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South Africa: Report on Observance of Standards and Codes

This Report on Observance of Standards and Codes (ROSC) on the FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism for South Africa was prepared by Financial Action Task Force (FATF). The views expressed in this document as well as in the detailed assessment report, on which it is based, are those of the FATF and do not necessarily reflect the views of the government of South Africa or the Executive Board of the IMF.

A copy of the detailed assessment report can be found on the website of the FATF at http://www.FATF-GAFLORG.

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SOUTH AFRICA

Report on Observance of Standards and Codes
FATF Recommendations for Anti-Money Laundering
and Combating the Financing of Terrorism

26 February 2009

REPORT ON OBSERVANCE OF STANDARDS AND CODES

FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism

SOUTH AFRICA

1. This Report on the Observance of Standards and Codes for the FATF 40 Recommendations and 9 Special Recommendations on Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) was prepared by the Financial Action Task Force. The report provides a summary[1] of the AML/CFT measures in place in South Africa as of the time of the on-site visit (4-15 August 2008), and shortly thereafter, the levels of compliance with the FATF 40+9 Recommendations, and contains recommendations on how the AML/CFT system could be strengthened. The views expressed in this document have been agreed by the FATF and South Africa, but do not necessarily reflect the views of the Board of the IMF and World Bank.

Key Findings

2. South Africa has made good progress in developing its system for combating money laundering (ML) and the financing of terrorism (FT) since its last FATF mutual evaluation in 2003.

- The money laundering offence is generally in line with the Vienna and Palermo Conventions, although a lack of comprehensive statistics made it difficult to assess effectiveness.

- Provisions criminalising the financing of terrorism are comprehensive, although they are not yet tested in practice.

- The Financial Intelligence Centre ("the Centre") is an effective financial intelligence unit.

- The confiscation scheme is comprehensive and utilises effective civil forfeiture measures. Since 2003, South Africa has also adopted mechanisms to freeze terrorist-related assets.

- The FIC Act imposes customer due diligence, record keeping, and suspicious transaction reporting and internal control requirements. It should be noted that, after the FIC Act came into force, South Africa implemented a program to re-identify all existing customers. The issue of beneficial ownership has not yet been addressed, however, and South Africa also needs to adopt measures dealing with politically exposed persons (PEPs) and correspondent banking.

- The FIC Act covers some designated non-financial businesses and professions (DNFBPs); however, South Africa needs to broaden the legislation to cover dealers in precious metals and stones, company service providers, and more broadly cover accountants.

- At the time of the on-site visit, there were not adequate powers to supervise and enforce compliance with AML/CFT provisions; however, amendments to FIC Act have been enacted, and when they enter into force this year they will significantly enhance the compliance regime.

[1] A copy of the full mutual evaluation report can be found on the FATF website: www.fatf-gafi.org.

- South African authorities have established effective mechanisms to co-operate on operational matters to combat ML and FT. South Africa can also provide a wide range of mutual legal assistance, including the possibility to extradite its own nationals.

Background Information

3. The Republic of South Africa is a developing country located in a region where the economy remains primarily cash-based. It has a first-world banking sector characterised by well established infrastructure and technology, but limited participation (over 60% of the adult population was excluded from any formal financial services in 1994), and a growing demand for financial services. A priority of the Government is to ensure that individuals currently excluded from using formal financial services, particularly potential low-income customers, can access and, on a sustainable basis, use financial services being offered by registered financial services providers and which are appropriate to their needs.

4. Major profit-generating crimes include fraud, theft, corruption, racketeering, precious metals smuggling, abalone poaching, "419" Nigerian-type economic/investment frauds and pyramid schemes, with increasing numbers of sophisticated and large-scale economic crimes and crimes through criminal syndicates. South Africa remains a transport point for drug trafficking. Corruption also presents a problem. However, the South African authorities are committed to pursuing this issue through a range of initiatives such as the introduction of measures to entrench good governance and transparency. Security agencies indicated that the current threat from international and domestic terrorism is low, and will remain to be low for the foreseeable future. Nevertheless, the authorities are vigilant about the concern that South Africa could be used as a transit or hideaway destination for people with terrorist links.

5. The development of AML/CFT systems in South Africa represents work in progress. South Africa has demonstrated a strong commitment to implementing AML/CFT systems which has involved close cooperation and coordination between a variety of government departments and agencies. The authorities have sought to construct a system which uses as its reference the relevant United Nations Conventions and the international standards as set out by the Financial Action Task Force. Since 2003, South Africa has taken numerous steps to address many of the recommendations that were made in its first FATF mutual evaluation report.

Legal systems and Related Institutional Measures

6. South African has criminalised ML in three separate provisions of the Prevention of Organised Crime Act, 1998 (POCA), which cover the conversion or transfer, concealment or disguise, possession, acquisition of property in a manner that is largely consistent with the 1988 United Nations (UN) Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) and the 2000 UN Convention against Transnational Organised Crime (Palermo Convention). However, acquisition, possession or use of the proceeds of unlawful activities does not apply to the person who committed the predicate offence. South Africa adopts an "all crimes" approach which covers a range of offences in each of the 20 designated categories of offences. There is also a broad range of ancillary offences to the money laundering offences. Liability for money laundering extends to both natural and legal persons, and proof of knowledge can be derived from objective factual circumstances. The penalties for money laundering are a fine not exceeding ZAR 100 million or imprisonment for a period not exceeding 30 years. The lack of more comprehensive statistics and data maintained by the relevant authorities means that it is not possible to obtain an accurate picture of the effectiveness of the AML/CFT regime in South Africa.

