



Financial
Intelligence Centre

MUTUAL EVALUATION OF SOUTH AFRICA

Financial Action Task Force / Eastern and Southern Africa
Anti-Money Laundering Group

15 February 2022

OVERVIEW OF PRESENTATION

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Mutual evaluation of South Africa

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1. BACKGROUND

A photograph showing a person's hands writing in a spiral notebook with a pen. The person is wearing a dark purple shirt. The background is blurred, showing another person in a patterned shirt. The scene is brightly lit, likely from a window.

MUTUAL EVALUATION OF SOUTH AFRICA



1. Background

- The Financial Action Task Force (FATF) is an inter-governmental body to set standards (40 Recommendations) and promote effective implementation of legal and operational measures for combating money laundering (ML), terrorist financing (TF) and proliferation financing (PF) of weapons of mass destruction (WMDs).
- The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) is a regional body with membership from southern and eastern Africa, which associates itself with the FATF's international standards and promotes the implementation of the standards by its members.
- South Africa became a member of ESAAMLG in 2002 and of the FATF in 2003.



Background (cont.)

- FATF's 40 Recommendations describe what is required for a comprehensive framework to combat money laundering and terrorist financing:
 - Identification of money laundering and terrorist financing risks, and develop policies and domestic cooperation to mitigate these risks
 - Pursue money laundering and terrorist financing as criminal offences
 - Apply preventive measures for financial and non-financial institutions



Background (cont.)

- Apply preventive measures for financial and non-financial institutions
- Establish an institutional framework with competent authorities such as financial intelligence units, investigators, prosecutors and supervisors
- Provide transparency for ownership and control of legal persons and legal arrangements
- Promote international cooperation.



Background (cont.)

- FATF's international standards as described in its 40 Recommendations is the benchmark used in the mutual evaluation.
- The mutual evaluation considered both:
 - Whether South Africa has in place the laws and institutional infrastructure that are required by 40 Recommendations (technical compliance with each Recommendation)
 - Whether South Africa's authorities and private sector institutions achieve the expected outcomes by applying the laws and using the institutional infrastructure to combat money laundering and terrorist financing (effectiveness in achieving each of 11 Immediate Outcomes).



Background (cont.)

- Technical compliance is rated as follows: Compliant (C), Largely Compliant (LC), Partially Compliant (PC) and Non-Compliant (NC). C and LC ratings refer to acceptable compliance levels, while PC and NC refer to poor compliance levels.
- Effectiveness is rated as follows: High Levels of Effectiveness (HE) Substantial Levels of Effectiveness (SE), Moderate Levels of Effectiveness (ME) and Low Levels of Effectiveness (LE). H and SE refer to performance, while ME and LE refer to poor performance.
- FATF and ESAAMLG last evaluated South Africa for compliance with FATF Standards in a joint mutual evaluation in 2009. South Africa received a favourable outcome from that evaluation.



Background (cont.)

- South Africa started with preparations for the mutual evaluation in late 2017 when the FIC called together all the relevant authorities that were going to participate in the evaluation process to start the planning for their participation.
- South Africa established an Interdepartmental Working Group with Cabinet endorsement and thematic sub-working groups to coordinate preparations by agencies and departments for and participation in the evaluation for the duration of the process.



Background (cont.)

- Cabinet established the Interdepartmental Committee on AML/CFT, led by the Director-General of National Treasury in December 2018.
- The IDC-AML/CFT promotes collaboration, communication and information sharing within and among the relevant law enforcement agencies, government departments and regulatory authorities and to coordinate decision-making on policy changes that may be required to improve the effectiveness of South Africa's AML/CFT system.
- The IDC-AML/CFT received regular reports on the progress made to complete the evaluation.

Background (cont.)

Inter-Departmental Committee on Anti-Money Laundering
–CHAired BY NATIONAL TREASURY–

Financial Intelligence
Centre coordinates &
reports to the
Committee

Inter-Departmental Working Group on Mutual Evaluation
–CHAired BY THE FIC–

IO 1

Risk and co-ordination

IO 2

International cooperation

IO 3 & 4

a) Supervision
b) Compliance programmes

IO 5

Beneficial ownership

IO 6, 7 & 8

Money laundering investigations, prosecutions & asset forfeiture

IO 6, 7 & 9

Terrorist financing investigations & prosecutions

IO 10 & 11

Targeted financial sanctions on terrorist financing & proliferation financing



Background (cont.)

