted to identify targets for designation where on reasonable grounds any of them believes that an entity meets the requirements of paragraph (a) and (b) of section 28(1). However, section 28(1) of Suppression of Terrorism falls short of requirement of an entity which is owned or controlled, directly or indirectly, by an entity as outlined in the UNSCR 1373 designation criteria.

(c) Regulation 15 provides that Eswatini should give effect to designation requests of a foreign country without delay. However, the transmission chain of these requests involves several agencies and entities from its receipt until the request is transmitted to the body finally entrusted to execute the requests [see c. 6(4)] and hence prevents the prompt determination of whether Eswatini can execute such requests.

(d) Eswatini applies an evidentiary standard of proof of "reasonable grounds" when deciding whether or not to make a designation in terms of s.28 of the Suppression of

Terrorism Act. There is no legal provision to suggest that proposals for designations should be conditional upon the existence of a criminal proceeding.

(e) When requesting another country to give effect to its freezing mechanisms/designations, there is no provision in the Regulation that enables Eswatini to provide as much identifying and specific supporting information as possible.

Criterion 6.3 – (Not Met)

(a) Regulation 5 (2) (a) of the AML (UNSCR) Regulations, 2016 provide for the Committee, in the performance of its functions to consult with any competent authority or any other person for purposes of identifying persons or entities. However, the competent authorities do not have procedures or mechanisms to collect or solicit information to identify persons and entities that meet criteria for designation.

(b) There are no legal authorities and procedures or mechanisms for competent authorities to operate ex parte against person or entity identified and whose designation is being considered.

Criterion 6.4 – (Not Met) Regulation 10 of the AML (UNSCR) Regulations, 2016 provides a basis for implementing targeted financial sanctions without delay. However, while Eswatini has not defined the phrase "without delay" in any legal framework, in accordance with the FATF standards, the communication process of sanctions list is very long and defeats the without delay requirement. The communication process starts with the Swazi Mission to the UN then Ministry of Finance, Principal Secretary in the Ministry, Member of Committee, Committee, EFIU and other relevant competent authorities who then circulate it to the accountable institutions. It takes on average eighteen (18) days to communicate designations to the accountable institutions.

Criterion 6.5 – (Not Met)

(a) (*Partly Met*) Regulation 12 of AML (UNSCR) Regulations, 2016 provides a basis for freezing funds without delay and without prior notice to the entity. However, the term funds or other assets have not been defined. Analysis made in c.6.4 indicated that given the long process in implementing targeted financial sanctions the without delay requirement cannot be met.

(b) *(Not Met)* - (i) Regulation 11(1) of AML (UNSCR) Regulations, 2016 provides for issuance of an order freezing the property or funds of a designated entity, whether held directly or indirectly by the entity or by a person acting on behalf of or at the direction of the designated entity. It does not make provision for freezing of all funds or other assets, not just those tied to a particular terrorist act. In addition, there is no obligation to extend the freezing to assets and funds owned by designated persons;

(ii) The Regulations do not cover those funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities;

(iii) The Regulations do not cover the funds or other assets derived or generated from funds or other assets owned or controlled, directly or indirectly, by designated persons or entities

(iv) The Regulation covers funds or assets held by a person acting on behalf of or of the direction by the designated entity. However, this requirement does not extend to designated natural persons.

(c) *(Not Met)* - Eswatini has no provision prohibiting its nationals, or any persons and entities within its jurisdiction, from making any funds or other assets, economic resources, or financial or other related services, available, directly or indirectly, wholly or jointly, for the benefit of designated persons and entities; entities owned or controlled, directly or indirectly, by designated persons or entities; and persons and entities acting on behalf of, or at the direction of, designated persons or entities, unless licensed, authorised or otherwise notified in accordance with the relevant UNSCRs;

(d) *(Not Met)* - Regulation 10 (4) (b) provides for circulation of the designation or sanctions list to the EFIU and supervisory authorities under the MLFTP (which include FIs and DNFBP supervisors) without delay who should in turn circulate the list to the reporting institutions for their information and action. Regulation 10 (5)(b) obliges the EFIU or supervisory authorities upon receipt of the designation to provide guidance to the reporting institutions holding funds or assets of designated persons, in relation to their obligations under the regulations, but only where necessary. The Regulation provides no obligation to provide clear guidance to other persons or entities (apart from FIs and DNFBPs) that may also be holding targeted funds or other assets on their obligations in taking action under freezing mechanisms. The time taken to communicate designations undermines the "without delay" provisions required under c.6.4.

(e) (*Not Met*) - There is no specific requirement for financial institutions and DNFBPs to report to competent authorities any assets frozen or actions taken in compliance with the prohibition requirements of the relevant UNSCRs, including attempted transactions. Instead, financial institutions are required to raise an STR to the EFIU and to report, in writing, action taken to the Committee, which is not a competent authority.

(f) *(Not Met)* - Eswatini has not adopted measures which protect the rights of bona fide third parties acting in good faith when implementing the obligations under Recommendation 6.

Criterion 6.6 – (Not Met)

(a) (*Partly Met*) - Regulation 19 of AML (UNSCR) Regulations, 2016 provides that in case of a de-listing request under UNSCR 1267, the request by the person designated shall be submitted to the Office of the Ombudsperson, or to the Focal Point for Delisting in case of delisting under Resolution 1988, both through specified addresses. The office of the Ombudsperson shall determine the request in accordance with the relevant procedures set out under the Security Council Resolution. While these procedures were gazetted, they seem to only allow the designated person to submit the request directly to UN without involving the country, that is, taking into consideration the views of the country whether the person and entity do not or no longer meet the criteria for designation. Eswatini has also not adopted additional specific procedures for delisting.

(b) (*Mostly Met*) - Regulation 18 provides for a legal authority and mechanism / procedure for de-listing under UNSCR 1373. It further provides grounds upon which a de-listing request should be done, including mistaken identity, change of facts or circumstance, death, dissolution or liquidation of a designated entity. Within 24 hours of removal of a designated person by the Sanctions Committee, the Principal Secretary shall notify the accountable institutions to remove the person and this has an effect of revoking the existing freeze. While there is legal authority to unfreeze, the unfreezing procedures are not clear.

(c) (*Not Met*) - Regarding designations pursuant to UNSCR 1373, there are no procedures to allow, upon request, review of the designation decision before a court or other independent competent authority.

(d) (*Not Met*) - Regarding designations pursuant to UNSCR 1988, there are no procedures to facilitate review by the 1988 Committee in accordance with any applicable guidelines or procedures adopted by the 1988 Committee, including those of the Focal Point mechanism established under UNSCR 1730.

(e) (*Not Met*) - With respect to designations on the Al-Qaida Sanctions List, while Regulation 19 (2) (a) provides for submission of de-listing requests under UNSCR 1267/1989 to the Office of the Ombudsperson and provides a physical and e-mail address of the UN Office of the Ombudsperson, Eswatini has not provided procedures for informing designated persons and entities of the availability of the United Nations Office of the Ombudsperson, pursuant to UNSCRs 1904, 1989, and 2083 to accept de-listing petitions.

(f) (*Not Met*) - While Regulation 18 (2) (a) provides for a procedure to apply for de-listing on account of mistaken identity, there are no publicly known procedures to unfreeze the funds or other assets of persons or entities with the same or similar name as designated persons or entities, who are inadvertently affected by a freezing mechanism (i.e., a false positive), upon verification that the person or entity involved is not a designated person or entity.

(g) (*Not Met*) - Eswatini has not provided mechanisms for communicating de-listings and unfreezings to the financial sector and the DNFBPs immediately upon taking such action, and providing guidance to financial institutions and other persons or entities, including DNFBPs, that may by holding targeted funds or other assets, on their obligations to respect a de-listing or unfreezing action. The only communication available is for the Principal Secretary to notify the supervisory bodies and the relevant LEAs specified under Regulation 10(4), within 24 hours of removal of a designated person by the Sanctions Committee (Regulation 18). This is deficient in that it doesn't provide any further guidance after that.

Criterion 6.7 – (Partly Met) Regulation 17 of AML (UNSCR) Regulations, 2016 provides for access to frozen property necessary for basic expenses or extra ordinary expenses. It does not cover payment for certain types of fees and service charges.

Weighting and Conclusion

Eswatini has a legal framework for implementation of targeted financial sanctions related to terrorism and TF. There are, however, major shortcomings identified in the law. The Regulations do not provide for mechanisms for identifying targets for designation, based on the UNSCRs criteria. Eswatini does not have a provision to enable it to provide as much relevant information as possible on the proposed name; a statement of case detailing the basis for the listing or on whether its status as a designating state should be made. The Regulations do not provide for ex parte operation against person or entity identified and whose designation is being considered. The Regulations provide a basis for implementing targeted financial sanctions without delay. However, the communication process of sanctions list is very long and defeats the without delay requirement. While the Regulations provide a basis for freezing funds without delay and without prior notice to the entity, the term funds or other assets have not been defined. The Regulations do not make

provision for communicating de-listings and unfreezings to the FIs and DNFBPs immediately upon taking such action and advising them of their obligations in instances where they may be holding targeted funds or assets. Access to frozen property does not cover payment for certain types of fees and service charges.

Eswatini is rated Non-Compliant with R.6

Recommendation 7 – Targeted financial sanctions related to proliferation

These obligations were added during the revision of the FATF Recommendations in 2012 and were thus not considered in the framework of the evaluation of Eswatini in 2010 under the 1st Round of MEs.

Criterion 7.1-7.5 – (Not Met) Eswatini has no legal framework relating to proliferation and proliferation financing. Although the AML (UNSCR) Regulations, 2016 under Regulation 3 (d) provides that the UNSCRs apply to an entity designated under Resolutions relating to the suppression and disruption of the proliferation of and financing of dealings with weapons of mass destruction, as there is no enabling provision under the parent Act to issue and implement PF Regulations.

The Regulations were enacted by the Minister pursuant to powers under s.92 of the MLTFP Act, 2011 which has no provisions or bearing on proliferation or proliferation financing. The terms proliferation and proliferation financing are not even defined. The Suppression of Terrorism Act referred to in the Regulations treats proliferation as a mere act of terrorism. Subsidiary legislation cannot therefore grant powers or rights or be applicable to an area outside the scope of the parent Act and thus do not apply to implementation of proliferation and proliferation financing provisions.

Weighting and Conclusion

Eswatini has no legal framework relating to proliferation and proliferation financing.

Eswatini is rated Non-Compliant with R.7

Recommendation 8 – Non-profit organisations

Eswatini was previously rated Non-Compliant with R.8 in its First Round MER (formerly SR. VIII). The main deficiency was that the authorities had not implemented requirements under SR. VIII as required by the FATF Standards.

Criterion 8.1 – (Not Met)

(a) Eswatini has not identified the subset of NPOs falling within the FATF definition of NPO, and use all relevant sources of information, in order 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.

(b) Eswatini has not identified the nature of threats posed by terrorist entities to the NPOs which are at risk as well as how terrorist actors abuse those NPOs.

(c) Eswatini has not reviewed the adequacy of measures, including laws and regulations, that relate to the subset of the NPO sector that may be abused for terrorism financing support in order to be able to take proportionate and effective actions to address the risks identified.

(d) Eswatini has not periodically reassessed the sector by reviewing new information on the sector's potential vulnerabilities to terrorist activities to ensure effective implementation of measures.

Criterion 8.2 – (Not Met)

(a) Eswatini does not have policies to promote accountability, integrity and public confidence in the administration and management of NPOs.

(b) Eswatini has neither encouraged nor undertaken outreach and educational programmes to raise and deepen awareness among NPOs as well as the donor community about the potential vulnerabilities of NPOs to terrorist financing abuse and terrorist financing risks, and the measures that NPOs can take to protect themselves against such abuse.

(c) Eswatini has not worked with NPOs to develop and refine best practices to address terrorist financing risk and vulnerabilities and thus protect them from terrorist financing abuse.

(d) Eswatini has not encouraged NPOs to conduct transactions via regulated financial channels, wherever feasible, keeping in mind the varying capacities of financial sectors in different countries and in different areas of urgent charitable and humanitarian concerns.

Criterion 8.3 – (Not Met) Eswatini has not taken steps to promote effective supervision or monitoring such that they are able to demonstrate that risk-based measures apply to NPOs at risk of terrorist financing abuse**.**

Criterion 8.4 – (Not Met)

(a) Eswatini has not started monitoring the compliance of NPOs with the requirements of Recommendation 8, including the risk-based measures being applied to them under criterion 8.3.

(b) No enabling provisions in relation to application of effective, proportionate and dissuasive sanctions for violations by NPOs or persons acting on their behalf.

Criterion 8.5 – (Not Met)

(a) Authorities have not demonstrated effective co-operation, co-ordination and information-sharing to the extent possible among all levels of appropriate authorities or organisations that hold relevant information on NPOs.

(b) With the exception of general investigative powers provided in the Prevention of Corruption Act, the country has not demonstrated that it has investigative expertise and capability to examine those NPOs suspected of either being exploited by, or actively supporting, terrorist activity or terrorist organisations.

(c) Generally, competent authorities have access to information in Eswatini. The Royal Eswatini Police and Anti-Corruption Commission have access to information as indicated under c31.1. It is, however, not clear whether this access extends to information on the administration and management of particular NPOs (including financial and programmatic information) may be obtained during the course of an investigation.

(d) Eswatini has not demonstrated that it has established appropriate mechanisms to ensure that, when there is suspicion or reasonable grounds to suspect a particular NPO, that

information is promptly shared with competent authorities, in order to take preventive or investigative action.

Criterion 8.6 – (Not Met) Eswatini has not yet identified point of contact nor are their procedures in place to respond to international requests for information on NPOs suspected of FT or involvement in other forms of terrorist support.

Weighting and Conclusion

Eswatini has no legal instruments or any other measures to address requirements of Recommendation 8.

Eswatini is rated Non-Compliant with R.8

Recommendation 9 – Financial institution secrecy laws

In its First Round MER Eswatini was rated Non-Compliant with R. 9 (formerly R. 4). The main deficiency was that the banking secrecy provisions created by banking laws were not overridden. Eswatini has since enacted the MLFTP Act to address this deficiency.

Criterion 9.1 – (Mostly Met) Financial institution secrecy laws in Eswatini do not inhibit implementation of AML/CFT measures. S. 72 of the MLFTP Act 2011 requires an accountable institution to comply with the requirement of the Act notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by any written law or otherwise. Therefore, this provision would not prevent competent authorities from obtaining information held with the accountable institutions.

(a) **Access to information** - Competent authorities have access to information in Eswatini. The Royal Eswatini Police and Anti-Corruption Commission have access to information as indicated under c31.1. The EFIU, Central Bank of Eswatini, and the FSRA access information held by financial institutions and DNFBPs as provided under S.31(n) and 32 of the MLFTP Act, S.39 of the FIA, and S.61 of the FSRA respectively.

(b) **Sharing of information between competent authorities** – S. 5 (i) of the FSRA Act, 2010 provides legal basis for the FSRA to share both public and non-public information with domestic and foreign counter parts subject to proper confidentiality standards. S. 31(n) of the MLFTP Act also allows the EFIU to share information. In addition, some LEAs have also developed and signed MoUs with their domestic and international counterparts to enable sharing of information. While the FSRA and the EFIU have legal basis and mechanisms to exchange and share information both domestically and internationally, this is not the case with CBE, ACC and Immigration Department (see R.40.9-20 analyses) There are, however, no financial institution secrecy laws that inhibit this sharing.

(c) **Sharing of information between FIs** - There are no restrictions in legislation preventing FIs to fulfil their obligations where this is required by R.13, 16 and 17.

Weighting and Conclusion

Most elements as required in R.9 are met. However, not all competent authorities in Eswatini have proper legal provisions enabling them to share information.

Eswatini is rated Largely Compliant with R.9

Recommendation 10 – Customer due diligence

In its MER under the First Round of MEs, Eswatini was rated Non-Compliant with requirements of this Recommendation (formerly R. 5). There was no law or regulation creating obligations for financial institutions to undertake CDD measures as required by the FATF Standards. Eswatini has since enacted the MLFTP Act, 2011 and amended it in 2016 to address this deficiency.

CBE Guidelines wrongly issued

In 2016, CBE issued industry *Guidelines for Financial Institutions* to assist the accountable institutions under the purview of CBE to comply with AML/CFT requirements. However, assessors noted that the guidelines were not issued under the MLFTP Act but under the FIA which is not the primary law nor have jurisdiction on AML/CFT. The assessors therefore did not consider the guidelines for TC analysis.

When CDD is Required

Criterion 10.1 – (Met) S. 9 of the MLFTP Act 2011 prohibits financial institutions from opening, operating or maintaining anonymous accounts or any account which is in a fictitious, false or incorrect name.

Criterion 10.2 – (Met) S.6bis (1) of the MLFTP Act 2011provides for performance of customer due diligence by financial institutions under the following circumstances:

(a) (*Met*) – S.6 bis(1)(a) of the MLFTP Act 2011 requires financial institutions to ascertain the identity of a customer when entering into continuing business relationship;
(b) (*Met*) when conducting any transaction (S.6 bis(1)(a) of the MLFTP Act 2011);
(c) (*Met)* when carrying out an electronic funds transfer (S.6bis(1)(b) of the MLFTP Act 2011). The law does not provide for any threshold; hence any wire transfer is subject to CDD measures;
(d) (*Met*) when there is suspicion of ML/TF (S.6 bis(1)(c) of the MLFTP Act 2011), including suspicion on an occasional transaction not exceeding two thousand, five hundred Emalangeni (E2,500/USD 170) as provided under S.6(7)(b) of the MLFTP Act 2011;
(e) (*Met*) when there is doubt about the veracity or adequacy of the customer identification and verification documentation or information it had previously obtained (S.6bis(1)(d) of the MLFTP 2011).

Required CDD Measures for all Customers

Criterion 10.3 – (Partly Met) S.6*bis* (1) of the MLFTP Act 2011 obliges financial institutions to ascertain the identity of a customer or beneficial owner on the basis of any official identifying document and verify the identity of the customer on the basis of reliable and independent source documents, data or information or other evidence as is reasonably capable of verifying the identity of the customer. While the terms 'customer' covers both natural and legal persons, it does not cover both occasional and permanent customers.

Criterion 10.4 – (Partly Met) S. 6bis (2) (c) of the MLFTP Act 2011 requires financial institutions to verify that any person purporting to act on behalf of the customer is so authorized and identify those persons. However, the provision only requires identification of the identity of the person who purports to act on behalf of the customer but not verification of the identity of that person.

Criterion 10.5 – (Not Met) S. 6bis (1) of the MLFTP Act 2011 obliges financial institutions to ascertain the identity of a customer or beneficial owner. However, identification of a beneficial owner is not mandatory and there is also no requirement to take reasonable measures to verify the identity of the beneficial owner using the relevant information or data obtained from a reliable source.

