MUTUAL EVALUATION REPORT
ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

LESOTHO

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ABBREVIATIONS

AML	**Anti Money Laundering**
CBL	**Central Bank of Lesotho**
CFT	**Combating the Financing of Terrorism**
ESAAMLG	**Eastern and Southern Africa Anti-Money Laundering Group**
FATF	**Financial Action Task Force on Money Laundering**
FIA	**Financial Institutions Act, 1999**
FIU	**Financial Intelligence Unit**
FT	**Financing of Terrorism**
KYC	**Know Your Customer**
LMPS	**Lesotho Mounted Police Service**
ML	**Money Laundering**
MLPC	**Money Laundering and Proceeds of Crime Bill**
MOF	**Ministry of Finance**
MOJ	**Ministry of Justice**
MOU	**Memorandum of Understanding**
NBFIs	**Non Bank Financial Institutions**
NCCT	**Non-Cooperative Countries and Territories**
POCEO	**Prevention of Corruption and Economic Offences Act, 1999**
SADC	**Southern African Developing Countries**
SARPCCO	**Southern Africa Regional Police Chiefs Cooperation Organization**
STRs	**Suspicious Transaction Reports**
PEPs	**Politically Exposed Persons**
UN	**United Nations**
WCO	**World Customs Organisation**

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A. GENERAL

Information and methodology used for the assessment

1. This Mutual Evaluation Report (henceforth referred to as "report") on the Observance of Standards and Codes for the *FATF 40 Recommendations for Anti-Money Laundering and 8 Special Recommendations Combating the Financing of Terrorism* was prepared by representatives of member jurisdictions of the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG).

2. The Kingdom of Lesotho (henceforth referred to as 'Lesotho') is the fourth jurisdiction in ESAAMLG to undertake a mutual evaluation. The first jurisdiction evaluated was the Republic of South Africa and this was a joint evaluation comprising FATF and ESAAMLG officials. Following the joint evaluation, ESAAMLG evaluated Swaziland and Malawi and then conducted the mutual evaluation of Lesotho during the months of June and July of 2004.

3. The report provides a summary of the level of observance with the FATF 40+8 Recommendations, (now FATF 40+9 Recommendations), and provides recommendations to strengthen observance. The views expressed in this document are those of the ESAAMLG mutual evaluation team and do not necessarily reflect the views of the government of Lesotho.

4. The report was prepared using the Methodology for Assessing Compliance with Anti-Money Laundering and Combating the Financing of Terrorism ("AML/CFT") that has been approved for such purposes by the FATF, IMF and World Bank.

5. In preparing the report, the evaluation team reviewed the relevant AML/CFT laws and regulations, the capacity and implementation of criminal law enforcement systems, and supervisory and regulatory systems in place to deter money laundering and the financing of terrorism, among prudentially regulated financial institutions, which includes banks, the securities exchange and securities firms, and insurance companies. The evaluation team also considered information relating to the non-regulated sector to include the accountants, legal professionals, business advisers and surveyors.

6. The mutual evaluation team comprised:

Experts

- Legal expert – Mr. Pacharo Kayira, Senior Prosecutor Attorney Generals Department of Malawi;
- Financial/regulatory expert - Mr. D.S. Sanhye, Assistant Director, Financial Intelligence Unit, Mauritius;

- Law enforcement expert – Mr. B.O Lekan, Anti-Corruption Officer, Directorate on Corruption and Economic Crime, Botswana;

Mentor

- ESAAMLG Secretariat representative – Mr. Wayne Blackburn, UN Mentor

7. Prior to the visit, the evaluators received Lesotho's response to the ESAAMLG mutual evaluation questionnaire (AML/CFT Methodology). Copies of most of the relevant laws were provided to the evaluation team prior to the first day of interviews; other laws were provided during the margins of the interviews.

8. The evaluators visited Lesotho from 28 June to 2 July 2004. The on-site visit involved:

- An initial meeting with the Lesotho Multi Discipline Anti Money Laundering committee ("The Task Team") consisting of members of government agencies and stakeholders responsible for AML/CFT to discuss the mutual evaluation process and to get an overall perspective of Lesotho;
- 'one on one' meetings with relevant government agencies and the private financial sector.

9. Meetings were held with representatives from the following*:*

- The Ministry of Finance;
- The Ministry of Justice;
- The Ministry of Foreign Affairs;
- The Ministry of Industry, Trade and Marketing;
- The Office of the Director of Public Prosecutions;
- The Central Bank of Lesotho;
- The Lesotho Directorate on Corruption and Economic Offences;
- The Lesotho National Insurance Group;
- The Lesotho Mounted Police;
- The Customs and Excise Department;
- The Task Team;
- Nedbank Lesotho Limited;
- Standard Bank of Lesotho;
- The Lesotho Institute of Accountants;
- The Lesotho Law Society;
- The National Security Service; and
- Interpol.

10. The evaluation team would like to thank all agencies that sent representatives to attend the one-on-one meetings during the course of the on-site visit, for their cooperation and assistance. The team wishes to thank the Ministry of Finance and the Central Bank of Lesotho in particular for their assistance prior to and during the on-site visit.

General Information on Lesotho and its Economy

11. Lesotho is landlocked and has a total land area just over 30,355 square kilometers. Maseru is the capital and is also the administrative center. Lesotho is completely surrounded by The Republic of South Africa. Population estimates from 2003 indicated that there were more than 1.861,959 inhabitants with an average growth of 0.19%. About 82% of the population live in rural areas while 18% reside in towns and cities. National languages spoken are English and Sesotho.

12. Lesotho comprises one topographical and climatic area. The nearest harbour is Durban in South Africa. The main products of Lesotho are mohair, wool and limited mining of diamonds. The products manufactured are textiles and clothing which are exported to USA under the Africa Growth Opportunity Act "AGOA".

13. Lesotho has been a Constitutional Monarchy since becoming independent from the former Colony of Basutoland in 1966, which was under British government. The King is the Head of State however the Constitution is the Supreme law of Lesotho. The Constitution of Lesotho has the Office of King included as part of the Constitution. The succession to the throne is defined in the Constitution as well as roles and responsibilities. The parliament makes the laws for Lesotho. A bill will not be presented to the King for assent unless it has been supported in its final draft by no less than two-thirds of all the members of the National Assembly.

14. The Government comprises of the King, Prime Minister, the Senate and the National Assembly. The Senate includes twenty-two Principal Chiefs and eleven other Senators nominated by the King and acting in accordance with the advice of the Council of State.

15. The National Assembly is made up of one hundred and twenty members excluding the Speaker and the Deputy Speaker who are elected by the Assembly. The constitution of Lesotho is very comprehensive and includes a chapter on rights and freedoms, as well as the right to life and movement.

16. The value of currency in Lesotho (the Loti) is pegged to the South African Rand in terms of The Common Monetary Area (CMA), which is an agreement between Lesotho, South Africa, Swaziland and Namibia.

17. Lesotho is a developing country with limited domestic markets; her economic performance depends on export orientated industries and is thus influenced by global trends, commodity prices, capital and aid flow. Resources include textile, food products, water and electricity. About 40% of Lesotho's export products including wool, clothing and mohair, are sold internationally, approximately US$422 million. Lesotho's imports are estimated at US$738 million. South Africa accounts for about 85% of local imports, including consumer and petroleum products. Latest figures place growth at 1.5%. GDP is estimated at US$5.106 billion and US$2,700 GDP per capita, with real growth of 4%. Among the 13 SADC countries, Lesotho is rated third in human development and eighth in terms of economic competitiveness in Africa.

Overview of the financial sector

18. Lesotho has a Central Bank (hereinafter referred to as "CBL") and four commercial banks all of which are owned by South African Banks. Two banks are Stanbic operated under the names of Standard Bank Lesotho Ltd and Lesotho Bank 1999 Ltd. The third bank is Nedbank Lesotho Ltd under the Nedbank Group, RSA, and the fourth is the First National Bank which falls under the First Rand Group, RSA. There is also one other bank which is the Post Bank under the Government of Lesotho (through the Ministry of Communications). Lesotho does not have a Bankers Association, instead the Governor of the CBL and the three Managing Directors of the commercial banks meet and discuss issues of mutual interest. The Minister of Finance, Governor of the CBL and commercial bank managers feel that the financial community is too small to require a formal banking association, as a result regular meetings are held to address banking issues.

19. Within the CBL, the Bank Supervision Department is responsible for overseeing and safeguarding the stability, integrity and efficiency of the banking industry. The Department's objectives include licensing, regulating and supervising banks and financial institutions**.** Under the Financial Institutions Act, 1999, all financial institutions have been provided with the Financial Institutions (Anti-Money Laundering) "AML" Guidelines, 2000 to adhere to the practices of monitoring and reporting AML activity, in particular suspicious transactions. Section 11 of the AML Guidelines 2000, requires financial institutions to report any transactions by customers that constitute a suspicious transaction report or form part of a criminal activity. However as the guidelines stand there are no obligations on financial institutions to report suspicious transaction relating to the financing of terrorism given that the guidelines were passed before the September 11 attacks and the prior to the development of the FATF 8 Special Recommendations on CFT. It appeared during the course of the mutual evaluation that financial institutions were reluctant to report STRs for fear of victimization.

20. Financial institutions are also required to abide by KYC principles in relation to procedures and controls with regard to customer identification, account opening, record keeping, and knowledge of the customer's activities, adequate internal controls and staff awareness.

21. The CBL conducts both offsite and onsite supervision of financial institutions. Off-site supervision entails analysis of weekly, monthly and quarterly statutory returns submitted by the banks to determine whether these institutions carry out their operation. At the time of the evaluation, the FISD of the Central Bank was staffed with three (3) officers and on-site inspections for the banks are carried out twice a year and entail closer monitoring of banks operations to ensure that banks comply with regulatory requirements issued by the CBL. There are also on-site inspections for the insurance companies, and other ancillary service providers.

22. There are six (6) insurance companies, eleven (11) insurance brokers and three hundred (300) agents in Lesotho and their duties are bound by the Insurance Act 1996. This particular legislation is inadequate and out of date and there is no provision in that legislation addressing any AML/CFT issues. The CBL acts as the Commissioner of the financial institutions under the Financial Institutions Act 1999 and is responsible for licensing and supervising the insurance companies. The insurance companies provide mainly life insurance, accident and motor vehicles insurance. They also provide small loans to their clients and some reinsurance services. Money lenders on the other hand are considered as ancillary service providers under the Financial Institutions Act 1999 ("FIA, 1999) and are also supervised and licensed by the CBL. According to the FIA 1999, the ancillary service

providers means a person who engages in providing ancillary services such as foreign exchange, electronic funds transfer and other similar ancillary financial services. The Financial Institutions AML Guidelines do not include compliance by the insurance sector and ancillary services. As a consequence these sectors are not familiar with AML/CFT deterrence, detection and reporting.

23. As it stands under the Financial Institutions Act 1999 and the Insurance Act 1976, the CBL is required to supervise and license both the banking and non banking financial institutions (NBFIs) in the form of Insurance Brokers and Insurance Companies.

General Situation of Money Laundering and Financing of Terrorism

24. Lesotho has not enacted Anti-Money Laundering ("AML") or Combating the Finance of Terrorism ("CFT") laws. Lesotho has a draft Money Laundering and Proceeds of Crime Bill (hereinafter referred to as "draft MLPC Bill") since 2001. The proposed legislation defines financial institutions in terms of the relevant services and this makes the proposed legislation far reaching as it would capture different financial services providers providing such services to include Ancillary Financial Services, Insurance Companies, Professional Accountants, Business Advisers and Independent Legal professionals. The relevant businesses or services should be reviewed to include other services provided by these providers or professionals.

25. Lesotho has not enacted a law which criminalizes terrorism and subsequently no CFT legislation. The draft MLPC Bill also lacks comprehensive provisions on CFT. The draft Bill partly addresses FT in Part 3 Division 5 Section 55, which criminalises FT and explains the procedures for seizure and detection of terrorist funds but does not put any onus on financial institutions or ancillary financial service providers to institute proper internal control to prevent and detect any suspicious cases of terrorist financing and to report their suspicion to a competent authority. It is suggested that the financing of terrorism should be addressed in different legislation to meet the various components of the international convention for the suppression of financing of Terrorism 1999.

26. In the absence of AML/CFT legislation there are also no draft implementing regulations to complement the legislation once it is enacted. These regulations when promulgated would make the AML legislation effective in the financial, legal and law enforcement sectors.

27. With regards to international conventions, Lesotho has signed the 1988 Vienna Convention, the 1999 International Convention for the Suppression of the Financing of Terrorism, and the United Nations Convention against Transnational Organized Crime in 2000. This undertaking has expressed Lesotho's political will to combat money laundering and to criminalizing the laundering of proceeds of crime and to also undertake the obligation of instituting comprehensive regulation and supervision of banking and non-banking financial institutions which are susceptible to money laundering and the financing of terrorism.

28. During the discussions with the authorities, it emerged that the crimes which money laundering ("ML") vulnerability are derived from include drug trafficking, fraud, theft and corruption. It appeared that monitoring and detection measures are either ineffectual or very slowly handled due to the lack of available human and financial resources. Cases of fraud involving civil servants are particularly alarming and are more problematic because most of it goes unchecked or undetected. There does not appear to be regular monitoring or investigation of the proceeds generated from crime

in Lesotho even though some cases have been brought before the courts of law where such proceeds have been confiscated. The Office of the Director of Public Prosecutions ("DPP") remains the overall authority responsible for prosecutions of all criminal cases but since ML and FT is not criminalized, the DPP has not handled such cases.

29. Under the draft MLPC Bill the Directorate On Corruption and Economic Offences is given the mandate under Section 11 to deal with ML and proceeds of crime. While this agency is solely responsible for the investigation of corruption offences, it was noted that the agency does not have enough human and financial resources to effectively deal with the new functions as proposed under the draft MLPC Bill

30. Lesotho authorities have not yet established a Financial Intelligence Unit ("FIU") and hence no statistical data in the area of ML or FT is available. The draft Bill does provide for an independent FIU.

31. Under the FIA, 1999, the Central Bank of Lesotho is mandated to issue guidelines and regulations to financial institutions to compile Suspicious Transaction Reports (STRs). The FIA Act however is pre – AML /CFT regime legislation and needs to be reviewed to complement the proposed AML/CFT legislation. The CBL has received 4 STRs filed from one of the commercial banks, Standard Bank Lesotho Ltd. These STRs have been reported to the Police for the Directorate on Corruption and Economic Offences to investigate. There was no information available during the evaluation regarding the progress or outcome of the investigation of these STRs.

32. In the absence of successful investigation of reported STRs further efforts are required to spell out the specific requirements from accountable institutions with respect to suspicious transactions, the manner and method of reporting, and penalties for non-reporting and non-compliance. There is also general concern on insufficient skills, resources and funding available to properly address these issues, bearing in mind that this is a country where dagga trade, fraud and theft have been identified as prime areas of concern.

33. Lesotho has established a Money Laundering Task Team, which includes representatives from the CBL, the Ministry of Finance, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Home Affairs, the Police, the Directorate On Corruption and Economic Offences, the National Security Service, the Law Society, the Insurance Sector and representatives from Commercial Banks. The Money Laundering Task Team meets on an ad hoc basis to discuss issues relating to ML and FT. However, several important agencies and entities have been omitted and should be included. Those entities are the Ministry of Trade and Industry, Cooperatives and Marketing, Accountants, and other similar entities. Ideally the Money Laundering Task Team should be developed into a National Coordination Committee to comprise representatives from the major stakeholders responsible for combating money laundering and terrorist financing. The National Coordination Committee's duties and responsibilities should be defined in the draft MLPC Bill. The Money Laundering Task Team would constitute a sub organ of this committee and should include in its work programme awareness raising of ML and FT and the importance of enacting the draft MLPC as soon as possible. In the addition the development of ML and FT regulations, and the preparation of written procedures and guidelines for investigating and prosecuting ML and FT cases.

34. Many of the Government institutions are understaffed and lack resources and procedures to function effectively. Customs, Treasury and the Directorate On Corruption and Economic Offences

need more resources, training and systems in place to strengthen their capabilities to prevent and detect money laundering activities and also to create an efficient and effective system that will increase financial resources.

Overview of measures to prevent money laundering and terrorism financing

35. There is a strong desire by the Lesotho authorities to implement an AML/CFT framework and to be in compliance with the various international standards.

36. At present Lesotho lacks laws that criminalize ML and FT, this makes the country exposed to ML and FT vulnerabilities. Lesotho is completely surrounded by South Africa not only geographically but also financially. With South Africa having a very advanced AML/CFT regime, Lesotho may be a natural safe haven for criminals escaping South African FIC and Scorpions investigations.

37. Only serious offences such as drug trafficking, fraud, smuggling, theft, murder, sabotage, are punishable under Lesotho laws. These offences are criminalized by laws such as the Prevention of Corruption and Economic Crimes Act, 1999, the Criminal Procedure and Evidence Act, 1981, the Penal Code, 2004, and, the Financial Institutions Act, 1999. In the absence of AML/CFT laws, the relevant authorities should focus on the proceeds derived from the abovementioned serious offences with a view to understanding their ML and FT risks.