- The evaluation was led by the International Monetary Fund, which assembled a team of 10 assessors drawn from FATF and ESAAMLG member countries and staff of the IMF and ESAAMLG and FATF Secretariats.
- The evaluation started in May 2018 when South Africa supplied the first tranche of information to the assessment team and included a three-week on-site visit in October and November 2019. The process was interrupted for almost a year due to the COVID-19 pandemic, which meant that FATF adopted the mutual evaluation report in June 2021 and ESAAMLG adopted the report in September 2020.
- The mutual evaluation report is a public document and was published in October 2021.

Summary of compliance ratings: Rating 1 to 40

NC Non-compliant

PC Partially compliant

LC Largely compliant

C Compliant

PC	R1 Assessing risk & applying risk-based approach
PC	R2 National co-operation & co-ordination
LC	R3 Money laundering offence
LC	R4 Confiscation & provisional measures
PC	R5 Terrorist financing offence
NC	R6 Targeted financial sanctions – terrorism & terrorist financing
PC	R7 Targeted financial sanctions – proliferation
NC	R8 Non-profit organisations
LC	R9 Financial institution secrecy laws
PC	R10 Customer due diligence
LC	R11 Record keeping
NC	R12 Politically exposed persons
LC	R13 Correspondent banking
PC	R14 Money or value transfer services
NC	R15 New technologies
LC	R16 Wire transfers
NC	R17 Reliance on third parties
PC	R18 Internal controls & foreign subsidiaries
LC	R19 Higher-risk countries
LC	R20 Reporting of suspicious transactions

C	R21 Tipping-off & confidentiality
PC	R22 DNFBPs: Customer due diligence
PC	R23 DNFBPs: Other measures
PC	R24 Transparency & BO of legal persons
PC	R25 Transparency & BO of legal arrangements
PC	R26 Regulation & supervision of financial institutions
PC	R27 Powers of supervision
PC	R28 Regulation & supervision of DNFBPs
LC	R29 Financial intelligence units
C	R30 Responsibilities of law enforcement & investigative authorities
C	R31 Powers of law enforcement & investigative authorities
PC	R32 Cash couriers
LC	R33 Statistics
LC	R34 Guidance & feedback
LC	R35 Sanctions
LC	R36 International instruments
LC	R37 Mutual legal assistance
LC	R38 Mutual legal assistance: freezing & confiscation
LC	R39 Extradition
LC	R40 Other forms of international co-operation

Summary of compliance ratings: Immediate outcome 1 to 11

MODERATE	IO 1	Risk, policy and coordination
MODERATE	IO 2	International cooperation
MODERATE	IO 3	Supervision
MODERATE	IO 4	Preventive measures
LOW	IO 5	Beneficial ownership of legal persons and arrangements
MODERATE	IO 6	Use of financial intelligence – ML/TF investigations
MODERATE	IO 7	ML investigation and prosecution
MODERATE	IO 8	Confiscation
LOW	IO 9	TF investigation and prosecution
LOW	IO 10	TF preventive measures and financial sanctions
MODERATE	IO 11	PF financial sanctions

2. KEY ASSESSMENT FINDINGS

IDENTIFIED SHORTCOMINGS
IN RELATION TO
IMMEDIATE OUTCOMES

IO1: Risk, Policy and Coordination

FINDINGS: South Africa rated MODERATE

UNDERSTANDING ML TF RISK

- Understand domestic ML threats, including those related to corruption, to some extent
- Limited understanding of scale of ML threats and vulnerabilities, or channels exploited
- Understanding of ML risks arising from foreign proceeds is limited
- Understanding of TF risks is underdeveloped and uneven

POLICY DEVELOPMENT

- South Africa yet to develop and implement national AML/CFT policies to address its ML/TF risks
- IDC excludes some stakeholders, yet to produce major AML/CFT policy initiatives

COORDINATION

- Mechanisms in place for cooperation and coordination on AML/CFT at policy as well as operational (supervisory) levels

IO2: International cooperation

FINDINGS: South Africa rated **MODERATE**

- South Africa provides constructive mutual legal assistance and extradition. The assistance is useful and has resulted in resolution of some criminal cases in other jurisdictions but is sometimes slow
- South Africa has made requests for international legal assistance in a limited number of instances. The authorities have not adequately demonstrated seeking international cooperation in the investigation of ML, associated predicate offences, and TF is a priority in all relevant cases
- The volume of outgoing requests is inconsistent with South Africa's risk profile as reflected by the statistics provided
- Competent authority for MLA and extradition to develop and implement a comprehensive case management system for all incoming and outgoing requests.

IO3: Supervision and enforcement

FINDINGS: South Africa rated MODERATE

MITIGATING ML / TF RISKS

- Understanding of ML risks varies across supervisors – to a limited or negligible extent in the potential high-risk non-financial sectors (estate agents, attorneys and trust and company services providers)
- Banks are the only accountable institutions rated for ML/TF risks at the institutional level but with limited attention to their inherent risks
- Supervisors have a better understanding of controls in financial institutions than their inherent risks
- Supervisors' TF risk understanding is very limited
- Supervisors' prioritisation is not driven by ML/TF risks
- Only limited information has been provided to private sector to help it identify and understand TF risks

IO3: Supervision and enforcement (cont.)