Criterion 10.6 – (Partly Met) S. 6 bis (2) (a) of the MLFTP Act 2011 requires financial institutions to obtain information on the purpose and nature of the business relationship. However, there is no obligation for FIs to understand the business relationship.

Criterion 10.7 – (Partly Met)

(a) ***(Partly Met)*** – S. 11 (3) of the MLFTP Act 2011 requires a financial institution to monitor its business relationships and the transactions undertaken throughout the course of the relationship to ensure that its obligations under s. 6 of this Act are met and that the transactions conducted are consistent with the information that the financial institution has of its customer and the profile of the business of the customer. However, the provision does not include the requirement to ensure consistency with risk profile of the customer and the source of funds, it is not clear whether "monitoring" referred to under s.11 is equivalent to conducting on-going due diligence by way of scrutinising transactions. Additionally, s.11 requires the financial institutions to conduct the monitoring based on the information that they have of their customers. This again is a shortcoming in that "information" does not relate to the institution's "knowledge" of the customer as required by the Standards; and

(b) ***(Partly Met)*** – Paragraph 7.8 (c) of the AMLCFT Guideline, 2016 issued by the FSRA requires financial institutions to do periodic reviews of customer identification information obtained to ensure that the information is kept up-to-date, particularly for higher-risk categories of customers. However, there are no similar requirements for other FIs not covered by the FSRA Guideline.

Criterion 10.8 – (Partly Met) S.6bis (2) (c) (ii) of the MLFTP Act, 2011 requires financial institutions to adequately identify and verify the legal existence and structure of a legal entity, including information relating to principal owners and beneficiaries and control structure. However, s.6 does not extend to a customer who is a legal arrangement, and there is no legal requirement for FIs to understand the nature of the customer's business.

Criterion 10.9 – (Partly Met) For customers that are legal persons or legal arrangements, the financial institutions are required to identify the customers as follows:

(a) *(Partly Met)* – S.6bis (2) (c) (i) MLFTP Act 2011 requires financial institutions to adequately identify and verify legal existence and structure of legal entities, including information relating to the customer's name, legal form, address and directors. However, the requirement does not extend to a customer who is a legal arrangement.

(b) *(Partly Met)* - S.6bis (2) (c) (iii) of the MLFTP Act 2011 requires financial institutions to adequately identify and verify legal existence and structure of legal entities, including information relating to the provisions regulating the power to bind the entity. However, the requirement is on the powers to regulate and bind the legal person or arrangement, not just power to bind as was put in this provision. Further, the requirement does not extend to a customer who is a legal arrangement. In addition, there is no provision on the powers to identify and verify names of the relevant persons having senior management positions in the legal person or arrangement.

(c) *(Partly Met)* – S.6bis (2) (c) (i) MLFTP Act 2011 requires financial institutions to adequately identify and verify the customer's address. The provision does not show that the address should be for the registered office.

Criterion 10.10 – (Partly Met) For customers that are legal persons, financial institutions are required to identify and take reasonable measures to verify the identity of the beneficial owner as follows:

(a) *(Partly Met)* – S.6bis (2) (c) (ii) of the MLFTP Act 2011 requires financial institutions to identify and verify the principal owners and beneficiaries and the control structure for customers that are legal persons. S.2 of the MLTFP Act defines a beneficial owner as a person who ultimately owns, controls a customer and/or the person on whose behalf a transaction is being conducted and includes those persons who exercise effective control over a legal person or arrangement. In view of this definition, principal owners and beneficiaries are not regarded as beneficial owners as required by the criterion, the definition does not adequately fit the requirement under s.6bis (2) (c) (ii). However, Paragraph 7.7 (a) of the AML/CFT Guideline, 2016 issued by the FSRA requires financial institutions to identity and verify each natural person who has a controlling ownership interest or ultimately owns the legal person

(b) *(Not Met)* –There is no specific requirement for financial institutions to ensure that to the extent that there is doubt under, as to whether the person(s) with the controlling ownership interest is the beneficial owner(s) or where no natural person exerts control through ownership interests, the identity of the natural person(s) (if any) exercising control of the legal person or arrangement is identified and verified through other means; and

(c) *(Partly Met)* – Paragraph 7.7 (b) of the AML/CFT Guideline, 2016 issued by the FSRA requires financial institutions to identify each natural person who otherwise exercises executive control or management or similar position in the legal person, where no

natural persons ultimately own the legal person. There are no similar requirements for financial institutions outside the ambit of the FSRA.

Criterion 10.11 – (Not Met) Paragraph 7.5.2 (d) of the AML/CFT Guideline, 2016 issued by the FSRA requires financial institutions to identify and establish the settlor, trustee, beneficiaries and natural person who purports to be authorised to enter into a transaction or to establish a business relationship on behalf of the trust. However, there are no similar requirements for financial institutions outside of the FRSA's mandate. In addition, there is no provisions requiring financial institutions to take reasonable measures to verify the identify the identity of the settler, the trustee, protector (if any) and beneficiaries or class of beneficiaries and any other person exercising ultimate effective control of the trust, and to identify persons in equivalent or similar positions for other types of legal arrangements.

CDD for beneficiaries of Life Insurance Policies

Criterion 10.12 – (Not Met) There is no specific requirement in law for financial institutions to identify and verify the customer or beneficial owner of life insurance and other related investment insurance policies in a manner set out in the criteria.

Criterion 10.13 – (Not Met) There is no legal provision requiring financial institutions to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable and require enhanced measures on a risk-sensitive basis which should include reasonable measures to establish and verify the true identity of the beneficial owner of the beneficiary, at the time of pay-out.

Timing of verification

Criterion 10.14 – (Partly Met) The legal framework in Eswatini does not provide for completion of verification after the establishment of the business relationship. S.6bis (1) of the MLFTP Act requires financial institutions to verify a customer before entering into a business relationship. However, the provisions do not cover verification of the identity of beneficial owners before or during the course of establishing a business relationship. Verification of both customers and beneficial owners when conducting transactions for occasional customers is also not provided for.
Criterion 10.15 – (N/A) Under the Eswatini laws, no business relationship can be established prior to verification.

Existing customers

Criterion 10.16 – (Not Met) There are no provisions requiring financial institutions to apply CDD requirements to existing customers on the basis of materiality and risk, and to conduct due diligence on such existing relationships at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained.

Risk-Based Approach

Criterion 10.17 – (Partly Met) Paragraph 7.11 (a-b) of the AML/CFT Guideline issued by the FSRA requires financial institutions to apply EDD measures to all higher-risk business relationships, customers and transactions. However, there are no similar requirements for financial institutions outside of the ambit of the FSRA.

Criterion 10.18 – (Partly Met) Paragraphs 7.10 (a) and (e) of the AML/CFT Guideline, 2016 issued by the FSRA require that where the risks of ML/TF are lower, financial institutions may apply simplified CDD measures. The simplified measures must have been identified through a risk assessment and should be commensurate with the lower risk factors having regard to the circumstances of each case. Simplified CDD measures are not allowed where there is a suspicion of money laundering and terrorist financing or where specific higher risk scenarios apply. However, there are no similar requirements for financial institutions outside of the purview of the FRSA.

Failure to satisfactorily complete CDD

Criterion 10.19 – (Partly Met) Where a financial institution is unable to comply with relevant CDD measures, it is required under s.7 of the MLFTP Act, 2011:

(a) *(Not Met)* - Not to proceed any further with the transaction unless directed to do so by the EFIU. However, there is no legal provision not to open the account, commence business relationship or to terminate the business relationship.

(b) *(Met)* - To report the attempted transaction to the EFIU.

Criterion 10.20 – (Not Met) There are no specific obligation permitting financial institutions not to perform CDD process but instead file an STR in cases where they form a suspicion of money laundering or terrorist financing, and they reasonably believe that performing the CDD process will tip-off the customer.

Weighting and Conclusion

Eswatini complies with some criteria of this Recommendation such as CDD measures on most types of customers, regarding when the CDD measures are required, CDD for existing customers, and timing of customer verification. However, there are deficiencies including on CDD relating to identification and verification of legal arrangements, beneficial owners, identity of the relevant natural person who holds the position of senior managing official, and beneficiaries of life insurance policies, tipping-off, periodic review of identification information, risk-based approach to CDD, and obligation to file STRs where suspicion of ML/TF is formed but conducting of CDD would tip-off the customer.

Eswatini is rated Partially Compliant with R.10

Recommendation 11 – Record-keeping

In its first Round MER Eswatini was rated NC with R. 11 (formerly R. 10). The main deficiencies were that there was no law or regulation to keep records longer than the prescribed period if requested to do so by a competent authority; there was 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 was 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; and the accountable institutions were not required to ensure that all customer and transaction records and information were available on a timely basis to domestic competent authorities upon appropriate authority.

Criterion 11.1 - (Met) S.8(1) and (2) of the MLFTP Act, 2011 requires financial institutions to keep all records (domestic and international) of CDD information, all transactions and reports made to the EFIU for a minimum of five years following completion of the transaction. In addition,

s.8(6) of the MLFTP Act, 2011 as amended in 2016 requires accountable institutions to maintain particular records beyond the minimum period of five years when requested to do so by the EFIU, a law enforcement agency or a supervisory authority.

Criterion 11.2 – (Partly Met) S. 8(1) and (2) of the MLFTP Act, 2011 requires a financial institution to keep records obtained through CDD measures and business correspondence for at least five years following the termination of a business relationship or completion of the transaction. However, there is no requirement for keeping records of account files and results of any analysis undertaken.

Criterion 11.3 – (Met) S. (8)(1)(b) and s.8(3)(a) of the MLFTP Act, 2011 require financial institutions to establish and maintain records sufficient to permit the transaction to be readily reconstructed at any time by the EFIU or competent authority to provide, if necessary, evidence for prosecutions of any offence.

Criterion 11.4 – (Met) S. 8(3)(a) and (b) of the MLFTP Act 2011 requires a financial institution to establish and maintain records in a manner and form that will enable the financial institution to comply immediately with requests for information from the law enforcement or EFIU, and other competent authorities.

Weighting and Conclusion

Most of the elements in this criterion have been met, with the exception of the deficiency identified in c.11.2 on the lack of obligation to keep records of account files and results of any analysis undertaken.

Eswatini is rated Largely Compliant with R.11

Recommendation 12 – Politically exposed persons

In its first Round MER Eswatini was rated NC with R. 12 (formerly R. 6). There were no requirements for financial institutions to apply enhanced due diligence when dealing with foreign PEPs clients. Eswatini enacted the MLFTP Act to address this deficiency.

Criterion 12.1 – (Partly Met) In Eswatini, the definition of a Foreign PEP does not include senior politicians and important political party officials. The requirements of the Criterion are provided for as follows:

(a) ***(Partly Met)*** – S.6bis (2) (d) (i) of the MLFTP Act, 2011 requires financial institutions to have appropriate risk management systems to determine whether the customer is a politically exposed person. The legal provisions, however, do not extend to beneficial owners.

(b) ***(Partly Met)*** S. 6bis (2) (d) (ii) of the MLFTP Act, 2011 requires financial institutions to obtain the approval of senior management before establishing a business relationship with the customer who is a PEP. This provision does not cover existing customers who become PEPs.

(c) ***(Partly Met)*** –S.6bis(2)(b) of the MLFTP Act, 2011 requires financial institutions to take reasonable measures to establish the source of wealth and source of property for all transactions conducted by natural persons. However, the provision does not extend to beneficial owners.

(d) ***(Partly Met)*** S.6(2)(d)(iii) of the MLFTP Act, 2011 requires financial institutions to conduct regular enhanced monitoring of the business relationship established with PEPs. The term "regular" may not mean the same as "on-going", as required by the Standards. This therefore is a shortcoming.

Criterion 12.2 – (Partly Met) S.6bis(2)(d)(i) of the MLFTP Act 2011 requires financial institutions to have appropriate risk management systems to determine whether the customer is a politically exposed person or not, and to apply the measures under c.12.1. As indicated under c.12.1, the legal provisions do not cover beneficial owners who are PEPs. In addition, there is no legal provision requiring financial institutions to take reasonable measures to determine whether a customer or the beneficial owner is a PEP in the case of persons who have been entrusted with a prominent function by an international organisation.

Criterion 12.3 – (Partly Met) Requirements for PEPs under criteria 12.1 and 12.2 also apply to family members or close associates of PEPs. However, there is a deficiency with respect to family members and close associates of international organisation or an existing customer who becomes a PEP, that are not covered by the legal provisions.

Criterion 12.4 – (Partly Met) In relation to life insurance policies, financial institutions are required under Paragraph 8 (f) of the AML/CFT Guideline 2016 issued by the FSRA to take reasonable measures to determine whether the beneficiaries and/or, where required, the beneficial owner of the beneficiary, are PEPs. There is, however, no similar provision for all other financial institutions outside the ambit of the FSRA.

Weighting and Conclusion

FIs in Eswatini are required to have appropriate risk management systems to determine whether a customer is a PEP or not, obtain approval of senior management when establishing business relationships with them, take reasonable measures to establish the source of wealth and source of property for all customers, and conduct regular enhanced monitoring of the business relationship established with PEPs. However, the definition of a PEP is deficient in that it does not include international organization PEPs; and there are no requirements on application of measures in respect of beneficial owners or existing customers who become PEPs.

Eswatini is rated Partially Compliant with R.12

Recommendation 13 – Correspondent banking

In its first Round MER Eswatini was rated NC with R. 12 (formerly R. 6). The main deficiency was that there were no measures dealing with correspondent relationships as required by the FATF standards. Eswatini has since enacted the MLFTP 2011 and amended it in 2016to address this deficiency.

Criterion 13.1 – (Partly Met) S. 6(4) (b-f) of the MLFTP Act, 2011 requires a financial institution to comply with the following in respect of cross-border correspondent relationships and other similar relationships:

(a) gather sufficient information about the nature of the business of the respondent institution and determine from publicly available information the reputation of the person and the quality of supervision to which the respondent institution is subject (s.6(4)(b) and (c)). However, the information required to be gathered does not include on whether the respondent institution has been subject to a ML/TF investigation or regulatory action.

(b) assess the respondent institution's anti-money laundering and terrorist financing controls (s.6(4)(d));

(c) obtain approval from senior management before establishing a new correspondent relationship (s.6(4)(e); and

(d) document the responsibilities of the financial institution and the respondent institution (s.6(4)(f)).

Criterion 13.2 – (Met) Under s. 6(5)(a) and (b) of the MLFTP Act, 2011.

(a) *(Met)* – With respect to a payable-through account, s.6(5)(a) of the MLFTP Act, 2011 requires a financial institution to ensure that the respondent financial institution has verified the identity of its customer and performed on-going due diligence on such customers that have direct access to accounts of the correspondent financial institution.

(b) *(Met)* – S.6 (5) (b) of the MLFTP Act, 2011 obliges a financial institution to ensure that the respondent financial institution is able to provide the relevant customer identification data upon request to the correspondent financial institution.

Criterion 13.3 – (Met) S.18(4) of the MLFTP Act, as amended, prohibits a FI from entering into or continuing a correspondent banking relationship with a shell bank. Further, under paragraph 9 of the AML/CFT Guidelines issued by the Central Bank, a reporting institution is prohibited from (a) opening a foreign account with a shell bank; (b) permitting its accounts to be used by a shell bank; or (c) entering into or continue a correspondent financial relationship with (i) a shell bank; or(ii) a respondent financial institution that permits its account to be used by a shell bank.

Weighting and Conclusion

Eswatini meets most of the criteria of this Recommendation with the exception of deficiencies identified under c.13.1 on lack of requirement to gather information on whether the respondent institution has been subjected to a ML/TF investigation or regulatory action.

Eswatini is rated Largely Compliant with R.13

Recommendation 14 – Money or value transfer services

In its First Round MER Eswatini was rated Non-Compliant with R. 14 (formerly SR.VI). The main deficiencies were that: there was no competent authority to license or register value transfer service operators and agents via mobile phones; MVT service operators were not subject to all applicable FATF Recommendations, including customer due diligence; there were no enforceable systems to monitor all MVT service operators in the Kingdom of Eswatini and ensure compliance with applicable FATF Recommendations; there were no requirement for Banks and Postal Office to maintain a current list of its agents and make it available to CBS; and there were no sanctions for failure to comply with obligations and operating MVT service without approval from a competent authority.

Criterion 14.1 (Partly Met)- S. 4 of the Central Bank of Eswatini (the Bank) Mobile Money Transfer (MMT) Practice Note No.1/2019/NPSS require Mobile Money Transfer Service (MMTS) providers to be licensed or registered with the Central Bank of Eswatini. There are, however, no legal provisions covering the licensing and/or registration of money or value transfer services (MVTS) which fall outside the Practice Note.

Criterion 14.2 (Not Met)- Despite administrative and criminal sanctions provided for under s. 29 of the Central Bank of Eswatini (the Bank) Mobile Money Transfer (MMT) Practice Note No.1/2019/NPSS applicable to entities engaging in payment services without a license and/or the proper authorization of the Central Bank, the country has not demonstrated that it has taken the necessary action to identify natural or legal persons that carry out MVTS without a license or registration and issued proportionate and dissuasive sanctions.

Criterion 14.3 (Partly Met)- MMT operators are subject to monitoring for AML/CFT compliance in terms of s. 3.5 (a) of the Central Bank of Eswatini (the Bank) Mobile Money Transfer (MMT) Practice Note No.1/2019/NPSS in accordance with the MLFTP Act 2011. However, there is no provision for other types of MVTS operators (which fall outside the Practice Note) to be subjected to monitoring for AML/CFT compliance.

Criterion 14.4 (Partly Met)- MMTS operators are required under S.24.2 of the Central Bank of Eswatini (the Bank) Mobile Money Transfer (MMT) Practice Note No.1/2019/NPSS to keep a registry of its agents, including the name and address of such agents, and the registry is to be made available for inspection by the Central Bank. The requirement however does not cover agents for other MVTS providers.

Criterion 14.5 (Not Met)- There is no legal provision requiring MVTS providers that use agents to include them in their AML/CFT programmes and monitor them for compliance with the programmes.

Weighting and Conclusion

Mobile Money Transfer service providers are subject to licencing and AML/CFT compliance monitoring by CBE. Any MMT service provider operating without a licence is subject to sanctions by the Central Bank of Eswatini. The MMT service operators are required to keep a registry of its agents which should be made available for inspection by the Central Bank. However, there are no requirements for licencing of other types of MVTS, and there are no requirements to ensure that they are subjected to monitoring for AML/CFT compliance. In addition, there is no evidence that the country has taken the necessary action to identify natural or legal persons that carry out unlicensed MVTS without a license or registration and issued proportionate and dissuasive sanctions. MVTS providers that use agents are not obligated to include them in their AML/CFT

programmes. In this regard, only a sub-set, and not all MVTS providers, are covered by the relevant laws, which would have an overall bearing on the level of compliance of this recommendation.