7. South Africa criminalised terrorist financing in section 4 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act (POCDATARA). The POCDATARA is

comprehensive and criminalises the collection or provision of property with the intention that it be used for the purpose of committing a terrorist act, or by a terrorist organisation or individual terrorist for any purpose. The term property is broadly defined, and there is no requirement that the property actually be used to carry out or attempt a terrorist act, or be linked to a specific terrorist act. Terrorist financing is also a predicate offence for money laundering. A broad range of ancillary offences also apply to the terrorist financing offence. The maximum penalty (which can apply to natural or legal persons) for conviction of a terror financing offence is a fine of R100 million or imprisonment for a period of 15 years. However, the effectiveness of the measures put in place by POCDATARA cannot be assessed as there have been no prosecutions under this provision.

8. The POCA provides for both criminal (conviction based) and civil (not dependent on a conviction) forfeiture. Overall, the confiscation and forfeiture regime is being effectively implemented, with the statistics demonstrating that the value of the proceeds confiscated is high. The Asset Forfeiture Unit (AFU) in the National Prosecuting Authority (NPA) administers and implements the freezing and forfeiture provisions of the POCA which apply to a broad range of proceeds (both direct and indirect) and property of corresponding value. Additionally, the Criminal Procedure Act provides for the search, seizure, forfeiture and disposal of the instrumentalities of crime. Any property which may be subject to confiscation or civil forfeiture may be frozen (restrained) by means of an ex parte application.

9. Provisions in POCDATARA allow authorities to freeze assets pursuant to United Nations Security Council Resolutions S/RES/1267(1999) and S/RES/1373(2001). For S/RES/1267(1999), the President must give notice by proclamation in the Gazette of those who have been designated by the UN Security Council. To date, 63 proclamations have been issued through this process, although no assets relating to designated persons/entities have been located. For S/RES/1373(2001), the National Director of Public Prosecutions may make an ex parte application to a judge in chambers for a freezing order where there are reasonable grounds to believe that the property is related to terrorism. In practice, such a freezing order may be obtained in a matter of hours, is of indefinite duration and may be obtained without commencing a criminal investigation or prosecution in South Africa. To date, the relevant South African authorities have not received a request from a foreign country to freeze assets pursuant to S/RES/1373(2001), so the effectiveness of these procedures remains untested. Although these mechanisms generally meet the technical requirements of Special Recommendation III, better communication mechanisms and guidance are recommended. In addition, the authorities should enhance their monitoring of all financial institutions for their compliance with these obligations.

10. The financial intelligence unit (FIU) of South Africa is the Financial Intelligence Centre ("the Centre") which is an "administrative" FIU under the Ministry of Finance. The Centre is a well-structured, funded, and staffed FIU that is functioning effectively. The Centre became a member of the Egmont Group of Financial Intelligence Units in 2003 and has access to a wide range of financial, administrative and law enforcement information to enhance its ability to analyse STRs. The Centre is also authorised to request additional information from reporting entities and has issued guidance on the reporting obligation and provides feedback to its stakeholders. Although the Centre has not yet issued any typologies, a unit was recently established for the purpose of conducting typologies work.

11. The South African Police Service (SAPS) is the main agency that is responsible for the investigation of money laundering and terrorist financing. The SAPS also has a specific unit in its Detective Service which deals with terrorist offences, including terrorist financing (although, to date, there have been no terrorist financing investigations). Overall, the SAPS appears to be adequately resourced and dedicated to combating money laundering and terrorist financing. Law enforcement authorities have a broad range of investigative powers, including special investigative techniques. Asset Forfeiture Tracing Teams have been established in all the provinces of South Africa. In the five years from April 2003 to March 2008, there were 64 money laundering cases pending before the courts, and 16 resulted in

convictions. While South Africa has most of the necessary legal tools and funding to combat money laundering, there is a low number of ML investigations and prosecutions.

12. To implement Special Recommendation IX, South Africa uses a combination of a declaration system and an exchange control regime. Overall, these provisions cover most types of physical cross-border transportations of currency and bearer negotiable instruments (BNI). The exception is incoming BNI payable in any currency and outgoing BNI payable in domestic currency (where the transportation is made by a person) and incoming BNI payable in any currency (where the transportation is made through the mail). Requirements are not yet in place to ensure that cross-border transportations of currency and BNI are reported to the Centre. Although there are sanctions for failing to report cross-border movements of currency, these are not yet in force.

Preventative measures – Financial institutions

13. South Africa had implemented AML/CFT preventative measures through the application of the Financial Intelligence Centre Act, 2001 (FIC Act), the Money Laundering and Terrorist Financing Control Regulations (MLTFC Regulations) and Exemptions in Terms of the Financial Intelligence Centre Act (Exemptions). It should also be noted that the FIC Act has been amended by the Financial Intelligence Centre Amendment Act, 2008 (FIC Amendment Act) which will substantially address some of the concerns identified below when it comes into effect in 2009.

14. Financial institutions covered by the FIC Act (so-called "accountable institutions") are prohibited from establishing a business relationship or concluding a single transaction with a customer before establishing and verifying the customer's identity, and the identity of any person acting on behalf of the customer or on whose behalf the customer is acting. Accountable institutions are also required to establish and verify the identity of all customers with whom it had entered into a business relationship before the FIC Act took effect (so-called "existing customers"). The MLTFC Regulations set out in detail the measures to be taken by accountable institutions when establishing and verifying their customers' identities. However, there is no specific requirement in law or regulation requiring accountable institutions to identify or verify the identity of beneficial owners (*i.e.* the natural persons who ultimately own and control the customer). Certain Exemptions fully exempt certain accountable institutions from all CDD requirements (as well as some or all record keeping requirements) in circumstances defined as being low risk, which goes beyond the FATF Recommendations which allow for simplified but not full exemption from CDD. There are no explicit requirements to understand the ownership and control structure of a customer, obtain information on the purpose of the business relationship or conduct on-going due diligence. Likewise, there is no specific requirement that accountable institutions apply enhanced due diligence for higher risk categories of customers, business relationships or transactions, including politically exposed persons (PEPs) or cross border correspondent banking relationships. There is also a scope issue in that a limited number of financial institutions are not subject to AML/CFT requirements.