FINDINGS: South Africa rated MODERATE

GATE KEEPING

- While fit and proper criteria are in place for many sectors, these often do not apply to beneficial owners
- Most regulators do not conduct criminal checks or verify self-declarations of applicants
- Unlicensed money remitters are not being systematically identified, sanctioned, or removed from the market

COVERAGE

- Cooperative financial institutions, crypto asset service providers, credit providers
- Company service providers (other than attorneys), dealers in precious metals and stones
- Accountants are not subject to AML/CFT obligations or oversight
- Their ML/TF risks are not understood nor mitigated by any supervisors

IO3: Supervision and enforcement (cont.)

FINDINGS: South Africa rated MODERATE

EFFECTIVE OVERSIGHT REMEDIAL ACTION

- Inspections are too infrequent or rare (to varied degrees across sectors) to be effective
- Essentially, attorneys are subject to no AML/CFT oversight
- The PA and FSCA do not coordinate or share information with each other in supervision of financial institutions that belong to the same group, and do not conduct joint inspections
- Except for the PA, inspections focus on the presence of basic controls (such as appointed compliance officer) rather than the soundness of AML/CFT programmes
- The effectiveness of the FSCA, EAAB (for estate agents), FIC is hampered by a (severe) lack of resources
- Only some supervisors apply remedial actions including monetary penalties, but these are often too low and infrequent to be dissuasive or effective
- PA uses full range of tools, but remedial actions not always proportionate, and monetary penalties may not be sufficiently dissuasive for large banks

IO3: Supervision and enforcement (cont.)

FINDINGS: South Africa rated MODERATE

IMPACT OF SUPERVISORY ACTION

- Except for attorneys and casinos, supervisors regularly apply remedial actions and follow up
- Only the financial supervisors demonstrated some impact in improving institutions' compliance, but this is limited to basic obligations rather than risk-based measures
- Supervisory impacts in promoting entities' compliance with new FIC Act requirements cannot be demonstrated since the new requirements became enforceable only in April 2019
- Some supervisors only started supervision with respect to new FIC Act requirements very recently and others (of attorneys) have not started yet.

IO4: Preventive measures

FINDINGS: South Africa rated MODERATE

MITIGATING ML & TF RISK

- The 'big four' banks show a more developed understanding of ML risks to a certain extent and seem somewhat better at implementing mitigating measures commensurate with their risks
- Smaller financial institutions show a very basic to limited ML risk understanding and are compliance focused when implementing such measures
- Accountable institutions play down the risks of operating internationally
- TF risk is poorly understood, primarily based on a lack of information
- Non-financial institutions' understanding of ML risks is mixed, with the attorneys and real estate agents showing the weakest understanding, and their mitigating measures are not risk-based
- Financial and non-financial institutions that have an underdeveloped understanding of their risks, conduct ongoing monitoring only to a limited extent
- Enhanced measures are insufficiently applied given the very low percentage of clients identified to be high risk

IO4: Preventive measures (cont.)

FINDINGS: South Africa rated MODERATE

IMPLEMENTATION OF FIC ACT

- Basic customer due diligence is satisfactorily applied by many accountable institutions
- However, all accountable institutions are challenged when applying BO requirements
- Non-financial institutions' understanding of AML/CFT obligations is very basic
- The 'big four' banks and authorised dealers with limited authority meet reporting obligations to a certain extent, while other sectors fail to do so (file reports) commensurate with their risk profiles
- Some high-risk sectors (attorneys) rarely file reports

IO5: Legal persons and arrangements

FINDINGS: South Africa rated **LOW**

- The measures which South Africa has put in place to promote transparency and BO of legal persons and arrangements are, to a large extent, not adequate to address the main vulnerabilities that allow abuse of legal persons and trusts for ML/TF
- Competent authorities have a general understanding that legal persons and trusts are exposed to ML/TF but have not properly identified and assessed the specific ML or TF vulnerabilities that lead to that exposure
- South Africa's AML/CFT regime faces serious challenges in obtaining BO information on companies and trusts. The authorities rely primary on obtaining such information from accountable institutions, but the measures in place are not sufficient to ensure that AIs are able to provide adequate, accurate and up to date BO information in a timely manner
- The CIPC maintains a company register containing basic information but no ownership information. The CIPC information may not be accurate as there is limited verification and no guarantee that it is kept up to date

IO5: Legal persons and arrangements (cont.)