Eswatini is rated Partially Compliant with R.14

Recommendation 15 – New technologies

In its MER under the First Round of MEs, Eswatini was rated Non-Compliant with requirements of this Recommendation (formerly R 8). The main technical deficiencies were that there were no requirements to have policies or measures in place to prevent the misuse of technological developments in money laundering and terrorist financing schemes. The new R. 15 focuses on assessing risks related to new products, new business practices and new delivery channels and the use of new technologies for both new and existing products including virtual assets and virtual asset (VA) service providers (VASPs).

Criterion 15.1 – (Not Met) While S.6(1) of the MLFTP Amendment Act 2016 provides for requirement of this criterion, Eswatini and the financial institutions have not identified and assessed the ML/TF risks that may 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.

Criterion 15.2 – (Partly Met) S.6(1) of the MLFTP Amendment Act 2016 requires FIs to put in place appropriate processes to identify, assess, monitor, manage and mitigate ML/TF risks that may arise in relation to the development of new products, business practices and technologies. There is, however, no specific legal provision requiring accountable institutions to undertake ML/TF risk assessments prior to launch or use of such products, practices technologies and to take appropriate measures to manage and mitigate the risks.

Criterion 15.3 – (Not Met) In accordance with Recommendation 1, Eswatini has not identified and assessed the ML/TF risks emerging from virtual asset activities and the activities or operations of VASPs; applied a risk-based approach to ensure that measures to prevent or mitigate ML/TF are commensurate with the risks identified; require VASPs to take appropriate steps to identify, assess, manage and mitigate their ML/TF risks.

Criterion 15.4 – (Not Met) There is no legal provision requiring licensing or registration of VASPs, and that competent authorities should take necessary legal or regulatory measures to prevent criminals or their associates from holding, or being the beneficial owner of, a significant or controlling interest, or holding a management function in, a VASP.

Criterion 15.5 – (Not Met) Eswatini has not taken action to identify natural or legal persons that carry out VASP activities without the requisite license or registration, and apply appropriate sanctions to them.

Criterion 15.6 – (Not Met) VASPs are not subject to adequate regulation and risk-based supervision or monitoring by a competent authority. Although S.35 of the MLFTP Act 2011 empowers the EFIU or Supervisory Authority to enforce AML/CFT compliance by accountable institutions, VASPs do not fall under the supervisory requirements mentioned under this criterion.

Criterion 15.7 – (Not Met) Competent authorities and supervisors in Eswatini have not established guidelines, and provided feedback, to assist VASPs in applying national measures to ML/TF, and, in particular, in detecting and reporting suspicious transactions.

Criterion 15.8 – (Not Met) Eswatini does not have in place a range of proportionate and dissuasive sanctions, whether criminal, civil or administrative, available to deal with VASPs that fail to comply with AML/CFT requirements; and ensure that sanctions are applicable not only to VASPs, but also to their directors and senior management.

Criterion 15.9 – (Not Met) In Eswatini, VASPs are not required to comply with the requirements set out in Recommendations 10 to 21, subject to the qualifications outlined in this criterion.

Criterion 15.10 – (Not Met) With respect to targeted financial sanctions, the communication mechanisms, reporting obligations and monitoring referred to in Recs 6 and 7 do not apply to VASPs.

Criterion 15.11 – (Not Met) Eswatini does not rapidly provide the widest possible range of international cooperation in relation to money laundering, predicate offences, and terrorist financing relating to virtual assets, on the basis set out in Recommendations 37 to 40, and the supervisors of VASPs do not have a legal basis for exchanging information with their foreign counterparts.

Weighting and Conclusion

There are no legal frameworks in Eswatini that comply with requirements of this Recommendation. Further, Eswatini has not identified and conducted an ML/TF risk assessment associated with development of new products and new business practices, including new delivery mechanisms, and the use of new technologies for both new and existing products.

Eswatini is rated Non-Compliant with R.15

Recommendation 16 – Wire transfers

In its MER under the First Round of MEs, Eswatini was rated Non-Compliant with requirements of this Recommendation (formerly SR VII). The main technical deficiency was that there were no measures in place to implemented requirements under SR.VII. The FATF requirements in this area have since been expanded to include requirements relating to beneficiary information, identification of parties to transfers and the obligations incumbent on the financial institutions involved, including intermediary financial institutions.

Ordering financial institutions

Criterion 16.1- (Partly Met) S.10(1) of the MLFTP Act, 2011 requires all FIs to include accurate originator information and other related messages on electronic funds transfers and that such information shall remain with the transfer. However, there is no provision specifying the type of information to be included. In this regard, there is no requirement for inclusion of information on the originator's name, account number, address, or national ID number, or passport number or date and place of birth, and beneficiary's name, account number where such an account is used to process the transaction and in the absence of an account number, a unique transaction reference number. The legal framework in Eswatini applies to all transactions without limiting them to USD/Euro 1,000 threshold.

Criterion 16.2 - (Not Met) There are no requirements for ordering financial institutions to include full beneficiary information in cross-border batch files.

Criterion 16.3 – (N/A)– FIs in Eswatini do not apply the de minimis threshold. Based on s.10 of the MLFTP Act, 2011 the requirement on accompanying relevant originator and beneficiary information is applicable to every cross-border wire transfer irrespective of its amount.

Criterion 16.4 (Not Met)- There is no legal provision requiring financial institutions to verify the information pertaining to its customer where there is a suspicion of ML/TF.

Criterion 16.5 – (Not Met) There is no legal provision on domestic wire transfers requiring the ordering financial institution to ensure that the information accompanying the wire transfer includes originator information as indicated for cross-border wire transfers, and there is no requirement that the information can be made available to the beneficiary financial institution and appropriate authorities by other means.

Criterion 16.6 – (Not Met) There is no specific obligation to financial institutions to implement the measures under this criterion.

Criterion 16.7- (Not Met) There is no specific obligation to financial institutions to implement the measures under this criterion.

Criterion 16.8 - (Not Met)-The is no specific requirement for financial institutions to fulfil this criterion.

Intermediary financial institutions

Criterion 16.9 (Not Met)- There is no legal provision requiring an intermediary financial institution to ensure that all originator and beneficiary information that accompanies a wire transfer is retained with it.

Criterion 16.10 (Partly Met)- S.8(1)(b) of the MLFTP Act, 2011 obliges all financial institutions to establish and maintain records of all transactions carried out by it and correspondence relating to the transactions. However, there is no specific obligation for intermediary FIs to keep records of all the information received from the ordering FI or another intermediary FIs where technical limitations prevent the required originator or beneficiary information accompanying a cross-border wire transfer from remaining with a related domestic wire transfer. S.8(2) of the MLFTP Act, 2011 obliges financial institutions to keep records for a minimum period of 5 years from the date of the transaction or when the account is closed or business relationship ceases.

Criterion 16.11**(Partly Met)-** S.11(1)(d) of the MLFTP Act, 2011 places an obligation on financial institution to pay special attention to electronic funds transfer that do not contain complete originator information. However, the requirement on an electronic transfer not containing complete beneficiary information is not covered in law.

Criterion 16.12 (Not Met)- The requirements under this criterion are not provided in law.

Beneficiary financial institutions

Criterion 16.13 (Not Met)- The requirements under this criterion are not provided in law.

Criterion 16.14 (Not Met)- The requirements under this criterion are not provided in law.

Criterion 16.15 (Not Met)-There is no legal requirement that places an obligation on reporting institutions to have risk-based policies and procedures for determining when to execute, reject or suspend a wire transfer lacking required originator or beneficiary information.

Money or value transfer service operators

Criterion 16.16 (Not Met)- S.10(1) of the MLFTP Act, 2011 requires a money transmission service provider to include accurate originator information and other related messages on electronic funds transfers and such information shall remain with the transfer. However, relevant deficiencies identified under 16.1-16.15 apply to MVTS providers.

Criterion 16.17 (Not Met) – In the case of a MVTS provider that controls both the ordering and the beneficiary side of a wire transfer, there is no legal provision requiring MVTS providers to take into account all the information from both the ordering and beneficiary FIs in order to determine whether an STR has to be filed and file an STR in any country affected by the suspicious wire transfer, and make relevant transaction information available to the EFIU.

Implementation of Targeted Financial Sanctions

Criterion 16.18 (Not Met)- There is no legal provision requiring financial institutions to take freezing action and comply with prohibitions from conducting transactions with designated persons and entities, as per obligations set out in the relevant UNSCRs relating to the prevention and suppression of terrorism and terrorist financing, such as UNSCRs 1267 and 1373, and their successor resolutions.

Weighting and Conclusion

There are major shortcomings in the Eswatini legal framework pertaining to wire transfers. Among others, there are generally no requirements in place for ordering financial institutions, intermediary financial institutions, beneficiary financial institutions and MVTS providers.

Eswatini is rated Non-Compliant with R.16

Recommendation 17 – Reliance on third parties

In its First Round MER Eswatini was rated Non-Compliant with R. 17 (formerly R. 9). The main deficiency was that there were no requirements for financial institutions to obtain the necessary information concerning some elements of CDD process when relying on third parties and introduced business.

Criterion 17.1 – (Met) S.6bis (6) (a) (b) and (c) of the MLFTP Act, 2011 permits financial institutions to rely on a third party or introduce business and places the ultimately CDD obligation with the financial institutions provided that the third party:

(a) obtains immediately the necessary information concerning elements (a) – (c) of the CDD measures set out in R.10 (s.6bis (6) (a));

(b) ensure that copies of identification data and other relevant documentation relating to the requirements in s.s. (1), (2) and (3) will be made available to it from the intermediary or the third party upon request without delay (s.6bis (6) (b));

(c) satisfy itself that the third party is regulated, and supervised or monitored for, and has measures in place for compliance with, CDD and record-keeping requirements in line with Recommendations 10 and 11 (s.6bis (6) (c)).

Criterion 17.2 – (Not Met) There is no legal provision requiring financial institutions which rely on a third party to have regard to information available on the level of country risk.

Criterion 17.3 – (Not Met) There is no legal provision requiring financial institutions relying on a third party which is part of the same financial group to consider that the requirements of the criteria 17.1 and 17.2 are met in the circumstances stated under (a) to (c) of the criterion.

Weighting and Conclusion

FIs in Eswatini which rely on third parties are required to be ultimately responsible for CDD requirements as set out in this Recommendation. However, there is no requirement for such FIs to consider information available on the level of country risk, and that a third party which is part of the same financial group meets criteria 17.1 and 17.2 in the stated circumstances.

Eswatini is rated Partially Compliant with R.17

Recommendation 18 – Internal controls and foreign branches and subsidiaries

In its First Round MER Eswatini was rated Non-Compliant with R. 18 (formerly R 15 and R 22). The main deficiency was that there was no enforceable obligation to require accountable institutions to implement the requirements under the FATF Recommendation 15.

Criterion 18.1 – (Met) S. 18 of the MLFTP Act 2011 requires financial institutions to establish and implement AML/CFT programmes with regard to ML/TF risks and size of the businesses and programmes, including:

(a) appoint a compliance officer who shall be responsible for ensuring the financial institution's compliance with the requirements of the Act. The compliance officer shall be a senior officer with relevant qualifications and experience to enable him or her to respond sufficiently well to enquiries relating to the financial institutions and the conduct of its business (Ss.18 (1)(a) and 18(2);

(b) establish and maintain procedures and systems to screen persons before hiring them as employees (S. 18(1)(b)(vi));

(c) training programme for officers, employees and agents (S.18(1)(c).

(d) independent audit function to test AML/CFT procedures and systems (S.18(1)(d)).

Criterion 18.2 – (Not Met) There is no legal provision requiring financial institutions to implement group-wide programmes against ML/TF, which should be applicable, and appropriate to, all branches and majority-owned subsidiaries of the financial group. All measures specified in c.18.2(a)-(c) are not provided for.

Criterion 18.3 – (Not Met) There is no legal provision requiring financial institutions to ensure that their foreign branches and majority-owned subsidiaries apply AML/CFT measures set out under this criterion.

Weighting and Conclusion

FIs in Eswatini are required to establish and implement AML/CFT programmes. However, there are no requirements to implement group-wide AML/CFT programmes and ensure that FIs with foreign branches and majority-owned subsidiaries apply AML/CFT measures.

Eswatini is rated Partially-Compliant with R.18

Recommendation 19 – Higher-risk countries

In its First Round MER Eswatini was rated Non-Compliant with R. 19 (formerly R 21). The main deficiency was that authorities had not implemented requirements under the FATF Recommendation 21.

Criterion 19.1 – (Partly Met) Para 7.11 of the FSRA AML/CFT Guideline requires FIs to apply EDD to all higher-risk business relationships, customers (natural and legal person) and transactions from or in a country in relation to which FATF has called for countermeasures. However, the Guideline only applies to FIs under the purview of the FSRA.

Criterion 19.2 – (Not Met) Eswatini has not demonstrated that counter-measures proportionate to the risk can be applied, (a) when called to do so by the FATF, and (b) independently of any call by the FATF to do so.

Criterion 19.3 – (Not Met) Eswatini does not have mechanisms in place to advise financial institutions of concerns about weaknesses in the AML/CFT systems of other jurisdictions.

Weighting and Conclusion

There is no adequate legal provision requiring financial institutions to apply enhanced due diligence proportionate to the risks, to business relationships and transactions with natural and legal persons from countries for which this is called for by the FATF. Further, Eswatini has not demonstrated that countermeasures proportionate to the risk can be applied, (a) when called to do so by the FATF, and (b) independently of any call by the FATF to do so. There are also no mechanisms in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other jurisdictions.

Eswatini is rated Non-Compliant with R.19

Recommendation 20 – Reporting of suspicious transaction

In its First Round MER Eswatini was rated Non-Compliant with R. 20 (formerly R 13). The main deficiencies were that: there was 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 were covered for reporting of STRs; only banks submitted STRs; there was threshold reporting for proceeds of robbery and theft; and there was no requirement to report STRs irrespective of possible involvement in tax matters.

Criterion 20.1 – (Met) S.12(1) of the MLFTP Act, 2011 requires a financial institution which suspects or has reasonable grounds to suspect that any transaction or attempted transaction may be related to the commission of an unlawful activity, a money laundering offence or an offence of financing of terrorism, the financial institution to report the transaction or attempted transaction or the information to the EFIU not later than two working days following formation of the suspicion.

Criterion 20.2 – (Met) S.12(1) of the MLFTP Act, 2011 requires financial institutions to report any suspicious transactions or attempted transactions to the EFIU, regardless of the amount of the transaction.

Weighting and Conclusion

Eswatini meets all criteria of this Recommendation.

Eswatini is rated Compliant with R.20

Recommendation 21 – Tipping-off and confidentiality

In its First Round MER Eswatini was rated Non-Compliant with R. 21 (formerly R 14). The main deficiencies were that there was no specific tipping off prohibition for TF STRs and that tipping off prohibition applied only at investigation stage.

Criterion 21.1 – (Mostly Met) S.16(1) of the MLFTP Act provides for protection of financial institutions, officer, employee or agent, an auditor or supervisory authority or competent authority of a financial institution from any criminal, civil, disciplinary proceedings in relation to any reports or information made in good faith or in compliance with directions given by the EFIU. However, directors of a financial institution are not explicitly covered by the said legal provision.

Criterion 21.2 – (Met) S. 14 of the MLFTP Act, 2011 prohibits a person or an institution from disclosing the fact that an STR or related information has been or may be made to the EFIU.

Weighting and Conclusion

Eswatini mostly meets the requirements of this Recommendation. However, the lack of clarity in law regarding who should specifically be prohibited from disclosing the fact that STRs have been filed with the EFIU and on the directors put financial institutions and the country on an uncertain legal terrain.

Eswatini is rated Largely Compliant with R.21

Recommendation 22 – DNFBPs: Customer due diligence

In its MER under the First Round of MEs, Eswatini was rated Non-Compliant with requirements of this Recommendation (formerly R12). The main technical deficiency was that the DNFBPs were not subject to implementation of AML/CFT measures.

Criterion 22.1 – (Partly Met) The general CDD measures set out under s.6 of the MLFTP Act, 2011 equally apply to all transactions regardless of value. The shortcomings/deficiencies identified under R.10 therefore equally apply to DNFBPs.

Criterion 22.2 – (Mostly Met) S.8(1), (2) and (3) of the MLFTP Act, 2011 provides for record-keeping obligations which equally apply to DNFBPs (See R.11 for further details of shortcomings/ deficiencies).

Criterion 22.3 – (Partly Met) See R.12 (PEPs) for a full analysis of shortcomings/ deficiencies under s.6 of the MLFTP Act, 2011 in respect of PEPs obligations which also apply to DNFBPs.

Criterion 22.4 – (Not Met) Eswatini has not identified and assessed ML/TF risk on new technologies and products being used by DNFBPs, and there are no AML/CFT obligations regarding virtual assets (See R.15 for further details of shortcomings/ deficiencies).

Criterion 22.5 – (Partly Met) See R.17 (reliance on third-parties) for a full analysis of shortcomings/ deficiencies.

Weighting and Conclusion

The deficiencies identified in respect of CDD measures, PEPs, ML/TF risks assessment and mitigating controls against new technologies and reliance on third parties, equally apply to DNFBPs. Deficiencies on CDD and PEPs are significant.

Eswatini is rated Partially Compliant with R.22

Recommendation 23 – DNFBPs: Other measures

In its MER under the First Round of MEs, Eswatini was rated Non-Compliant with requirements of this Recommendation (formerly R16). The main deficiency was that AML/CFT regime did not extend to accountants, casinos, dealers in precious metals and stones and lawyers although they were operating in the country.

Criterion 23.1 – (Met) S.12 of the MLFTP Act 2011 provides for filing of STR obligations which equally apply to DNFBPs (See R.20).

Criterion 23.2 – (Partly Met) See R.18 for a full analysis of S.18 of the MLFTP Act 2011 in respect of internal controls which also extend to DNFBPs

Criterion 23.3 – (Not Met) See R.19 for a full analysis of S.18(1) and (5) of the MLFTP Act 2011 in respect of obligations relating to identified high risk jurisdictions which equally apply to DNFBPs

Criterion 23.4 – (Mostly Met) See R.21 for a full analysis of S.16(1) and S.14 of the MLFTP Act 2011 relating to requirements on tipping-off prohibition and confidentiality obligations which equally apply to DNFBPs.

Weighting and Conclusion

DNFBPs in Eswatini are required to file STRs with the EFIU, implement internal AML/CFT control programs, and implement obligations on tipping-off prohibition and confidentiality. However, the deficiencies identified under R.18, 19 and 21 also apply to DNFBPs.