38. The lack of legislation also defines the lack of AML/CFT implementing regulations which will need to be developed and issued to the financial, law enforcement and legal sectors to enforce the statute's requirements.

39. In the absence of ML and FT legislation requiring financial institutions to be AML/CFT responsible, the banking sector should comply with *Know Your Customer* requirements as part of banks having to abide by the Basel Core Principles. These efforts include closing accounts of high risk individuals or entities.

40. There is no FIU. As a consequence financial institutions are required by the Financial Institutions AML Guidelines, 2000 to monitor and report STRs to the CBL. The commercial banks have only reported a small number of STRs. It appears that employees of financial institutions are concerned about the lack of systems in place which can protect them from being victimized when reporting STRs. In addition the CBL lacks resources to proactively collect, analyze and share financial information, either domestically or internationally.

41. There appears to be insufficient skills, resources and functioning available to address properly AML and CFT issues concerning preventative measures for financial institutions, investigating and prosecuting ML and FT offences. Lesotho should consider taking measures aimed at awareness raising and training on AML issues for all sectors.

42. Specific AML/CFT training is also required for the judiciary, law enforcement and regulatory sectors, including investigators and regulators and a culture of sharing and co-operation between them should be embraced. In addition to creating general awareness regarding new legislation and envisaged regime, training and capacity are required in the law enforcement agencies and

prosecutorial services to strengthen the investigative capabilities and enhance investigators skills and expertise in dealing with money laundering and financing of terrorism cases.

43. The Task Team should also clearly delineate responsibilities among the parties concerned to avoid duplicating efforts and resources. It would be helpful to assess the country's current crime risks, statistics and areas of threat with respect to ML and FT and incorporate them into the strategic plan for Lesotho.

B. DETAILED ASSESSMENT

44. The following detailed assessment was conducted using the October 11, 2002 version of the Methodology for assessing compliance with the AML/CFT international standard i.e., criteria issued by the Financial Action Task Force (FATF) 40+8 Recommendations (the Methodology)

Detailed Assessment of Criminal Justice Measures and International Cooperation

I—Criminalization of ML and FT
(compliance with criteria 1-6)

Description

45. Lesotho acceded to the 1988 UN Vienna Convention in 1995 and signed **t**he UN Convention for the Suppression of Financing of Terrorism 1999 on 6th November 2001. The UN Convention Against International Crime (the "Palermo Convention") was ratified in September 2003. Lesotho has not yet complied with the UN Resolution 1373 relating to the prevention and suppression of FT. The ratified Conventions recommendations have not been fully implemented by Lesotho.

46. The Money Laundering Task Team in Lesotho drafted the MLPC Bill, 2001. Some of its major vulnerabilities are as follows: The definition of money laundering is limited under Section 17 of the state of mind, intent or purpose of committing the offence of money laundering are captured under 'knowing or having reason to believe'. The MLPC bill also envisages some money laundering offences with specific intent at Section 17 (b) such as, concealing or disguising the origin, nature, location, disposition, movement or ownership of the property. The scope of the liability could be extended to cover the state of mind where the accused neither 'did not know' nor 'should have known', but nevertheless suspected its criminal provenance and choose not to conduct further investigation or dispel any suspicion. This could be where any reporting institutions under Section 14 of the MPLC fails to take such measures as reasonably necessary to ensure that neither it nor the services offered by it, is capable of being used by a person to commit or to facilitate the commission of a money laundering offence. This could be a state of 'willful blindness' and needs to be captured in the draft legislation.

47. The Act does not establish a Financial Intelligence Unit but merely extends the power to the Directorate On Corruption and Economic Offences already established under the Prevention of Corruption and Economic Offences Act 1999. This does not satisfy the recommendations of the FATF. Further, the Act does not specify the composition of the Directorate nor measures to safeguard and strengthen its dependence nor access to information or means of cooperation with other agencies. Furthermore there is no definition of suspicious transactions. Furthermore suspicious transactions

should be defined and indicators of suspicious transactions should be given. There is also no reporting requirement or designated threshold for cash or wire transfer transactions.

48. Money laundering is not specified in the Act as an extraditable offence. No specific part of the Act is dedicated to mutual legal assistance. Mutual Legal Assistance is referred to in isolated Sections in the Act. There is also ambiguity in the draft law regarding cconfiscation of assets.

49. No mention has been made whether the Directorate is responsible for terrorist financing activities. As mentioned earlier Section 55 only makes reference to terrorist cash and property. The Directorate is not empowered to deal with any issue of terrorist financing or terrorist related offences as per Section 11 of the Act which lists the functions of the FIU. However, pursuant to Section 55 supra, the Directorate is responsible to seize and search terrorist property. The powers of the Directorate should clearly be set out to prevent legal impediments in the exercise of its functions under the Act. The office of FT is criminalized for the purposes of the Act in so far as seizure of terrorist cash and property are concerned; however no other obligations are referred to in relation to any competent authority required to handle FT issues.

50. Some sections in the draft Bill overlap. Section 19 which deals with seizure and detention of suspicious imports or exports of currency could be dealt with under Part III Division 4 which deals with powers of seizure. Section 21 – Property tracking and monitoring orders could be dealt with under Part III Division 9, which deals with monitoring orders. Furthermore Section 28 of Part III Division I sets out when an application for a confiscation order can be made and specifies that such an application should be made after a conviction. However Section 31 sets the procedures for a forfeiture order before conviction without first specifying whether the Court can entertain such an application at that stage of the proceedings. Division 3 in the Bill deals with the application for pecuniary orders by the Attorney General whereas in Section 28 the application should be lodged by the DPP. This creates uncertainty as to which body is responsible for application.

51. Under the already existing laws of Lesotho, predicate offences have not been named and classified. The relevant laws which deal with crimes are the Prevention of Corruption and Economic Crimes Act, 1999, the Criminal Procedure and Evidence Act, 1981, the Penal Code, 2004, The Customs and Excise Act 1982, the Financial Institutions Act, 1999 and the Common Law.

52. The Prevention of Corruption and Economic Crime Act 1999, under section 3 (i) establishes the Directorate on Corruption and Economic Offences. The Directorate is responsible for the investigation and prosecution of economic crimes such as corruption, bribery, frauds and offences akin to the above. Part IV of the Act deals with offences, apart from criminalizing the conventional offences which normally are criminalized by the Penal Code (ie corruption, bribery, cheating) the Act also makes the possession of unexplained property an offence in Section 31.

53. The Criminal Procedure and Evidence Act 1981 relates to procedure and evidence in the prosecution of criminal cases in both the High Court and subordinate courts. As such the Act does not create offences.

54. The Penal Code 2004 is the major legal framework dealing with criminal offences. Lesotho also uses common law in prosecution of criminal cases. For example in the celebrated Lesotho Highlands Water Project Case (Property cited as ***Rex –vs- Masupha Ephraim Sole)*** the accused was charged with bribery and fraud under the common law.

55. The Customs and Excise Act 1982 primarily provides for the levying of customs excise and sales duties and surcharge as well as the prohibition and control of importation and exportation of goods. Chapter xi of the Act specifically deals with offences. For most offences the penalty is a fine or imprisonment for a few months or forfeiture for illegally imported or exported goods. The highest form of punishment in the Act is imprisonment of not more than 24 months (eg for false documentation in section 85 and irregular dealing with goods in section 84). No offence under this Act therefore can qualify as a predicate offence by virtue of section 17 of M LPC Bill.

56. Most of the above laws are out dated and will need to be revised to complement the proposed enactment of the draft MLPC. In particular these laws do not include money laundering and terrorism and the financing of terrorism as listed offences.

57. Lesotho's legal infrastructure begins with the Ministry of Justice ("MOJ"). Under the MOJ and directly reporting to the MOJ is the Office of the Attorney General which is responsible for drafting legislation.

58. At present there is a shortage of prosecutors at the DPP to deal with the prosecution of serious offences and this impacts on the capacity to deal with ML and FT offences. The Magistrates court is inundated with many cases. Judges are dealing with a backlog of cases to be heard and have not received awareness raising on how to deal with ML and FT. One judge has been assigned to look into cases of corruption and related issues and could therefore be familiarized to preside over ML and FT cases once the legislation has been enacted.

Training

59. There are currently no AML/CFT training programmes available for officers in the judicial sector. AML/CFT training has only been delivered to the CBL and Commercial Bank Staff.

Analysis of Effectiveness

60. Since ML or FT legislation has not yet been enacted and henceforth implemented, it is not possible to assess accurately whether these laws are effective as law enforcement mechanisms or whether they will serve to deter and detect ML or FT. As the laws are drafted, more attention is needed in relation to the definition of serious offences, the establishment of a FIU, mutual legal assistance and international cooperation and the systems required to combat FT. Existing legislation will also need to be revised to complement the new AML/CFT legislation. It is evident that at this early stage that the UN Conventions which have been ratified by Lesotho have not effectively been implemented.

Recommendations and comments

61. The current definition of serious crime in the MLPC Bill may be restrictive and not in line with FATF Recommendations which encourage countries to apply the crime of money laundering to all serious offences, with a view to include the widest range of predicate offences, which may be described by reference to all offences or to a designated threshold approach. The United Nations Convention against Transnational Organised Crime known as The Palermo Convention defines, "serious crime" as conduct which constitute an offence punishable by a maximum deprivation of liberty of at least 4 years or a more serious penalty and "predicate offence" as any offence as a result

of which proceeds have been generated that may become the subject of an offence as defined in the article 6 of this convention which elaborates on the criminalisation of the laundering of proceeds of crime. The UN Model Crime Bill also defines predicate offence as any "serious offence". Lesotho may choose to spell out the predicate offence to a pre-set list of crimes and the criterion to decide whether an activity is a predicate offence for money laundering, in short, would be the profit generating character of a given criminal activity. To facilitate international legal assistance, it may be necessary to ensure that the predicate offence is a crime in all countries involved: the country where the crime was committed, the country requesting assistance, and the country whose assistance is requested.

62. The establishment of a FIU should be considered under separate legislation as the details in the draft MLPC are not sufficient to support the functions and requirements of a FIU. Provisions for effective CFT need to be further detailed in draft MLPC Bill or considered in separate legislation. To assist in reviewing the draft MLPC, Lesotho authorities should consider assessing other enacted regional AML laws or contact legislators in the region for assistance so as to better strengthen their current draft AML/CFT law. For instance South Africa, Swaziland and Mauritius AML/CFT laws could be used as model laws for Lesotho to further revise their draft AML/CFT Bill.

63. A workable plan of action also needs to be implemented to review existing laws to harmonise these laws with impending AML/CFT laws. For instance regulations and laws addressing financial institutions should be incorporated in the Financial Institutions Act so that non-bank financial institutions can be more aware of the vulnerabilities and be more accountable for AML/CFT. The Lesotho Revenue Authority and Customs and Excise Laws need to provide for defense against ML and FT.

64. The Money Laundering Task Team should set out a strategic plan for an AML/CFT regime. The law enforcement agencies should establish capacity in this area as soon as possible. This would need to include resources, training and cooperation with the judiciary and supervisors /regulators in this area. Regular meetings should be held between these parties to facilitate the implementation of an AML/CFT strategic plan to satisfy the international standards and conventions.

65. Lesotho needs to allocate resources for effective implementation of the proposed laws. There is need for capacity building among the law enforcement agencies and the Director of Public Prosecutions Office. Prosecutors and police officers should be trained so as to develop expertise on ML and FT matters. Regional entities such as SADC, ESAAMLG and AU can play a role in the development and training of prosecutors, magistrates and judges on the concepts and elements of ML and FT.

66. Lesotho ratified the Palermo Convention (2000) in September 2003 and needs to take sufficient steps to fully implement its requirements which obligates each ratifying country to criminalize money laundering; to establish regulatory regimes to deter and detect all forms of money laundering; cooperate and exchange of information among administrative, regulatory, law-enforcement and other authorities both domestically and internationally and to promote international cooperation. Efforts should be made to implement the requirements of the 1988 UN Vienna Convention, and the 1999 UN Convention for the Suppression of the Financing of Terrorism.

67. UN Resolution 1373 needs to be complied with and then complemented by the future drafting and enactment of CFT legislation.

Implication for compliance with FATF Recommendations –

Recommendation 1:	Largely Compliant
Recommendation 4:	Materially Non-Compliant
Recommendation 5:	Materially Non-Compliant
SR I:	Materially Non-Compliant
SR II:	Materially Non-Compliant

II Confiscation of Proceeds of Crime or property used to Finance Terrorism (criteria 7 – 16)

Description

68. Lesotho presently lacks legislation that specifically deals with the confiscation of proceeds of crime or property derived from the financing of terrorism and money laundering. According to the Lesotho authorities there are arrangements in place for the seizure and forfeiture of proceeds of crime derived from offences committed under the Prevention of Corruption and Economic Offences Act, 1999, however there are no statistics or data available on any confiscations nor is there a register of property or proceeds of crime which have been confiscated. Section 37 of the Prevention of Corruption and Economic offences Act 1999 provides:

> *" The Attorney General may, upon request by the Director and upon obtaining a court order to that effect seize, or freeze bank accounts or assets of any person the Director reasonably suspects to have committed an offence under this Act."*

69. Furthermore, under the Criminal Procedure & Evidence Act, any damage or loss of Government property shall upon conviction be treated as a loss in a civil judgment and shall be so enforced. Section 322 (1) states:

> *"When any person is convicted by any court of an offence involving damage or loss of Government property the conviction shall in respect of the loss or damage sustained by Government have the effect of a civil judgment for the payment of money and shall be enforced in the same manner as any other judgment for the payment of money in a civil court:"*

70. Part III of the draft MLPC bill refers to the confiscation of laundered property for criminal convictions only. Confiscation of proceeds of crime or property are only permissible upon conviction of a suspect, the Bill does not provide for civil forfeiture. In the Bill, the Directorate On Corruption and Economic Offences is empowered to trace property suspected to be proceeds of crime or used for the financing of terrorism. Under Section 34 of the draft Bill, confiscated property is registered and becomes government property.

71. Section 58 of the draft Bill empowers the Commissioner of Financial Institutions to direct Financial Institutions to freeze an account or property of person believed to be FT

Civil Forfeiture

72. There is no provision for civil forfeiture. Restraint orders, forfeiture of property , proceeds or instruments are all related to criminal charges . They occur only when a person has been charged, and convicted of a serious offence under the Prevention of Corruption and Economic Offences Act 1999.

Rights of Third Parties

73. Rights of bonafide third parties are protected under Section 38 of the draft MLPC Bill.

Asset Sharing

74. While there appears to be an adhoc system in place, there are no records which indicate that confiscated assets have been shared with other countries and there is no established authority for sharing of confiscated property to assist in international efforts among different countries. In addition there is no provision in the draft MLPC Bill for the sharing of confiscated assets with other countries.

Voiding of contracts

75. Under the draft MLPC, there is no provision for the voiding of contracts. Section 37 of the Bill only deals with voiding of transfers.

Training

76. Training to administrative, investigative, prosecutorial and judicial authorities for ML and FT confiscation purposes has not occurred and needs to be provided to all stakeholders.

Freezing and confiscation of terrorist funds and property

77. There is no current provision nor is there mention of any authority that allows for the freezing and confiscation of terrorist funds and property. The draft MLPC under Section 60 only provides for the Commissioner of Financial Institutions to direct Financial Institutions to freeze an account or property of person believed to be FT.

Analysis of Effectiveness

78. Lesotho has not enacted laws which allow for criminal confiscation for ML and FT and other serious offences. There appear to have been confiscations for other serious offences made under existing laws however statistics on the success of these convictions are not available. There is also no provision for civil forfeiture. Since there has not been any investigation, prosecution or confiscation for ML or FT offences, confiscation authority and implementation is untested. In addition, there does not appear to be any authority for freezing or seizing assets prior to court action authorizing confiscation.

Recommendations and Comments

79. The draft MLPC needs to adequately address the issue of confiscation and forfeiture of proceeds of crime and property used for ML and FT. The draft should provide for confiscation of laundered property (including property that is income or profit derived from proceeds of crime), proceeds from, and instrumentalities used in or intended for use in the commission of any ML and FT offence or predicate offence and or property of corresponding value. Adequate resources should be allocated for the enforcement of these laws once they are enacted. The draft Bill should also provide for civil forfeiture.

80. The draft MLPC also needs for a determination to empower the Directorate On Corruption and Economic Offences to immediately freeze suspected accounts especially those accounts listed on the counter terrorist list provided under the UN SCR 1371.

81. Once the AML/CFT law comes into force, it will be important for authorities to consider developing more targeted statistics on frozen funds and confiscation of assets and make these statistics centralized and accessible for judicial and enforcement authorities. This would enable the Government to accurately measure the effectiveness of the confiscation regime.

Implications for compliance with FATF Recommendations 7, 38, SR III

Recommendation 7:	Materially Non-Compliant
Recommendation 38:	Materially Non-Compliant
SR III:	Materially Non-Compliant

III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels (compliance with criteria 17-24)

82. Lesotho does not have a FIU or formalized specialized unit within any of the government ministries or agencies to receive, analyze and disseminate financial reports related to ML or any ML predicate offence. In the draft MLPC Bill under Section 11, the Directorate On Corruption and Economic Offences is given the task of performing the functions of a FIU. However the draft MLPC lacks the detail required to particularly provide for the setting up of a centralised agency responsible for the receiving, analyzing and disseminating financial information to enforcement authorities. Section 14 sets out the obligation to report suspicious transactions, however the definition of suspicious transactions is limited to reasonable grounds to suspect that any transaction is related to the commission of a money laundering offence.