FINDINGS: South Africa rated **LOW**

- Not all company services providers are accountable institutions which limits the availability of information on BO of companies
- Shareholder information obtained and held by companies in their share registers is not verified and is focused on legal not BO
- The time it takes for law enforcement authorities to access BO information from AIs when it is available is on average too long to allow effective investigation of ML/TF offences
- The Master's Office maintains a register of trusts which is a positive development. Basic information in the register is publicly available but it may not always be accurate as the only information verified relates to the names of the trustees
- The authorities could not demonstrate that they applied effective, proportionate, and dissuasive sanctions for failure to comply with information requirements

IO6: Financial intelligence ML/TF

FINDINGS: South Africa rated **MODERATE**

- Authorities in South Africa, particularly SAPS, routinely use financial intelligence to help investigate predicate crimes and trace criminal assets, primarily related to fraud and corruption. The use of financial intelligence however by SAPS to proactively investigate ML or TF specifically, was demonstrated to a significantly lesser degree, driven in part by a lack of skills and resources
- Each year FIC receives around 300 000 STRs and SARs and terrorist property reports (TPRs). In addition, FIC receives more than five million CTRs and cash threshold aggregate reports (CTRAs) annually. (These reports are increasing in quality as a result of feedback from FIC and FIC has good systems for analysing these reports)
- While South Africa has benefited from some voluntary reporting (notably from a few VASPs), the data held by the FIC is incomplete in the sense that FIC is not receiving reports from a vast number of informal money remitters and many higher-risk DNFBS. In addition, FIC does not routinely receive intelligence from cross-border cash declarations or related violations

IO6: Financial intelligence ML/TF (cont.)

FINDINGS: South Africa rated **MODERATE**

- FIC makes effective use of its powers to obtain additional information from reporting entities to follow the money and trace criminal proceeds. It also provides proactive and reactive disclosures to LEAs and has been able to provide 'live monitoring' during selected investigations. The majority of FIC disclosures, however, are reactive as well as relate to the predicate offences for ML, with ML or TF specific disclosures representing only 8 percent of the total
- FIC also produces what it refers to as strategic products including contributions to the National Intelligence Estimates. The main strategic intelligence product however, the GIS Quarterly Report is not proactively disclosed to law enforcement authorities. The other reports, while strategically useful, are not focused on financial analysis related to predicate crimes, ML or TF trends that would assist law enforcement authorities in identifying and investigating such crimes
- FIC, SAPS and SARS cooperate effectively and form 'Project Teams' to address major predicate offence, ML & TF investigations

IO7: ML investigation and prosecution

FINDINGS: South Africa rated **MODERATE**

- The authorities identify and investigate ML cases to some extent. Emphasis is placed on the investigation of predicate offences. Parallel financial investigations are undertaken in cases of serious organised crime, commercial crime, and corruption. SAPS/DCPI pursues ML offences disclosed during the investigation of predicate offences but, the authorities have not sufficiently demonstrated the proactive identification and investigation of ML cases as a primary objective
- Investigation and prosecution of ML activity is partly consistent with South Africa's threat and risk profile. ML cases relating to fraud form the bulk of cases investigated and prosecuted, which is somewhat consistent. There are fewer ML prosecutions relating to other high-risk areas such as serious corruption, serious narcotics and tax offending. ML cases relating to "State Capture" not been sufficiently pursued in the past, and cases referred to the NPA by SIU have not been dealt with expeditiously
- The NPA has suffered from major resource and staffing constraints, which is now being addressed by the establishment of ID/NPA and an increased budget allocation for hiring of prosecutors

IO7: ML investigation and prosecution (cont.)

FINDINGS: South Africa rated **MODERATE**

- Prosecutions for ML are regularly undertaken, and a reasonable number of convictions is being achieved. However, the cases largely concern cases of self-laundering based on the predicate offending which is often prosecuted at the same time. Standalone ML cases are prosecuted, but few cases of third-party ML and foreign predicate offending are prosecuted. This appears to be a consequence of the focus on the investigation of predicate offences rather than the proactive identification and investigation of ML networks and professional enablers
- Sanctions applied against natural persons convicted of ML offences are to some extent effective, proportionate and dissuasive. South Africa has a high head sentence of 30 years' imprisonment for the ML offence and sentences of up to 25 years imprisonment have been handed down in practice. However, the majority of sentences imposed by the courts involve non-custodial or suspended sentences for the ML offence. Sanctions have been applied against legal persons
- AFU/NPA actively pursues asset recovery through civil forfeiture regardless of a criminal prosecution for the ML offence. SIU also pursues recovery of State losses through its available remedies in civil litigation.