Eswatini is rated Partially Compliant with R.23

Recommendation 24 – Transparency and beneficial ownership of legal persons

In its First Round MER Eswatini was rated Non-Compliant with R. 24 (formerly R 33). The main deficiencies were that: information submitted for registration of legal persons by legal practitioners was not necessarily accurate as it was not verified; the non-verification of information on beneficial ownership and control of legal persons as specified under the FATF definitions compromised the accuracy of the information retained by the Registrar's department; no requirement where the shareholder was body corporate to establish the legal or natural beneficiary owner of the shares; the running of companies by corporate directors and nominee shareholders distorted information on beneficial ownership and control of the legal persons that engaged them; the timely access to information and accuracy of the information might be undermined by the use of manual systems to maintain information; and that there were no measures in place to ensure that bearer shares are not misused for purposes of money laundering.

Criterion 24.1 – (*Partly Met*) Eswatini has legal provisions on the identity and description of the different types, forms and basic features of legal persons. The Companies Act 2009 establish different types of companies such as company limited by shares (s.15 (1) (a)), company limited by guarantee (s.15 (1) (b)), and an unlimited company (s.15 (1) (c)). A company limited by shares may either be a private company or a public company (s.15 (2)). Non-Profit Organizations (NPOs) may be incorporated as companies limited by guarantee (s.17 (1)). S.18 also provides for incorporation of certain branches of foreign companies and NPOs. The Act further provides for obtaining and recording of basic information (see analysis in c.24.3 below) but falls short of obtaining and recording information on beneficial ownership. In terms of s.25 (1) of the Companies Act, partnerships (only allowed up to a membership of twenty persons) can exist and carry on business without having to be incorporated whilst those with more than twenty persons will have to be incorporated to be permitted to carry on business. There is, therefore, no mechanism for registration and collection of information of partnership under the Companies Act. The information on the creation of legal entities under Companies Act is publicly available on the Ministry of Commerce, Industry and Trade website. Information on the creation of partnerships is, however, not publicly available.

Criterion 24.2 – (*Not Met*) The authorities have not yet assessed the ML/TF risks associated with all legal persons created in Eswatini.

Basic Information

Criterion 24.3– (*Partly Met*) Eswatini requires that all companies created are registered in the company registry. S.52 of the Companies Act, 2009 empowers the Registrar of Companies to register the memorandum and articles upon payment of the prescribed fees. It is a requirement in

Eswatini under s.43 that the Memorandum of Association shall contain information such as the name of the company and legal form and status, among others. Upon the registration of the memorandum and articles of a company, the Registrar shall allocate a registration number to the company concerned and issues a certificate of incorporation in terms of s.53. S.149 provides for company including a foreign company to have a registered office and address while s.30 provides for basic regulating powers. S. 196 further requires each registered company to keep a register of directors and officers of the company. The register of companies at the office of the Registrar of Companies is available for search by any person upon payment of a fee (Section 8 (1)).

Criterion 24.4 – *(Not Met)* While there is no requirement for companies in Eswatini to maintain information set out in criterion 24.3, s.99 of the Companies Act, 2009 provides that a company shall keep a register of its members, and shall record the names and addresses of the members and, in the case of a company limited by shares, a record of the shares issued to each member, distinguishing each share by its number, if any, and by its class or kind. S. 99 of the Act however, does not provide for the nature of the associated voting rights. Furthermore, there is no requirement to notify the company's registry of the location where the information is kept within the country.

Criterion 24.5 – (Not Met) In order to ensure up datedness of the information in the registry, s. 151 requires a company including a foreign company, not earlier than 1st July or later than 31st August of any calendar year, to lodge with the Registrar the annual return, in the pre-scribed form and accompanied by the prescribed fee, specifying information pertaining to the name of the company, its registration number, the situation of its registered office and its registered postal address and the place where the registers of members, interests in shares are kept. Additionally, s. 197 requires companies to lodge with the Registrar any changes in the particulars of directors within twenty-one (21) days of the receipt of notification of such change. With the exception of the foregoing legislative provisions, there are no other relevant mechanisms that ensure that the remaining information referred to under c.24.3 and 24.4 is accurate and updated on a timely basis.

Beneficial Ownership Information

Criterion 24.6- (a-c) – (Not Met) Eswatini relies on beneficial ownership information collected by FIs and DNFBPs in the course of the CDD process (see Recommendations 10 and 22). S. 6bis (1) of the MLFTP Act, 2011 obliges accountable institutions to ascertain the identity of a customer or beneficial owner. As discussed under R.10 and R.22 CDD obligations do not amount to a comprehensive requirement to identify and take reasonable measures to verify beneficial ownership information. Moreover, the definition of beneficial owner in terms of s. 2 of the MLFTP Act 2011, as read with s.2 of the Interpretation Act and s.2 of MLTFP on definition of 'person' also fall short of the standard as it allows for a beneficial owner to be a legal person. In both provisions, the term 'person" also refers to legal persons. The FATF requirement is that a beneficial owner should be a "natural" person. It should also be highlighted that the mechanism to obtain beneficial ownership information is only limited to companies designated as accountable institutions and not others, including those listed under c.24.6c.

Criterion 24.7- *(Not Met)* There is no requirement in Eswatini for the beneficial ownership information to be accurate and as up-to-date as possible.

Criterion 24.8- *(Not Met)* There is no legal obligation on companies to authorize one or more natural person resident in Eswatini to provide to competent authorities available beneficial ownership information; or for authorizing a DNFBP in Eswatini to provide such information to the authorities. The country does not also take other comparable measures.

Criterion 24.9 – *(Not Met)* There is no specific provision in relation to maintaining information and records for at least five years after the date on which the company is dissolved or otherwise

ceases to exist, or five years after the date on which the company ceases to be a customer of the professional intermediary or the financial institution.

Other Requirements

Criterion 24.10 – *(Met)* Eswatini Royal Police Service and the Anti-Corruption Commission have the responsibility to investigate ML/ TF cases and associated predicate offences in Eswatini and there are legal provisions in place for them to timely access necessary documents and information (basic and beneficial ownership information, if available) held by financial institutions, DNFBPs and other natural and legal persons (see R.31.1).

Criterion 24.11(a)-(e) – *(N/A)* This is not applicable as bearer shares or bearer share warrants are not recognised under s.97 of the Companies Act.

Criterion 24.12 – *(Not Met)*

(a) Although nominee arrangements are allowed in Eswatini, there are no provisions requiring nominee shareholders and Directors to disclose the identity of their nominator to the company or any relevant registry and no provisions for this information to be included in the relevant register.

(b) There are no provisions requiring such appointees to be licensed and for them to maintain information identifying their nominator, ad make this information available to the competent authorities.

(c) There is no requirement for nominees to be licensed or any other mechanisms identified to regulate such appointments.

Criterion 24.13 – *(Not Met)* The Companies Act does not provide any legal liability or sanctions for non-compliance by natural or legal person with the requirements of the Act.

Criterion 24.14 – *(Partially Met)* Generally, the Criminal Matters (Mutual Assistance) Act, 2001 provides powers on mutual legal assistance which might include any MLA on information relating to basic and beneficial ownership information. However, the following applies:

(a) There are no specific provisions facilitating access by foreign competent authorities to basic information held by the Registrar of Companies.

(b) No provisions on exchange of information on shareholders. There are however, possibilities that such information can be shared through the MLA route, although it is not a rapid way of doing so. The informal channels could also be used if all the competent authorities had enabling provisions to exchange information with their foreign counterparts (see R.40.9-40.20).

(c) The legal provisions in place for competent authorities to access necessary documents and information held by financial institutions, DNFBPs and other natural and legal persons as explained under criterion 31.1 can be used by LEAs to obtain BO information on behalf of their foreign counterparts if such information exist.

Criterion 24.15 – *(Not Met)* Eswatini does not monitor the quality of assistance received from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad.

Weighting and Conclusion

The basic information on companies which is kept by the Registrar is publicly available. Information on partnerships is, however, not publicly available. There is no ML/TF risk assessment of all types of legal persons created in Eswatini. Eswatini has no mechanisms that

ensure that the information referred to under c.24.3 and 24.4 including beneficial ownership information is accurate and updated on a timely basis. The Companies Act, 2009 does not provide for obtaining and recording of information on beneficial ownership. Furthermore, the definition of a beneficial owner is problematic in that it allows for a legal person to be a beneficial owner contrary to the FATF's definition of a beneficial owner. There is no legal obligation on companies to authorize one or more natural person resident in Eswatini to provide to competent authorities available beneficial ownership information; or for authorizing a DNFBP in Eswatini to provide such information to the authorities. The country does not also take other comparable measures. Eswatini has no specific provision in relation to maintaining information and records for at least five years after the date on which the company is dissolved or otherwise ceases to exist, or five years after the date on which the company ceases to be a customer of the professional intermediary or the financial institution. With regards to nominee shareholders, there are no provisions requiring nominee shareholders and Directors to disclose the identity of their nominator to the company or any relevant registry and no provisions for this information to be included in the relevant register. Appointees and nominees are not required to be licensed and for them to maintain information identifying their nominator, and make this information available to the competent authorities. The Companies Act does not provide any legal liability or sanctions for non-compliance by natural or legal person with the requirements of the Act. There are gaps in ensuring that companies co-operate with competent authorities to the fullest extent possible in determining the beneficial owner. Eswatini does not monitor the quality of assistance received from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad.

Eswatini is rated Non-Compliant with R.24

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

In its First Round MER Eswatini was rated Non-Compliant with R. 25 (formerly R 34). The main deficiencies were that: the legal practitioners who provided trusteeship services were not required to comply with AML/CFT requirements; there were 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; there was possibility of undue delay in accessing information by competent authorities and financial institutions due to the manual system which was still used to record information on trusts at the department of the Registrar of Companies.

Criterion 25.1 – *(Not Met)*

(a) Eswatini does not impose obligations on trustees to obtain and hold adequate, accurate and current information on the identity of the settlor, the trustee, a protector, the beneficiaries or class of beneficiaries and any other natural person exercising ultimate effective control over the trust.

(b) Trustees are not required to hold basic information on other regulated agents, and service providers to the trust, including investment advisors or managers, accountants, and tax advisors.

(c) Eswatini does not require professional trustees to maintain information for at least five years after their involvement with the trust ceases

Criterion 25.2 – *(Not Met)* S.8 of the MLFTP Act, 2011 requires accountable institutions to keep records of CDD information, all transactions and reports made to the FIU for a minimum of five years. There is however, no requirement that any information held on legal arrangements be kept accurate and up-to-date and updated on a timely basis.

Criterion 25.3 – *(Partly Met)* S.6bis (2) (c) of the MLFTP Act, 2011 requires financial institutions to verify that any person purporting to act on behalf of the customer is so authorized and identify those persons. However, it does not specifically require FIs and DNFBPs to identify trustees acting on behalf of a trust.

Criterion 25.4 – *(Met)* Trustees are not by law or enforceable means prevented from providing information on trusts to competent authorities or FIs and DNFBPs upon request, on the beneficial ownership and assets of the trust to be held or managed under the terms of the business relationship.

Criterion 25.5 – *(Met)* There are legal provisions giving competent authorities powers to obtain timely access to documents and information held by financial institutions, DNFBPs and other natural and legal persons which might include the beneficial ownership and control of the trust. S.71 (1) of the MLTFA of 2011 gives powers to the Police to access all necessary documents and information for use in an investigation, prosecution and related actions. This includes, powers to request to be furnished with information within a period specified in the request.

S.12 of the Prevention of Corruption Act, 2006 provides special investigative powers to an investigator dealing with an offence under the Act and obliges all persons to provide all information required in relation to the offence.

Criterion 25.6 – *(Partly Met)*

(a) S.17 of the Criminal Matters (Mutual Assistance) Act, 2001 provides powers to provide mutual legal assistance which might include any MLA on information relating to beneficial ownership information on trusts and other legal arrangements. There are however no specific provisions facilitating access by foreign competent authorities to information held by registries or other competent authorities.

(b) No information provided on channels or legal provisions on exchange of domestically available information on trusts or other legal arrangements.

(c) Although, the ACC can use s. 12 of the Act to obtain information on crimes under investigation, there is no law expressly providing for these domestic investigative powers to be used by LEAs to obtain beneficial ownership information on behalf of their foreign counterparts or exchanging domestically available.

Criterion 25.7 – *(Not Met)* Eswatini has not clarified whether trustees can be liable for breaching obligations including those stated in c25.1. There are no specific sanctions whether administrative, criminal or civil for failing to comply**.**

Criterion 25.8 – (Not Met) Eswatini could not demonstrate sanctions which are in place in the case of a failure to grant competent authorities timely access to trust related information.

Weighting and Conclusion

There is no authority that governs the registration of trusts in Eswatini. Trustees are under no obligation to obtain and hold accurate, current and adequate information on the identity of the settlor, trustees, protector or beneficiaries and any other natural person exercising ultimate effective control over the trust. There are no requirements to ensure that any information held pursuant to legal arrangements is kept accurate, up to date and is updated on a timely basis. No sanctions are in place in the case of a failure to grant competent authorities timely access to trust related information.

Eswatini is rated Partially Compliant with R.25

Recommendation 26 – Regulation and supervision of financial institutions

In its First Round MER Eswatini was rated Non-Compliant with R. 26 (formerly R 23). The main deficiencies were that: there was a general scope issue affecting uncovered FIs and entities not licensed by the CBS; generally, regulation and supervision scope was too limited owing to inadequate AML/CFT requirements for FIs, e.g. lack of CDD measures and internal controls obligations; and that there was no competent authority designated to ensure CFT compliance.

Criterion 26.1- (Met) S. 35(1) of the MLFTP, 2011 provides that enforcement of AML/CFT compliance with the implementation of the provisions of the law by accountable institutions shall be the responsibility of the supervisory authority for accountable institutions under their supervision. CBE is responsible for the supervision of banks, credit institutions, money changers and e-money institutions. Banks, standalone forex bureau and e-money institutions are the only entities that can legally provide MVTS and thus the activity falls under the CBE's supervision. FSRA is responsible for the supervision of all non-banking financial institutions, which include insurance, capital market players and the Building Society.

Market Entry

Criterion 26.2- (Partly Met) Core principles FIs in Eswatini include banks, capital market players and insurance companies. All of them are subject to licensing obligations under different laws and statutes. Insurance companies and capital market players are required to be licensed under s.35 & 36 of the FSRA Act, 2011 before providing financial services. S.35 of the FSRA Act restricts the provision of financial services to only authorised or licensed persons. S.36 of the FSRA Act then provides the procedural requirements for applying for a licence under the FSRA Act.

S.6 of the FIA, 2005 provides for licensing of banks and restricts provision of banking services only to licensed persons. A licence is required in terms of s. 4 of the Practice Note for Mobile Money Providers 2019 for unsupervised institutions prior to carrying on mobile money services and supervised financial institution who want to carry on mobile money services are required to obtain prior written authorization from CBE. With regards to money or currency changing services, Regulation 3 of the Exchange Control Regulations, 1975, read together with the Authorised Dealers with Limited Authority Guidelines, require dealers to be authorised and appointed by the Minister before dealing in foreign currency. There are, however, no legal provisions covering the licensing and/or registration of money or value transfer services (MVTS) other than mobile money service providers. The Exchange Control order,1974 and the Exchange Control Regulations,1975 are limited in scope with regard to the licensing and registration of MVTS providers. The Short Title to the Exchange Control Order,1974 limits the scope of the Act to purchase, sale and loan of foreign currency, gold and securities. This does not seem to include MVTS.

There is no legal provision under the Laws of Eswatini prohibiting the country from approving the establishment or continued operation of shell banks.

Criterion 26.3 - (Mostly Met) The Eswatini legal framework contains a number of provisions that have been designed to prevent criminals from obtaining shareholdings or management positions in FIs.

Financial Services Regulatory Authority (FSRA)

At both the licence or registration stage and on an on-going basis, FSRA has fairly adequate fit and proper requirements for legal owners (i.e. persons with "qualified holdings) for all categories of FIs under its supervision. The grant or approval of a licence by the FSRA is conditional on the

meeting of all the licensing conditions stated in s.37(2) and (3) of the FSRA Act, 2010. S.S.37 (3) (a) of the FSRA Act requires an applicant for a financial services license to be a fit and proper person, or in the case of a corporate body, to be managed and controlled by fit and proper persons. The measures, however, exclude fitness and propriety of beneficial owners of FIs (where the legal owner(s) or person(s) with qualified holdings is not the beneficial owner).

Fit-and-proper tests (including assessment elements such as integrity, eligibility, professional experience, liquidity position, and presence of any criminal records) apply to the management and supervisory boards, as well as people holding a qualified shareholding, including when changes occur after obtaining the licence to FIs. Para. 2.2 (b) of the AML/CFT Guideline, 2016 issued by the FSRA requires the Supervisory Authority to screen all persons who own or control, directly or indirectly, or have significant interests (more than 20% of the voting rights) in the business of financial institutions. This is done prior to the approval of a new license and on an on-going basis or when ownership interests change. S.37 (5) of the FSRA Act, 2010 provides that in considering whether a person is a fit and proper person s., the Authority shall have regard to the following:

a) Financial status of that person;

b) Ability of that person to perform the proposed function efficiently, honestly and fairly; and

c) Reputation, character, financial integrity and reliability of that person. Where there is failure to meet integrity requirements, the license is not granted.

FSRA has also issued Fit and Proper and Rehabilitation Guideline, 2014 and Para. 4 requires members of the Board of Directors, senior management, and significant shareholders to be suitable for their functions. Para. 7 sets out the criteria for assessing the fitness and propriety of key functionaries including a requirement for police clearance certificate from the Royal Swaziland Police Service or from the comparable authority of the relevant jurisdiction in the case of foreigner in addition to tax clearance.

Central Bank of Eswatini (CBE)

With regards to the accountable institutions under the CBE, s.6 of the FIA Act, 2005 sets registration requirements for the grant of a banking licence. It stipulates that the bank shall investigate the history of the applicant, including character and experience of its managers, among other requirements. Para. 62 and 63 of the Corporate Governance Guidelines, 2017 require members of the board of directors of the financial institution to be subjected to the "fit and proper person test" with reference to competence, qualifications, experience and integrity, both upon their appointment and on a continuing basis.