15. Financial secrecy provisions do not inhibit implementation of the FATF standards. Accountable institutions are required to keep records of information pertaining to customer identification and transactions whenever they establish a business relationship or conclude any transaction. Such records must be kept for at least five years from the date on which the business relationship is terminated (in the case of a business relationship) or transaction was concluded. Nevertheless, effective application of the record keeping requirements is somewhat eroded by some of the Exemptions provisions which exempt accountable institutions from maintaining records of customer identification and verification. Accountable institutions should also be required to maintain account files or business correspondence.

16. Following the last FATF mutual evaluation of South Africa (2003), the Government established a project team to implement changes to South Africa's national payment system (NPS) which would enable

full originator information to accompany wire transfers (domestic and cross-border) being transmitted using the SWIFT messaging formats. The system ultimately developed relies on the operating rules and standards that govern the NPS and the contractual obligations among NPS participants to comply. This system is not considered "other enforceable means". Consequently, although there is a legal requirement for accountable institutions to collect and verify originator information, there is no generalised legal requirement that all wire transfers/payment instructions be accompanied by full originator information. However, this approach appears to be generally effective in practice. It should also be noted that these measures can only be effectively applied to wire transfers/payment instructions being processed through the NPS; payment instructions sent through other means (*e.g.* proprietary networks) are not covered.

17. Transactions with no apparent business or lawful purpose must be reported to the Centre. However, accountable institutions are not expressly required to pay special attention to transactions based on complexity, size or unusual patterns, or to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations. There are some mechanisms in place to ensure that accountable institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries, but no specific provisions for accountable institutions to apply counter-measures in situations where countries do not sufficiently apply the FATF Recommendations exist. The recent efforts to inform accountable institutions of the actions taken by FATF are a step in the right direction and should be formalised.

18. South Africa has a broad reporting regime in which all financial institutions and businesses (not just accountable institutions) are required to report suspicious transactions. Overall, the STR reporting regime is being implemented effectively. All suspicious transactions must be reported to the Centre, including attempted transactions, regardless of amount. No criminal or civil action may be brought against a person who files an STR in good faith, and tipping-off is prohibited. During the 2007/08 financial year, the Centre received 24 585 STRs. This is a 15% increase in comparison to the previous year. Additionally, accountable institutions are required to file Terrorist Property Reports (TPRs) with the Centre if they have knowledge that property in their possession or control is terrorist related.

19. Accountable institutions are required to formulate and implement internal rules that address CDD, record keeping and reporting obligations. Accountable institutions are required to appoint a compliance officer who is responsible for ensuring compliance by employees with the FIC Act; however, with the exception of the banking sector, the compliance officer need not be at the management level. Although the FIC Act does not specifically address the issue of an independent, internal audit function, such requirements do exist in some of the separate financial institutions' legislation. There is no general requirement for financial institutions to put in place screening procedures to ensure high standards when hiring all employees. Accountable institutions are required to provide AML/CFT training.

20. South African licensing requirements effectively prevent the establishment of shell banks. However, there is no direct prohibition on financial institutions from entering into, or continuing, correspondent banking relationships with shell banks, and no requirement that financial institutions satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. Additionally, there should be more specific requirements that foreign branches and subsidiaries apply AML/CFT measures consistent with the FATF Recommendations, and apply the higher of either domestic or South African standards, and inform the home supervisor if it is unable to do so.

21. The South African Reserve Bank (SARB) is responsible for supervising banking institutions, and overseeing South Africa's exchange control regime—powers which it exercises through its Banking Supervision Department (BSD) and Exchange Control Department (ExCon). The Financial Services Board (FSB) is responsible for supervising financial advisors and intermediaries including investment managers, the insurance industry, retirement funds, friendly societies, collective investment schemes, exchanges,

central securities depositories and clearing houses. The Johannesburg Stock Exchange (JSE) is a licensed exchange and self-regulatory organisation which is responsible for supervising authorised users of the exchange. A limited number of financial institutions are not subject to AML/CFT supervision because they are not defined as accountable institutions pursuant to the FIC Act. As well, there is no designated supervisory authority for the following accountable institutions: Postbank and members of the Bond Exchange.

22. The FIC Act does not provide any of the designated supervisory authorities with specific powers of AML/CFT supervision or enforcement. Consequently, supervisors must rely on their general statutory powers of supervision, as defined by their constituting or other legislation. This raises a concern since, although the SARB, FSB and JSE may rely on their general supervisory powers to inspect financial institutions within their jurisdiction for compliance with the FIC Act, they have no specific authority to sanction violations of the AML/CFT requirements. Although the Centre has no official powers of supervision or enforcement, it has been able to participate jointly with other supervisory authorities in AML/CFT inspections. These issues will be addressed by the FIC Act amendments which come into force in 2009.

23. The designated supervisors determine their inspection regimes using a risk-based approach. The intensity of the inspection is also based on risk. In the banking sector, inspections found that most bank's internal audit functions were robust, although in some cases know-your-customer documentation was not being kept. In the insurance sector, some technical breaches of the AML/CFT requirements were detected (mainly in the areas of ongoing training and examination of staff members, risk rating of clients and identification of PEPs), although in general, insurers had adequate internal rules and procedures to meet the CDD and reporting requirements. In all cases, the designated supervisors followed up to ensure that these deficiencies were corrected. As initial compliance was poor in relation to smaller foreign exchange dealers which are not banks, the ExCon focused on visiting such dealers more frequently.