IO8: Confiscation

FINDINGS: South Africa rated **MODERATE**

- South Africa proactively pursues confiscation of criminal proceeds and instrumentalities as a policy objective and some good results have been achieved. AFU/NPA places emphasis on its civil forfeiture powers under POCA which targets tainted property. Less emphasis is placed on criminal confiscation of property of equivalent value, which is dependent upon a conviction for the ML or predicate offence
- Whilst the authorities have demonstrated positive results for recovery of proceeds of crime in the area of fraud and economic crime including ML, efforts for recovery of assets from “state capture” and proceeds which have been moved to other countries have been less successful to date in part due to resource constraints. Recent efforts by the authorities are beginning to show positive results in some major cases, but these efforts are still at the early stage. Recovered property is consistently returned to victims including State-owned enterprises or is paid to the asset recovery fund. Sharing of funds with foreign jurisdictions is sometimes pursued, and the authorities have demonstrated the recovery of proceeds arising from foreign predicate offending in some cases

IO8: Confiscation (cont.)

FINDINGS: South Africa rated **MODERATE**

- South Africa has not positively demonstrated that confiscation of falsely declared cross-border movement of currency is being addressed and applied as an effective, proportionate and dissuasive sanction. Use of cash is prevalent in South Africa and it has been assessed as high risk from a ML and TF perspective, including cross-border movement
- Overall, confiscation of proceeds of crime partially reflects South Africa's ML/TF risk and national AML/CFT policies and priority. The bulk of tainted property recovered by the authorities stems from economic crime and fraud. Recovery of assets from serious corruption including foreign corruption has been less successful to date, but positive efforts are now underway to address the issue. The interdiction and recovery of cash proceeds of crime remains challenging

IO9: TF investigation and prosecution

FINDINGS: South Africa rated **LOW**

- South Africa has limited experience prosecuting TF offences. The authorities are currently in the process of prosecuting two cases, however, there have been no other prosecutions in the past five years with the only conviction for TF having been obtained seven years ago
- The authorities take a conservative approach to classifying acts carried out in South Africa as terrorism unless a high evidential threshold is met [linked to a particular terrorist act]. This approach indirectly impacts on their ability to investigate and prosecute potential TF, including to identify financing networks and other financing activities. South Africa has failed to demonstrate that they are effectively identifying the specific roles played by terrorist financiers
- A single TF conviction is not consistent with South Africa's TF risk profile. The authorities indicate that domestic terrorism risk is low and, while they are still developing their assessment of TF risks, they have identified significant risks such as international terrorist groups soliciting support within the country, which suggests that the number of prosecutions for TF should be much higher

IO9: TF investigation and prosecution (cont.)

FINDINGS: South Africa rated **LOW**

- South Africa takes a collaborative approach to TF cases. The Counter Terrorism Functional Committee meets on a regular basis to discuss ongoing cases, including potential TF cases. LEAs follow up on TF related proactive disclosures from FIC and during their inquiries make numerous requests of FIC for TF related financial intelligence. However, South African LEAs have not demonstrated that they are proactively identifying TF cases with the majority of cases deriving from foreign agencies
- The investigation of TF is not properly integrated into national counter terrorism-strategies. South Africa's Counter Terrorism Strategy does not identify the pursuit of terrorist financiers as an operational mitigant in the fight against terrorism. Neither does the Strategy identify the designation of terrorists, terrorist organisations and terrorist support networks as a tool to counter terrorism or TF

IO10: TF financial sanctions

FINDINGS: South Africa rated **LOW**

- Authorities do not implement without delay UNSCR 1267/1989 and 1988, and they did not implement them since July 2017. Authorities do not communicate effectively new designations or de listings to obliged entities
- Authorities have never used TFS under the UNSCR 1373 framework and would not be able to communicate such designations. Authorities rely on a freezing mechanism that can only apply to identified property rather than to any asset of a designated person. This does not amount to a general freezing order or a proper designation. There is no communicating mechanism attached
- No name was ever proposed to the UNSC nor co-sponsored under any of the UNSCR TFS regimes. There is no mechanism to identify possible targets for domestic designation or make recommendations for designations under any of the TFS regimes
- Authorities have never made a domestic TF TFS designation. South Africa's policy of testing evidence in court before making a designation is impeding authorities to consider administrative TFS designations as a relevant preemptive tool to fight TF

IO10: TF financial sanctions (cont.)