CBE also has detailed Licensing Guidelines which detail the licensing requirements and procedures which CBE follows in the licensing of banks under its purview. The Licensing Guidelines are supplemented by the CBE Banks Supervision Inspection Circular No.19 on the *"Requirements to Notify the Central Bank of New Directors and Executive Officers"*. The Circular is applicable to all financial institutions under the Financial Institutions Act,2005. The fitness and propriety check for shareholders, directors and beneficial owners are mandatory for all categories of financial institutions falling under the ambit of the CBE (banks, MVTS, bureaus). In addition, there is reference to criminal background checks. Changes to significant levels of legal ownership for all financial institutions require the approval of the CBE and further fit and proper checks are applied on an ongoing basis to determine whether a significant legal owner, board member or senior manager is or is no longer qualified. S.6 refers to 'an applicant' but it is not clear what 'applicant' include. Moreover, the requirement to "investigate history of the applicant" may not be very clear unless it is further explained in the Guidelines. It is also not clear whether, CBE takes

any action where it is determined that a significant legal owner, board member or senior management is no longer qualified. Based on this analysis, the measures in place to prevent criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function, in a financial institution under CBE both at registration or licensing state and on an on-going basis are fairly adequate.

Risk-based approach to supervision and monitoring

Criterion 26.4 - (Partly Met)

(a) *Core principles institutions (Partly Met)*: The banking, securities, insurance sectors are regulated in line with the principles set by the BCBS, IOSCO and IAIS where relevant for AML/CFT. The CBE and FSRA supervises FIs' obligation to establish and maintain policies, controls and procedures to mitigate and manage ML/TF risks. However, there is no evidence that the FIs are subjected to consolidated group supervision for AML/CFT purposes.

(b) *All other FIs*: **(**Partly Met**)**: All other FIs under the supervision of CBE and FSRA are under the same regime as core principles institutions. However, there is no supervision or monitoring of FIs having regard to the ML/TF risks in the sector.

Criterion 26.5(a) - (Not Met) S. 35(1) of the MLFTP Act, 2011, as amended in 2016 provides for supervision of FIs using a risk-based approach or on a risk sensitive basis. However, the frequency and intensity of on-site and off-site supervision is not determined on the basis required by the FATF Standards under c.26.5, to wit,

(a) the ML/TF risks and the policies, internal controls and procedures associated with the institution or group based on the risk profile of the institution;

(b) the ML/TF risks present in the country;

(c)the characteristic of the FI.

Criterions 26.6 - (Partly Met) Only CBE has started conducting individual ML/TF risk assessment of FIs under its purview to determine their risk profiles. This includes periodic reviews of the ML/TF risk profiles of FIs or group and when there are major events or developments in the management and operations of the FI. The other supervisory authorities have not started doing so.

Weighting and Conclusion

Eswatini has designated CBE and FSRA for the licensing, regulation and supervision/ monitoring of FIs for compliance with the AML/CFT requirements. There are, however, shortcomings which include weak measures in place to prevent criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function, in a financial institution, in particular, for the FIs under CBE both at registration or licensing stage; FIs are not subjected to consolidated group supervision for AML/CFT purposes; Absence of supervision or monitoring of other FIs having regard to the ML/TF risks in the sector; absence of a risk based approach to AML/CFT supervision, hence the frequency and intensity of onsite and offsite AML/CFT supervision is not determined by the level of ML/TF risks. With the exception of CBE, there is no evidence that any of the other supervisors review the assessment of individual risk profile of the FIs under their purview.

Eswatini is rated Partially Compliant with R.26

Recommendation 27-Powers of Supervisors

In its First Round MER Eswatini was rated Non-Compliant with R. 27 (formerly R 29). The main deficiencies were that the authorities had not implemented the requirements under the FATF Recommendations 29.

Criterions 27.1- (Met) Supervisors are provided with powers to supervise and ensure compliance by FIs and DNFBPs with AML/CFT requirements, including powers to examine the records and inquire into the business and affairs of any accountable person/institution for the purpose of ensuring compliance with obligations to report and obligations to verify the identity of a customer, the power to demand and seize information and conduct inspections, either with or without a warrant (s.34 & 35 of the MLFTP Act, 2011)

Criterion 27.2 - (Met) Supervisors are provided with the authority to conduct inspections of accountable institutions under s. 18bis of the MLFPT (Amendment) Act, 2016. They also have the authority to examine the records and inquire into the business and affairs of any accountable person/institution for the purpose of ensuring compliance with AML/CFT obligations in terms of s. 34 of the MLFTP Act, 2011.

Criterion 27.3- (Met) Supervisors have broad powers to request for and/or compel production of any documents or information relevant to monitoring compliance with AML/CFT requirements, with or without a court order (see s. 34(1) (c) of the MLFTP Act, 2011, s. 61 of the FSRA Act, 2010, s. 37 and s. E(i) of the ADLA Guidelines. In addition, the general supervisory powers under respective sectoral laws and regulations are applicable.

Criterion 27.4 - (Met) The CBE, FRSA and the EEFIU are authorised under s. 35bis(1) & (3) of the MLFTP Act, 2011 to impose a range of sanctions on accountable institutions for failure to comply with the AML/CFT requirements as set forth in R.35 including: cautioning, reprimanding, issuing a directive to take remedial action or to make specific arrangements, issuing a restriction or suspending certain business activities, suspend institution's license and imposing a financial penalty not exceeding E5 million (USD 340,000).

On the other hand, the supervisory authority may in addition to imposing an administrative penalty or sanction make a recommendation to the relevant institution or person in respect of compliance with the AML/CFT obligations or direct a financial penalty to be paid by a natural person for whose actions the relevant institution is accountable in law-provided the person was personally responsible for the non-compliance.

Weighting and Conclusion

Eswatini meets all the criteria under this Recommendation.

Eswatini is rated Compliant with R.27

Recommendation 28 –Regulation and Supervision of DNFBPs

In its First Round MER Eswatini was rated Non-Compliant with R. 28 (formerly R 24). The main deficiencies were that there were 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 had not monitored casinos for compliance with AML obligations; all DNFBPs were not monitored for compliance with applicable AML/CFT measures; and that there were no measures in place to prohibit criminals or their associates from holding or being beneficial owners.

Casinos

Criterion 28.1

(a) *(Met)*- Casinos and gaming activities in Eswatini are licensed by the Minister of Tourism and Environmental Affairs under s. 9 of the Casino Act,1963.

(b) *(Not Met)*- The legal regime in Eswatini for the licensing of Casino's is not adequate for the prevention of criminals and their associates from holding (or being a beneficial owner of) a significant or controlling interest, or holding a management function, or being an operator of a casino in Eswatini**.**

(c) *(Met)*- In terms of the MLFTP Act, 2011, s. and 35(1) read together with s. 2(p) casinos in Eswatini are accountable institutions and the Eswatini Gaming Board is responsible for supervising or monitoring casinos for compliance with AML/CFT requirements.

DNFBPs other than Casinos

Criterion 28.2 (Mostly Met) In line with s. 35(1) of the MLFTP Act the Minerals Management Board is designated as the AML/CFT supervisory authority for the Precious Stones and the Metals; Law Society of Eswatini (LSE) for the lawyers and advocates; Eswatini Institute of Accountants (EIA) for accountants and auditors; and EFIU for the Real Estate Sector and the Motor Vehicle Dealers. However, trust and company service providers (TCSPs) are not covered.

Criterion 28.3 (Not Met) There is no evidence that supervisors/regulators of other categories of DNFBPs subject their sectors to systems for monitoring compliance with AML/CFT obligations.

Criterion 28.4(Partly Met)

(a) *(Met)* S.s 34 & 35 of the MLFTP Act, 2011empowers the competent authorities to supervise and ensure compliance by DNFBPs with AML/CFT requirements, including powers to examine the records and inquire into the business and affairs of any accountable person/institution for the purpose of ensuring compliance with obligations to report and obligations to verify the identity of a customer, the power to demand and seize information and conduct inspections, either with or without a warrant s.;

(b) *(Not Met)* There is no indication that the DNFBP supervisors take the necessary measures to prevent criminals or their associates from being professionally accredited or holding (or being the owner of) a significant or controlling interest or holding a management function in a DNFBP. Fit and proper requirements are not in place in the licensing/registration of DNFBPs. Beneficial owners of the DNFBPs are not screened.

(c) *(Met)* The supervisory authorities have powers to issue a wide range of sanctions, including both criminal and administrative sanctions. Criminal sanctions are issued in terms of s.76-89 of the MLFTP Act, 2011. S. 35bis of the MLFTP Act, as amended, empowers the EFIU or a supervisory authority to impose a range of proportionate and dissuasive administrative sanctions on any accountable institution or person when satisfied on available facts and information that the institution or person has failed to comply with the provisions of the MLFTP Act, 2011 (as amended), any regulation, guideline, order, determination or directive; condition of a license, registration, approval or authorisation issued or amended in accordance with the Act or any other law (see analysis under c.35.1).

All DNFBPs

Criterion 28.5 - (Not Met) S. 35(1) of the MLFTP Act, as amended in 2016 provides for supervision of DNFBPs using a risk-based approach or on a risk sensitive basis. However, in practice, the frequency and intensity of on-site and off-site supervision is not determined: (a) on the basis of their understanding of the ML/TF risks, taking into consideration the characteristics of the DNFBPs, in particular, the diversity and number (b) taking into account the ML/TF risk profiles of those DNFBPs, and the degree of discretion allowed to them under the RBA, when assessing the adequacy of the AML/CFT internal controls, policies and procedures of DNFBPs.

Weighting and Conclusion

Although Eswatini's legal framework has designated various supervisory authorities to perform AML/CFT supervision for DNFBPs, compliance monitoring has not yet started in the DNFBP sectors. There are no mechanisms to prevent criminals or their associates from holding (or being beneficial owners of) significant interest or management positions in the DNFBP sectors. In addition, application of a risk-based approach in the entire DNFBP sector has not yet started.

Eswatini is rated Partially Compliant with R.28

Recommendation 29 - Financial intelligence units

In its First Round MER Eswatini was rated Non-Compliant with R. 29 (formerly R 26). The main deficiency was that the country did not have a financial intelligence unit at the time of the evaluation. The CBS was the competent authority receiving STRs from accountable institutions.

Criterion 29.1 – (Met) Eswatini has designated the EFIU with the responsibility for acting as a national centre, under s.19 and s.31(f) as amended of the MLFTP Act, 2011, to receive, and analyse suspicious transactions and other reports, and disseminate financial intelligence and other information to LEAs to identify and investigate money laundering and financing of terrorism.

Criterion 29.2 – (Met) MLFTP Act designates the EFIU as the central agency for the receipt of:

(a) suspicious transaction reports from accountable institutions under s.12.

(b) reports from supervisory authorities in the course of their supervisory function and auditors of accountable institutions in the performance of their general auditing functions under s. 13, currency declaration reports from the Customs Office under s.41(7), and cash threshold reports under s.12bis, as amended in 2016,

Criterion 29.3 – (Met)

(a) ***(Met)*** S.31(j) of the MLFTP Act empowers the EFIU to request for further information from any accountable institution on parties or transactions referred to it in a report.

(b) ***(Met)*** The EFIU has the authority under s.31(b) – (c) of the MLFTP Act, 2011 to access publicly available information including information that is stored in databases maintained by the government, and is empowered to access information held by accountable institutions, supervisory and law enforcement agencies.

Criterion 29.4 – (Partly Met)

(a) (***Met)*** - S.31(d) as amended in 2016 states that the EFIU shall analyse and assess all reports and information and shall in the process conduct operational analysis.

(b) (***Not Met***) - S.31(d) as amended in 2016 provides that the EFIU shall also conduct strategic analysis. However, the EFIU has not yet commenced this type of analysis.

Criterion 29.5 – (Mostly **Met)** The FIU disseminates financial disclosures to authorized LEAs, spontaneously [S.31(f), as amended in 2016] but there is no legal provision to cover disseminations upon request. The disseminations are done using dedicated, secure and protected channels.

Criterion 29.6 – (Met)

(a) The EFIU has sufficient safeguards to protect information it holds. The EFIU has policies on Information Protection and ICT which govern the security and confidentiality of information its holds including requirements for handling, storage, dissemination, and protection of information.

(b) S.25*bis* as amended, states that a person shall not be employed in or seconded to the EFIU unless that person has been subjected to a security screening process. All staff of the EFIU underwent security clearance conducted by the ISSS (i.e., the Police). This process is done on the shortlisted candidates to be interviewed for vacant positions. Once employed, the officers are briefed on the ICT and Information Protection Policy for the EFIU to help them understand their responsibilities in handling and disseminating sensitive and confidential information. The Head of ICT monitors staff implementation of the policies and there were no breaches of these policies by staff as at the time of the onsite visit.

(c) Although the EFIU is housed in a multi-storey building, it does not share its floor with another organisation. The offices of the EFIU have adequate information technology infrastructure that allow for limited access to facilities and information, including information technology systems. Further, information access within the EFIU is on need-to-know basis. EFIU premises have adequate physical security measures to deter, detect and delay intrusion. These include: CCTV surveillance in all relevant and strategic places, security officers; visitors are registered and go through security checks including through a metal detector; laptops and electronic gadgets are declared and not allowed unless prior authority is communicated to the security officers by management; biometric access door gadgets for every door in the office; automated recording of officers accessing the server room, among others.

Criterion 29.7 – (Met)

(a) (Met) Under s.21(2) and (3) of the MLFTP Act, 2011, the Director of the EFIU is mandated to exercise all the powers, duties and functions of the EFIU. The EFIU is entitled under s. 20 of the MLFTP Act, 2011 to do all that is necessary or expedient to perform its functions effectively. The EFIU has a Board of Directors with powers under s. 27 of this Act to give

direction to the Director on management, performance, operational policies and implementation of the policies of the EFIU. In exercising its role, the Board acts as an interface between the Government and the EFIU on policy matters. The assessment team noted that the EFIU carries out its functions freely including making autonomous decision on its operations without interference from the Board

(b) (Met) - The EFIU is empowered under s. 31(o) and s. 32 of the MLFTP Act, 2011 to make arrangements or engage independently with other domestic competent authorities or foreign counterparts on the exchange of information.

(c) (N/A) - The EFIU is not located within the existing structure of another authority.

(d) (Met) - S 37 of the MLFTP Act, 2011, provides that the EFIU shall receive funds consisting of money appropriated annually by the Parliament, any government grants made to it and any other money legally acquired by it and can accept donations with prior approval of the Minister. The EFIU is empowered under s. 20 of the MLFTP Act, 2011 to do all that is necessary or expedient to perform its functions effectively. This includes determining its own staff establishment and the terms and conditions for its staff within a policy framework determined by its Board.

Criterion 29.8 – (Not Met) Eswatini is presently in the process of seeking the Egmont Group membership. As part of the application process, the country is being co-sponsored by South Africa, Mauritius and Malawi. However, Eswatini has not yet applied for membership in the Egmont Group

Weighting and Conclusion

The EFIU is the central authority for receiving, requesting, analysing and disseminating disclosures of financial information to counter money laundering and financing of terrorism. It has powers to access a wide range of information to enable it conduct its analysis and has the necessary measures and infrastructure for protection of information in its custody. Further, it conducts its operations autonomously and can independently engage with domestic competent authorities and international counterparts. However, the FIU has not yet started conducting strategic analysis; has not yet applied unconditionally for Egmont Group membership and there is no legal requirement for the EFIU to disseminate financial intelligence upon request by competent authorities.

Eswatini is rated Largely Compliant with R.29

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

In its First Round MER Eswatini was rated Partially-Compliant with R.30 (formerly R 27). The main deficiencies were that training for the law enforcement and prosecution authorities on ML/TF cases was not sufficiently provided and that statistics with regard to ML/FT cases as well as the underlying predicate offences was not systematically kept and maintained. Other deficiencies related to effectiveness which are not part of assessment for 2013 FATF Methodology.

Criterion 30.1 – (Met) LEAs with the responsibility to investigate ML, TF and associated predicate offences in Eswatini are the Royal Eswatini Police Service, the SRA (for only tax crimes and not ML) and the Anti-Corruption Commission. S.s 9 and 13 of the Police Services Act empowers the Police to investigate all offences and gives Police officers the general powers for the preservation of peace, the prevention and detection of crime, and the apprehension of offenders. S. 10 of the Prevention of Corruption Act, 2006 as read with s. 2 of the MLFTP Act, 2011 gives powers to the ACC to investigate all offences related to corrupt practices.

Criterion 30.2 – (Met) S. 13 (3) (i) of the Police Services Act, 2018 gives wide powers to the Police thereby empowering Police officers to purse investigations of any related ML/TF offences during a parallel financial investigation. S. 11 (1) of the Prevention of Corruption Act, 2006, mandates the ACC to investigate corruption and associated offences and refer appropriate cases to the Director of Public Prosecutions; S. 12 (1) grants the Commissioner or officer of the ACC with a warrant from the Courts to carry out financial investigations into any account.

Criterion 30.3 – (Met) The Royal Eswatini Police Service and the Anti-Corruption Commission are the competent authorities that can expeditiously identify, trace, and initiate freezing of property that is or may become subject to confiscation. S. 45 of the MLFTP Act 2011 provides for restraint of property. S. 49 of the MLFTP Act 2011 provides for seizure of property subject to restraint order and s. 50 (1) of the MLFTP Act, 2011 provides for powers to search and seize tainted property or terrorist property. In addition, s. 13 (1) of the Prevention of Corruption Act, 2006 provides for investigators of the Anti-Corruption Commission to search and seize property reasonably connected to an offence under the Act**.**

Criterion 30.4 – (Met) Ss. 63 and 65 of the FSRA Act and s. 8 of the Central Bank orders gives powers to the FSRA and the Central Bank respectively to purse financial investigations of predicate offences to the extent that these competent authorities exercise functions covered under R. 30.

Criterion 30.5 – (Met) The Anti-Corruption Commission has powers to identify, trace and initiate freezing and seizing of assets. S.12 (1) gives powers to the Anti-Corruption Commission to trace assets while s. 13 (1) (c) provides for seizure of property connected to the offence. Furthermore, the provisions under s. 45 (1) of the MLFTP amendment Act provides for restraint of property.

Weighting and Conclusion

There are enabling provisions that satisfy the provisions of Recommendation 30.

Eswatini is rated Compliant with R.30

Recommendation 31 - Powers of law enforcement and investigative authorities

In its First Round MER Eswatini was rated Partially-Compliant with R.31 (formerly R 28). The main deficiency was with regard to effectiveness which could not be determined and this is not part of assessment for 2013 FATF Methodology.

Criterion 31.1 – (Met)

(a) *(Met)* LEAs with the responsibility to investigate ML, TF and associated predicate offences in Eswatini can access necessary documents and information held by FIs, DNFBPs and other natural and legal persons. S.71 (1) of the MLTFP Act, 2011 gives powers to the Police to access all necessary documents and information for use in an investigation, prosecution and related actions. Under the same provision the Police can apply ex parte to court to compel a person to produce the document to the police. S. 76 of the Prevention of Organized Crime Act, 2018 gives powers to a police officer to request any person employed in or associated with an Agency, office or Ministry or statutory body to furnish the police officer free of charge and within a period specified in that request, with all information that may reasonably be required for any investigation. S. 11 (2) (a) of the

Prevention of Corruption Act, 2006 provides for an officer of the Commission access, where necessary with a court order all books, records, returns, reports, data stored electronically on computer or otherwise and any other documents.