24. Both legal and natural persons (including directors and/or senior management of a financial institution who are responsible for the institution's contraventions or failures) are liable to criminal sanctions for violating the FIC Act. The maximum penalties for offences relating to violations of CDD, record keeping and reporting requirements are imprisonment for 15 years or a fine of ZAR 10 million. There is no possibility to apply administrative sanctions directly for breaches of the FIC Act. Although the designated supervisors may apply some administrative sanctions, these are not directly applicable for AML/CFT violations and can generally only be applied if those AML/CFT deficiencies rise to the level of undesirable business practices, safety and soundness issues, or fit and proper criteria. This means that the current range of sanctions for breaches of the AML/CFT requirements is not sufficiently broad to be effective, proportionate to the severity of a situation, and dissuasive. Although this is a serious deficiency, it will be addressed when the FIC Amendment Act comes into force in 2009.

25. Prudentially regulated financial institutions are subject to strict licensing requirements, although fit and proper tests do not apply to the directors and senior management of long-term insurers, or all directors of financial service providers and collective investment schemes. Natural and legal persons providing money or currency changing services must be licensed in South Africa. International remittances are tightly controlled by the Exchange Control Regulations, with international remittance providers being licensed authorised dealers (certain banks) and the Postbank. However, no registration/licensing requirements apply to natural or legal persons conducting a purely domestic money/value transfer business.

Preventative measures – Designated Non-Financial Businesses and Professions

26. The following designated non-financial businesses and professions (DNFBP) are designated as accountable institutions pursuant to the FIC Act: attorneys (which includes notaries), trust service

providers, (real) estate agents, casinos and public accountants who carry on the business of rendering investment advice or investment broking services. AML/CFT preventative measures described above generally apply to all accountable institutions in the same way, regardless of whether they are financial institutions or DNFBP.

27. Although dealers in precious metals and stones are not subject to the CDD and record keeping requirements of the FIC Act (as they are not defined as accountable institutions), the industry is very committed to the Kimberly process, begun under the auspices of the United Nations, which seeks to improve transparency in the diamond trade. Any person can act as a company service provider and there are, in fact, some specialised firms of professionals who provide the vast majority of company registrations. Accountants are only covered to the extent that they can be characterised as providing investment advice or brokering services.

28. The obligations to report activity suspected of being related to money laundering or terrorist financing, protection for reporting and the prohibition on tipping off apply to all DNFBPs. In general, compliance with the reporting requirements has been improving. However, South African authorities should continue working with the dealers in precious metals/stones and real estate sectors to determine whether they are adequately identifying and reporting suspicious activity.

29. The FIC Act designated authorities responsible for supervising certain DNFBP sectors for AML/CFT compliance, but does not provide them with any specific powers of AML/CFT supervision or enforcement. Nevertheless, some of these authorities are using their general powers to conduct AML/CFT inspections. For casinos, the designated AML/CFT supervisor is the National Gambling Board (NGB). For estate agents and public accountants, the designated AML/CFT supervisors are the Estate Agency Affairs Board (EAAB) and the Public Accountants and Auditors Board (PAAB) (now the Independent Regulatory Board for Auditors (IRBA) respectively. However, it should be noted that the IRBA only has the authority to supervise a limited segment of the accounting sector. For attorneys (and notaries), the Law Society of South Africa (LSSA) is the designated AML/CFT supervisor; however, only the four regional law societies have statutory inspection authority and enforcement power to supervise the conduct of attorneys. This situation has stalled implementation of AML/CFT requirements in the legal profession. South Africa should bring into effect as soon as possible provisions that will provide adequate authority for the DNFBP supervisors/monitoring bodies to inspect for and apply a range of sanctions that is effective, proportionate, and dissuasive for non-compliance with the FIC Act.

30. Although the Centre has no official supervisory functions or powers of its own, designated supervisors who wish to have Centre participation may use their general powers to appoint employees of the Centre to their inspection teams. In this way, the Centre has been able to participate jointly with the National Gambling Board in 25 inspections of casinos (October 2007 to April 2008) and with the Estate Agency Board in 21 inspections of estate agents (November 2006 to June 2007).

Legal Persons and Arrangements & Non-Profit Organisations

31. In preventing the use of legal persons for illicit purposes, South Africa relies primarily on an investigatory approach, supplemented by a company registry and corporate record keeping requirements. Overall, there are limited measures in place to ensure that there is adequate, accurate, and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. All companies doing business in South Africa, including foreign companies, must be registered in the national company registry—the Companies and Intellectual Property Registration Organisation Office (CIPRO). South African and foreign companies must keep registers of the directors and officers as well as a register of members (shareholders). Shareholders may be natural or legal persons. While there is a duty to disclose the identity of the person on whose behalf the share is being held,

that person could be a natural or legal person, this does not capture the FATF's concept of beneficial ownership/control. There are no impediments to accessing the information available. However, information which is available pursuant to the collection mechanisms does not capture accurate and current information on the beneficial ownership and control of legal persons; the information in CIPRO is not verified, and the provisions relating to nominee shareholders may obscure beneficial ownership in the company's share registry. Share warrants to the bearer may also obscure beneficial ownership and control.

32. With regard to preventing the use of legal arrangements for illicit purposes, South Africa relies primarily on an investigatory approach, supplemented by a national trust registration system whereby a national registry records details on trusts, including information on the settlers (founders), trustees and beneficiaries. The registry system is supplemented by record keeping requirements related to trust accounting. At the time of the on-site visit, the Master of the High Court was in the process of implementing an electronic version of the trust register which is fully searchable. The Registry does not regulate trusts; it is an office of record. Law enforcement officers have timely access to the contents to the files held at the Masters Office and may make a copy of any document in the file. This includes the names of the founders (settlor), trustees, and beneficiaries of trusts. The Trust Registry is a valuable source of current information on trusts; however, steps should be taken to ensure that the information held in the Registry is accurate (*e.g.* verification), and that the remaining paper files are uploaded into the register.