FINDINGS: South Africa rated **LOW**

- Larger financial institutions have a good understanding of their TFS obligations and implement these, driven by international expectations. Other financial institutions and DNFBPs have a limited understanding. Overall implementation is not effective. Virtual asset service providers (VASPs) are not supervised
- Authorities have used alternative civil and criminal confiscation processes to deprive terrorist of their assets only to a limited extent relative to South Africa's TF exposure
- South Africa, through the formation of the non-profit organisation Task Team, has begun the process of identifying NPOs who, based on their characteristic and activities, are at risk of TF abuse. The authorities, however, have not applied specific measures, nor commenced monitoring or supervision, of those organisations they deemed to be at risk of TF abuse
- The measures implemented for TFS and to combat abuse of NPOs are not in line with the risk profile of the country, which is exposed to TF. They do not reflect the number of terrorist related activities being monitored in the country as well as the risk posed by foreign terrorist fighters (FTFs) and returned fighters

IO11: PF financial sanctions

FINDINGS: South Africa rated **MODERATE**

- South Africa started to implement TFS for PF in April 2019, and no assets have been frozen nor identified since then. It is not possible to ascertain how well financial institutions and DNFBPs dealt with TFS-designated PF assets prior to this date
- Implementation is not without delay in all instances for both changes to existing PF TFS lists and if a new UNSCR is issued
- Communication by the FIC about changes to PF TFS lists is very effective for obliged entities that pay to subscribe but does not reach other obliged entities
- The level of coordination among authorities on PF hinders proactive identification and a common understanding among relevant agencies, FIs, DNFBPs, and VASPs of PF matters

IO11: PF financial sanctions (cont.)

FINDINGS: South Africa rated **MODERATE**

- Authorities have demonstrated their ability to proactively identify and investigate PF related cases only to a limited extent. Export and trade controls are in place, but authorities did not demonstrate that those controls led to early identification of PF activities. The identification of PF related assets and funds is limited by the lack of access to BO information
- Authorities recently extended STR obligations to transactions that would breach TFS obligations for PF, which might prove to be a useful resource to eventually support the FIC's ability to identify PF. However, it is premature to assess any positive impact of this measure.

IO11: PF financial sanctions (cont.)

FINDINGS: South Africa rated **MODERATE**

- Despite positive and repeated outreach efforts by the FIC to provide guidance on PF obligations, understanding remains very uneven among financial institutions, FIs, DNFBPS, and VASPs. Only large FIs with international exposure understand the new PF obligations and implement their obligations to an acceptable level. Understanding by other FIs, DNFBPS, and VASPs is more limited. The overall level of compliance with the obligations remains however uncertain
- The authorities could not demonstrate how effectively they supervise PF obligations. Supervision and compliance monitoring of PF-related obligations commenced only in April 2019. Supervision has a limited focus and scope; VASPs are not supervised at all

3. CONSEQUENCES BASED ON RESULTS



Consequences based on results

South Africa is in the *enhanced follow up process* following the adoption of the MER



Enhanced
follow-up

Members who meet any of the following:

- Eight or more NC/PC ratings for technical compliance
- Rated NC/PC on any one of R.3, 5, 10, 11 and 20
- Low or moderate level of effectiveness for 7 or more of the 11 effectiveness outcomes
- Low level of effectiveness for four or more of the 11 effectiveness outcomes

Report back four plenary meetings after the adoption of the MER, subsequently report twice more at intervals of three plenary meetings and is subject to a follow-up assessment after five years

Consequences based on results (cont.)

South Africa is also eligible for FATF's listing process

OBSERVATION

A member that is eligible for listing has a ONE-YEAR OBSERVATION period after the adoption of the mutual evaluation report to REMEDY ITS SHORTCOMINGS under enhanced follow-up procedures

NON ACHIEVEMENT

If the South Africa does NOT ACHIEVE all of the following at the end of the observation period, it will be listed in the FATF's "GREY LIST":

- LC on Recommendations 6, 10 and 20, and
- Progress towards increasing effectiveness on each IO that was rated as low or moderate



Implications

- Negative perception of financial sector supervisors' ability to influence behaviour and take corrective action when necessary
- Negative perception of financial institutions' ability to manage exposure to ML/TF risks emanating from non-financial institutions
- Negative perception of ability of financial sector to mitigate ML/TF risks
- South Africa will be placed in an “enhanced follow-up” process and at risk of being listed in the FATF’s list of Jurisdictions under Increased Monitoring if sufficient progress is not made during follow-up
- Concerns among foreign regulators/supervisors and global financial institutions that South African financial institutions may be exposing foreign counterparts to ML/TF risks



Implications (cont.)