(b) *(Met)* The LEAs in Eswatini have adequate powers of search of persons and premises. S. 50 of the MLTFP Act, 2011 as amended provides for search of persons and premises. In addition, S. 13 (4) of the Police Services Act, 2018 empowers any Police officer to search without a warrant any person, premises, other place, vehicle, vessel or aircraft or any receptacle of whatever nature, at any place in the Eswatini. Under S. 13 of the Prevention of Corruption Act, 2006, an officer with an order issued by the Judge may search any persons and premises. S. 29 (2) of The People Trafficking and Smuggling Act, 2009 gives powers to LEAs with a warrant to search any premises or conveyance that is reasonably believed to furnish evidence of the commission an offence.

(c) *(Met)* S. 12 (1) (f) of the Prevention of Corruption Act, 2006 gives powers to officers of the ACC to obtain a sworn statement from a person being investigated for any offence under the Act. S. 9 and 13 of the Police Services Act, 2018 gives Police Officers adequate powers to obtain evidence relevant to any investigation.

(d) *(Met)* LEAs with responsibility to investigate ML, TF and associated predicate offences have adequate powers to seize and obtain evidence. S. 50 (1) (c) of the MLFTP Act of 2011 as amended provides for seizure of tainted property. In addition, S. 13 (4) of the Police Services Act, 2018 provides for seizure of proceeds of crime including instrumentalities. S. 13 (1) (c) of the Prevention of Corruption Act, 2006 gives powers to the officer to seize property reasonably suspected to be connected to offence under the Act. S. 30 (1) of the Suppression of Terrorism Act, 2008 gives powers to LEAs to seize property used in commission of terrorist acts. Furthermore, S. 88 (c) of the Customs and Excise Act provides for seizure of property liable to forfeiture.

Criterion 31.2 – (*Partly *Met)

(a) *(*Mostly *Met)* In terms of S. 9 (1) (c) of the Police Services Act, 2018, the Police are able to conduct undercover operations when collecting intelligence likely to affect public peace and the security of the State. However, there are no specific legal provisions enabling other LEAs to conduct undercover operations.

(b) *(Partly Met)* S. 25 (1) Suppression of Terrorism Act, 2008 gives powers to a police officer with consent from the Attorney General to intercept communication for the purpose of obtaining evidence of the commission of an offence. But this is limited to the offence of terrorism and leaves out ML and other associated predicate offences. There are no specific provisions that provides for competent authorities to intercept communication for the purposes of obtaining evidence for ML and other predicate offences.

(c) *(Mostly Met)* In terms of s. 13 (3) (i) of the MLTFP Act, 2011, Police officers have wide powers to use when collecting evidence. However, there are no specific provisions that gives powers to other LEAs to access computer system.

(d) *(Not Met)* LEAs do not have a legal mandate to conduct controlled delivery operations.

Criterion 31.3 – (Met)

(a) *(Met)* S. 12 (1) (c) of the Prevention of Corruption Act, 2006 gives powers to an investigating officer to investigate and inspect any bank account or other account of whatever description or kind and any banker's books or company books of, or relating to, any person. S. 71 of the MLFTP Act, 2011 gives powers to LEAs to identify, in a timely manner, whether natural or legal persons hold or control accounts.

(b) *(Met)* S. 50 – 53 of the MLFTP Act, 2011 give powers to competent authorities to identify assets without prior notification to the owner through a court order.

Criterion 31.4 – (Met) There are mechanisms in place that enable LEAs to request for all relevant information held by the EFIU. The REPS, ACC and the SRA have signed MoUs with the EFIU which provides for information sharing.

Weighting and Conclusion

LEAs charged with the responsibility to investigate ML, TF and associated predicate offences in Eswatini have adequate powers to investigate, search and seize proceeds of crime. However, these powers are limited to some investigative techniques as LEAs in Eswatini do not have powers to conducted controlled delivery. Further, not all LEAs have the power to use a wide range of investigative techniques in investigations of ML, TF and associated predicate offence.

Eswatini is rated Largely Compliant with R.31

Recommendation 32 – Cash Couriers

In its First Round MER Eswatini was rated Non-Compliant with R.32 (formerly SR IX). The main deficiency was that Eswatini had not implemented requirements under SR. IX as required by the FATF Standards.

Criterion 32.1 – (Mostly Met) Eswatini uses a declaration system for incoming and outgoing cross-border transportation of currency or negotiable bearer instruments (BNIs) (s. 41 (1) of the MLFTP Act, 2011 as amended) However, there is no requirement to declare currency or BNIs transported through mail and cargo into or out of Eswatini.
Criterion 32.2 – (Met) The law adequately provides for all travellers to fill in a written declaration system for cross boarder transportation of cash. S. 41 (1) of the MLFTP Act, 2011 sets the threshold at fifteen thousand Emalangeni (E15,000/USD1,020) or equivalent.

Criterion 32.3 – (N/A) This criterion is not applicable because Eswatini uses a declaration system.

Criterion 32.4 – (Met) The relevant competent authority (SRA), through its Customs Officers, upon discovery of a false declaration or disclosure of currency, BNIs or both, or failure to declare, has the authority to detain and request for further information on the undeclared or excess undeclared cash, BNI or both, and such detained amount shall be forfeited to the State, without the need to establish the origin or intended use.

Criterion 32.5 – (Partly Met) S. 41 (2) of the MLFTP Act, 2011, states that any person who makes a false declaration or disclosure commits an offence and shall be liable on conviction to a fine not exceeding thirty thousand Emalangeni (E30, 000/USD2,040) or imprisonment not exceeding five years. However, the financial penalty may not be dissuasive in cases involving larger amounts.

Criterion 32.6 – (Met) Under s. 41(7) of the MLFTP Act, 2011, the Customs Office is required to send a copy of the currency report to the EFIU without delay. This report is transmitted to the EFIU via email.

Criterion 32.7 – (Met) There is adequate coordination among customs, immigration and other related authorities on issues related to the implementation of R.32.

Criterion 32.8 – (Partly Met)

(a) ***(Met)*** The provisions of s.s 42(a)(b) and 43(1) of the MLFTP Act, 2011 gives powers to authorized officers to detain any cash or BNIs which is being imported into, or exported from, Eswatini for 72 hours if that officer has reasonable grounds for suspecting that it is- derived from an unlawful activity or a money laundering offence or an offence of financing of terrorism; or, intended by any person for use in the commission of an unlawful activity or a money laundering offence or an offence of financing of terrorism

(b) ***(Not Met)*** The provisions under S.s. 41 of the MLFTP Act, 2011 which deal with cross-border transportation of currency and BNIs do not provide for false declarations, more specifically s. 41(5)

Criterion 32.9 – (Met) Eswatini's declaration system allows for international cooperation by ensuring information obtained and retained where there is (a) a declaration of cross-border transportation of cash, BNI's or both exceeding the threshold; or (b) a report of a false disclosure established after a search, seizure and forfeiture and (c) where an authorized officer seizes cash, BNI's or both on suspicion of ML/TF is reported to the EFIU and can be shared spontaneously or upon request with foreign designated authorities..

Criterion 32.10 – (Met) S. 4 (3) of the Customs and Excise Act, 1971 prohibits officers from sharing the information obtained during the course of his/her duties. S. 51 (bis) of the Customs and Exercise Amendment of 2016 provides for entering into information sharing agreements and how information shared under those should be handled

Criterion 32.11– (Partly Met)

(a) (Partly Met) (Not Met) S. 41 (2) of the MLFTP Act, 2011 do not provide for proportionate and dissuasive sanctions for persons carrying out physical cross boarder transportation of currency or BNIs that are related to ML/TF or predicate offences.

(b) **(Met)** S. 42 of the MLFTP Act, 2011 as amended provides for seizure of currency or BNIs relating to ML/TF or predicate offences which can be subject to confiscation.

Weighting and Conclusion

The statutory provisions cover the requirements under this recommendation to some extent. However, the law does not provide for proportionate and dissuasive sanctions for persons carrying out physical cross boarder transportation of currency or BNIs that are related to ML/TF or predicate offences.

Eswatini is rated Partially Compliant with R.32

Recommendation 33 – Statistics

In its First Round MER Eswatini was rated Non-Compliant with R.33 (formerly R 32). The main deficiency was that Eswatini did not maintain comprehensive statistics useful to determine and review effectiveness of measures in place to combat money laundering and financing of terrorism.

Criterion 33.1 – (Partly Met)

(a) *STRs, received and disseminated* – EFIU maintains statistics on the number of STRs received and disseminated. There are also statistics on the number of requests for information received and transmitted, and on intelligence reports disseminated by EFIU broken down by areas of crime and LEAs.

(b) *ML/TF investigations, prosecutions and convictions* – The REPS and ACC maintain statistics on ML investigations while the DPP's office is required to maintain statistics on prosecutions and convictions. However, these statistics are held manually and are not comprehensive, making it difficult to obtain accurate and up-to-date information. In addition, the REPS do not maintain clear statistics on TF.

(c) *Property frozen; seized and confiscated* – Eswatini does have statistics on property frozen, seized and confiscated but these are not kept in a coordinated and comprehensive manner to enable Eswatini to monitor the effectiveness and efficiency of its asset recovery regime.
(d) *MLA or other international requests for co-operation made and received* – Statistics on outgoing and incoming requests on MLA and extradition are not sufficiently maintained in a comprehensive manner to enable Eswatini to monitor the effectiveness and efficiency of its AML/CFT regime. Moreover, there are no mechanisms for maintaining in a comprehensive manner information made and received for other forms of international co-operation.

Weighting and Conclusion

Although the country maintains statistics, they are not comprehensive on matters relevant to the effectiveness and efficiency of their AML/CFT systems.

Eswatini is rated Partially Compliant with R.33

Recommendation 34 – Guidance and feedback

In its First Round MER Eswatini was rated Non-Compliant with R.34 (formerly R.25). STR reporting guidelines were issued only to banks and excluded other accountable institutions and that feedback provided to accountable institutions did not conform to the FATF Best Practice Guidelines on Providing Feedback to Accountable institutions and Other Persons.

Criterion 34.1 – (Partly Met) Pursuant to s. 18bis(b) of the MLFTP (Amendment) Act, 2016 all supervisory authorities in Eswatini are required to issue guidelines relating to risk management, customer identification, record keeping, reporting obligations, identification of suspicious transactions and PEPs. Based on this requirement, CBE has issued comprehensive AML/CFT Guidelines for FIs, 2016; Minimum Standards for Electronic Payment Schemes; ADLA Guidelines; Central Bank of Eswatini (the Bank) Mobile Money Transfer (MMT) Practice Note No.1/2019/NPSS which guides Mobile Money Service Providers (MMSP) that are licensed and/or authorised by CBE including their agents by providing authorization and/or the licensing procedures; and CBE Corporate Governance Guidelines. FSRA also issued a comprehensive AML/CFT Guideline in 2016; Circular on AML/CFT Risk Assessments, 2016; and Fit and Proper Guideline and Rehabilitation Criteria. In addition to this, the Eswatini Revenue Authority issued Guidelines on completion of cross border cash and currency declaration forms.

There is no indication that the EFIU and other DNFBPs supervisors have issued any of the guidelines required under s.18bis of the MLFTP amendment Act, 2016 to the accountable institutions which they supervise.

While the FSRA has issued guidelines to detect and report suspicious transactions, CBE has only issued guidelines to report STRs and nothing on detection of suspicious transactions. Both FSRA and CBE have not issued guidelines for implementing targeted financial sanctions.

With regard to feedback, s. 31(r) of the MLFTP Act, as amended in 2016, empowers the EFIU to provide feedback to accountable institutions on the reports made to it. In addition, s. 31(k) of the MLFTP Act, states that the EFIU may provide training programs for accountable institutions in relation to, among others, reporting obligations and the identifications of suspicious transactions. There is no evidence however that such feedback has been provided, neither have the other competent and supervisory authorities demonstrated that they are providing feedback to the accountable institutions.

Weighting and Conclusion

CBE and FSRA have issued several guidelines to the financial institutions which they supervise. These include guidelines to report suspicious transactions, and with the exception of FSRA, CBE is yet to issue guidelines on the detection of suspicious transactions. Both have not issued guidelines on targeted financial sanctions. With the exception of the SRA which has issued a guideline on cross border cash and currency declaration forms, none of the other non-FI competent authorities, SRBs and the DNFBP supervisors have established guidelines to assist the accountable institutions. In addition, all the competent authorities and supervisors have not provided feedback to accountable institutions to assist them in the application of the national AML/CFT measures. The EFIU has also not provided feedback on detecting and reporting of suspicious transactions.

Eswatini is rated Partially Compliant with R.34

Recommendation 35 – Sanctions

In its First Round MER Eswatini was rated Non-Compliant with R.35 (formerly R.17). The main deficiencies were that: sanctions did not extend to directors and senior managers of financial institutions; sanctions were not proportionate and dissuasive; there were limited administrative sanctions available; and that sanctions were not broad enough to cover all AML/CFT requirements.

Criterion 35.1 – (Mostly Met) Sanctions for Recommendation 6 (terrorism-related TFS): Regulation 11 to 12 of the Anti-Money Laundering (United Nations Security Council Resolutions) Regulations set out the obligations which prohibit dealing with individuals and entities on the sanctions list, and require all reporting institutions and any other institution which hold the property of a designated entity to immediately freeze, until further notice, such property and funds. Regulation 27 provides that any person or entity that contravenes the provisions of the Regulations commits an offence and shall be liable, on conviction, to a fine not exceeding E500,000 or to imprisonment for a term not exceeding seven years or both.
Sanctions for Recommendation 8 (NPOs): Eswatini has no enabling provisions in relation to application of effective, proportionate and dissuasive sanctions for violations by NPOs or persons acting on behalf of those NPOs.

Sanctions for Recomendations.9–21(Preventives measures)

Criminal Sanctions in the MLTFP Act applying to all FIs and DNFBPs
S.89 of the MLFTP Act provides adequate criminal sanctions relating to failure by FIs and DNFBPs to establish and verify identity of persons and transactions; maintain records; maintain account in true name; report suspicious transactions; formulate and implement internal rules; appoint compliance officer or provide training; and for opening account in fictitious, false or incorrect name.
A person convicted of an offence for non-compliance with the above preventive measures is liable to, for individuals, imprisonment for 1 year or to a fine not less than E30,000 (USD2,040); and for companies to a fine not less than E100,000 (USD6,800).

For offences relating to providing false or misleading statements, unauthorised disclosure of suspicious transaction reports and other information, dealing with shell banks, individuals are liable to imprisonment of 5 years or fine of not less than E50,000 (USD3,400) and E100,000 (USD6,800) for corporates.

Administrative Sanctions in the MLFTP Amendment Act Applying to all FIs and DNFBPs

S. 35bis of the MLFTP Act, 2011 as amended, empowers the EFIU or a supervisory authority to impose a range of proportionate and dissuasive administrative sanctions on any accountable institution or person when satisfied on available facts and information that the institution or person has failed to comply with the provisions of the MLFTP Act, 2011 (as amended), any regulation, guideline, order, determination or directive; condition of a license, registration, approval or authorisation issued or amended in accordance with the Act or any other law. The sanctions available range from cautioning, reprimanding, issuing a directive to take remedial action or to make specific arrangements, issuing a restriction or suspending certain business activities, suspend institution's license and imposing a financial penalty not exceeding E5 million (USD340,000). Other sanctions are available to the various FI supervisors through their sectoral laws. These sanctions are considered proportionate and dissuasive based on the size and structure of the financial institutions and DNFBPs which is generally smaller.

Criterion 35.2 (Met) S. 35bis (4) of the MLFTP (Amendment) Act, 2016 empowers the EFIU or a supervisory authority to impose a financial penalty on a natural person for whose actions the relevant institution is accountable in law, provided that the person was personally responsible for the non-compliance.

Weighting and Conclusions

Generally, Eswatini and the supervisory authorities have powers to apply a broad range of proportionate and dissuasive criminal and administrative sanctions. However, Eswatini has no enabling provisions in relation to application of sanctions for violations by NPOs.

Eswatini is rated Largely Compliant with R.35

Recommendation 36 – International instruments

In its First Round MER Eswatini was rated Non-Compliant with R.35 (formerly R.17). The main deficiencies were that the Kingdom of Eswatini had not ratified the Palermo Convention and there was limited implementation of both the Vienna and Palermo Conventions as the list of predicate offences did not cover the minimum of the designated categories of offences under the FATF Glossary.

Criterion 36.1 – (Met) Eswatini is a party to Vienna Convention (Acceded to on 3/10/1995) the Palermo Convention (Ratified 24/9/2012), the United Nations Convention against Corruption (the Merida Convention) (Ratified 24/9/2012) and the Terrorist Financing Convention (Ratified 24/9/2012).

Criterion 36.2 – (Mostly Met) Eswatini enacted several pieces of legislation to implement the Vienna Convention, the Palermo Convention, the Merida Convention and the Terrorist Financing Convention. However, analysis made in respect of Recommendations 3, 5 and 6 demonstrated that there are some deficiencies that would not warrant the full implementation of some of these conventions in particular Palermo Convention and Terrorist Financing Convention.

Weighting and Conclusion

Although Eswatini has enacted several pieces of legislation to implement the Vienna Convention, the Palermo Convention, the Merida Convention and the Terrorist Financing Convention, analysis made in respect of Recommendations 3, 5 and 6 demonstrated that there were some deficiencies that would not warrant the full implementation of some of these conventions in particular Palermo Convention and Terrorist Financing Convention.

Eswatini is rated Largely Compliant with R.36

Recommendation 37 - Mutual legal assistance

In its First Round MER Eswatini was rated Partially-Compliant with R.37 (formerly R.36). Some of the main deficiencies were that there was 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 and that mutual legal assistance in terms of the Criminal Matters (Mutual Assistance) Act was only limited to designated countries.

Criterion 37.1 – (Partly Met) Eswatini uses the Criminal Matters (Mutual Assistance) Act, 2001 as the legal basis to provide mutual legal assistance in all criminal matters including prosecutions and related proceedings. However, granting of mutual legal assistance is limited to designated countries in terms of s.3 of Criminal Matters (Mutual Assistance) Act 2001. This therefore limits Eswatini's ability to provide the widest possible range of mutual legal assistance. In addition, there is neither stipulation in law nor mechanisms in place indicating the time frame within which Eswatini can execute mutual legal assistance requests. Thus, there is no certainty that the country can execute requests within the shortest period of time. This therefore undermines a legal basis that allows Eswatini to rapidly provide the widest possible range of mutual legal assistance in relation to money laundering, associated predicate offences and terrorist financing investigations, prosecutions and related proceedings. These shortcomings are therefore moderate.