33. The non-profit organisations (NPO) sector in South Africa is well established and is comprised of various voluntary associations, charitable trusts and corporations. Registered NPOs in South Africa must comply with financial disclosure requirements; accounting records must be kept and financial statements together with a report from an accounting officer certifying compliance with the organisation's constitution, its accounting policies and the NPO Act must be filed annually with the NPO Directorate. A registered NPO must preserve each of its books of account, supporting vouchers, records of subscriptions or levies paid by its members, income and expenditure statements, balance sheets and accounting officer's reports for the prescribed period. Nevertheless, registration of NPOs is voluntary, which creates a loophole that increases the risk of abuse of unregistered NPOs by terrorist financiers. South Africa should assess the potential risks of terrorist financing posed within its NPO sector and review the level of oversight measures to ensure that these are effective and proportional to the risk of abuse. More outreach should also be undertaken with the specific aim to protect the NPO sector from terrorist financing abuse.

National and International Co-operation

34. South African authorities have established effective mechanisms to cooperate on operational matters to combat ML and FT. The Centre has mechanisms in place to exchange information and coordinate with the various stakeholders, and regulators and law enforcement agencies effectively and to cooperate effectively amongst themselves.

35. South Africa ratified the Palermo Convention on 20 February 2004, and the Terrorist Financing Convention on 1 May 2003, and acceded to the Vienna Convention on 14 December 1998. The vast majority of the convention's provisions have been implemented. South Africa has implemented components of S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001).

36. South Africa adopts a flexible approach in dealing with mutual legal assistance requests, and is able to render a wide range of mutual legal assistance under the International Cooperation in Criminal Matters Act (ICCMA), South Africa is able to render assistance without the need for a treaty or agreement (although South Africa has a number of agreements in place), and there is also no requirement for dual criminality or where the request is to obtain evidence, there is no requirement that judicial proceedings should have already been instituted before assistance can be rendered. Assistance is generally provided on

the basis of an assurance of reciprocity, but this principle is not interpreted in an overly strict manner. Neither the ICCMA nor the treaties impose restrictions against requests relating to fiscal matters.

37. The ICCMA provides for the confiscation and transfer of proceeds of crime or property of corresponding value through the execution of "foreign confiscation orders", which are complemented by domestic provisions in the asset forfeiture regime under the POCA, and provisions in the CPA that are used to cover the search and seizure of instrumentalities intended for use in ML, FT and predicate offences.

38. South Africa's extradition framework is comprehensive and flexible. The Extradition Act provides for extradition in respect of "extraditable offences" namely offences in both states that are punishable with a sentence of imprisonment for a period of six months or more. This would include the money laundering offences and terrorist financing offences. There is no requirement for a treaty, and South Africa can also extradite its own nationals.

39. The Centre, law enforcement agencies, and supervisors are able to provide a wide range of international co operation to foreign counterparts, and generally do so in a rapid, constructive, and effective manner. South Africa does not refuse cooperation on the ground that offences also involve fiscal matters. The provisions and practices apply to all criminal conduct including money laundering and terrorist financing.

Resources and Statistics

40. South African authorities have committed substantial and appropriate human and financial resources to the Centre, police, financial supervisors and prosecutors. The NPA has increased its staff by 27% over the past three years, and receives adequate funding but experiences some challenges with attracting and appointing qualified applicants. All competent authorities are required to maintain high professional standards, including standards concerning confidentiality, and receive adequate AML/CFT training.

41. South Africa maintains comprehensive statistics regarding STRs received, analysed, and disseminated, and statistics relating to financial supervisory cooperation. South African authorities should record and maintain more detailed statistics of money laundering investigations, prosecutions and convictions, so as to be able to more effectively assess the effectiveness of South Africa's AML/CFT system. South Africa should also keep comprehensive statistics of mutual legal assistance and extradition matters. Finally, South Africa should review the effectiveness of its systems for combating money laundering and terrorist financing on a regular basis.

TABLE 1: RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (NA).

Forty Recommendations	Rating	Summary of factors underlying rating
Legal systems		
1. ML offence	LC	• Section 6 POCA (acquisition, use and possession) does not apply to the perpetrator of the predicate offence. • Lack of more comprehensive statistics makes it difficult to assess the effectiveness of the anti-money laundering regime.
2. ML offence – mental element and corporate liability	LC	• Lack of more comprehensive statistics makes it difficult to assess the effectiveness of the anti-money laundering regime.
3. Confiscation and provisional measures	C	• This Recommendation is fully observed.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	C	• This Recommendation is fully observed.
5. Customer due diligence	PC	• No specific legal obligation for an accountable institution to undertake CDD when there is a suspicion of money laundering or terrorist financing or when it has doubts about the veracity or adequacy of previously obtained customer identification data. • The FIC Act does not require accountable institutions to verify the identification information relating to directors and senior management by comparison with the CM29 form filed with CIPRO. • No specific requirement in law or regulation that requires accountable institutions to identify beneficial owners (*i.e.* the natural persons who ultimately control and own the customer) or to verify their identities. Therefore, there is no obligation to identify the beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers. • No specific requirement to understand the ownership and control structure of a customer that is a legal person or arrangement, beyond the requirements described above to identify: the manager and 25% shareholders of a company; the members of a close corporation; the partners in a partnership; and the founders, trustees and beneficiaries of a trust. • No explicit requirement that information on the purpose of a business relationship be obtained. • There is no explicit requirement to conduct on-going due diligence. • There is no specific requirement that accountable institutions apply enhanced due diligence for higher risk categories of customers, business relationships or transactions.