83. The CBL has issued the Internal Control Systems Regulation 2000 and the AML Guidelines 2000 to financial institutions. These regulations and guidelines outline major components to prevent money laundering in financial institutions as defined in the Financial Institution Act 1999. These regulations provide for the reporting of STRs to the CBL. Some regulatory penalties for any breach of the Regulations and Guidelines have been made and these are limited to the powers conferred upon the Commission of the financial institutions under Section 29 of the Financial Institution Act 1999. These measures are inadequate and do not exempt the Commission of a money laundering offence.

84. There are four commercial banks in Lesotho, Standard Bank Lesotho Ltd, Lesotho Bank 1999 Ltd, Nedbank Lesotho Ltd, and First National Bank. All these banks except Lesotho Bank 1999, are subsidiaries of South African registered companies listed on the Johannesburg Stock Exchange and they are required to follow rules and regulations prescribed by the law enforcement and the Central Bank of Lesotho. The banks in Lesotho are required to report STRs to the mother companies [banks] in RSA.

85. With regards the reporting of STRs to the local authorities, the commercial banks are reluctant because there are no local laws which indemnifies accountable institutions from any criminal, civil and/or administrative liabilities if they make STRs in good faith. Nonetheless the CBL has received four STRs from Standard Bank Lesotho Ltd. These reports have been forwarded to the police for investigation. The Police referred the STRs to the Directorate on Corruption and Economic Offences for further investigation. No feedback has been received about the outcome of the police investigation.

Information Sharing

86. In relation to ML and FT there is no effective mechanism that has been put into place for information sharing amongst the relevant domestic authorities or international authorities.

Analysis of effectiveness

87. In the absence of an FIU, some STRs have been reported to the CBL and enforcement authorities but there is no evidence of any prosecutions resulting from these STR investigations. With regards financial institutions reporting STRs, the AML Guidelines provide for reporting STRs but there does not appear to be enforcement of non-reporting or application of compliance. Bank staff are hesitant to report STRs as there are no laws in place to protect them from making these reports. This situation would improve if the commercial banks improved on their internal controls to protect and safeguard their staff. It also appears that there is no capacity to deal with the investigation or analysis of the STRs or other reports, due to the lack of training or specific skills in this area. Finally, there is no formal mechanism for information sharing with FIUs in other countries.

88. In the draft MLPC there is no particular provision for the setting up of a centralised agency responsible for the receiving, analyzing and disseminating of financial information to enforcement authorities.

Recommendations and Comments

89. The draft MLPC Bill provides that the Directorate On Corruption and Economic Offences is to provide the functions of a FIU and it appears that these responsibilities and functions will not be effectively manageable by the Directorate.

90. As a consequence of the above, an FIU should be established under separate legislation and should be established as an independent governmental authority or within the central bank or under the Ministry of Justice or Ministry of Finance. In any case the FIU should have sufficient independence and autonomy to ensure that (i) it is free from unauthorised outside influence or interference in its functions and decisions; and (ii) that information and intelligence held by it will be securely protected and disseminated only in accordance with the law.

91. Other regional FIUs have been established in Southern and Eastern Africa and Lesotho legislators should consider the FIU laws of South Africa and Mauritius in the proposed drafting of a separate FIU law for Lesotho.

92. In the event an FIU is established, the FIU should be independent in its function and should be free to exchange information without unnecessary administrative barriers and should seek membership of the Egmont Group. The FIU should be given access to the databases maintained by the various financial, administrative and police agencies. The FIU should be authorised to obtain from reporting parties, either directly or through another competent authority, additional documentation needed to assist in its analysis of financial transactions. The FIU should be adequately structured, funded, staffed, and provided with sufficient technical and other resources to fully perform its authorised functions. The FIU should have an organisational structure sufficient to ensure that its functions are properly executed.

93. The reporting of suspicious transaction should cover a wide range of scenarios as it may be difficult for the financial institution to suspect the commission of money laundering at the initial stage of the transaction. To widen the scope of reporting the definition of suspicious transactions should be extended to cover transactions carried out in an unusual and unjustified complexity; appeared to have no economic justification of lawful objective; is made by or on behalf of a person whose identity has not been established to the satisfaction of the person with whom the transaction is made; suspecting the offence concerning the financing of any activities or transactions related to terrorism or gives rise to suspicion for any reason.

94. As part of its function the FIU should publish for internal purposes periodic reports, including statistics, typologies and trends regarding its activities and issue guidance notes on suspicious transactions and the manner in which an STR needs to be reported.

95. In the absence of a FIU, the CBL should establish MOUs with other Central Banks regionally and internationally to facilitate the exchange of financial intelligence information for the purposes of AML/CFT investigations.

Implications for compliance with FATF Recommendations 14, 28, 32

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Recommendation 14:	Materially Non-compliant
Recommendation 28:	Materially Non-compliant
Recommendation 32:	Non-Compliant

IV – Law enforcement and prosecution authorities, powers and duties (compliance with criteria 25-33)

96. Lesotho comprises of agencies which are responsible for law enforcement in the country. They are the Directorate on Corruption and Economic Offences established in 2003, the National Security Services, the Military Intelligence and the Mounted Police. These agencies also work cooperatively with the Lesotho Revenue Authority, the CBL and the commercial banks with regards to investigations.

97. In the absence of AML legislation, law enforcement agencies apply the Common Law to deal with fraud offences which are predicate offences for ML. The Common Law explains elements of fraud offences as:

- Misrepresentation by conduct or word;
- Prejudice that is potential or actual;
- Unlawfulness;
- Intention;
- Unlawful possession.

98. The Common Law, CP & E 1981 provisions outlines, Dangerous Medicines Act of 1973, the Precious Stones Order of 1970 and the Prevention of Corruption and Economic Offences Act No. 5 1999 are laws invoking powers of the sections of the law that are outlined, to ensure that although a specific law on money laundering is not yet enacted, cases related to the violation of these laws can swiftly be investigated as cases of money laundering. The Penal Code and the Criminal Procedures and Evidence Act do not include ML and FT offences but recognize other serious offences and provide for investigation and prosecution of these offences.

99. Law Enforcement agencies also use a variety of different laws which criminalise serious offences relating to corruption, drugs and illegal possession and trading of precious stones and metals. Extracts from some of these laws are as follows:

100. *The Prevention of Corruption & Economic Offences Act No. 5 of 1999* provides in section 31 that, "The Director or an Officer of the Directorate may investigate any public officer who maintains a standard of living that is not commensurate with his income or assets" Section 343 of the Criminal Procedures & Evidence Act of 1981 makes unlawful possession of unexplained property an offence.

101. *The Dangerous Medicines Act No. 21 of 1973* provides in section 3 that, prohibition to deal in, possess or use prohibited medicines and habit forming medicines or drugs. Section 6 of the same act regulates the importation of habit forming drugs without the possession of a permit. Section 7 requires the issuance of certificates and licenses to import or cultivate plants from which habit forming medicines can be extracted. Section 15 prohibits dealings with potentially dangerous medicines, outlined in schedules 1, 2 and 3 of the Act.

102. *Precious Stones Order No. 24 of 1970, Section 6* prohibits unlawful dealings or possession of uncut diamonds without a license. Section 7 of the same Act prohibits any purchase from any unauthorised person of an uncut diamond. A diamond dealer is not allowed to buy from anyone who does not possess a proper letter granting authority to undertake any digging. It is a legal requirement that any diamonds bought or imported into Lesotho must be registered. Section 26 provides that diamonds found or picked up by chance, must be delivered to the police in certain circumstances, or must be taken to Mines & Geology for weighing and giving an incentive.

103. *Mining Rights Act No. 43 of 1967* prohibits mining and prospecting except under proper authority. According to section 21 the possession of a rough, uncut or unwright precious stone is prohibited. Under section 4, it is a requirement that one must have a prospecting lease or a mining lease in order to possess any legal mining right

Directorate On Corruption and Economic Offences

104. The Prevention of Corruption and Economic Offences Act of 1999 ("POCEO") mandates the Directorate On Corruption and Economic Offences to investigate and prosecute cases of corruption and economic offences. The Directorate also uses legislation such as the Penal Code and the Criminal Procedures and Evidence Act to assist with the investigation and prosecution of corruption and economic offences.

105. The internal functions of the Directorate deal with investigation, intelligence prosecution, report center, finance and administration, prevention unit and public education. In the absence of AML/CFT laws the Directorate has not investigated or prosecuted ML and FT cases. The draft MLPC Bill refers to the Directorate performing the functions of a FIU and it is highly likely that it will be receiving STRs from financial institutions.

106. The staff compliment of the Directorate is under resourced and under funded to handle all serious cases effectively. As at 30th June 2004 the Directorate comprised of 4 officers; the Director General, two Investigators and a Prosecutor. In their routine duties, the investigators are faced with challenges of lack of proper facilities like tape recorders, video cameras, surveillance equipment and transport.

107. The Directorate also utilizes the services of Interpol when conducting investigations outside Lesotho as they form part of the law enforcement agencies.

108. Additional technical assistance and training is required for the Unit to enhance the Unit's capacity to deal with existing serious offences in anticipation of inheriting the responsibility of dealing with ML and FT offences.

Lesotho Mounted Police Force ("LMPS")

109. The Lesotho Mounted Police Service (LMPS) is responsible for the investigation of predicate offences such as theft, diamond smuggling and drug trafficking. The Police Department is made up of the following departments: the Fraud Unit, the Diamonds & Drugs Unit, Crime Intelligence, and CID. Most units within the LMPS are understaffed and lack financial resources to purchase vehicles, surveillance equipment and telecommunications to be able operate effectively. For instance the Diamonds and Drugs Unit lacks necessary equipment to determine whether a stone is indeed a genuine diamond stone. Resources are insufficient to undertake a change of identity, where there is a need to detect the commission of a particular crime.

110. The LMPS through Interpol Maseru is able to carryout investigations outside the country and bring the suspects back to Lesotho for prosecution, because of Interpol membership. The LMPS does not have an internal system for logging statistics on crimes.

Customs and Excise Department

111. The Customs and Excise Department is governed by the Customs and Excise Act, 1982. The Departments' main duty is to control movement of goods at major entry points and this depends on declaration made by passengers. The Customs and Excise Act does not presently provide for ML and FT with regards to the declaration of cash imported or carried by travelers into Lesotho.

112. The Customs and Excise Act 1982 primarily provides for the levying of customs excise and sales duties and surcharge as well as the prohibition and control of importation and exportation of goods. Chapter xi of the Act specifically deals with offences. For most offences the penalty is a fine or imprisonment for a few months or forfeiture for illegally imported or exported goods. The highest form of punishment in the Act is imprisonment of not more than 24 months (eg for false documentation in section 85 and irregular dealing with goods in section 84). No offence under this Act therefore can qualify as a predicate offence by virtue of section 19 of the draft MLPC Bill.

Investigative techniques and access to information

113. The LMPS employ a range of techniques to access records in the course of an investigation. They are legally permitted to engage in undercover operations in order to detect, investigate or uncover the commission of an offence. Police investigative techniques include the use of informers, and limited electronic surveillance.

114. Through the courts, the Police can also obtain records from business and financial institutions by way of search warrants. Under the CP & E of 1981 section 46, provides powers of search with a warrant by providing that, a Judicial Officer upon a complaint made on oath and on reasonable ground of suspicion he may issue a warrant directing a policeman named in the warrant search, seize or take to the Magistrate any stolen property that he believes on reasonable ground to be stolen. The same Act provides for powers of search without a warrant in section 47, and provides that, "If a policeman of or above the rank of warrant officer believes on reasonable grounds that the delay in obtaining a search warrant would defeat the object of the search, he may search any person, premises, place, vehicle, or receptacle.

115. In relation to requests for information and documentation, according to section 247 of the same Act, CP&E 1981, a police officer is given power to demand bank records from a bank, in respect of a customer whom the police have a reasonable suspicion that the money in his possession is the proceeds of criminal conduct/behavior. Law enforcement agencies in accordance with section 247 of the CP&E of 1981 may compel the production of bank account records, financial transaction records and other records maintained by financial institutions or other entities for the purposes of processing a lawful purpose such as an investigation. Section 247(2) of the Criminal Procedure & Evidence Act of 1981 empowers a police officer of the rank of lieutenant or above, to demand the production of bank ledgers, cash books or other account books notwithstanding that there are no criminal proceedings pending. Under section 247 (1) banks shall not be compelled to produce these books and records except by court order.

116. The Prevention of Corruption and Economic Offences Act No. 5 of 1999 also provides in section 6, 7, 10, 43 and 36 that, during any search, an investigating officer can receive in-depth information that even relates to other crimes, other than the crime under investigation.

117. For the enforcement authorities, informers play a very important role in the investigation of crimes by providing information to an investigating officer, that is pertinent to the in-depth analysis and understanding of the crime committed and the evidence that is related to deal with the crime. Mostly, informers seek money as an incentive following the provision of information that is pertinent to the commission of the crime. Often informers are given little money as an incentive and there is sometimes no budget for informers.

118. Search as an investigative skill where a crime has been committed, reduces the commission of unlawful acts, and thus reduces the rate of crime. Sometimes when items have been seized from the scene of crime fabrications are made of missing things or items. Therefore, it is important for the suspect and the investigating officer to jointly sign the inventory.

119. The types of searches that are made require knowledgeable persons in the areas of search procedures which are presently lacking in technique and skill. Training is also needed for the recruitment of quality informers and knowledgeable investigators.

Statistics

120. In the absence of AML/CFT laws, no statistics are kept in respect of ML or FT. It also does not appear that crime statistics are studied in order to monitor or establish threats in respect of ML or FT predicate offences. According to the Directorate on Corruption and Economic Offences, some statistics are kept in relation to corruption. In 2003, 16 cases of corruption were reported to the Unit and only one case was dealt with through other agencies. In the first two quarters of 2004, 26 cases of corruption were reported, 7 of them referred, 1 case closed and 4 dealt with through other agencies.

Co-operation among law enforcement and other agencies

121. The Police and Postal Services inter-cooperate in investigation matters. The Money Laundering Task Team is also in existence to address common issues relating to money laundering. The Money Laundering Task Team undertook a joint assignment such as the drafting of the money laundering Bill of 2004, and participation in sub-regional, regional and international forums, that assist to improve the quality of work of all agencies affected with issues of money laundering; and information sharing on new developments.

122. The banks also assist law enforcement by furnishing them with information relating to suspects' accounts and also by freezing the accounts of the accused persons. This is possible only if there is a court order or a letter signed by the Commissioner of Police, instructing a financial institution to furnish an investigator with information relating to the activities of an account or freezing of the account. The CP & E Act compels the banks to furnish law-enforcement officers with information.

123. The key problem in interagency cooperation has been that no reports for follow up have been forthcoming to relevant line departments and ministries, following participation in sub-regional, regional and international forums. Minutes of the Money Laundering Task Team have also not been well disseminated.

124. In Lesotho there is no specific unit that deals with asset forfeiture, confiscation or freezing.

Training

125. At present there is no specific training on ML and FT matters for law enforcement and customs officers.

Investigation of Terrorist Financing

126. As the financing of terrorism is not currently an offence, there are currently no entities designated to investigate the financing of terrorism. Investigative techniques and the methods of obtaining evidence do not apply to FT, nor do authorities keep statistics or keep or disseminate typologies pertaining to terrorist financing. It is anticipated that once the draft MLPC Bill is passed, systems will be implemented to facilitate the investigation and prosecution of FT.

Assessment of Effectiveness

127. Law enforcement and prosecutorial authorities have no strategic plan to deal with ML or FT investigations, confiscations and prosecutions. There also appears to be a lack of training and capacity in the areas of ML and FT.

128. Enforcement authorities have legal powers to obtain bank records and other documents from Government and other institutions for serious offences. Law enforcement agencies have stated they do not have sufficient human and financial resources to effectively investigate ML and FT when the Law comes into force. The police do not have adequate computers and equipment and lack cyber investigative to competently handle commercial crimes and AML and FT cases

129. In the absence of AML and CFT laws there are no investigative resources, capacity or techniques employed in the specific area of ML or FT and without AML/CFT investigations there are no statistics available for these crimes.

Recommendations and Comments

130. The draft MLPC bill needs to be revised to include examples of serious offences relating to ML and FT activities. Law enforcement agencies and prosecutorial services should understand and support the requirement for an AML policy and should become more proactively involved in the enforcement of the draft MLPC. This should lead to the implementation of regulations for all aspects of the draft MLPC as well as the allocation of resources and leadership to meet the international standards.

131. A workable plan of action also needs to be implemented to review existing laws relevant to enforcement authorities so that these laws complement the impending AML/CFT law.

132. Further training on AML/CFT should be delivered to all authorities. In addition a typologies conference should also be held in Lesotho for all relevant officials from the law enforcement, legal and financial authorities. The typologies conference would help raise awareness and determine trends and methods for money laundering in Lesotho.