- Potential that foreign counterpart financial institutions will take more conservative approaches to establishing correspondent relationships with South African financial institutions / introduce stricter controls to maintain current correspondent relationships
- Potential that foreign financial sector regulators/supervisors will view South African financial institutions as high-risk
- Worst case scenarios:
 - De-risking of South African financial institutions by foreign counterparts
 - Refusal of market entry for South African financial institutions by foreign financial sector regulators

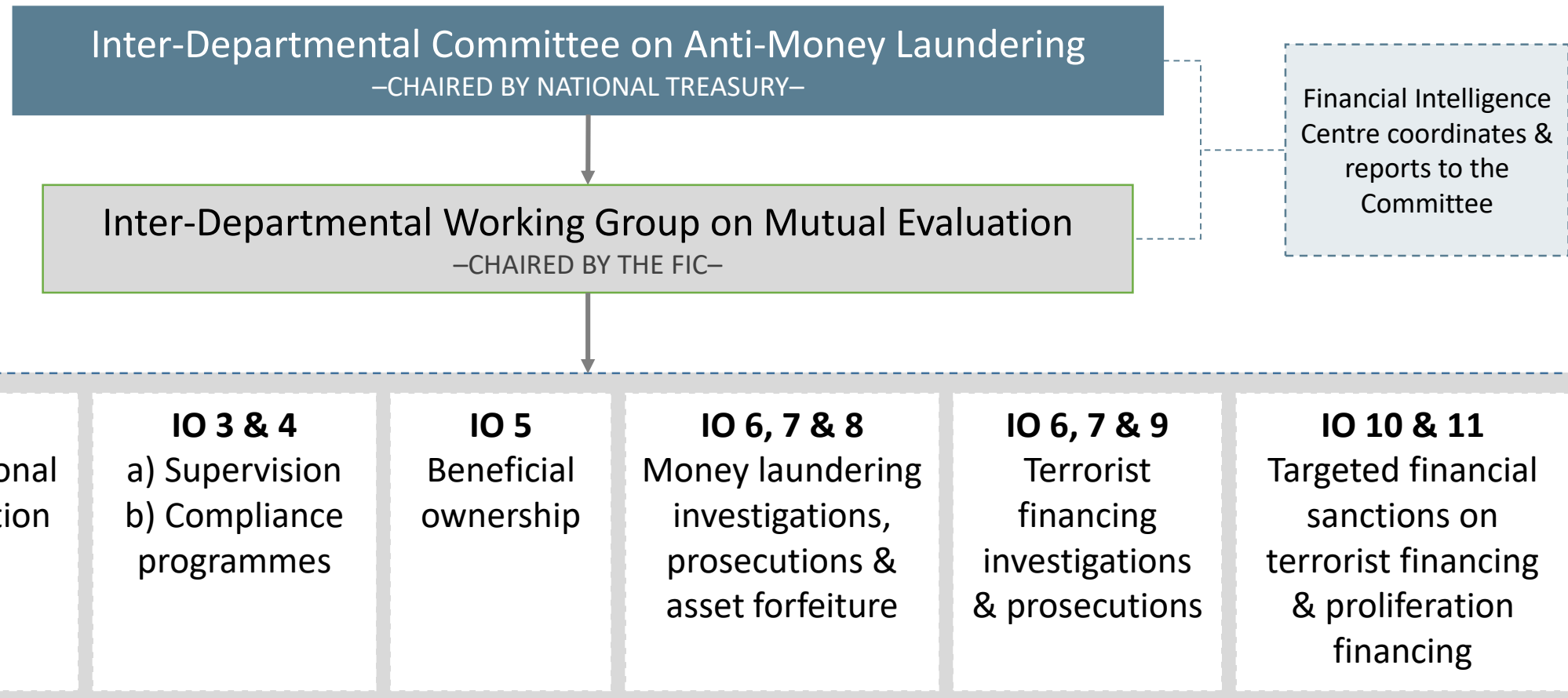
WAY FORWARD



REMEDICATION OF THE KEY DEFICIENCIES

Next steps: Endorsement of structure

Cabinet endorsed the same structure that was in place for the coordination of the South Africa's participation in the evaluation process, to coordinate the post-evaluation remediation process.



Next steps: Action steps immediate outcome 1 & 2

Immediate outcome	ACTION STEPS (derived from the recommended actions in the Mutual Evaluation Report)
IO1 Risk, policy and coordination	<ul style="list-style-type: none">• Identify vulnerabilities that may be exploited to conceal inward flow of suspected proceeds.• Ensure a mutual understanding by all authorities.• Consider policies that may reduce reliance on cash in South African economy (financial inclusion).• Cabinet to strengthen the mandate of the IDC to drive policy across Government, to align and monitor performance.
IO2 International cooperation	<ul style="list-style-type: none">• Develop electronic case management system for MLA requests.• Enhance the use of MLA procedure to obtain evidence from foreign jurisdictions.