Forty Recommendations	Rating	Summary of factors underlying rating
		• Certain exemptions do not comply with the FATF Recommendations in that they fully exempt certain accountable institutions from all CDD requirements (as well as some or all record keeping requirements). In addition: – For insurance exemptions, the annual and single premium thresholds greatly exceed the examples cited in the FATF methodology of the types of insurance policies that may be considered low risk. – A further concern is that the full exemptions from CDD and related record keeping in Exemptions 7, 15 and 16 would also apply in cases where an accountable institution is considering filing a suspicious transaction report. • Once a business relationship has been established, there is no specific requirement to terminate the business relationship or to consider filing an STR if doubts about the veracity or adequacy of previously obtained customer identification data arise. • Uncovered Financial Institutions are not subject to the CDD obligations of the FIC Act.
6. Politically exposed persons	NC	• No enforceable obligation for financial institutions to identify politically exposed persons (PEPs) or take other such measures as indicated in Recommendation 6.
7. Correspondent banking	NC	• There is no specific obligation in law or regulation for accountable institutions to conduct enhanced due diligence on cross border correspondent banking and other similar relationships.
8. New technologies & non face-to-face business	PC	• There are no specific legal or regulatory requirements to have policies in place to address the potential abuse of new technological developments for ML/FT. • The general requirements for non-face-to-face customers this requirement does not extend to when conducting on-going due diligence. Additionally, there is no elaboration of how this general requirement should be applied other than in the context of the banking sector and in relation to cell phone products. • Uncovered Financial Institutions are not subject to the CDD obligations of the FIC Act.
9. Third parties and introducers	NC	• Exemption 5 does not require the institution relying on third-party verification/identification to immediately obtain the relevant CDD information. • Exemption 5 does not require the accountable institution to satisfy itself that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the other institution "without delay." • For Exemption 5, there is no explicit requirement that the financial institution satisfy itself of the adequacy of applicable AML/CFT measures applicable to the foreign financial institution. • Despite the lack of determinations by relevant supervisory bodies, some accountable institutions are applying Exemption 5 and fully exempting from verification requirements all customers from FATF membership countries. • Uncovered Financial Institutions are not subject to the CDD obligations of the FIC Act.
10. Record keeping	PC	• There is not a specific requirement that the transaction records include the date of the transaction or the address of the customer. • Outside of the banking sector, there is no general obligation to keep

Forty Recommendations	Rating	Summary of factors underlying rating
		transaction records sufficient to permit the reconstruction of account activity. • No requirement to maintain account files or business correspondence as part of the record-keeping obligation. • Effective application of the record keeping obligations is eroded by Exemptions 4, 6, 14, 16 and 17 which exempt accountable institutions from maintaining records of customer identification and verification. • Uncovered Financial Institutions are not subject to the record keeping obligations of the FIC Act. This affects the ratings for Recommendation 10.
11. Unusual transactions	PC	• The FIC Act does not contain a provision which expressly requires financial institutions to pay special attention to transactions based on complexity, size or unusual patterns. • No requirement to make a record that includes customer and transaction information for complex and unusually large transactions or unusual patterns of transactions or to prepare written findings and to maintain them unless it is part of STR. • Since there is no requirement to prepare any written findings concerning the background and purpose of transactions with no apparent business of lawful purpose, there can be no requirement to keep them available for at least five years. • The obligation to pay attention to transactions with no apparent business or lawful purpose should be extended to Uncovered Financial Institutions.
12. DNFBP – R.13-15 & 21	NC	• The deficiencies identified in R.5, 6, and 8-11 that apply in the financial sector also apply to all DNFBPs. • Scope issues further reduce the application of the requirements of R.5 and R.8-11 in that: accountants are not covered when conducting all of the activities prescribed in R.12 and the applicability of the requirements when providing investment advice is not clear to the industry; attorneys are not covered when performing company services in relation to legal persons and arrangements within South Africa; the majority of dealers in precious metals and stones sector are not covered and the others are only subject to limited CDD and record keeping requirements; and trust and company service providers (other than lawyers or accountants providing investment advice) are not covered in the situations specified in R.12. • Applying R.5: Casinos are permitted to apply reduced CDD in all cases, and this was not based on demonstrated low risk. In particular, casinos are fully exempt from collecting and verifying the residential address and income tax registration number of natural persons (Exemption 14). Exemption 10 for attorneys does not comply with the FATF Recommendations in that it fully exempts attorneys from all CDD requirements (as well as some or all record keeping requirements) even where there is a suspicion of ML/FT. • Applying R.9: The characteristics of the real estate market (often cash-based) make it troubling that the full range of preventative measures required by Recommendation 9 does not apply to non-face-to-face transactions in the real estate sector. • Applying R.10: (Dealers): Only very limited information on limited transactions is recorded. • Effectiveness: The results of the EAAB inspection process show that, overall, implementation of AML/CFT measures, including CDD