Criterion 37.2 – (Partly Met) The CMMA Act designates the Minister of Justice as responsible for international assistance in criminal matters or transmission and execution of requests. The Act further empowers the Minister of Justice to delegate this role to the authorised officer and to that end the office of DPP has been authorised to undertake the legal work required for transmission and execution of requests. There are also no clear processes for the timely prioritisation and execution of mutual legal assistance requests. Eswatini does not maintain a case management system to monitor progress on requests.

Criterion 37.3 – (Met) S. 4 of the Criminal Matters (Mutual Assistance) Act provides that nothing in the Act shall prevent the provision or obtaining of international assistance other than in accordance with the Act. S.18(1) and (2) of the CMMA Act give the Minister the discretion to refuse to grant a request to a foreign country and outlines the grounds that can be considered by the Minister to refuse to grant a request by a foreign country. None of such grounds are considered as unreasonable or unduly restrictive to address the requirements of c. 37.2.

Criterion 37.4(a)-(b) – (Met) Eswatini does not have the legal basis to refuse mutual legal assistance based on the grounds in c.37.4 (a) and (b).

Criterion 37.5 – (Met) S. 30 of the Criminal Matters (Mutual Assistance) Act provides for maintenance of confidentiality of MLA requests.

Criterion 37.6 – (Met) Where mutual legal assistance requests do not involve coercive action, Eswatini does not make dual criminality a condition for rendering assistance.

Criterion 37.7 – (Met) Where Eswatini and a requesting state both criminalise the conduct underlying an offence the country is able to grant a mutual legal assistance. Eswatini can provide assistance regardless of whether both countries place the offence within the same category of offence or denominate the offence by the same terminology.

Criterion 37.8 – (Met) There is a wide range of investigative techniques and powers available to domestic competent authorities as analysed under R31 in relation to production, search and seizure of information, documents, or evidence from financial institutions and DNFBPs which can be used in response to requests for mutual legal assistance. These powers are also provided under Part II and III of The Criminal Matters (Mutual Assistance) Act, 2001 (see also analysis relating to R.31).

Weighting and Conclusion

The Criminal Matters (Mutual Assistance) Act, 2001 is the legal basis for provision of mutual legal assistance in all criminal matters save that the scope of the Act is limited to designated countries which may compromise the legal basis to rapidly provide the widest possible mutual legal assistance. There is neither stipulation in law nor mechanisms in place indicating the time frame within which Eswatini can execute mutual legal assistance requests. Thus, there is no certainty that the country can execute requests within the shortest period of time. Furthermore, Eswatini does not have established mechanism for timely prioritisation and execution of MLA requests and no case management system for monitoring progress on requests.

Eswatini is rated Partially Compliant with R.37

Recommendation 38 – Mutual legal assistance: freezing and confiscation

In its First Round MER Eswatini was rated Partially-Compliant with R.38 (formerly R.38). The main deficiency was that there were no proper systems in place to enable the time within which requests for provisional measures, including confiscation, were handled.

Criterion 38.1 – (Partly Met) (a)-(c) S.56 of the MLFTP Act, 2011 enables for search, and seizure of property suspected to be tainted property or terrorist property in relation to foreign request under the CMMA. Tainted property is defined in the MLTFP Act, 2011 as property intended for use in or in connection with the commission of an unlawful activity and the proceeds of crime. S.57(2) of the MLFTP Act, 2011 provides for property subject to forfeiture order which include assets laundered or terrorist assets, proceeds, income, and gain from such assets; assets intended to be laundered; assets used to facilitate or commit the unlawful activity and instrumentalities used or intended to be used in the commission of the offence, ML or TF. S. 17 of the Criminal Matters (Mutual Assistance) Act provides for expeditious response to requests by foreign countries. S. 57 (3) of the MLFTP Act, 2011 provides that where confiscation or forfeiture of proceeds of crime is not feasible for whatever reason, the court may instead of issuing a confiscation order, order the person to pay the state an amount equal to the value of the property, part or interest although it limits LEAs only to confiscation of cash and nothing more. [see analysis in c.4.1]. The instrumentalities actually used are, however, not covered in the definition of tainted property here.

Criterion 38.2 – (Met) S. 44 (1) of the MLFTP Act, 2011 provides that an application for restraint, search, seizure or forfeiture may be brought whether or not a person has been charged or convicted for an offence. S. 32 of the Prevention of Organized Crime Act and s. 60 of the MLFTP Act, 2011 make provision for in rem forfeiture where a person dies or absconds.

Criterion 38.3 – (Not Met) Eswatini has not demonstrated that it has arrangements for co-ordinating seizure and confiscation actions with other countries nor has it provided evidence that it has mechanisms for managing, and when necessary disposing of, property frozen, seized or confiscated.

Criterion 38.4 – (Met) S. 65 of the Prevention of Organized Crime Act, establishes the Criminal Assets Recovery Fund and a Committee responsible for exercising control over the Fund. In terms of S. 67 (2) (c) of Criminal Assets Recovery Fund the Committee may authorise payment out of the fund to satisfy or share forfeited property with foreign States pursuant to any relevant treaties or arrangements.

Weighting and Conclusion

The MLFTP enables for search, and seizure of property suspected to be tainted property or terrorist property in relation to foreign request under the CMMA. The instrumentalities actually used in money laundering, predicate offences or terrorist financing are not covered in the definition of tainted property. Eswatini falls short of meeting requirements of c.38.3 despite the fact that POCA enables the establishment of Confiscated and Forfeited Assets Fund, which should include where necessary, disposal of property frozen, seized or confiscated.

Eswatini is rated Largely Compliant with R.38

Recommendation 39 – Extradition

In its First Round MER Eswatini was rated Partially-Compliant with R.39 (formerly R.39). The main deficiencies were that extradition for a money laundering offence could only be done to a country which had an extradition agreement with the Kingdom of Eswatini or was designated, and that no measures were in place to ensure that extradition requests relating to the offences of money laundering were dealt with without any delay.

Criterion 39.1 – (Partly Met)

(a) ML/TF are extraditable offences in terms of s.90 of the MLFTP Act, 2011. But Eswatini has not demonstrated that extradition request can be granted without undue delay as will be noted in the analysis in c.39.1(b).

(b) Eswatini does not have case management system, and clear processes for the timely execution of extradition requests including prioritisation where appropriate.

(c) Ss.5, 13 and 14 of the Extradition Act, 1968 outline grounds upon which extradition orders will not be executed. S. 18 (1) and (2) of the MLFTP give the Minister the discretion to refuse to grant a request by a foreign country and outlines the grounds that can be considered by the Minister to refuse to grant a request by a foreign country. None of these grounds are considered as unduly restrictive or unreasonable.

Criterion 39.2 – (Met) Eswatini can extradite its own nationals under s. 4 of the Extradition Act. There are no restrictions based on nationality.

Criterion 39.3 – (Met) In terms of s. 10 of the Extradition Act, the Court will only issue a committal order for extradition if satisfied that the person is charged of an offence for which he would have been put to trial had it been committed in Eswatini. This means that there can be extradition regardless of whether both Eswatini and the requesting state place the offence within the same category of offence, or denominate the offence by the same terminology.

Criterion 39.4 – (Not Met) Eswatini does not have legal basis to grant provisional arrest by a requesting state nor is there legal basis to get the consent of the accused to be extradited consistent with the requirements of c.39. 4.

Weighting and Conclusion

There are no outlined clear processes for the timely execution of extradition requests, including prioritisation of requests where necessary. Further, application of the Extradition Act in terms of s. 3 and 4 is only in instances where there is an agreement between Eswatini and another State. The effect is that extradition will only be afforded to a state which has an agreement with Eswatini. Eswatini does not have legal basis to grant provisional arrest by a requesting state nor is there legal basis to get the consent of the accused to be extradited consistent with the requirements of c.39.4.

Eswatini is Rated Partially Compliant with R.39

Recommendation 40 – Other forms of international cooperation

In its First Round MER Eswatini was rated Partially-Compliant with R.40 (formerly R.40). The main deficiencies were that there were no specific measures authorising the CBS and relevant law enforcement agencies to offer the widest range of international cooperation; information exchange on ML in terms of the Money Laundering (Prevention) Act was only authorised where the requesting authority's country had mutual legal assistance treaty with the Kingdom of Eswatini; the authorities had inadequate measures to handle international cooperation on predicate offences and money laundering requests for information.

General Principles

Criterion 40.1 – (Met) S. 4 of the Criminal Matters (Mutual Assistance) Act, 2001 provides for the legal basis to provide for other forms of cooperation, in addition to mutual legal assistance. Agencies (including the EFIU) have a number of MOUs and agreements available to facilitate information exchange with international partners. There are no legal impediments for competent authorities to rapidly provide a wide range of information to foreign counterparts spontaneously or upon request. Further, the EFIU can exchange information under s.s 31(n) and 32 of the MLFTP Act, 2011 to an institution or agency of a foreign state or of an international organization established by the government of foreign states if on the basis of its analysis or assessment it suspects that the information would be relevant for investigating or prosecuting ML/TF offences.

Criterion 40.2 – (Partly Met)

(a) The legal basis for competent authorities to provide cooperation exists in relevant provisions in various laws. The EFIU has a lawful basis for providing co-operation under s. 31(n) and s.32 of the MLFTP Act, 2011. S.5 (i) of the FSRA Act provides a basis upon which the FSRA can share both public and non-public information and provide assistance to foreign counter-parts. There also seem not to be a lawful basis for CBE to provide cooperation. The ACC under s. 10 (1) (e) of the PCA have provisions enabling cooperation.

(b) Cooperation and information sharing are done both formally and informally. Competent authorities are not prevented from using the most efficient means possible for providing assistance. Competent authorities have entered into various MoUs or bilateral and multilateral agreements with other foreign entities to facilitate cooperation. They also make use of Interpol, SADC protocol on Mutual Legal Assistance and memoranda of understanding signed with foreign Competent Authorities. This information sharing agreements cover a broad range of foreign counterparts from numerous jurisdictions. Under s.32 of the MLFTP Act, 2011 the EFIU can exchange information on the basis of bilateral agreements/ arrangements or on terms and conditions as may be agreed by the EFIU and its counterpart at the time of disclosure.

(c) Although exchange of information can be done through channels such as e-mails, telephones and faxes, it is not clear to what extent the authorities ensure that these mechanisms or channels are clear and secure to facilitate and allow for the transmission and execution of requests. LEAs also use established channels of cooperation such as INTERPOL.

(d) Competent authorities do not have processes for prioritising and executing requests. There are no internal guidelines, procedures or instructions in relation to the handling and prioritisation of requests.

(e) The legal documents (mainly MoUs) have provisions on safeguarding the confidentiality of information received by the competent authorities. However, not all competent authorities have signed MoUs with foreign counterparts.

Criterion 40.3 – (Partly Met) S. 32 of the MLFTP Act, 2011 permits the EFIU to exchange information with its foreign counterparts on terms and conditions set out in an agreement or arrangement. In the absence of an agreement or arrangement, the FIU can also under s. 32(b) of the Act share information with a foreign counterpart on such terms and conditions as may be agreed by the EFIU and its counterpart at the time of disclosure. However, all competent authorities have not demonstrated the ability to negotiate and sign agreements with the widest range of foreign counterparts.

Criterion 40.4 – (Not Met) The competent authorities did not indicate if upon request it can provide feedback to competent authorities from which it has received assistance, on the use and usefulness of the information obtained.

Criterion 40.5 – (Met) There is no information suggesting that laws place unreasonable or unduly restrictive conditions on information exchange or assistance with foreign counterparts. The grounds outlined for refusal to grant requests under S. 18 of the Criminal Matters (Mutual Assistance) Act do not include the cases covered by c.40.5 in the Methodology. Eswatini does not prohibit or place unreasonable or unduly restrictive conditions on information exchange or assistance with foreign counterparts. [see s. 4 of the Criminal Matters (Mutual Assistance) Act, 2001. Neither does Eswatini does not refuse legal assistance requests on the basis of "banking secrecy" or confidentiality, except where professional secrecy between lawyer and client applies. Article 4(4) of the SADC Protocol on Mutual Legal Assistance bars the prohibiting or unreasonably and unduly restricting the provision of assistance in case of an ongoing enquiry or investigation save where such assistance would impede that inquiry, investigation or proceedings.

Criterion 40.6 – (Mostly Met) S. 32 of the Criminal Matters (Mutual Legal Assistance) Act provides that no information obtained in response to a request shall be used in connection with any matter other than the one for which the request was made. In the absence of an agreement or arrangement, the EFIU can also under s. 32(b) of the MLFTP Act share information with a foreign

counterpart on such terms and conditions as may be agreed by the EFIU and its counterpart at the time of disclosure. The terms and conditions shall include the report or information provided shall be used for intelligence purposes only and be treated in a confidential manner and not be further disclosed without the express consent of the EFIU. S. 30 of the MLTFP Act, 2011 which deals with disclosure of information requires the Director and officers and agents of the EFIU to not disclose any information or matter obtained in the performance of their duties unless lawfully authorised. S. 18 of the PCA also provides for prohibition of disclosure of information. Article 2 (1) of the SADC Protocol on Mutual Legal Assistance of 2002 provide controls and safeguards to ensure that information exchanged by competent authorities is used only for the purpose for, and by the authorities, for which the information was sought or provided, unless prior authorization has been given by the requested competent authority. However, there are no similar provisions cited for the other competent authorities authorized to render assistance.

Criterion 40.7 – (Partly Met) The MoUs signed by the competent authorities with their foreign counterparts have a confidentiality clause. There are however no specific provisions on refusal by competent authorities to provide information if the requesting competent authority cannot protect the information effectively.

Criterion 40.8 – (Not Met) There are no provisions enabling competent authorities in Eswatini to conduct inquiries on behalf of their foreign counterparts and exchange with their foreign counterparts all the information that would be obtainable by them if such inquiries were being carried out domestically.

Exchange of Information between FIUs

Criterion 40.9 – (Partly Met) S. 31(n) of the MLFTP Act, 2011 allows the EFIU to share information in relation to money laundering and terrorist financing investigations and prosecutions only. However, it does not explicitly authorize the EFIU to exchange information relating to intelligence and predicate offences under s. 31(n) of the Act.

Criterion 40.10 – (Not Met) There is no requirement for the EFIU to provide feedback to its counterparts on assistance received.

Criterion 40.11 – (Partly Met) Under s. 31(n) of the MLFTP Act, 2011 the EFIU can disclose any report and any information derived from such report or any other information it receives to foreign counterparts which have powers and duties similar to it only if it determines on the basis of its analysis and assessment that the report or information would be relevant to investigating or prosecuting a money laundering offence or a terrorist financing offence. The provision does not explicitly allow the sharing of intelligence or information relating to predicate offences.

Exchange of Information between Financial Supervisors

Criterion 40.12 – (Partly Met) S. 5 (i) of the FSRA Act, 2010 provides legal basis for the FSRA for sharing both public and non-public information with domestic and foreign counter parts subject to proper confidentiality standards. However, there are no provisions relating to exchange of information related to or relevant for AML/CFT purposes. The FIA, has no provisions on co-operation with foreign counterparts on basic and AML/CFT related information.

Criterion 40.13 – (Partly Met) Save for s. 5 (i) of the FSRA, alluded to under c.40.12 above, there are no other enabling provisions in relation to exchange of information by other financial supervisors such as CBE with their foreign counterparts.

Criterion 40.14 – (Partly Met) S. 5 (i) of the FSRA Act, 2010 provides legal basis for the FSRA for sharing both public and non-public information with domestic and foreign counter parts subject to proper confidentiality standards. This should be taken to include (i) regulatory information; (ii) prudential information; and (iii) AML/CFT information. However, there are no provisions relating to exchange of similar information by CBE.

Criterion 40.15 – (Partly Met) S. 5 (i) (ii) of the FSRA Act provides legal basis for the FSRA to provide assistance to foreign counterparts who need to make enquiries in the discharge of their functions. The FIA however, has no similar provision in relation to CBE as a financial supervisor. It is also not clear whether financial supervisors in Eswatini can authorise or facilitate the ability of foreign counterparts to conduct inquiries themselves in Eswatini as the law or MoUs are silent on this aspect.

Criterion 40.16 – (Partly Met) S. 5 (i) of the FSRA, 2010 provides for the Authority to share information within proper confidentiality safeguards and within the provisions of the MoUs. As already stated, with respect to CBE, the FIA has no provision on co-operation with foreign counterparts on basic and AML/CFT related information.

Exchange of Information between Law Enforcement Authorities

Criterion 40.17 – (Partly Met) Eswatini Royal Police Service's exchange domestically available information with foreign counterparts for intelligence or investigative purposes relating to ML, associated predicate offences or terrorist financing cases through agreements with international and regional bodies such as Interpol, SADC, SARPCCO and ARINSA. However, the other LEAs such as Immigration, Customs, Anti-Corruption etc do not have similar arrangements.

Criterion 40.18 – (Met) There is a wide range of investigative techniques and powers available to domestic competent authorities as analysed under R.31 in relation to protection, search and seizure of information, documents, or evidence from financial institutions and DNFBPs which can be used in response to requests for mutual legal assistance. These powers can be used in accordance with Eswatini laws to conduct inquiries and obtain information on behalf of foreign counterparts. S. 17 of the Criminal Matters (Mutual Legal Assistance) Act gives a general procedure on how requests for assistance are made by foreign counterparts.

Criterion 40.19 – (Not Met) Eswatini has not demonstrated that it can form joint investigative teams and establish bilateral or multilateral agreements where required and agencies have made use of joint investigative teams.

Exchange of Information between Non-Counterparts

Criterion 40.20 – (Not Met) There are no provisions or mechanisms that allow competent authorities in Eswatini to exchange information indirectly with foreign non-counterparts.

Weighting and Conclusion

Competent authorities in Eswatini apply the requirements of other forms of cooperation through laws and other arrangements at a bilateral and multilateral level to provide assistance to foreign counterparts. However, not all competent authorities have demonstrated the ability to negotiate and sign agreements with the widest range of foreign counterparts. Competent authorities have not shown that upon request they are able to provide feedback to competent authorities from which they have received assistance, on the use and usefulness of the information obtained. While the Eswatini FIU is empowered to exchange information with foreign FIUs, the shared information relates only to money laundering and terrorist financing investigations and prosecutions and does

not explicitly authorize the FIU to exchange information relating to intelligence and predicate offences with its counterparts. The Financial Institutions Act, 2005, has no provisions on co-operation with foreign counterparts on basic and AML/CFT related information. There are no provisions or mechanisms that allow competent authorities in Eswatini to exchange information indirectly with foreign non-counterparts.