Next steps: Action steps immediate outcome 3 & 4

Immediate outcome	ACTION STEPS (derived from the recommended actions in the Mutual Evaluation Report)
IO3 Supervision	<ul style="list-style-type: none">• Enhance fit and proper requirements to include criminal record checks, and apply to BOs of licensing applicants, including by amending legislation where necessary.• Formulate policy on regularising informal MVTs/follow robust process of identifying and shutting down illegal MVTs.• Develop and execute inspection plans on the basis of understanding of ML and TF risks.
IO4 Preventive measures	Share understanding of how ML and TF risks materialise in South Africa among all relevant sectors.

Next steps: Action steps immediate outcome 5 & 6

Immediate outcome	ACTION STEPS (derived from the recommended actions in the Mutual Evaluation Report)
IO5 Legal persons and arrangements	Complete processes of creating reliable central sources of BO information in respect of companies and trusts for access by authorities.
IO6 Financial intelligence ML/TF	<ul style="list-style-type: none">• Elevate priority of ML investigations.• Improve skills to carry out financial investigations in a wider range of ML cases.• Enhance ability to develop strategic analysis reports and typologies.

Next steps: Action steps immediate outcome 7 & 8

Immediate outcome	ACTION STEPS (derived from the recommended actions in the Mutual Evaluation Report)
IO7 ML investigation and prosecution	Ensure that strategies for investigation and prosecution of complex criminal cases, organised crime cases, serious corruption (including “state capture”), narcotics and tax evasion include ML as a standard operation, specifically third party money laundering and stand-alone money laundering involving professional money launderers.
IO8 Confiscation	<ul style="list-style-type: none">• Increase the use of multi-disciplinary teams in the investigation, prosecution and asset recovery in complex criminal cases, organised crime cases, serious corruption (including “state capture”), narcotics and tax evasion.• Implement process to give effect to section 30, etc. (declaration, search, seizure and prosecution) of the FIC Act.

Next steps: Action steps immediate outcome 9 & 10

Immediate outcome	ACTION STEPS (derived from the recommended actions in the Mutual Evaluation Report)
IO9 TF investigation and prosecution	<ul style="list-style-type: none">• Include specific recognition of and response to TF scenarios (collection, fund-raising, conduit channels and use of TF funding) in Counter-Terrorism Strategy.• Develop strategies for detection, investigation and prosecution of all TF scenarios (collection, fund-raising, conduit channels and use of TF funding).
IO10 TF preventive measures and financial sanctions	<ul style="list-style-type: none">• Amend POCDATARA Act and FIC Act.• Provide for designation criteria and process in Counter-Terrorism Strategy.• Confirm authority to supervise NPO Sector.

Next steps: Action steps immediate outcome 11

Immediate outcome	ACTION STEPS (derived from the recommended actions in the Mutual Evaluation Report)
IO11 PF financial sanctions	<ul style="list-style-type: none">• Develop strategy for asset identification and tracing in response to new designations.• Enhance communication of consolidated TFS list.



Next steps: Legal remediation

POCDATARA Act

- Remove the exclusion clause on terrorist acts committed during armed struggle.
- Provide that freezing orders cover funds or other assets of persons and entities acting on behalf or, or at the direction, of a designated person.

POCDATARA Act and FIC Act

- Transfer implementation of targeted financial sanctions under UNSCRs to the FIC Act.

Police Civilian Secretariat



Next steps: Legal remediation (cont.)

NPO Act

- Implement policy recommendations to improve the oversight of the NPO sector to protect the integrity of the NPO sector.
- Provide for a penalty clauses in respect of contraventions of the NPO Act.

Department of Social Development

Next steps: Legal remediation (cont.)

Companies Act

- Provide for a comprehensive mechanism through which the CIPC can keep accurate and updated BO information e.g. through a BO register.
- Require that the CIPC maintain records of a company for a period after it has been dissolved.
- Provide for a time limits for filing notices on changes to basic company information.
- Require that companies keep accurate and up-to-date information on their beneficial owners.

Department of Trade, Industry and Competition



Next steps: Legal remediation (cont.)

Trust Control Property Act

- Provide for requirement for the Master of the High Court to obtain and make accessible ultimate BO information relating to trusts.
- Require trustees to hold information on agents and service providers to trusts.
- Require all trustees to information which they obtain up to date and accurate.
- Require trustees to disclose their status to financial and non-financial institutions when forming a business relationship or carrying out an occasional transaction.
- Provide for administrative or criminal sanctions for all trustees who breach the Act.

Department of Justice and Constitutional Development

Next steps: Legal remediation (cont.)

FIC Act

- Amend FIC Schedules to include activities not covered in the scope of the Act
- Extend the concept of “beneficial owner”.
- Address a number of issues relating to customer due diligence e.g. requiring enhanced due diligence in the case of higher risk occasional transactions.

National Treasury





Financial
Intelligence Centre

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THANK
YOU