133. The authorities should study the crime statistics to determine the countries threats and use these as a contribution to the overall AML strategic plan. Authorities should be more proactive in pursuing the "money trail" which derives from serious offences. This would enable them to proactively investigate money laundering offences.

134. Asset forfeiture legislation and training needs to be considered, and should complement the reporting regime and AML legislation.

Implications for compliance with the FATF Recommendation 37

Recommendation 37: Materially Non-compliant

V—International Co-operation
(compliance with criteria 34-42)

135. Lesotho has extradition treaties with South Africa, China and Other Commonwealth countries. However the extradition treaties do not provide for extradition of ML/FT offences. The country also has a Fugitives Act.

136. The draft MLPC bill does not provide a clear section on International Co-Operation with regards to extradition for criminals for ML and FT offences and confiscation of terrorist financing related property. It is suggested that this item can be addressed better by the Ministry of Foreign Affairs under the Chief of Protocol office working together with the Attorney Generals Chamber in which treaties and Security Council resolutions should be provided for in the draft MLPC bill.

137. Lesotho uses the Southern African Regional Police Chiefs Co-Operation (SARPCCO) Agreement in respect of Co-operation and Mutual Assistance in the Field of Crime Combating concluded between 12 Southern African States: Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

138. Lesotho has signed the SACO Agreement, which provides for cooperation in Law enforcement investigations. Other countries which are also party to the agreement are South Africa, Namibia, Swaziland and Mozambique. Lesotho Law enforcement authorities also have the means to use Interpol to request and exchange information.

139. Lesotho is a member of SADC, and ESAAMLG. Through membership of SADC, Lesotho is also party to the SADC Protocol on Extradition and Mutual Legal Assistance in Criminal Matters in which MOUs have been entered into with SADC countries for provision of assistance and information during investigations. Lesotho is also a member of Interpol which provides a forum for international cooperation on law enforcement investigations.

140. There are no accurate statistics available regarding the number of mutual legal assistance requests that have been made between local authorities and their international counterparts save for isolated incidents. There is no current provision for asset sharing with foreign jurisdictions.

Analysis of Effectiveness

141. There does not appear to be any law which effectively deal with mutual legal assistance. In addition the draft MLPC does not state what considerations may be considered in the provision of international mutual legal assistance. The draft provides for the extradition of criminals for ML and other serious offences, however does not include the extradition of criminals for FT offences and confiscation of terrorist financing related property.

142. Lesotho should enter into other more solid bilateral multi- lateral agreement s to share information and mutual legal assistance. The country should have agreements beyond the SADC and

Commonwealth region. The Ministry of Foreign Affairs with the help of the Attorney Generals Chamber must engage all the countries they find necessary to make agreements with after consulting Ministry of Trade on issues of trade agreements.

143. These agreements should include extradition of suspects, sharing of the proceeds and property that has been seized and forfeited to the state. The agreements must also provide for information sharing between law-enforcement agencies across regional borders and internationally.

Recommendations and Comments

144. Lesotho needs to revise the draft MLPC Bill to provide for more effective international cooperation in relation to ML and FT investigations and prosecutions.

145. Lesotho should enter into other bilateral and multi-lateral international agreements to share information and provide mutual legal assistance, including authority to freeze and seize assets that may be subject to forfeiture, for ML and FT offences as well as the underlying ML predicate offences.

146. Lesotho should also centralize statistics relating to requests for mutual legal assistance. It is hoped that the Directorate On Corruption and Economic Offences which is tasked under the draft MLPC to act as an FIU will enter into arrangements for sharing of confiscated assets with other foreign jurisdictions. Once these mechanisms are in place, a more transparent understanding will be available on the efficiency of international cooperation.

147. Lesotho should also consider the establishment of authority to enter into asset sharing arrangements with other countries for assets that have been forfeited. This would enhance international cooperation.

Implications for compliance with FATF Recommendations 3, 32, 33, 34, 37, 38, 40, SR I, SR V

Recommendation 3:	Materially Non-Compliant
Recommendation 32:	Non-Compliant
Recommendation 33:	Materially Non-Compliant
Recommendation 34:	Materially Non-Compliant
Recommendation 37:	Materially Non-Compliant
Recommendation 38:	Materially Non-Compliant
Recommendation 40:	Non-Compliant
SR I:	Materially Non-Compliant
SRV	Non-Compliant

Detailed Assessment of the Legal and Institutional Framework for Financial Institutions and its Effective Implementation

148. In order to assess compliance with the following criteria the evaluation team must verify that: (a) the legal and institutional framework is in place and (b) there are effective supervisory/regulatory measures in force that ensure that those criteria are being properly and effectively implemented by all financial institutions. Both aspects are of equal importance.

I—General Framework
(compliance with criteria 43 and 44)

Description

Secrecy Provisions

149. Currently there are a number of secrecy and confidentiality provisions in many acts. The Central Bank of Lesotho Act 2000 under Section 18(1) provides that no director, officer, employee or agent of the Bank shall disclose to any person any information relating to the affairs of its customers unless so required to do so by any courts of law or under the provisions of any law.

150. Under the Financial Institution Act, 1999 Section 26 (1), stipulates that no Commissioner, Officer, Employee or agent of the Commissioner's office, including any examiner duly authorised by the Commissioner to examine the affairs of, or advise concerning any person shall disclose to any person, any information of non-public nature relating to such office or to the affairs of any person, including any customer of a licensed institution except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do so by a competent court or under the provisions of any Act. Section 27 of the same Act lists information that can be disclosed, which includes any information relating to the banking and financial sectors of a representative of a foreign country.

151. Bank secrecy at times prevents effective investigation of suspects since law enforcement officers require a court order to compel financial institutions to divulge information on suspect clients and transactions. The draft MLPC under Section 23 states that secrecy obligations can be overridden and this shall have effect notwithstanding any obligation as to secrecy or other restriction on disclosure of information imposed by law or otherwise.

152. The CBL has issued Anti Money Laundering Guidelines for financial institutions only and in the absence of any law which compels the CBL to make these Guidelines available to all accountable institutions such entities as the bureaux de change and accountants and lawyers are unfamiliar with the AML/CFT requirements. Nonetheless the Guidelines are well written but the CBL itself would not be able to enforce the guidelines. In addition the Guidelines do not set any timelines for implementation.

153. The CBL supervises Banks, Insurance Companies, and all agents of financial institutions and ancillary financial service providers as defined in the FIA 1999.

Competent authorities to implement the recommendation

154. Under the MLPC Bill, Section 6(e) clearly defines the institutions to be licensed, registered and supervised by the Central bank of Lesotho. The CBL as the commissioner of the financial institutions would license the banks, insurance companies, moneylenders, and insurance and security brokers. Under the MLPC Bill the Directorate will be instituted as the competent authority to receive, collect, analyse suspicious transactions and will enforce compliance of the AML provisions in the legislation as per section 11(2) I of the MLPC Bill.

Analysis of Effectiveness

155. The draft MLPC does not provide for disclosure of information by financial institutions, privacy or bank secrecy laws notwithstanding. The current secrecy provisions may inhibit the function of the 'FIU' when it comes to the sharing of information at a domestic level with law enforcement and supervisory bodies since a court order will have to be sought in relation to the lifting of these provisions. This will also hamper the 'FIU' to share information to foreign counterparts.

156. It is not clear if confidentiality of information, which results from a contract between the financial institution and its client, is being used inter-changeably as secrecy obligation in the above provisions. The protection of the duty of confidentiality of the financial institution to its clients have not been addressed in the draft legislation and as such financial institution may not release financial information to the 'FIU' on this ground and a court order would have to be sought in that respect. The laws will need to be reviewed and harmonized to support the draft MLPC in this area.

Recommendations and Comments

157. The draft MLPC needs to be amended to clarify the secrecy and confidentiality obligations to facilitate the sharing of information at both the domestic and international level. Once the draft Bill is passed AML implementing regulations will need to be prepared and issued to the legal, financial and law enforcement sectors. These regulations should also focus on the secrecy laws and responsibilities of the competent authorities to implement the FATF 40 +8 Recommendations.

158. Financial institutions defined under the FIA 1999 are not defined in the draft MLPC Bill and will need to be included in the Bill. Many financial institutions listed under FIA are not supervised with respect to the 40+8 Recommendation. With regards the draft Bill, the draft law is limiting in the reporting of suspicious transactions. It only provides that financial institutions are required to report STRs and does not include members of other professions; such as an accountant and auditor, legal professionals and a chartered secretary. There is also no supervisory control on managing trustees managing trusts. The laws need to be amended to include accountability for all institutions whether financial or other entities.

Implications for compliance with FATF Recommendation 2

Recommendation 2:	Non-Compliant

II—Customer identification

(compliance with criteria 45-48 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 68-83 for the banking sector, criteria 101-104 for the insurance sector and criterion 111 for the securities sector)

Description

Financial institutions in general

159. The AML Guidelines 2000 describe identification of customers and record keeping. Guideline 7 (1) states that financial institutions shall require a customer or client to disclose a true identity of the person on whose behalf the account is opened or the transaction is conducted, and Guideline 6 (1) and (2) provide that financial institutions are not allowed to keep anonymous accounts or accounts in fictitious names. While provisions are made in the Guidelines they are not fully compliant with the FATF and the Basel Committee CDD principles. The FIA Act and Guidelines do not provide for the treatment of businesses from introducers and the treatment of correspondent accounts. The use of numbered accounts has been considered. These accounts can only be permitted if the financial institution has properly identified the customer in accordance with these criteria, and the customer identification records are available to the AML/CFT compliance officer, other appropriate staff and the supervisor.

160. The FIA Act and AML Guidelines 7(1) and 8, require financial institutions to identify their customers on the basis of an official or other identifying document, and to record their identity, when establishing business relations, and to identify and record the identity of their occasional customers when performing transactions over a specified threshold and to renew identification when doubts appear as to their identity in the course of their business relationship. If the customer is a legal entity, financial institutions are required to verify its legal existence and structure, including information concerning the customer's name, legal form, address, directors in order to establish the true identity of the customer. However no provisions exists for regulating the power to bind the entity; and to verify that any person purporting to act on behalf of the customer is so authorised and identify those persons.

Banking

161. Lesotho has a Central Bank and three commercial banks of which all are owned by South African Banks. Two banks are Stanbic operated under the names of Standard Bank Lesotho Ltd, and Lesotho Bank 1999 Ltd. The other two banks are Nedbank Lesotho Ltd [Nedcor Group, RSA] and First National Bank which falls under FirstRand Group, RSA. Lesotho does not have a Bankers Association, instead the Governor of the CBL and the three Managing Directors of the commercial banks meet on an ad hoc basis and discuss issues of mutual interest. The Minister of Finance, Governor of the CBL and commercial bank managers feel that the financial community is too small to require a formal banking association, as a result regular meetings are held to address banking issues.

162. Within the CBL, the Bank Supervision Department is responsible for overseeing and safeguarding the stability, integrity and efficiency of the banking industry. The Department's objectives include licensing, regulating and supervising banks and financial institutions**.** Under the Financial Institutions Act, 1999, all financial institutions have been provided with the Financial Institutions AML

Guidelines, 2000 to adhere to the practices of monitoring and reporting AML activity, in particular suspicious transactions.

163. AML Guidelines 6(2) and (3) require financial institutions to fully comply with KYC principles in relation to procedures and controls with regard to customer identification, account opening, record keeping, knowledge of the customer's activities, adequate internal controls and staff awareness.

Insurance Corporations, Ancillary Financial Services etc

164. Insurance Companies and ancillary financial services are regulated and supervised by the CBL. However the Financial Institutions AML Guidelines do not include compliance by these sectors and hence these Guidelines have not been made available to these sectors. As a consequence these sectors are unfamiliar with AML/CFT deterrence, detection, reporting of suspicious transactions, customer identification and internal control systems to prevent and detect money laundering.

Customer and Legal Entities Identification and Timing of Identification

165. The draft MLPC itself does not provide for any specific customer identification procedure for individual customers nor any requirement or procedure regarding legal entities or beneficial owners of legal entities. It also fails to indicate which measures an institution should take to obtain information about the true identity of the customers.

166. In addition, the draft MLPC does not explicitly prohibit financial institutions from keeping anonymous accounts or accounts in obviously fictitious names and does not address the issue of establishment of numbered accounts, which are deemed to be high risk for money laundering purposes. However AML Guideline 6 does prohibit financial institutions from keeping anonymous account or accounts in fictitious names.

Funds Transfers

167. There are no provisions in the FIA 1999, or draft MLPC Bill or regulations that require the financial institutions to record and establish accurate and meaningful originator information on wire transfers and related messages. Currently the originator information does not include name, address and account numbers.

Analysis of effectiveness

168. There lacks clear and comprehensive legislation, regulations and guidelines on customer identification and record keeping for accountable institutions with the exception of financial institutions which are required to abide by the AML Guidelines and commercial banks internal controls. The draft MLPC will need to be amended to be compliant with the FATF recommendations on customer identification for "all accountable institutions".

169. The regulations and guidelines issued by the Central Bank under the FIA 1999 contain limited requirements without any specific procedures to address the identification of legal entities and beneficial owner of legal entities, and numbered accounts which are considered to be high risks for money laundering. In the absence of these requirements, there is potential for the use of anonymous and fictitious accounts by these institutions.

170. Part II of the FIA 1999 on the Licensing process and Section 44 of the same Act require the applicant of a license and any director or officer of a licensed institution under this Act to be 'fit and proper'. These sections are very limited and are not supported by comprehensive regulations or guidelines.

171. The development of internal policies by banks, insurance and other financial institutions and the application of procedures for obtaining customers identification are inadequate. The banks and the insurance institutions have more or less an identification procedure, which needs to be updated whilst other types of financial institutions have very limited procedures. Most of the banks and insurance companies visited require copy of identification but not all of them keep a copy of photo identification.

Recommendations and Comments

172. Lesotho needs to amend the draft MLPC and existing guidelines and regulations that cover detailed, comprehensive and mandatory and enforceable customers identification that are applicable to all financial institutions. The existing guidelines need to be updated to bring them in line with the 40+8 Recommendations and also should cover the various requirements in the Basle Core Principles on customers due diligence for banks, and the IOSCO Core Principles.

173. Financial institutions, including moneylenders, should be required to include accurate and meaningful originator information on funds transfers and related messages that should remain with the transfer or related message through the payment chain. Originator information should include name, address, and account number (when being transferred from an account). The new legislation should make this requirement mandatory to comply with Special Recommendation VII.

174. Banks should have policy and procedures for handling banking relationships with politically exposed persons (PEPs) that cover identification of a politically exposed person among new or existing customers; identification of persons or companies related to them; verification of the source of funds prior to account opening; and Senior management approval for establishing banking relationships with PEPs.

175. Banks should have policies and procedures regarding the opening of correspondent accounts. The policy and procedures should at the minimum require the bank to fully understand and document the nature of the respondent bank's management and business; to ascertain that the respondent bank has effective customer acceptance and KYC policies and is effectively supervised and to identify and monitor the use of correspondent accounts that may be used as payable-through accounts; and not to enter into or continue a correspondent relationship with a bank incorporated in a jurisdiction in which it has no physical presence (i.e. meaningful mind and management).

176. There has to be an established agency within the government system where identity of people applying for accounts could be verified like the National Registration office or ID Book office. The Labour and Home Affairs Ministry must keep records of foreigners and foreign companies investing in Lesotho through Labour and Immigration departments, this information can also be kept by the Ministry of Trade. The establishment of a Financial Intelligence Unit can also assist in cross checking and verifying the documents submitted by foreign companies and individuals opening accounts with the Lesotho banks, this include reference letters from the bankers of the applicant where they come from.

Implications for compliance with FATF Recommendations 10, 11, SR VII

Recommendation 10:	Materially Non Compliant
Recommendation 11:	Materially Non Compliant
SR VII:	Non-Compliant

III—Ongoing monitoring of accounts and transactions

(compliance with Criteria 49-51 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 84-87 for the banking sector, and criterion 104 for the insurance sector)

Description

177. There are no detailed provisions in existing laws and regulations that address complex, unusual large transactions, transactions of unusual pattern having no economic or lawful purpose. Section 17 and 18 of the FIA Guidelines 2000 provides for limited guidance about large cash transactions and suspicious transactions.

178. While the proposed draft MLPC refers to suspicious transaction, there are no requirements that compel financial institutions to monitor high risks accounts for operational risks and when dealing with high-risk countries.

179. There is also no requirement in the proposed legislation regarding caution in dealing with transactions from other countries. Section 14 of the AML Guidelines, which deals with foreign persons, also do not include specific requirements in this regard. However, financial institutions are required to exercise reasonable caution in their business transactions when dealing with persons from other countries.

Banking, Insurance Companies, Ancillary Financial Services, Insurance and Stock Brokers

180. The CBL has not devised effective measures to ensure that financial institutions are advised of concerns about weaknesses in the AML or CFT systems of other countries. Lesotho banks do not have capacity to aggregate and monitor significant balances and activity in customer accounts on a fully consolidated world wide basis, but they do have measures in place to detect unusual or suspicious patterns of activities in all accounts, such as important transactions journals, and "worry lists" for intensified monitoring.