Eswatini is rated Partially Compliant with R.40

Summary of Technical Compliance – Key Deficiencies

Recommendations	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	PC	• TF vulnerabilities were not identified and assessed; • There is no process for keeping the NRA updated between MEs; • No mechanisms in place to provide information on the results of the risk assessment to the relevant competent authorities, SRBs, FIs and DNFBPs once the report is approved. • The country has not applied a risk-based approach in allocating resources and in implementing measures to mitigate its identified ML/TF risks based on the findings of the draft NRA Report • The exemption for occasional transactions below E2,500 (USD170) is not based on proven low risk of ML/TF. • The AML/CFT regime has not yet required the FIs and DNFBPs to take enhanced measures to manage and mitigate the risks identified in the draft NRA and to incorporate the information into their internal risk assessments • There is no obligation for FIs and DNFBPs to understand their ML/TF risks and have AML/CFT policies which are approved by senior management. FIs and DNFBPs are not required to have appropriate mechanisms to provide risk assessment information to both competent authorities and SRBs; • There are no provisions requiring FIs and DNFBPs to take into consideration all the relevant risk factors in determining the level of overall risk and the appropriate level and type of mitigation to be applied. • FIs under CBE and the DNFBPs are not required to have appropriate mechanisms to provide risk assessment information to both competent authorities and SRBs. • No provision requiring DNFBPs to develop and implement policies, controls and procedures which are approved by senior management in order to enable them to effectively manage and mitigate the identified risks • There is no requirement to perform enhanced due diligence where higher risks are identified.

		• There is no requirement for simplified measures not to be permitted whenever there is a suspicion of ML/TF.
2. National cooperation and coordination	PC	• Eswatini does not have national AML/CFT policies which are informed by ML/TF risks. • Eswatini does not have cooperation and coordination mechanisms to combat the financing of proliferation of weapons of mass destruction. • There is no cooperation and coordination between relevant authorities to ensure the compatibility of AML/CFT requirements with Data Protection and Privacy rules and other similar provisions
3. Money laundering offences	LC	• A mandatory penalty of 10 years impedes the discretion of the court to impose proportionate and dissuasive sentence against a natural person committing ML offence; • Although there is provision for ancillary offences to ML, the offence of counselling is not criminalised
4. Confiscation and provisional measures	LC	• The provisions do not specifically provide for confiscation of property intended or allocated for use in the financing of an individual terrorist, a terrorist act or a terrorist organisation. • Competent authorities in Eswatini have limited power under MLFTP Act to confiscate property of corresponding value.
5. Terrorist financing offence	PC	• Acts covered by article 2(a) of the TF Convention were not all criminalised in Eswatini, such that their financing would be illegal; • The definition under s.2 of the Suppression of Terrorism Act has not fully incorporated all the elements of Article 2(1)(b) of the Terrorist Financing Convention 1999; • MLFTP Act does not criminalise the financing of terrorist organisation and individual terrorist; • Requirements of ***Criterion 5.2^{bis} have*** not been provided in law; • The definition of funds under MLFTP does not extend to other assets; • The MLFTP Act does not criminalise contribution to the commission of one or more TF offence(s) or attempted offence(s) by a group of persons acting with common purpose.
6. Targeted financial sanctions related to terrorism & TF	NC	• There are no mechanisms in the Regulations for identifying targets for designation, based on the UNSCRs criteria

		• Eswatini does not follow procedures and standard forms for listing as adopted by committees constituted under Resolutions 1989 and 1988 respectively. • There are some inconsistences in the Regulations and the Primary Act which may render implementation of some requirements of c.6.2 invalid. • There are no procedures or mechanisms to collect or solicit information to identify persons and entities that meet criteria for designation, nor are there procedures to operate ex parte against person or entity identified and whose designation is being considered. • The communication process of sanctions list is lengthy and defeats the without delay requirement. • The Regulations do not make provision for communicating de-listings and unfreezing to the FIs and DNFBPs immediately upon taking such action and advising them of their obligations in instances where they may be holding targeted funds or assets.
7. Targeted financial sanctions related to proliferation	NC	• There is no legal basis to issue Regulations to implement PF measures.
8. Non-profit organisations	NC	• Eswatini does not have legal instruments or any other measures to address requirements of Recommendation 8.
9. Financial institution secrecy laws	LC	• Not all competent authorities in Eswatini have proper legal provisions enabling them to share information
10. Customer due diligence	PC	• The requirement to identify and verify a customer does not cover occasional and permanent customers; • There is no provision requiring verification of the identity of the person who purports to act on behalf of the customer; • Identification of a beneficial owner is not mandatory and there is also no requirement to take reasonable measures to verify the identity of the beneficial owner using the relevant information or data obtained from a reliable source; • There is no obligation for FIs to understand the business relationship; • No requirement for FIs to ensure consistency with the knowledge of the customer's risk profile and the source of funds; • FIs under CBE are not required to do periodic reviews of customer identification information obtained to ensure that

	the information is kept up-to-date, particularly for higher-risk categories of customers; • No provision for FIs to adequately identify and verify the legal existence and structure of a legal arrangement, including information relating to principal owners and beneficiaries and control structure. There is no legal requirement for FIs to understand the nature of the customer's business; • There is no specific requirement for FIs to ensure that to the extent that there is doubt under, as to whether the person(s) with the controlling ownership interest is the beneficial owner(s) or where no natural person exerts control through ownership interests, the identity of the natural person(s) (if any) exercising control of the legal person or arrangement is identified and verified through other means; • There is no provisions requiring FIs to identify and take reasonable measures to verify the identity of the settler, the trustee, protector (if any) and beneficiaries or class of beneficiaries and any other person exercising ultimate effective control of the trust, and to identify persons in equivalent or similar positions for other types of legal arrangements; • No requirement for FIs to identify and verify the customer or beneficial owner of life insurance and other related investment insurance policies; • There is no legal provision requiring financial institutions to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable and require enhanced measures on a risk-sensitive basis; • There are no provisions requiring financial institutions to apply CDD requirements to existing customers on the basis of materiality and risk, and to conduct due diligence on such existing relationships at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained; • No requirement for FIs outside FSRA to apply EDD measures to all higher-risk business relationships, customers and transactions; • No requirement for FIs outside FSR forbidding simplified CDD measures where there is a suspicion of money

		laundering and terrorist financing or where specific higher risk scenarios apply; • There is no legal provision not to open the account, commence business relationship or to terminate the business relationship where CDD is not satisfactorily completed; • There are no specific obligation permitting financial institutions not to perform CDD process but instead file an STR in cases where they form a suspicion of money laundering or terrorist financing, and they reasonably believe that performing the CDD process will tip-off the customer.
11. Record keeping	LC	• There is no requirement for keeping records of account files and results of any analysis undertaken.
12. Politically exposed persons	PC	• the definition of a PEP in the MLFTP Act does not include senior politicians and important political party officials and international organisation PEPs (including their family members and close associates); • Requirements for FIs to have appropriate risk management systems to determine whether the customer is a politically exposed person do not extend to beneficial owners; • Requirements to obtain the approval of senior management before establishing a business relationship with the customer who is a PEP do not cover existing customers who become PEPs; • Requirements for FIs to take reasonable measures to establish the source of wealth and source of do not extend to beneficial owners; • No requirement for FIs to conduct enhanced on-going monitoring of the business relationship established with PEPs; • In relation to life insurance policies, FIs outside FSRA are not required to take reasonable measures to determine whether the beneficiaries and/or, where required, the beneficial owner of the beneficiary, are PEPs.
13. Correspondent banking	LC	• No requirement for FIs to gather information on whether the respondent institution has been subjected to a ML/TF investigation or regulatory action.
14. Money or value transfer services	PC	• No legal provisions covering the licensing and/or registration of money or value transfer services (MVTS) which fall outside the Practice Note; • The country has not taken the necessary action to identify natural or legal persons that carry out MVTS without a

		license or registration and issued proportionate and dissuasive sanctions; • There is no provision for other types of MVTS operators (which fall outside the Practice Note) to be subjected to monitoring for AML/CFT compliance. • MVTS providers falling outside the Practice Note are not required to keep a registry of its agents, including the name and address of such agents; • There is no legal provision requiring MVTS providers that use agents to include them in their AML/CFT programmes and monitor them for compliance with the programmes.
15. New technologies	NC	• Eswatini and the FIs have not identified and assessed the ML/TF risks that may 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 • No specific legal provision requiring FIs to undertake ML/TF risk assessments prior to launch or use of such products, practices technologies and to take appropriate measures to manage and mitigate the risks • Eswatini has not implemented measure in relation to criterion 15.3 to 15.11.
16. Wire transfers	NC	• There are no requirements for ordering financial institutions to include full beneficiary information in cross-border batch files; • There is no legal provision requiring financial institutions to verify the information pertaining to its customer where there is a suspicion of ML/TF; • There are major shortcomings in the Eswatini legal framework pertaining to wire transfers.
17. Reliance on third parties	PC	• There is no legal provision requiring FIs which rely on a third party to have regard to information available on the level of country risk; • There is no legal provision requiring FIs relying on a third party which is part of the same financial group to consider that the requirements of the criteria 17.1 and 17.2 are met in the circumstances stated under (a) to (c) of the criterion.
18. Internal controls and foreign branches and subsidiaries	PC	• There is no legal provision requiring FIs to implement group-wide programmes against ML/TF, which should be applicable, and appropriate to, all branches and majority-owned subsidiaries of the financial group. • There is no legal provision requiring FIs to ensure that their foreign branches and majority-owned subsidiaries apply AML/CFT measures set out under this criterion.

19. Higher-risk countries	NC	• There are no measures requiring FIs (outside FSRA) to apply EDD to all higher-risk business relationships, customers (natural and legal person) and transactions from or in a country in relation to which FATF has called for countermeasures; • Limitations on the counter-measures proportionate to the risk that can be applied, (a) when called to do so by the FATF, and (b) independently of any call by the FATF to do so; • No mechanisms in place to advise FIs of concerns about weaknesses in the AML/CFT systems of other jurisdictions.
20. Reporting of suspicious transaction	C	• All requirements are R.20 are met
21. Tipping-off and confidentiality	LC	• Directors of FIs have no protection from any criminal, civil, disciplinary proceedings in relation to any reports or information made in good faith or in compliance with directions given by the EFIU.
22. DNFBPs: Customer due diligence		• The deficiencies identified in respect of CDD measures, PEPs, ML/TF risks assessment and mitigating controls against new technologies and reliance on third parties, equally apply to DNFBPs.
23. DNFBPs: Other measures		• Deficiencies identified under R. 18, 19 and 21 also apply to DNFBPs.
24. Transparency and beneficial ownership of legal persons	NC	• There is no ML/TF risk assessment of all types of legal persons created in Eswatini; • No mechanisms that ensure that the information referred to under c.24.3 and c.24.4 including beneficial ownership information is accurate and updated on a timely basis; • The Companies Act, 2009 does not provide for obtaining and recording of information on beneficial ownership; • The definition of a beneficial owner allows for a legal person to be a beneficial owner contrary to the FATF requirement of a natural person; • There is no legal obligation on companies to authorize one or more natural persons resident in Eswatini to provide to competent authorities available beneficial ownership information or for authorizing a DNFBP in Eswatini to provide such information to the authorities; • With regards to nominee shareholders, there are no provisions requiring nominee shareholders and directors to disclose the identity of their nominator to the company or

		any relevant registry and no provisions for this information to be included in the relevant register; • Appointees and nominees are not required to be licensed and for them to maintain information identifying their nominator, and make this information available to the competent authorities; • There are gaps in ensuring that companies co-operate with competent authorities to the fullest extent possible in determining the beneficial owner. Eswatini does not monitor the quality of assistance received from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad.
25. Transparency and beneficial ownership of legal arrangements	PC	• There is no authority that governs the registration of trusts in Eswatini. • Trustees are under no obligation to obtain and hold accurate, current and adequate information on the identity of the settlor, trustees, protector or beneficiaries and any other natural person exercising ultimate effective control over the trust. • There are no requirements to ensure that any information held pursuant to legal arrangements is kept accurate, up to date and is updated on a timely basis. • No sanctions are in place in the case of a failure to grant competent authorities timely access to trust related information.
26. Regulation and supervision of financial institutions	PC	• No legal provisions covering the licensing and/or registration of money or value transfer services (MVTS) other than mobile money service providers; • There is no legal provision under the Laws of Eswatini prohibiting the country from approving the establishment or continued operation of shell banks; • FIs are not subjected to consolidated group supervision for AML/CFT purposes; • Absence of supervision or monitoring of non-core principle FIs having regard to the ML/TF risks in the sector; • Risk-based supervision not fully implemented.
27. Powers of supervisors	C	• All requirements are R.27 are met.
28. Regulation and supervision of DNFBPs	PC	• Compliance monitoring has not yet started in the DNFBP sectors; • There are no mechanisms to prevent criminals or their associates from holding (or being beneficial owners of)

		significant interest or management positions in the DNFBP sectors; • Application of a risk-based approach in the entire DNFBP sector has not yet started.
29. Financial intelligence units	LC	• EFIU has not conducted strategic analysis; • EFIU has not yet applied for membership in the Egmont Group; • There is no legal requirement for the EFIU to disseminate financial intelligence upon request by competent authorities.
30. Responsibilities of law enforcement and investigative authorities	C	• All requirements are R.20 are met.
31. Powers of law enforcement and investigative authorities	LC	• LEA' powers are limited to some investigative techniques as LEAs in Eswatini do not have powers to conduct controlled delivery; • Not all LEAs have the power to use a wide range of investigative techniques in investigations of ML, TF and associated predicate offence. .
32. Cash couriers	PC	• There is no requirement to declare currency or BNIs transported through mail and cargo into or out of Eswatini; • False declarations are not covered under the MLFPT Act 2011; • There are no proportionate and dissuasive sanctions for persons carrying out physical cross boarder transportation of currency or BNIs that are related to ML/TF or predicate offences.
33. Statistics	PC	• Statistics on outgoing and incoming requests on MLA and extradition are not sufficiently maintained in a comprehensive manner to enable Eswatini to monitor the effectiveness and efficiency of its AML/CFT regime. Moreover, there are no mechanisms for maintaining in a comprehensive manner information made and received for other forms of international co-operation.
34. Guidance and feedback	PC	• Non-FI competent authorities, SRBs and the DNFBP supervisors have not established guidelines to assist the accountable institutions; • all the competent authorities and supervisors have not provided feedback to accountable institutions to assist them in the application of the national AML/CFT measures.

35. Sanctions	LC	• No enabling provisions in relation to application of sanctions against NPOs.
36. International instruments		• Deficiencies identified in Recommendations 3, 5 and 6 have cascading effect on Recommendation 36.
37. Mutual legal assistance	PC	• There are no clear processes for the timely prioritisation and execution of mutual legal assistance requests; • Eswatini does not maintain a case management system to monitor progress on requests.
38. Mutual legal assistance: freezing and confiscation	LC	• Lack of arrangements for co-ordinating seizure and confiscation actions with other countries; • lack of mechanisms for managing, and when necessary disposing of, property frozen, seized or confiscated; • Issue on confiscation of property of corresponding value.
39. Extradition	PC	• Eswatini has not demonstrated that extradition request can be granted without undue delay; • Lack of case management system, and clear processes for the timely execution of extradition requests including prioritisation where appropriate; • No legal basis to grant provisional arrest by a requesting state nor is there legal basis to get the consent of the accused to be extradited.
40. Other forms of international cooperation	PC	• Not all competent authorities have demonstrated the ability to negotiate and sign agreements with the widest range of foreign counterparts; • There is no lawful basis for CBE to provide international cooperation; The FIA, has no provisions on co-operation with foreign counterparts on basic and AML/CFT related information; • Competent authorities do not have processes for prioritising and executing requests. There are no internal guidelines, procedures or instructions in relation to the handling and prioritisation of requests; • All competent authorities have not demonstrated the ability to negotiate and sign agreements with the widest range of foreign counterparts; • Competent authorities have not shown that upon request they are able to provide feedback to competent authorities from which they have received assistance, on the use and usefulness of the information obtained; • There are however no specific provisions on refusal by competent authorities to provide information if the requesting competent authority cannot protect the information effectively;

	• The provisions of the MLFTP Act do not explicitly allow the sharing of intelligence or information relating to predicate offences; • There are no provisions or mechanisms that allow competent authorities in Eswatini to exchange information indirectly with foreign non-counterparts.

Glossary of Acronyms

ACC	Anti-Corruption Commission
AD	Authorised Dealer
ADLA	Authorised Dealer with Limited Authority
AFU	Asset Foreiture Unit
AG	Attorney General
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
ARINSA	Asset Recovery Inter-Agency Network of Southern Africa
AU	African Union
BNI	Bear Negotiable Instrument
BO	Beneficial Owner
CBE	Central Bank of Eswatini
CBR	Correspondent Banking Relationship
CDD	Customer Due Diligence
CID	Criminal Investigations Division
CIS	Collective Investment Schemes
COMESA	Common Market for Eastern and Southern Africa
CMA	Common Monetary Area
DPP	Director of Public Prosecutions
E	Emalangeni (Eswatini currency)
EFIU	Eswatini Financial Intellienge Unit
EIA	Eswatini Institute of Accountants
EFT	Electronic Funds Transfer
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
FAFI	Financial Assets Forfeiture Investigation
FECU	Financial and Economic Crimes Unit
FIs	Financial Institutions
FSRA	Financial Services Regulatory Authority
GDP	Gross Domestic Product
ISSS	Intelligence State Security Services
JSC	Judiciary Services Commission
LEAs	Law Enforcement Agencies
LSE	Law Society of Eswatini
ML	Money Laundering
MLFTP	Money Laundering and Financing of Terrorism (Prevention) Act
MLA	Mutual Legal Assistance
MLRO	Money Laundering Reporting Officer
MoFAIC	Ministry of Foreign Affairs and International Cooperation
MMT	Mobile Money Transfer

MVTS	Money or Value Transfer Services
NFIS	National Financial Inclusion Strategy
NPOs	Non-Profit Organisatikons
NRA	National Risk Assessment
PEPs	Politically Exposed Persons
POCA	Proceeds of Crime Act
RBA	Risk Based Approach
RBS	Risk-Based Supervision
REPS	Royal Eswatini Police Service
SACCOS	Savings and Credit Cooperative Societies
SACU	Southern Africa Customs Union
SADC	Southern African Development Community
SOP	Standard Operating Procedure
SRA	Swazilandi Revenue Authority
STRs	Suspicious Transaction Reports
TF	Terrorist Financing
TFS	Targeted Financial Sanctions
UBO	Ultimate Beneficial Owner
UNSCR	United Nations Security Council Resolutions
VAs	Virtual Assets
VASPs	Virtual Assets Service Providers
ZAR	South African Rand