Forty Recommendations	Rating	Summary of factors underlying rating
		requirements, is low among estate agents.
13. Suspicious transaction reporting	LC	• Leasing and financing companies have not yet implemented the reporting obligations.
14. Protection & no tipping-off	C	• This Recommendation is fully observed.
15. Internal controls, compliance & audit	PC	• For financial institutions other than banks, there is not a requirement that the compliance officer be at the management level. • Other than for banks, there is no requirement for accountable institutions to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with AML/CFT procedures, policies and controls. • There is no general requirement for financial institutions to put in place screening procedures to ensure high standards when hiring all employees. • There is no requirement that training be conducted on an ongoing basis. • Uncovered Financial Institutions are not subject to FIC Act requirements relating to internal controls.
16. DNFBP – R.13-15 & 21	PC	• Applying R.13 and SR.IV: – Effectiveness: Implementation of the reporting obligation is negatively affected as follows: for attorneys, there is a lack of clarity on how to interpret legal privilege in the context of meeting the reporting obligations pursuant to the FIC Act; for dealers, there has been very low rates of reporting in contrast to the relative importance of the sector in the South African context; and for estate agents, until recently it was not widely recognised that property transactions effected in cash are suspicious. Additionally, the EAAB has detected some activity in the estate agent sector which should have been reported (but was not) and which is suspected of relating to ML. • Applying R.15 and R.21: The deficiencies identified in R.15 that apply in the financial sector also apply to all DNFBPs.
17. Sanctions	PC	• Sanctions are not sufficiently effective and proportionate. Only criminal sanctions can apply for breaches of the FIC Act. • There is no specific authority for SARB, FSB, or JSE, to apply administrative sanctions for breaches of the FIC Act. • Scope issue: The following financial institutions are not subject to AML/CFT supervision: finance companies; leasing companies; collective investment scheme custodians; money lenders other than banks; securities custodians licensed under the FAIS Act , Postbank and members of the Bond Exchange. • Effectiveness: Low level of compliance with AML/CFT requirements in the insurance sector, and among securities market participants. No sanctions have been applied, even though breaches of AML/CFT requirements detected.
18. Shell banks	PC	• There is no direct prohibition on financial institutions from entering into, or continuing, correspondent banking relationships with shell banks. • No requirement that financial institutions satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
19. Other forms of reporting	C	• This Recommendation is fully observed.
20. Other NFBP & secure transaction techniques	C	• This Recommendation is fully observed.

Forty Recommendations	Rating	Summary of factors underlying rating
21. Special attention for higher risk countries	NC	• No specific requirement for financial institutions to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations. • Efforts to inform financial sector about the risks of certain jurisdictions were directed only to banks. • No explicit requirement for a person to examine such transactions and prepare written findings (other than an STR) that can be made available to competent authorities and auditors. • No requirements to apply counter-measures in situations where countries do not sufficiently apply the FATF Recommendations. • The obligation to pay attention to transactions with no apparent business or lawful purpose should be extended to Uncovered Financial Institutions.
22. Foreign branches & subsidiaries	NC	• There is no direct requirement for South African financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations to the extent that the host country's laws and regulations permit. Nor is there a requirement to apply the higher of the requirements if South African and host country requirements differ. • There are serious deficiencies in South Africa's framework for preventative measures for financial institutions, so applying the South Africa standards would not be consistent with the FATF Recommendations. • There is no specific requirement to inform the South African authorities if a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures. • Uncovered Financial Institutions are not subject to FIC Act requirements relating to foreign branches and subsidiaries.
Institutional and other measures		
23. Regulation, supervision and monitoring	PC	• For financial service providers, insurers and CIS, fit and proper tests do not apply to all directors. • There is no legal requirement to submit directors and senior management of long-term insurers to fit and proper tests. • Market entry (banks, securities market participants): adequate measures not taken to determine beneficial ownership or (for JSE) go beyond the 10% if the shareholder is a legal person. • The JSE Rules do not currently specify that persons holding a management function meeting the fit and proper criteria, and they do not currently include "expertise" as a criteria, • No registration/licensing requirements apply to natural or legal persons conducting money/value transfer within South Africa, financial leasing and finance companies. • There is no designated AML/CFT supervisor for Postbank or the Bond Exchange. • Certain types of remittances through informal systems not covered. • Scope issue: The following financial institutions are not subject to AML/CFT supervision: finance companies; leasing companies; collective investment scheme custodians; money lenders other than banks; securities custodians licensed under the FAIS Act, Postbank and members of the Bond Exchange. • Effectiveness: Low level of compliance with AML/CFT requirements in the insurance sector, and among securities

Forty Recommendations	Rating	Summary of factors underlying rating
		market participants. No sanctions have been applied, even though breaches of AML/CFT requirements detected. The largest provider of money remittance services in South Africa has not yet been visited for an AML/CFT review, despite having reported the vast majority of total STRs. Insufficient resources for SARB (BSD and ExCon) and FSB, given the number of entities that they supervise.
24. DNFBP - regulation, supervision and monitoring	PC	• The FIC Act currently only provides for enforcement of its provisions through criminal sanctions, none of which have yet been applied. Administrative sanctions will not be available under the FIC Act until the Amendment Bill comes into force. • The designations of the NGB, IRBA and LSSA as supervisory bodies are problematic. • The FIC Act-designated supervisory authorities for casinos (National Gambling Board), attorneys (Law Society of South Africa), and estate agents (Estate Agency Affairs Board) do not have specific authority to inspect for compliance or apply sanctions in respect to the FIC Act. • ***Dealers in precious metals and stones:*** It is a major vulnerability is that there is no industry-wide supervisory body to ensure compliance with the FIC Act. • ***Company service providers:*** Only company service providers that are lawyers or accountants have a designated AML/CFT supervisor; and the existing framework in relation to attorneys applies only when they are providing services for companies outside of South Africa. • ***Casinos:*** None of the provincial licensing authorities (PLAs) has yet been required or requested to exercise its authority to apply sanctions for violations of the FIC Act requirements. • ***Attorneys:*** Currently, the regional law societies (RLS) are not routinely checking for compliance with the FIC Act, and they do not have specific powers to impose sanctions in accordance with the FIC Act. • ***Accountants:*** The IRBA does not have clear authority to supervise auditors beyond ensuring their compliance with the AP Act, and its supervision would only extend to a relatively small number of accountants. • Auditors providing investment advice, also fall under the supervisory jurisdiction of the FSB. As there is no co-ordination between FSB and IRBA inspections, there is the possibility of overlap in this regard. • ***Trust service providers:*** The providers are generally attorneys and banks. However, the supervisory framework described above in relation to attorneys applies only when they are providing services for trusts outside of South Africa. For banks, the supervisory framework and identified deficiencies described in section 3.10 of this report apply.
25. Guidelines & Feedback	PC	• The current STR reporting guidelines are not sector specific, and the reporting requirements and reporting forms are mainly designed for banks. • The Centre has not provided the general feedback on the methods and trends of money laundering, or sanitised ML cases. • Guidance Note 3 only applies to banks and comprehensive guidance on FIC Act requirements to other financial sectors has not been issued. • The guidance does not contain a description of ML/FT techniques and methods.