181. Under the draft MLPC Bill ancillary financial services are obliged to report STRs as they are deemed to be financial institutions. However the draft Bill is insufficient in the case of the insurance sector as they are not included in the financial institutions definition.

182. There are three officers in the supervision department of the CBL to carry out on-site inspection of the Banks, Insurance companies, Insurance Brokers, Ancillary Financial Services and Securities Agents. The banks are inspected twice a year and no inspection is carried out for the other sectors. There is no manual or checklist to guide the supervisors in their inspection duties. No AML/CFT manual is used and there is no proper follow up of the designated persons and entities declared as terrorists.

Analysis of effectiveness

183. In general, the banks and other institutions interviewed were aware of monitoring suspicious and high-risk accounts but not all banks and financial institutions have implemented effective systems to trace complex and unusual transactions. The list of designated terrorists for individuals and entities are not circulated to financial institutions for monitoring purposes. Many of the financial institutions were not aware of such a list and also do not monitor transactions with customers from countries that are considered to be of high risk and have no system to fight money laundering (NCCT Countries)

184. There is a lack of understanding and knowledge to the types of transactions throughout the financial sector which retards the employees' ability to recognize unusual activities or transactions that may be suspicious and hence a failure to detect and report such transactions to the Central Bank or the Police. Training in this area is urgently needed.

Recommendations and Comments

185. Lesotho authorities should introduce adequate provisions in the law and/or regulation that requires financial institutions to pay special attention to all complex, unusual large transactions.

186. While AML Guideline 2(a) specifies the basic requirements for reporting suspicious transactions and a description of what constitutes a suspicious transaction, further examples of STRs need to be included in particular those which may relate to the FT. Additionally, regulations should stress the importance of financial institutions' adequate monitoring systems in order to identify all types of suspicious transactions. Banks should also issue internal guidance in this area and incorporate procedures to test the system in an inspection manual.

187. Lesotho authorities should introduce amendments in law and/or regulations that require financial institutions to give enhanced scrutiny to wire transfers that do not contain complete originator information.

188. The draft MLPC and other related laws should be amended to require financial institutions to give special attention to business relations and transactions with persons (including legal entities and other financial institutions) in jurisdictions that do not have adequate systems in place to prevent or deter ML or FT.

189. There should be effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML or CFT systems of other countries

190. Various training packages have to be designed for the financial institutions to assist employees with understanding their responsibilities regarding effective AML/CFT. There should be a local agency working hand in hand with international organizations like ESAAMLG, IMF, World Bank, SADC and SAFAC. One such avenue could be the Security Managers Forum comprising representatives from law-enforcement agencies, Compliance Managers of commercial banks, Head of Security [Central Bank], Ministry of Finance and the judiciary. This Forum could be formalized by making a provision in the draft MLPC Bill for the establishment of such an organization. A Bankers Association can also be included in this forum provided the Banking Act or the Central Bank has a provision for the establishment of a Bankers Association.

191. In view of the lack of resources, the CBL may adopt a risk-based approach to AML/CFT inspection to put the responsibility on firms and their boards and senior management – to identify, assess, mitigate and monitor their money laundering risks on a considered and continuing basis

Implications for compliance with FATF Recommendations 14, 21, 28

Recommendation 14:	Materially Non-Compliant
Recommendation 21:	Non-Compliant
Recommendation 28:	Materially Non-Compliant

IV—Record keeping

(compliance with Criteria 52-54 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criterion 88 for the banking sector, criteria 106 and 107 for the insurance sector, and criterion 112 for the securities sector)

Description

192. Section 8 and 9 of the Guidelines 2000 require financial institutions to maintain a record on customer identification, such as copies of official identification documents, account files and business correspondence, for at least ten years after account is closed. Records, which can enable financial institutions to comply with information requests from competent authorities, are also to be kept for a minimum period of ten years. Such records are to be kept in such a form as would enable reconstruction of individual transactions as evidence in criminal proceedings.

193. A further requirement as set out under section 10 of the Guidelines 2000 is for financial institutions to review and properly document the background and purpose of all complex, unusually large transactions and all unusual transactions, which have no apparent economic or visible lawful purpose.

Documents to be kept and time frame

194. Under Section 13(1) of the MLPC Bill, the Central Bank of Lesotho is given the power to inspect records of all suspicious transactions and also financial institutions to include ancillary financial services as defined under this draft legislation are required to keep evidence of the person identity in accordance with Section 12 of the same Bill. Section 13 (4) requires all financial institutions to keep records for at least 10 years from the date the relevant business or transaction was completed or termination of business relationship. Financial institutions are required under Section 13(3) to keep details of transaction conducted, name and address, identification and principle activity of each person conducting transaction, the nature and the date of transaction, type of transaction. On the other hand, the Directorate of Corruption is empowered under Section 14(3) to call for further information in relation to suspicious transaction filed with the Directorate. It is an offence under Section 18(3) for failing to keep records by any financial institution.

195. The Financial Institutions Guidelines 2000 require financial institutions to develop programmes against money laundering and the financing of terrorism. Such programmes include

records keeping and customer identification procedures. Failure to comply with these guidelines (Section 5), may result with supervisory actions taken by the Central Bank. Section 41 of the Financial Institutions Act requires every financial institution to keep records necessary to exhibit clearly and correctly state of its affairs and to explain its financial and transaction position. The Act prescribes that such records should be kept for at least 10 years from the date of last entry therein.

Access to records by supervisory authorities

196. The MLPC Bill empowers the Directorate On Corruption to enforce compliance with the said legislation. This responsibility may or would overlap with the supervisory duties of the Central Bank of Lesotho. The draft legislation places heavy burden on the Directorate and stretches its resources to cover a number of areas to include operation as an FIU, supervision of AML/CFT legislation, investigation of corruption offences, prosecution of offences, education and system enhancement. There is no particular provision in the draft legislation that deals with the exchange and sharing of information with supervisory bodies and law enforcement. As an AML/CFT law, the draft legislation is silent on the exchange of information. The secrecy and confidentiality provision in related legislation should be reviewed to facilitate the exchange of information. Section 20 and Section 21 of the draft legislation set out procedures to obtain grants monitoring order and the Directorate may upon application of the Court obtains documents relevant to its investigation be delivered herewith.

197. Through the courts, the Police can also obtain records from business and financial institutions by way of search warrants. Under the CP & E of 1981 section 46, provides powers of search with a warrant by providing that, a Judicial Officer upon a compliant made on oath and on reasonable ground of suspicion he may issue a warrant directing a policeman named in the warrant search, seize or take to the Magistrate any stolen property that he believes on reasonable ground to be stolen. The same Act provides for powers of search without a warrant in section 47, and provides that, "If a policeman of or above the rank of warrant officer believes on reasonable grounds that the delay in obtaining a search warrant would defeat the object of the search, he may search any person, premises, place, vehicle, or receptacle.

198. In relation to requests for information and documentation, according to section 247 of the same Act, CP & E 1981, a police officer is given power to demand bank records from a bank, in respect of a customer whom the police have a reasonable suspicion that the money in his possession is the proceeds of criminal conduct/behavior. Law enforcement agencies in accordance with section 247 of the cp& e of 1981 may compel the production of bank account records, financial transaction records and other records maintained by financial institutions or other entities for the purposes of processing a lawful purpose such as an investigation. Section 247(2) of the Criminal Procedure & Evidence Act of 1981 empowers a police officer of the rank of lieutenant or above, to demand the production of bank ledgers, cash books or other account books notwithstanding that there are no criminal proceedings pending. Under section 247 (1) banks shall not be compelled to produce these books and records except by court order.

Access to records for AML/CFT investigations and prosecutions

199. While the draft MLPC provides for access to records by the authorities for ML investigations there is no provision in any law for the access to records for FT investigations. In general there have not yet been any requests for records for AML/CFT investigations and prosecutions.

Analysis of effectiveness

200. Financial institutions should be required to maintain all necessary records concerning customer transactions, and accounts, for at least five years following completion of the transaction (or longer if requested by a competent authority), regardless of whether the account or business relationship is terminated and these documents should be available to a competent authority. Transaction records should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal behaviour. Records should include the customer's (and beneficiary's) name, address (or other identifying information normally recorded by the intermediary), the nature and date of the transaction, the type and amount of currency involved, and the type and identifying number of any account involved in the transaction. The provisions in the Guidelines 2000 are not sufficient to meet the requirement of the FATF Recommendations.

201. Financial institutions should be required to ensure that customer and transaction records and information are available to domestic competent authorities for AML/CFT investigations and prosecutions. The establishment of the internal control framework by the financial institutions is uneven and some financial institutions interviewed were not familiar with the internal control policies laid down in the FIA Regulations 2000. During the interview it was not evident that financial institutions were maintaining adequate records of customers' identifications and transactions. However our interview with the international bank, however, revealed that the bank has established appropriate internal control policies and maintains proper archive system.

202. The CBL states that compliance with these requirements is being verified during on-site examinations and that records have been made available to examiners. However, due to the lack of training in AML area, it seems that the examiners are carrying out only very limited tests to the compliance with these AML requirements.

Recommendations and Comments

203. Financial institutions should develop clear policies to maintain records of customer identity (including where possible, copies of the official or other identifying document) account files and business correspondence following the termination of an account or business relationship (or longer if requested by a competent authority) and should establish system for updating such records. Such documents should be available for inspection by a competent authority or the supervisory examiners.

204. The record keeping and the internal control procedures in the proposed legislation will have to be supplemented by regulations and guidelines to establish the manner in which the records have to be kept and the identification which is required. In addition, all guidelines should make clear that information regarding beneficial ownership of underlying clients, the source of funds, type of currencies, and the number of any accounts involved in the transaction should be obtained and retained for all transactions.

205. Financial institutions should be required to ensure that customer and transaction records and information are available to domestic competent authorities for AML/CFT investigations and prosecutions, are provided for under Financial Institutions Act No. 6 of 1999, Section 41 and
- Financial Institutions AML Guidelines 2000, Guideline 8 and 9 (1) and (2).

206. All financial institutions should be requested to develop internal policies that clearly describe their obligations in this area and communicate these policies and procedures to staff. In addition, supervisors should ensure that their own examination manuals cover compliance testing for both customer identification and transactional records of financial institution's customers. They should also ensure that financial institutions' internal compliance inspection manuals include testing in this area.

207. Lesotho does not have laws in place to guard against money laundering, financing of terrorism and also to compel the financial institution, both banking and non-banking to file suspicious activity reports with Central Bank of Lesotho or any designated body. The financial institutions regulations on money laundering do not include the non-banking sectors; therefore other players in the economy have been left out. Institutions like law firms, accountants and insurance brokers have not been included in the whistle blowers therefore a gap or a loophole has been created where money launders can launder their money.

Implications for compliance with FATF Recommendation 12

Recommendation 12: Largely compliant.

V—Suspicious Transactions Reporting

(compliance with Criteria 55-57 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 101-104 for the insurance sector)

Description

Financial institutions in general

208. The FIU has not been established in Lesotho. According to Section 11(2) of the draft MLPC bill, the Directorate of Economic Crimes established under the POCEO Act 1999 is set up as the competent authority to receive STRs.

209. The draft law provides that the Directorate:

- Shall receive reports of suspicious transactions issued by financial institutions and cash dealers pursuant to section 14(1);
- Shall send any such report to the appropriate law enforcement authorities, if having considered the report, the Directorate also has reasonable grounds to suspect that the transaction is suspicious;
- May enter the premises of any financial institution or cash dealer during ordinary business hours to inspect any record kept pursuant to section 14(1), and ask any question relating to such record, make notes and take copies of whole or part of the record;
- Shall send to the appropriate law enforcement authorities, any information derived from an inspection carried out pursuant to paragraph (c), if it gives the Directorate reasonable grounds to suspect that a transaction involves proceeds of crime;
- May instruct any financial institution or cash dealer to take such steps as may be appropriate to facilitate any investigation anticipated by the Directorate;

- May compile statistics and records, disseminate information within Lesotho or elsewhere, make recommendations arising out of any information received, issue guidelines to financial institutions and advise the Minister accordingly;
- Shall create training requirements and provide such training for any financial institution in respect of transaction record-keeping and reporting obligations provided for in section 13(1) and 14(1);
- May consult with any relevant person, institution or organization for the purpose of exercising its powers or duties under paragraph (e), (f) or (g);
- Shall not conduct any investigation into money laundering other than for the purpose of ensuring compliance by a financial institution with the provisions of this part.

210. Section 24 of the MLPC Bill provides for immunity where suspicious transaction is reported under Section 14(1) of the same Bill. Section 25, provides for immunity where officials powers or duties are exercised in good faith. The law provides for no suit, prosecution or any legal proceedings against Government, officer or other person. The provision covers both criminal and civil prosecution. It also provides comfort for any breach of confidentiality arising from disclosure and with compliance with this legislation. "When the STR is made in good faith, the accountable institution or its employees … shall be exempt from criminal, civil and / or administrative liability …for complying with this section or for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision".

211. The provisions related to tipping off is contained in the draft MLPC under Section 18(5)(a) which make it an offence for any person who warns the owner of any fund of any report make the Directorate would disclose to any person information or other matter which is likely to prejudice an investigation. Section 18(5)(b) makes it an offence for a person who knows or suspects that an investigation into money laundering has been, is being, or is about to be made, to divulge that fact or any other information to another whereby the investigation is likely to be prejudiced. As it stands in the present legislation there is no provision that prohibits tipping off when a report has been filed with the Central Bank. However Section 49 of the POCEO Act 1999 makes it an offence for any person to disclose without lawful authority or reasonable excuse, to any person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by him under the POCEO Act, the fact that he is subject to such an investigation or any details of such investigation, or publishes or discloses to any other person the identity of any person who is the subject of such an investigation

212. Section 11 of the Guidelines financial institutions requires to report to law enforcement authorities and to the Central Bank, any transaction by a customer which the financial institution suspects may form part of a criminal activity or otherwise constitutes a suspicious transaction. Under section 18 of the Guidelines, reports are also immediately to be made to the Central Bank, pertaining to any knowledge or suspicion of money laundering related to a specific customer or transaction. 213.

213. Financial institutions are also required to report to the Central Bank, any transaction above M100, 000.00 within 30 days from month-end. These are transactions which involve cash or "near cash", for example, travelers cheques, bearer bonds and other easily negotiable monetary instruments

Insurance Companies, Ancillary Financial Services etc

214. Financial institutions to include ancillary financial services, are obligated to make STRs as defined in the draft MLPC Bill. The definition of financial institutions does restrict the offence of money laundering to certain specific services and as such some services may be vulnerable to money laundering and terrorist financing. The definition of financial information needs to be extended to include the reporting obligations by legal or natural persons acting in their professional activities such as Auditors, External Accountants, Tax Advisors, Legal Professionals acting on behalf of their clients in any financial transaction dealers in high value goods or precious stones or metals and real estate agents. Section 2 (i) of the Bill captures the services of Lawyers, Tax Advisors and External Accountants. However this could be extended to cover buying and selling of business entities or real estate, managing of clients money, securities or other assets opening or management of bank accounts or securities on behalf of clients, creation operation or management of trusts, companies or similar structure.

215. However the draft Bill does not clearly define the services offered by insurance companies in the definition of financial institutions. This omission in the draft Bill could provide a loophole for parts of the insurance sector to not be accountable for ML and FT. MLPC Bill.

STRs related to Terrorist Financing

216. There are currently no requirements for financial institutions to report STRs involving funds suspected to be linked in the financing of terrorism.

Analysis of Effectiveness

217. There is no central authority under the guidelines to assist financial institutions in detecting patterns of suspicious financial activity. Such guidelines should also include: (i) a description of ML and FT techniques, methods and trends; (ii) an explanation of the AML/CFT laws and requirements that apply; and guidance on how a financial institution could comply with those laws and requirements. The STR system in place does not fit the requirements of the FATF Recommendation. The guidelines are inadequate and incomplete to fight money laundering and terrorist financing there are major weaknesses in the existing guidelines to detect and control money laundering as the bank industry is allowed to apply to the Central Bank for exemption for some clients from being reported in terms of the large cash transaction. This is identified as a major flaw as the bank will never know when a longstanding bank customer may become a launderer. The exemption can serve to facilitate money laundering without fear of detection as a client is protected from scrutiny. It would also seem to open the banks up to the risk of employees being too lax about exempted customers to even pay attention when the customer starts to transact in an unusual manner.

218. The perception is that bank officials and other financial institutions do not report suspicious transactions as they are enjoined to do for fear of reprisals as there is a lack of faith in the police to deal with reports in confidence and to protect the identities of the officials who report. Members of the Fraud Unit of the Police Service conceded that reports of suspicious transactions were very few in number.

219. The proposed legislation does not create a central agency responsible to receiving, collecting, analyzing and disseminating financial information relating to suspicious transaction reports pursuant to section 14(1) of the Bill. The Directorate is called to function as an FIU side by side with the Investigatory function. The Directorate is also called to perform supervisory duties to ensure compliance with the various provisions of the Bill. We are of the view that the bill is placing heavy burden on the Directorate and would not be able to properly function as an Anti-Corruption Body.

Recommendations and Comments

220. A central authority should be set up to act as the FIU or the Central Bank be tasked with that function. The most ideal situation is to have segregation of duties when you deal with receiving reports, analyzing them, processing the data, investigating, advising clients/stakeholders and prosecuting the perpetrator of the offence. The Central Bank is the most ideal institution because it does not investigate like the law-enforcement agents, therefore the element of independence could be realized. While under the draft MLPC Bill, the DCEO is tasked to function as an FIU, the DCEO is under staffed and this is going to create an extra burden on the institution and also there is lack of proper training.

221. All stakeholders should be actively involved in the development of the new AML/CFT laws. Once these Acts come into force it will be important to issue implementing regulations, which would assist financial institutions in detecting patterns of suspicious financial transactions by customers.

222. These regulations should include:

- A description of ML and FT techniques, methods and trends.
- An explanation of the AML/CFT laws and regulations that apply and guidance on how financial institutions should comply with the same.
- A standard format for reporting STRs to be made available to all accountable institutions. Sanctions should be applied to financial institutions that fail to comply with suspicious transaction reporting requirements.

223. Financial institutions should be encouraged to design monitoring systems that not only capture large amounts above the threshold limit but small amounts which when aggregated, constitute significant amounts. Model examples from regional and overseas financial institutions should be studied by Lesotho's institutions with a view to designing an appropriate monitoring system which can capture suspicious transactions below the threshold limit.

224. Accountable institutions should develop training programs that will increase staff awareness as well as increase their ability to detect the different types of suspicious transactions.

225. The reporting of STR should cover both the suspicious money laundering activities and suspicious terrorist financing transactions. If a financial institution suspects that assets involved in a transaction either stem from a criminal activity or are linked or related to, or are to be used to finance terrorism, the financial institution should be required to report promptly its suspicions to the 'FIU' in the form of a "suspicious transaction report". The information should be for intelligence purposes and the person making the report in good faith should be immune from criminal or civil liability.

226. Financial institutions should be required to have clear procedures, communicated to all personnel, for reporting suspicious transactions. Financial institutions (including any directors, officers, and employees) should be protected from any liability for breach of any restriction on disclosure of information in the course of making available findings or reporting suspicions in good faith.

227. A training package on AML/CFT should be devised for all officers concerned in the financial institution and the Lesotho authorities in the appreciation of the background to money laundering. The primary purpose of such training is to raise awareness of those tasked to fight money laundering and terrorist financing. The training to include what constitutes money laundering, the most common method of money laundering, achieving comprehensive knowledge of the client, the detection of suspicious transactions, dealing with large cash transactions, the possible link between investment related transactions and international activity to money laundering.

Implications for compliance with FATF Recommendations 15, 16, 17, 28, SR IV

Recommendation 15:	Materially Non-Compliant
Recommendation 16:	Materially Non Compliant
Recommendation 17:	Materially Non-Compliant
Recommendation 28:	Materially Non-Compliant
SR IV:	Non-Compliant

VI—Internal controls, Compliance and Audit

(compliance with Criteria 58-61 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 89-92 for the banking sector, criteria 109 and 110 for the insurance sector, and criterion 113 for the securities sector)

Description

Internal rules, training, and compliance officers

228. The banks in Lesotho do not have foreign subsidiaries. With the exception of Lesotho Bank 1999, all other commercial banks are subsidiaries of South African banks, hence in most cases these commercial banks should apply standards that are recommended by their Group head office.

229. The two commercial banks in Lesotho, Standard Bank Group and Ned bank Lesotho have implemented policies and procedures issued by their head office in South Africa in line with the Financial Intelligence Centre Act and its Regulations. The compliance officers of both banks interviewed showed that they exercise self-regulation on money laundering through ensuring compliance with legislation, internal controls, policies and procedures issued by South Africa.

230. No provision in the draft law or existing laws requires financial institutions to ensure that employees are kept informed of new developments, including information on current ML and FT techniques, methods and trends; and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning customer identification and due diligence,

and suspicious transaction reporting. The Lesotho authorities should also introduce such provision in the law or in future mandatory and enforceable guidance notes.

Employee screening

231. There is no provision in the existing legislation that requires financial institutions, insurance sectors, ancillary financial services etc to put in place adequate screening procedures to ensure high standards when hiring employees. The Lesotho Authorities should introduce such provision in the legislation.

Home Versus host country supervision

232. No provision in the law requires financial institutions to inform their home jurisdiction supervisor/regulator when a foreign branch or subsidiary is unable to observe the appropriate AML/CFT measures of the home jurisdiction. In addition, no provision, requires the application of the higher standard where the minimum AML/CFT requirements of the home and host jurisdictions differ, branches and subsidiaries in host jurisdictions should be required to apply the higher standard. Subsidiaries often apply standards of parent companies.

Compliance Officer

233. There is no provision in the existing legislation or the proposed MLPC Bill that requires financial institutions to designate an officer at management level to ensure compliance with the AML/CFT legislations and issues.

AML/CFT audit manual & checklist for supervisory examiners

234. Currently the CBL has not conducted any examinations of financial institutions with respect to AML/CFT compliance and as such no manual and checklist exist to guide the examiners in their on-site audit.

Analysis of Effectiveness

235. There is no provision in the draft law that requires financial institutions to designate an AML/CFT compliance officer at management level. The Lesotho authorities should consider introducing such provision in the law or in future mandatory and enforceable regulation

236. The development of internal AML/CFT policies and procedures by financial institutions is weak and needs to be strengthened. Written internal policies and procedures reflecting supervisory authorities' guidelines need to be established for all banks and other financial institutions.

237. Lesotho authorities should issue mandatory and enforceable guidelines to establish AML/CFT programs that include internal procedures and policies (such as customer acceptance policies), ongoing employee training, and an audit function to test the system, to ensure adequate compliance with these programs

238. The non-existence of on-site inspections on AML/CFT standards by the supervisors makes analysis of effectiveness difficult.

Recommendations and Comments

239. Financial institutions should ensure that their foreign branches and subsidiaries observe appropriate AML/CFT measures consistent with the home jurisdiction requirements, to the extent that local laws and regulations permit. Financial institutions should inform their home jurisdiction supervisor/regulator when a foreign branch or subsidiary is unable to observe the appropriate AML/CFT measures of the home jurisdiction. Where the minimum AML/CFT requirements of the home and host jurisdictions differ, branches and subsidiaries in host jurisdictions should be required to apply the higher standard. The two commercial banks in Lesotho, which are, the Standard Bank Group and Ned bank Lesotho have implemented policies and procedures issued by their head office in South Africa in line with the Financial Intelligence Centre Act and its Regulations. The compliance officers of both banks interviewed showed that they exercise self-regulation on money laundering through ensuring compliance with legislation, internal controls, policies and procedures issued by South Africa.

240. Financial institutions should be required to establish and maintained internal procedures to prevent their institutions from being used for ML or FT purposes. In particular, financial institutions should be required to establish AML/CFT programs that include internal procedures and policies (such as customer acceptance policies), ongoing employee training, and an audit function to test the system, to ensure adequate compliance with these programs In relation to ongoing training, financial institutions should be required to ensure that employees are kept informed of new developments, including information on current ML and FT techniques, methods and trends; and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning customer identification and due diligence, and suspicious transaction reporting. We understand from the representatives of the two banks that their group policies require them to report suspicious transactions to the Bank's Head Office in Johannesburg where it ends up with the Group's anti-money laundering officer who in turn reports to the South African Reserve Bank or the Financial Intelligence Centre

241. Financial institutions should be required to put in place adequate screening procedures to ensure high standards when hiring employees.

242. All financial institution to apply higher KYC standards on a global basis

243. On site examiners of the Central Bank should be provided with adequate training to ensure proper AML/CFT inspection.

244. All financial institutions should become aware of the requirements set forth in any foreign jurisdictions where they have foreign operations regarding AML/CFT measures in place.

Implications for compliance with the FATF Recommendations 19, 20

Recommendation 19:	Largely Compliant
Recommendation 20:	Non-applicable

VII—Integrity standards

Compliance with criteria 62 and 63 for the (i) banking sector, (ii) insurance sector, (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criterion 114 for the securities sector.

Description

Licensing Requirements

245. The FIA 1999 provides for the authorisation, supervision and regulation of financial institutions, agents of financial institutions and ancillary financial service providers. The Act defines a financial institution as an institution, which performs banking business or credit business. In terms of the Act, the Central Bank of Lesotho (The Central Bank) serves as Commissioner of financial institutions. In the exercise of the function of Commissioner, under Part II of the Act, licenses financial institutions, agents of financial institutions and ancillary financial service providers such as foreign exchange dealing services, electronic fund transfer services etc. In terms of section 49, the Central Bank is also responsible for the supervision of financial institutions and other licensed institutions.

246. Lesotho has the legal and institutional framework in place to ensure that criminals are prohibited from holding or controlling a significant investment in a financial institution, or from holding any qualified management functions therein, including in the executive or supervisory boards; councils, etc. The Central Bank of Lesotho acts as a Commissioner of all financial institutions under the Financial Institutions Act 1999 and is the sole authority to issue licences after the due diligence to financial institutions agents of financial institutions and agents of ancillary financial services providers

247. In considering an application for a license the Commissioner shall under section 7 of the FIA 1999 evaluate the Directors and senior management of financial institutions expertise and integrity and shall also consider the skills and experience in relevant financial operations commensurate with the intended activities of the financial institution, and have no record of criminal activities or adverse regulatory judgments that would make the person unfit to be a director or senior manager of that institution.

Foreign Exchange

248. The CBL under section 31 – 36 of the CBL Act provides for exchange rate policy, foreign exchange regime, foreign exchange rules, international reserves and reporting of foreign exchange transactions by the commercial banks and hotels in Lesotho. The threshold is to be determined from time to time by the Central Bank of Lesotho.

Insurers, collective investment schemes, and financial services providers

249. The pensions and retirement funds are governed by the Pensions Act and the regulating authority is the Ministry of Finance. There is no information on policies and procedures currently under development by the Ministry.

Financing of Terrorism

250. Since FT have not yet been considered a crime, there are no measures in place to prevent unlawful use of entities identified as vulnerable to use as conduits for criminal proceeds or FT, such as charitable or not-for-profit organizations.

Analysis of effectiveness

251. Fit and proper evaluations are conducted by the CBL to ensure that proposed directors and senior management have the appropriate expertise, experience and integrity

252. Regarding ownership or investment in a financial institution, under the FIA the definition of what constitutes significant ownership, the prohibition from holding and management is sufficient to prevent criminals from gaining control of or holding a significant investment in any financial institution.

Recommendations and Comments

253. There should be measures to prevent unlawful use of entities identified as vulnerable to use as conduits for criminal proceeds or FT, such as shell corporations or charitable or not-for-profit organisations

254. The licensing process includes a fit and proper test but no guidelines exist for the various financial sectors to assess the fitness and suitability of directors, senior management and significant shareholders.

255. The CBL should review the fit and proper assessment of stakeholders, directors and senior managers on a continuing basis. The draft MLPC should be amended to provide bank-like requirements for other financial institutions and should be amended to define significant ownership or investment in percentage terms and also state under such a provision that holders of percentages below the significant level but appearing to exercise control anyhow should be construed to hold significant ownership.

256. Guidelines and determinations should apply to non-bank financial institutions preventing criminals from gaining control or having investments in institutions such as law firms, casinos, Forex Bureaus etc, which are vulnerable to use for ML and FT purposes.

Implications for compliance with FATF Recommendation 29

Recommendation 29: Materially Non Compliant.

VIII—Enforcement powers and sanctions

(compliance with Criteria 64 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 93-96 for the banking sector and criteria 115-117 for the securities sector)

Description

257. The CBL undertakes on site inspections of Commercial Banks in Lesotho to determine their compliance with the various Determinations. Any criminal transactions are reported to the police. Records are kept off site and on site.

Analysis of Effectiveness

258. The effectiveness of enforcement powers and sanctions cannot be assessed at this time since the draft MLPC has not yet been enacted.

Recommendations and Comments

259. The draft MLPC needs to be enacted to allow for effective enforcement powers regarding AML/CFT. Implementing AML regulations should also be promulgated once the draft MLPC is enacted and enforced.

260. The CBL should commence on-site inspections on AML/CFT issues and enforce sanctions where violations are identified.

Implications for compliance with Recommendation 26

Recommendation 26: Materially Non-Compliant

IX—Cooperation between supervisors and other competent authorities

(compliance with Criteria 65-67 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 97-100 for the banking sector and criteria 118-120 for the securities sector)

Description

261. There is no provision in any of the existing financial sector legislation on cooperation and exchange of information between supervisory and competent authority. However, the Central Bank acts as the Commissioner of financial institutions that is the banking sector, insurance sector, securities sector and other financial institutions and would make the information available upon court order for investigation or evidential purposes.

262. In addition the CBL and commercial banks work together with the LMPS when an investigation has been instituted against a criminal having an account with the commercial banks. The law-enforcement agency is able to contact the banks directly during the preliminary investigations.

International Cooperation

263. There is no formal system of cooperation and information sharing among foreign supervisory authorities and the various government agencies concerned with AML and CFT. .

264. Lesotho does not appear to have any cooperative mechanisms in place at the international level to facilitate the detections and deterrence of cross-border misconduct and to assist in the discharge of licensing and supervisory responsibilities. Currently there is cooperation through INTERPOL and SADC Protocols.

Cooperation between supervisors and other competent authorities

265. The CBL does not appear to have close cooperation with other domestic competent authorities except through committee meetings such as the Money Laundering Task Team.

Safeguarding of information

266. The Financial Institutions Act, and Insurance Act compels the institution to disclose information to the CBL where necessary. This is an obligation on the side of the sectors where other information is considered confidential except when required to be disclosed by a court under any law.

Analysis of Effectiveness

267. The effectiveness of cooperative efforts cannot be assessed at this time because there has been no enactment, implementation or enforcement of the draft MLPC

Recommendations and Comments

268. The existing laws should be utilized or where necessary amended to authorize the sharing of information and cooperation among the various government domestic and foreign agencies as well as other competent authorities. The proposed amendments should enable the various Government agencies to enter into arrangements and or agreements with their foreign counterparts that would facilitate exchange of information on ML and FT matters.

269. AML implementing regulations should be promulgated as soon as the draft MLPC comes into force.

270. Lesotho should enter into agreement with other supervisors to facilitate detection and deterrence of cross-border misconduct by market participants

271. Lesotho should also enter into agreements with other Foreign Supervisory authorities to facilitate detection and deterrence of cross-border misconduct by market participants.

272. Competent national authorities should enter into arrangements to share information freely without having to seek assistance from the courts.

273. Non-bank financial institutions should be closely monitored so as to prevent these entities from being used for laundering purposes.

Description of the Controls and Monitoring of Cash and Cross Border Transactions

FATF Recommendation 22

Description

274. There is no information available on the cash based sector of the economy and the cross border transactions made mostly into South Africa as it is the only country surrounding Lesotho. The problem could be that the South African Rand is widely used in Lesotho and that it is equivalent to the local currency. There is no proper monitoring due to the above mentioned problem.

FATF Recommendation 23:

Description

275. Information on the informal cash based sector and hawkers crossing borders was not made available to the evaluators during the course of the evaluation nor following the evaluation.

OTHER RELEVANT AML/CFT measures or issues

Casinos: Description

276. There are casinos in Lesotho and they are operated by the hotels in Maseru. The activities of these businesses are regulated by the CBL and under the draft MLPC Bill there is a provision for them to be regulated under section 2 as they are classified as financial institutions.

RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS, SUMMARY OF EFFECTIVENESS OF AML/CFT EFFORTS, RECOMMENDED ACTION PLAN AND AUTHORITIES' RESPONSE TO THE ASSESSMENT

Table 1. Ratings of Compliance with FATF Recommendations Requiring Specific Action

Compliant, Largely Compliant, Materially Compliant, Non Compliant

FATF Recommendation	Based on Criteria Rating	Rating
1 – Ratification and implementation of the Vienna Convention	1	Largely Compliant
2 – Secrecy laws consistent with the 40 Recommendations	43	Non Compliant
3 – Multilateral cooperation and mutual legal assistance in combating ML	34, 36, 38, 40	Materially Non-Compliant
4 – ML a criminal offence (Vienna Convention) based on drug ML and other serious offences.	2	Materially Non-Compliant
5 – Knowing ML activity a criminal offence (Vienna Convention)	4	Materially Non-Compliant
7 – Legal and administrative conditions for provisional measures, such as freezing, seizing, and confiscation (Vienna Convention)	7, 7.3, 8, 9, 10, 11	Materially Non-Compliant
8 – FATF Recommendations 10 - 29 applied to non-bank financial institutions; (eg. foreign exchange houses)		Materially Non-Compliant
10 – Prohibition of anonymous accounts and implementation of customer identification policies	45, 46, 46.1	Materially Non-Compliant
11 – Obligation to take reasonable measures to obtain information about customer identity	46.1, 47	Materially Non-Compliant
12 – Comprehensive record keeping for five years of transactions, accounts, correspondence, and customer identification documents	52, 53, 54	Largely Compliant
14 – Detection and analysis of unusual large or otherwise suspicious transactions	17.2, 49	Materially Non-Compliant
15 –If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the FIU	55	Materially Non-Compliant
16 – Legal protection for financial institutions, their directors and staff if they report their suspicions in good faith to the FIU	56	Materially Non-Compliant
17 – Directors, officers and employees, should not warn customers when information relating to them is reported to the FIU	57	Materially Non-Compliant
18 – Compliance with instructions for suspicious transactions reporting	57	Materially Non-Compliant
19 – Internal policies, procedures, controls, audit, and training programs	58, 58.1, 59, 60	Materially Non-Compliant
20 – AML rules and procedures applied to branches and	61	Non Applicable

subsidiaries located abroad		
21 – Special attention given to transactions with higher risk countries	50, 50.1	Non Compliant
26 – Adequate AML programs in supervised banks, financial institutions or intermediaries; authority to cooperate with judicial and law enforcement	66	Materially Non-Compliant
28 – Guidelines for suspicious transactions' detection	17.2, 50.1, 55.2	Materially Non-Compliant
29 – Preventing control of, or significant participation in financial institutions by criminals	62	Materially Non-Compliant
32 – International exchange of information relating to suspicious transactions, and to persons or corporations involved	22, 22.1, 34	Non Compliant
33 – Bilateral or multilateral agreement on information exchange when legal standards are different should not affect willingness to provide mutual assistance	34.2, 35.1	Materially Non-Compliant
34 – Bilateral and multilateral agreements and arrangements for widest possible range of mutual assistance	34, 34.1, 36, 37	Materially Non-Compliant
37 – Existence of procedures for mutual assistance in criminal matters for production of records, search of persons and premises, seizure and obtaining of evidence for ML investigations and prosecution	27, 34, 34.1, 35.2	Materially Non-Compliant
38 – Authority to take expeditious actions in response to foreign countries' requests to identify, freeze, seize and confiscate proceeds or other property	11, 15, 16, 34, 34.1, 35.2, 39	Materially Non-Compliant
40 – ML an extraditable offence	34, 40	Non Compliant
SR I – Take steps to ratify and implement relevant United Nations instruments	1, 34	Materially Non-Compliant
SR II – Criminalize the FT and terrorist organizations	2.3, 3, 3.1	Materially Non-Compliant
SR III – Freeze and confiscate terrorist assets	7, 7.3, 8, 13	Materially Non Compliant
SR IV – Report suspicious transactions linked to terrorism	55	Non Compliant
SR V – provide assistance to other countries' FT investigations	34, 34.1, 37, 40, 41	Non Compliant
SR VI – impose AML requirements on alternative remittance systems	45, 46, 46.1, 47, 49, 50, 50.1, 52, 53, 54, 55, 56, 57, 58, 58.1, 59, 60, 61, 62	Non Compliant
SR VII – Strengthen customer identification measures for wire transfers	48, 51	Non Compliant

Table 2. Summary of Effectiveness of AML/CFT efforts for each heading

Heading	Assessment of Effectiveness
Criminal Justice Measures and International Cooperation	
I—Criminalization of ML and FT	Since ML or FT legislation has not yet been enacted and henceforth implemented, it is not possible to assess accurately whether these laws are effective as law enforcement mechanisms or whether they will serve to deter and detect ML or FT. As the laws are drafted, more attention is needed in relation to the definition of serious offences, the establishment of a FIU, mutual legal assistance and international cooperation and the systems required to combat FT. Existing legislation will also need to be revised to complement the new AML/CFT legislation. It is evident that at this early stage that the UN Conventions which have been ratified by Lesotho have not effectively been implemented.
II—Confiscation of proceeds of crime or property used to finance terrorism	Lesotho has not enacted laws which allow for criminal confiscation for ML and FT and other serious offences. There appear to have been confiscations for other serious offences made under existing laws however statistics on the success of these convictions are not available. There is also no provision for civil forfeiture. Since there has not been any investigation, prosecution or confiscation for ML or FT offences, confiscation authority and implementation is untested. In addition, there does not appear to be any authority for freezing or seizing assets prior to court action authorizing confiscation.
III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels	In the absence of a FIU, some STRs have been reported to the CBL and enforcement authorities but there is no evidence of any prosecutions resulting from these STR investigations. With regards financial institutions reporting STRs, the AML Guidelines provide for reporting STRs but there does not appear to be enforcement of non-reporting or application of compliance. Bank staff are hesitant to report STRs as there are no laws in place to protect them from making these reports. This situation would improve if the commercial banks improved on their internal controls to protect and safeguard their staff. It also appears that there is no capacity to deal with the investigation or analysis of the STRs or other reports, due to the lack of training or specific skills in this area. Finally, there is no formal mechanism for information sharing with FIUs in other countries. In the draft MLPC there is no particular provision for the

	setting up of a centralised agency responsible for the receiving, analyzing and disseminating of financial information to enforcement authorities.
IV—Law enforcement and prosecution authorities, powers and duties	Law enforcement and prosecutorial authorities have no strategic plan to deal with ML or FT investigations, confiscations and prosecutions. There also appears to be a lack of training and capacity in the areas of ML and FT. Enforcement authorities have legal powers to obtain bank records and other documents from Government and other institutions for serious offences. Law enforcement agencies have stated they do not have sufficient human and financial resources to effectively investigate ML and FT when the Law comes into force. The police do not have adequate computers and equipment and lack cyber investigative to competently handle commercial crimes and AML and FT cases In the absence of AML and CFT laws there are no investigative resources, capacity or techniques employed in the specific area of ML or FT and without AML/CFT investigations there are no statistics available for these crimes.
V—International cooperation	There does not appear to be any law which effectively deal with mutual legal assistance. In addition the draft MLPC does not state what considerations may be considered in the provision of international mutual legal assistance. The draft provides for the extradition of criminals for ML and other serious offences, however does not include the extradition of criminals for FT offences and confiscation of terrorist financing related property. Lesotho should enter into other more solid bilateral multi-lateral agreement s to share information and mutual legal assistance. The country should have agreements beyond the SADC and Commonwealth region. The Ministry of Foreign Affairs with the help of the Attorney Generals Chamber must engage all the countries they find necessary to make agreements with after consulting Ministry of Trade on issues of trade agreements. These agreements should include extradition of suspects, sharing of the proceeds and property that has been seized and forfeited to the state. The agreements must also provide for information sharing between law-enforcement agencies across regional borders and internationally.
Legal and Institutional	

Framework for All Financial Institutions	
I—General framework	The draft MLPC does not provide for disclosure of information by financial institutions, privacy or bank secrecy laws notwithstanding. The current secrecy provisions may inhibit the function of the 'FIU' when it comes to the sharing of information at a domestic level with law enforcement and supervisory bodies since a court order will have to be sought in relation to the lifting of these provisions. This will also hamper the 'FIU' to share information to foreign counterparts. It is not clear if confidentiality of information, which results from a contract between the financial institution and its client, is being used inter-changeably as secrecy obligation in the above provisions. The protection of the duty of confidentiality of the financial institution to its clients have not been addressed in the draft legislation and as such financial institution may not release financial information to the 'FIU' on this ground and a court order would have to be sought in that respect. The laws will need to be reviewed and harmonized to support the draft MLPC in this area.
II—Customer identification	There lacks clear and comprehensive legislation, regulations and guidelines on customer identification and record keeping for accountable institutions with the exception of financial institutions which are required to abide by the AML Guidelines and commercial banks internal controls. The draft MLPC will need to be amended to be compliant with the FATF recommendations on customer identification for "all accountable institutions". The regulations and guidelines issued by the Central Bank under the FIA 1999 contain limited requirements without any specific procedures to address the identification of legal entities and beneficial owner of legal entities, and numbered accounts which are considered to be high risks for money laundering. In the absence of these requirements, there is potential for the use of anonymous and fictitious accounts by these institutions. Part II of the FIA 1999 on the Licensing process and Section 44 of the same Act require the applicant of a license and any director or officer of a licensed institution under this Act to be 'fit and proper'. These sections are very limited and are not supported by comprehensive regulations or guidelines. The development of internal policies by banks, insurance and other financial institutions and the application of

	procedures for obtaining customers identification are inadequate. The banks and the insurance institutions have more or less an identification procedure, which needs to be updated whilst other types of financial institutions have very limited procedures. Most of the banks and insurance companies visited require copy of identification but not all of them keep a copy of photo identification.
III—Ongoing monitoring of accounts and transactions	In general, the banks and other institutions interviewed were aware of monitoring suspicious and high-risk accounts but not all banks and financial institutions have implemented effective systems to trace complex and unusual transactions. The list of designated terrorists for individuals and entities are not circulated to financial institutions for monitoring purposes. Many of the financial institutions were not aware of such a list and also do not monitor transactions with customers from countries that are considered to be of high risk and have no system to fight money laundering (NCCT Countries) There is a lack of understanding and knowledge to the types of transactions throughout the financial sector which retards the employees' ability to recognize unusual activities or transactions that may be suspicious and hence a failure to detect and report such transactions to the Central Bank or the Police. Training in this area is urgently needed.
IV—Record keeping	Financial institutions should be required to maintain all necessary records concerning customer transactions, and accounts, for at least five years following completion of the transaction (or longer if requested by a competent authority), regardless of whether the account or business relationship is terminated and these documents should be available to a competent authority. Transaction records should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal behaviour. Records should include the customer's (and beneficiary's) name, address (or other identifying information normally recorded by the intermediary), the nature and date of the transaction, the type and amount of currency involved, and the type and identifying number of any account involved in the transaction. The provisions in the Guidelines 2000 are not sufficient to meet the requirement of the FATF Recommendations. Financial institutions should be required to ensure that customer and transaction records and information are available to domestic competent authorities for AML/CFT investigations and prosecutions. The establishment of the internal control framework by the financial institutions is

	uneven and some financial institutions interviewed were not familiar with the internal control policies laid down in the FIA Regulations 2000. During the interview it was not evident that financial institutions were maintaining adequate records of customers' identifications and transactions. However our interview with the international bank, however, revealed that the bank has established appropriate internal control policies and maintains proper archive system. The CBL states that compliance with these requirements is being verified during on-site examinations and that records have been made available to examiners. However, due to the lack of training in AML area, it seems that the examiners are carrying out only very limited tests to the compliance with these AML requirements
V—Suspicious transactions reporting	There is no central authority under the guidelines to assist financial institutions in detecting patterns of suspicious financial activity. Such guidelines should also include: (i) a description of ML and FT techniques, methods and trends; (ii) an explanation of the AML/CFT laws and requirements that apply; and guidance on how a financial institution could comply with those laws and requirements. The STR system in place does not fit the requirements of the FATF Recommendation. The guidelines are inadequate and incomplete to fight money laundering and terrorist financing there are major weaknesses in the existing guidelines to detect and control money laundering as the bank industry is allowed to apply to the Central Bank for exemption for some clients from being reported in terms of the large cash transaction. This is identified as a major flaw as the bank will never know when a longstanding bank customer may become a launderer. The exemption can serve to facilitate money laundering without fear of detection as a client is protected from scrutiny. It would also seem to open the banks up to the risk of employees being too lax about exempted customers to even pay attention when the customer starts to transact in an unusual manner. The perception is that bank officials and other financial institutions do not report suspicious transactions as they are enjoined to do for fear of reprisals as there is a lack of faith in the police to deal with reports in confidence and to protect the identities of the officials who report. Members of the Fraud Unit of the Police Service conceded that reports of suspicious transactions were very few in number. The proposed legislation does not create a central agency

	responsible to receiving, collecting, analyzing and disseminating financial information relating to suspicious transaction reports pursuant to section 14(1) of the Bill. The Directorate is called to function as an FIU side by side with the Investigatory function. The Directorate is also called to perform supervisory duties to ensure compliance with the various provisions of the Bill. We are of the view that the bill is placing heavy burden on the Directorate and would not be able to properly function as an Anti-Corruption Body.
VI—Internal controls, compliance and audit	There is no provision in the draft law that requires financial institutions to designate an AML/CFT compliance officer at management level. The Lesotho authorities should consider introducing such provision in the law or in future mandatory and enforceable regulation The development of internal AML/CFT policies and procedures by financial institutions is weak and needs to be strengthened. Written internal policies and procedures reflecting supervisory authorities' guidelines need to be established for all banks and other financial institutions. Lesotho authorities should issue mandatory and enforceable guidelines to establish AML/CFT programs that include internal procedures and policies (such as customer acceptance policies), ongoing employee training, and an audit function to test the system, to ensure adequate compliance with these programs The non-existence of on-site inspections on AML/CFT standards by the supervisors makes analysis of effectiveness difficult.
VII—Integrity standards	Fit and proper evaluations are conducted by the CBL to ensure that proposed directors and senior management have the appropriate expertise, experience and integrity Regarding ownership or investment in a financial institution, under the FIA the definition of what constitutes significant ownership, the prohibition from holding and management is sufficient to prevent criminals from gaining control of or holding a significant investment in any financial institution.
VIII—Enforcement powers and sanctions	The effectiveness of enforcement powers and sanctions cannot be assessed at this time since the draft MLPC has not yet been enacted.
IX—Co-operation between supervisors and other competent authorities	The effectiveness of cooperative efforts cannot be assessed at this time because there has been no enactment, implementation or enforcement of the draft MLPC

Table 3: Recommended Action Plan to Improve the Legal and Institutional Framework and to Strengthen the Implementation of AML/CFT Measures in Banking, Insurance and Securities Sectors.

Criminal Justice Measures and International Cooperation	Recommended Action
I—Criminalization of ML and FT	The current definition of serious crime in the MLPC Bill may be restrictive and not in line with FATF Recommendations which encourage countries to apply the crime of money laundering to all serious offences, with a view to include the widest range of predicate offences, which may be described by reference to all offences or to a designated threshold approach. The United Nations Convention against Transnational Organised Crime known as The Palermo Convention defines, "serious crime" as conduct which constitute an offence punishable by a maximum deprivation of liberty of at least 4 years or a more serious penalty and "predicate offence" as any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in the article 6 of this convention which elaborates on the criminalisation of the laundering of proceeds of crime. The UN Model Crime Bill also defines predicate offence as any "serious offence". Lesotho may choose to spell out the predicate offence to a pre-set list of crimes and the criterion to decide whether an activity is a predicate offence for money laundering, in short, would be the profit generating character of a given criminal activity. To facilitate international legal assistance, it may be necessary to ensure that the predicate offence is a crime in all countries involved: the country where the crime was committed, the country requesting assistance, and the country whose assistance is requested. The establishment of a FIU should be considered under separate legislation as the details in the draft MLPC are not sufficient to support the functions and requirements of a FIU. Provisions for effective CFT need to be further detailed in draft MLPC Bill or considered in separate legislation. To assist in reviewing the draft MLPC, Lesotho authorities should consider assessing other enacted regional AML laws or contact legislators in the region for assistance so as to better strengthen their current draft AML/CFT law. For instance South Africa, Swaziland and Mauritius AML/CFT laws could be used as model laws for Lesotho to further revise their draft AML/CFT Bill. A workable plan of action also needs to be implemented to review existing laws to harmonise these laws with impending

	AML/CFT laws. For instance regulations and laws addressing financial institutions should be incorporated in the Financial Institutions Act so that non-bank financial institutions can be more aware of the vulnerabilities and be more accountable for AML/CFT. The Lesotho Revenue Authority and Customs and Excise Laws need to provide for defense against ML and FT. The Money Laundering Task Team should set out a strategic plan for an AML/CFT regime. The law enforcement agencies should establish capacity in this area as soon as possible. This would need to include resources, training and cooperation with the judiciary and supervisors /regulators in this area. Regular meetings should be held between these parties to facilitate the implementation of an AML/CFT strategic plan to satisfy the international standards and conventions. Lesotho needs to allocate resources for effective implementation of the proposed laws. There is need for capacity building among the law enforcement agencies and the Director of Public Prosecutions Office. Prosecutors and police officers should be trained so as to develop expertise on ML and FT matters. Regional entities such as SADC, ESAAMLG and AU can play a role in the development and training of prosecutors, magistrates and judges on the concepts and elements of ML and FT. Lesotho ratified the Palermo Convention (2000) in September 2003 and needs to take sufficient steps to fully implement its requirements which obligates each ratifying country to criminalize money laundering; to establish regulatory regimes to deter and detect all forms of money laundering; cooperate and exchange of information among administrative, regulatory, law-enforcement and other authorities both domestically and internationally and to promote international cooperation. Efforts should be made to implement the requirements of the 1988 UN Vienna Convention, and the 1999 UN Convention for the Suppression of the Financing of Terrorism. UN Resolution 1373 needs to be complied with and then complemented by the future drafting and enactment of CFT legislation.
II—Confiscation of proceeds of crime or property used to finance terrorism	The draft MLPC needs to adequately address the issue of confiscation and forfeiture of proceeds of crime and property used for ML and FT. The draft should provide for confiscation of laundered property (including property that is income or profit derived from proceeds of crime), proceeds

	from, and instrumentalities used in or intended for use in the commission of any ML and FT offence or predicate offence and or property of corresponding value. Adequate resources should be allocated for the enforcement of these laws once they are enacted. The draft Bill should also provide for civil forfeiture. The draft MLPC also needs for a determination to empower the Directorate On Corruption and Economic Offences to immediately freeze suspected accounts especially those accounts listed on the counter terrorist list provided under the UN SCR 1371. Once the AML/CFT law comes into force, it will be important for authorities to consider developing more targeted statistics on frozen funds and confiscation of assets and make these statistics centralized and accessible for judicial and enforcement authorities. This would enable the Government to accurately measure the effectiveness of the confiscation regime.
III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels	The draft MLPC Bill provides that the Directorate On Corruption and Economic Offences is to provide the functions of a FIU and it appears that these responsibilities and functions will not be effectively manageable by the Directorate. As a consequence of the above, an FIU should be established under separate legislation and should be established as an independent governmental authority or within the central bank or under the Ministry of Justice or Ministry of Finance. In any case the FIU should have sufficient independence and autonomy to ensure that (i) it is free from unauthorised outside influence or interference in its functions and decisions; and (ii) that information and intelligence held by it will be securely protected and disseminated only in accordance with the law. Other regional FIUs have been established in Southern and Eastern Africa and Lesotho legislators should consider the FIU laws of South Africa and Mauritius in the proposed drafting of a separate FIU law for Lesotho. In the event an FIU is established, the FIU should be independent in its function and should be free to exchange information without unnecessary administrative barriers and should seek membership of the Egmont Group. The FIU should be given access to the databases maintained by the various financial, administrative and police agencies. The

	FIU should be authorised to obtain from reporting parties, either directly or through another competent authority, additional documentation needed to assist in its analysis of financial transactions. The FIU should be adequately structured, funded, staffed, and provided with sufficient technical and other resources to fully perform its authorised functions. The FIU should have an organisational structure sufficient to ensure that its functions are properly executed. The reporting of suspicious transaction should cover a wide range of scenarios as it may be difficult for the financial institution to suspect the commission of money laundering at the initial stage of the transaction. To widen the scope of reporting the definition of suspicious transactions should be extended to cover transactions carried out in an unusual and unjustified complexity; appeared to have no economic justification of lawful objective; is made by or on behalf of a person whose identity has not been established to the satisfaction of the person with whom the transaction is made; suspecting the offence concerning the financing of any activities or transactions related to terrorism or gives rise to suspicion for any reason. As part of its function the FIU should publish for internal purposes periodic reports, including statistics, typologies and trends regarding its activities and issue guidance notes on suspicious transactions and the manner in which an STR needs to be reported. In the absence of a FIU, the CBL should establish MOUs with other Central Banks regionally and internationally to facilitate the exchange of financial intelligence information for the purposes of AML/CFT investigations.
IV—Law enforcement and prosecution authorities, powers and duties	The draft MLPC bill needs to be revised to include examples of serious offences relating to ML and FT activities. Law enforcement agencies and prosecutorial services should understand and support the requirement for an AML policy and should become more proactively involved in the enforcement of the draft MLPC. This should lead to the implementation of regulations for all aspects of the draft MLPC as well as the allocation of resources and leadership to meet the international standards. A workable plan of action also needs to be implemented to review existing laws relevant to enforcement authorities so that these laws complement the impending AML/CFT law. Further training on AML/CFT should be delivered to all

	authorities. In addition a typologies conference should also be held in Lesotho for all relevant officials from the law enforcement, legal and financial authorities. The typologies conference would help raise awareness and determine trends and methods for money laundering in Lesotho. The authorities should study the crime statistics to determine the countries threats and use these as a contribution to the overall AML strategic plan. Authorities should be more proactive in pursuing the "money trail" which derives from serious offences. This would enable them to proactively investigate money laundering offences. Asset forfeiture legislation and training needs to be considered, and should complement the reporting regime and AML legislation.
V—International cooperation	Lesotho needs to revise the draft MLPC Bill to provide for more effective international cooperation in relation to ML and FT investigations and prosecutions. Lesotho should enter into other bilateral and multi-lateral international agreements to share information and provide mutual legal assistance, including authority to freeze and seize assets that may be subject to forfeiture, for ML and FT offences as well as the underlying ML predicate offences. Lesotho should also centralize statistics relating to requests for mutual legal assistance. It is hoped that the Directorate On Corruption and Economic Offences which is tasked under the draft MLPC to act as an FIU will enter into arrangements for sharing of confiscated assets with other foreign jurisdictions. Once these mechanisms are in place, a more transparent understanding will be available on the efficiency of international cooperation. Lesotho should also consider the establishment of authority to enter into asset sharing arrangements with other countries for assets that have been forfeited. This would enhance international cooperation.
Legal and Institutional Framework for Financial Institutions	
I—General framework	The draft MLPC needs to be amended to clarify the secrecy and confidentiality obligations to facilitate the sharing of information at both the domestic and international level. Once the draft Bill is passed AML implementing regulations will need to be prepared and issued to the legal, financial and law enforcement sectors. These regulations should also focus

	on the secrecy laws and responsibilities of the competent authorities to implement the FATF 40 +8 Recommendations. Financial institutions defined under the FIA 1999 are not defined in the draft MLPC Bill and will need to be included in the Bill. Many financial institutions listed under FIA are not supervised with respect to the 40+8 Recommendation. With regards the draft Bill, the draft law is limiting in the reporting of suspicious transactions. It only provides that financial institutions are required to report STRs and does not include members of other professions; such as an accountant and auditor, legal professionals and a chartered secretary. There is also no supervisory control on managing trustees managing trusts. The laws need to be amended to include accountability for all institutions whether financial or other entities.
II—Customer identification	Lesotho needs to amend the draft MLPC and existing guidelines and regulations that cover detailed, comprehensive and mandatory and enforceable customers identification that are applicable to all financial institutions. The existing guidelines need to be updated to bring them in line with the 40+8 Recommendations and also should cover the various requirements in the Basle Core Principles on customers due diligence for banks, and the IOSCO Core Principles. Financial institutions, including moneylenders, should be required to include accurate and meaningful originator information on funds transfers and related messages that should remain with the transfer or related message through the payment chain. Originator information should include name, address, and account number (when being transferred from an account). The new legislation should make this requirement mandatory to comply with Special Recommendation VII. Banks should have policy and procedures for handling banking relationships with politically exposed persons (PEPs) that cover identification of a politically exposed person among new or existing customers; identification of persons or companies related to them; verification of the source of funds prior to account opening; and Senior management approval for establishing banking relationships with PEPs. Banks should have policies and procedures regarding the opening of correspondent accounts. The policy and procedures should at the minimum require the bank to fully understand and document the nature of the respondent bank's management and business; to ascertain that the respondent bank has effective customer acceptance and KYC policies and is effectively supervised and to identify and monitor the use of

	correspondent accounts that may be used as payable-through accounts; and not to enter into or continue a correspondent relationship with a bank incorporated in a jurisdiction in which it has no physical presence (i.e. meaningful mind and management). There has to be an established agency within the government system where identity of people applying for accounts could be verified like the National Registration office or ID Book office. The Labour and Home Affairs Ministry must keep records of foreigners and foreign companies investing in Lesotho through Labour and Immigration departments, this information can also be kept by the Ministry of Trade. The establishment of a Financial Intelligence Unit can also assist in cross checking and verifying the documents submitted by foreign companies and individuals opening accounts with the Lesotho banks, this include reference letters from the bankers of the applicant where they come from.
III—Ongoing monitoring of accounts and transactions	Lesotho authorities should introduce adequate provisions in the law and/or regulation that requires financial institutions to pay special attention to all complex, unusual large transactions. While AML Guideline 2(a) specifies the basic requirements for reporting suspicious transactions and a description of what constitutes a suspicious transaction, further examples of STRs need to be included in particular those which relate to the FT. Additionally, regulations should stress the importance of financial institutions' adequate monitoring systems in order to identify all types of suspicious transactions. Banks should also issue internal guidance in this area and incorporate procedures to test the system in an inspection manual. Lesotho authorities should introduce amendments in law and/or regulations that require financial institutions to give enhanced scrutiny to wire transfers that do not contain complete originator information. The draft MLPC and other related laws should be amended to require financial institutions to give special attention to business relations and transactions with persons (including legal entities and other financial institutions) in jurisdictions that do not have adequate systems in place to prevent or deter ML or FT. There should be effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML or CFT systems of other countries

	Various training packages have to be designed for the financial institutions to assist employees with understanding their responsibilities regarding effective AML/CFT. There should be a local agency working hand in hand with international organizations like ESAAMLG, IMF, World Bank, SADC and SAFAC. One such avenue could be the Security Managers Forum comprising representatives from law-enforcement agencies, Compliance Managers of commercial banks, Head of Security [Central Bank], Ministry of Finance and the judiciary. This Forum could be formalized by making a provision in the draft MLPC Bill for the establishment of such an organization. A Bankers Association can also be included in this forum provided the Banking Act or the Central Bank has a provision for the establishment of a Bankers Association. In view of the lack of resources, the CBL may adopt a risk-based approach to AML/CFT inspection to put the responsibility on firms and their boards and senior management – to identify, assess, mitigate and monitor their money laundering risks on a considered and continuing basis
IV—Record keeping	Financial institutions should develop clear policies to maintain records of customer identity (including where possible, copies of the official or other identifying document) account files and business correspondence following the termination of an account or business relationship (or longer if requested by a competent authority) and should establish system for updating such records. Such documents should be available for inspection by a competent authority or the supervisory examiners. The record keeping and the internal control procedures in the proposed legislation will have to be supplemented by regulations and guidelines to establish the manner in which the records have to be kept and the identification which is required. In addition, all guidelines should make clear that information regarding beneficial ownership of underlying clients, the source of funds, type of currencies, and the number of any accounts involved in the transaction should be obtained and retained for all transactions. Financial institutions should be required to ensure that customer and transaction records and information are available to domestic competent authorities for AML/CFT investigations and prosecutions, are provided for under Financial Institutions Act No. 6 of 1999, Section 41 and - Financial Institutions AML Guidelines 2000, Guideline 8 and 9 (1) and (2).

	All financial institutions should be requested to develop internal policies that clearly describe their obligations in this area and communicate these policies and procedures to staff. In addition, supervisors should ensure that their own examination manuals cover compliance testing for both customer identification and transactional records of financial institution's customers. They should also ensure that financial institutions' internal compliance inspection manuals include testing in this area. Lesotho does not have laws in place to guard against money laundering, financing of terrorism and also to compel the financial institution, both banking and non-banking to file suspicious activity reports with Central Bank of Lesotho or any designated body. The financial institutions regulations on money laundering do not include the non-banking sectors; therefore other players in the economy have been left out. Institutions like law firms, accountants and insurance brokers have not been included in the whistle blowers therefore a gap or a loophole has been created where money launders can launder their money.
V—Suspicious transactions reporting	A central authority should be set up to act as the FIU or the Central Bank be tasked with that function. The most ideal situation is to have segregation of duties when you deal with receiving reports, analyzing them, processing the data, investigating, advising clients/stakeholders and prosecuting the perpetrator of the offence. The Central Bank is the most ideal institution because it does not investigate like the law-enforcement agents, therefore the element of independence could be realized. While under the draft MLPC Bill, the DCEO is tasked to function as an FIU, the DCEO is under staffed and this is going to create an extra burden on the institution and also there is lack of proper training. All stakeholders should be actively involved in the development of the new AML/CFT laws. Once these Acts come into force it will be important to issue implementing regulations, which would assist financial institutions in detecting patterns of suspicious financial transactions by customers. These regulations should include: • A description of ML and FT techniques, methods and trends. • An explanation of the AML/CFT laws and regulations that apply and guidance on how financial institutions

	should comply with the same. • A standard format for reporting STRs to be made available to all accountable institutions. Sanctions should be applied to financial institutions that fail to comply with suspicious transaction reporting requirements. Financial institutions should be encouraged to design monitoring systems that not only capture large amounts above the threshold limit but small amounts which when aggregated, constitute significant amounts. Model examples from regional and overseas financial institutions should be studied by Lesotho's institutions with a view to designing an appropriate monitoring system which can capture suspicious transactions below the threshold limit. Accountable institutions should develop training programs that will increase staff awareness as well as increase their ability to detect the different types of suspicious transactions. The reporting of STR should cover both the suspicious money laundering activities and suspicious terrorist financing transactions. If a financial institution suspects that assets involved in a transaction either stem from a criminal activity or are linked or related to, or are to be used to finance terrorism, the financial institution should be required to report promptly its suspicions to the 'FIU' in the form of a "suspicious transaction report". The information should be for intelligence purposes and the person making the report in good faith should be immune from criminal or civil liability. Financial institutions should be required to have clear procedures, communicated to all personnel, for reporting suspicious transactions. Financial institutions (including any directors, officers, and employees) should be protected from any liability for breach of any restriction on disclosure of information in the course of making available findings or reporting suspicions in good faith. A training package on AML/CFT should be devised for all officers concerned in the financial institution and the Lesotho authorities in the appreciation of the background to money laundering. The primary purpose of such training is to raise awareness of those tasked to fight money laundering and terrorist financing. The training to include what constitutes money laundering, the most common method of money laundering, achieving comprehensive knowledge of the client, the detection of suspicious transactions, dealing with large

	cash transactions, the possible link between investment related transactions and international activity to money laundering.
VI—Internal controls, compliance and audit	Financial institutions should ensure that their foreign branches and subsidiaries observe appropriate AML/CFT measures consistent with the home jurisdiction requirements, to the extent that local laws and regulations permit. Financial institutions should inform their home jurisdiction supervisor/regulator when a foreign branch or subsidiary is unable to observe the appropriate AML/CFT measures of the home jurisdiction. Where the minimum AML/CFT requirements of the home and host jurisdictions differ, branches and subsidiaries in host jurisdictions should be required to apply the higher standard. The two commercial banks in Lesotho, which are, the Standard Bank Group and Ned bank Lesotho have implemented policies and procedures issued by their head office in South Africa in line with the Financial Intelligence Centre Act and its Regulations. The compliance officers of both banks interviewed showed that they exercise self-regulation on money laundering through ensuring compliance with legislation, internal controls, policies and procedures issued by South Africa. Financial institutions should be required to establish and maintained internal procedures to prevent their institutions from being used for ML or FT purposes. In particular, financial institutions should be required to establish AML/CFT programs that include internal procedures and policies (such as customer acceptance policies), ongoing employee training, and an audit function to test the system, to ensure adequate compliance with these programs In relation to ongoing training, financial institutions should be required to ensure that employees are kept informed of new developments, including information on current ML and FT techniques, methods and trends; and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning customer identification and due diligence, and suspicious transaction reporting. We understand from the representatives of the two banks that their group policies require them to report suspicious transactions to the Bank's Head Office in Johannesburg where it ends up with the Group's anti-money laundering officer who in turn reports to the South African Reserve Bank or the Financial Intelligence Centre Financial institutions should be required to put in place adequate screening procedures to ensure high standards when hiring employees. All financial institution to apply higher KYC standards on a

	global basis On site examiners of the Central Bank should be provided with adequate training to ensure proper AML/CFT inspection. All financial institutions should become aware of the requirements set forth in any foreign jurisdictions where they have foreign operations regarding AML/CFT measures in place.
VII—Integrity standards	There should be measures to prevent unlawful use of entities identified as vulnerable to use as conduits for criminal proceeds or FT, such as shell corporations or charitable or not-for-profit organisations The licensing process includes a fit and proper test but no guidelines exist for the various financial sectors to assess the fitness and suitability of directors, senior management and significant shareholders. The CBL should review the fit and proper assessment of stakeholders, directors and senior managers on a continuing basis. The draft MLPC should be amended to provide bank-like requirements for other financial institutions and should be amended to define significant ownership or investment in percentage terms and also state under such a provision that holders of percentages below the significant level but appearing to exercise control anyhow should be construed to hold significant ownership. Guidelines and determinations should apply to non-bank financial institutions preventing criminals from gaining control or having investments in institutions such as law firms, casinos, Forex Bureaus etc, which are vulnerable to use for ML and FT purposes.
VIII—Enforcement powers and sanctions	The draft MLPC needs to be enacted to allow for effective enforcement powers regarding AML/CFT. Implementing AML regulations should also be promulgated once the draft MLPC is enacted and enforced. The CBL should commence on-site inspections on AML/CFT issues and enforce sanctions where violations are identified.
IX—Co-operation between supervisors and other competent authorities	The existing laws should be utilized or where necessary amended to authorize the sharing of information and cooperation among the various government domestic and foreign agencies as well as other competent authorities. The proposed amendments should enable the various Government agencies to enter into arrangements and or agreements with their foreign counterparts that would facilitate exchange of

	information on ML and FT matters. AML implementing regulations should be promulgated as soon as the draft MLPC comes into force. Lesotho should enter into agreement with other supervisors to facilitate detection and deterrence of cross-border misconduct by market participants Lesotho should also enter into agreements with other Foreign Supervisory authorities to facilitate detection and deterrence of cross-border misconduct by market participants. Competent national authorities should enter into arrangements to share information freely without having to seek assistance from the courts. Non-bank financial institutions should be closely monitored so as to prevent these entities from being used for laundering purposes.