Forty Recommendations	Rating	Summary of factors underlying rating
		• In addition, Guidance Note 3 only applies to banks and comprehensive guidance on FIC Act requirements to other financial sectors has not been issued. • The guidance does not contain a description of ML/FT techniques and methods. • AML/CFT guidance, although developed by the Centre in consultation with the NGB and casino industry, has not been issued for casinos (or dealers in precious metals and stones, or trust and company service providers that are not attorneys or accountants, although these sectors are not subject to national AML/CFT requirements).
Institutional and other measures		
26. The FIU	LC	• No annual reports concerning AML/CFT cases, typologies and trends analysis have yet been issued or published.
27. Law enforcement authorities	LC	• Effectiveness: Lack of more comprehensive statistics makes it impossible to assess the effectiveness of the money laundering regime; the information provided shows a low number of money laundering investigations.
28. Powers of competent authorities	C	• This Recommendation is fully observed.
29. Supervisors	PC	• There is not clear authority for the FSB to inspect for compliance, conduct on-site visits, and obtain information to determine compliance with the FIC Act. • For insurers and FSPs, the FSB does not have general authority to conduct visits in relation to AML compliance, and does not use the broad powers under the IFI Act to conduct inspections. There is no specific authority for SARB, FSB, or JSE, to apply administrative sanctions for breaches of the FIC Act. • Scope issue: The following financial institutions are not subject to AML/CFT supervision: finance companies; leasing companies; collective investment scheme custodians; money lenders other than banks; securities custodians licensed under the FAIS Act, Postbank and members of the Bond Exchange.
30. Resources, integrity and training	LC	<u>Law enforcement and prosecutors:</u> • The NPA experiences challenges with attracting and appointing qualified applicants.
31. National co-operation	C	• This Recommendation is fully observed.
32. Statistics	PC	• South Africa has not reviewed the effectiveness of its systems for combating money laundering and terrorist financing on a regular basis. • The assessment team was not provided with comprehensive data or statistics on details of money laundering investigations. The authorities do not maintain comprehensive statistics on the criminal sanctions applied to person convicted of money laundering cases. • No statistics are maintained concerning the number of cases and the amounts of property frozen, seized, and confiscated in relation to money laundering and terrorist financing. • There are no adequate statistics on cross border transportations of currency and BNI over the thresholds. • South Africa does not keep comprehensive statistics of mutual legal assistance and extradition matters.
33. Legal persons – beneficial owners	NC	• There are limited measures in place to ensure that there is adequate, accurate, and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.

Forty Recommendations	Rating	Summary of factors underlying rating
		• Shareholders can be legal persons, and nominees, which may obscure beneficial ownership information. • Information in the company registers pertains only to some legal ownership and control; it does not necessarily contain information concerning beneficial ownership and control; the information is not verified and is not necessarily reliable. • For cooperatives, it is not specified what information on directors must be supplied or updated, and they may also be legal persons. • It is unclear whether the measures to prevent share warrants to bearer to be misused for money laundering are sufficient.
34. Legal arrangements – beneficial owners	PC	• Where a legal person is a founder, trustee or beneficiary, there is no obligation to obtain information on the beneficial owner of the legal person. • Identification information on the founder and beneficiary is not verified before being entered into the Register which raises concerns about its accuracy. • No records exist of the 2 000 trusts that were created prior to 1987 when the TPC Act came into effect.
International Co-operation		
35. Conventions	LC	• Palermo: Section 6 POCA (acquisition, use and possession) does not apply to the person who committed the predicate offence as required by the Palermo Convention 6(1)(b)(i) and 6(2)(e). • FT Convention: South Africa does not fully comply with Article 18(1), which requires countries to implement sufficient measures to identify customers in whose interest accounts are opened (see section 3.2 of this report).
36. Mutual legal assistance (MLA)	LC	• Enforcement of foreign restraint order may be made only where such orders are not subject to any review or appeal. • Effectiveness: Section 8 (on obtaining of evidence) does not dispense with the presence of a witness subpoenaed to appear before a court to give evidence where such witness is able to provide the evidence before the date set down for the hearing
37. Dual criminality	C	• This Recommendation is fully observed.
38. MLA on confiscation and freezing	LC	• Enforcement of foreign restraint order may be made only where such orders are not subject to any review or appeal.
39. Extradition	LC	• Effectiveness cannot be assessed.
40. Other forms of co-operation	C	• This Recommendation is fully observed.
Nine Special Recommendations	**Rating**	**Summary of factors underlying rating**
SR.I Implement UN instruments	LC	• *FT Convention*: South Africa does not fully comply with Article 18(1), which requires countries to implement sufficient measures to identify customers in whose interest accounts are opened (see section 3.2 of this report).
SR.II Criminalise terrorist financing	LC	• The effectiveness cannot be assessed.
SR.III Freeze and confiscate terrorist assets	PC	• No mechanism for effectively communicating freezing actions taken pursuant to S/RES/1373(2001) to those accountable institutions and others who do not qualify as “interested parties” at the time the freezing order is obtained. • No guidance has been issued. • There is not adequate monitoring for compliance by all financial institutions. • Effectiveness concerns: Although the system remains untested, effectiveness concerns remain in the absence of clear communication mechanisms and guidance to accountable

Nine Special Recommendations	Rating	Summary of factors underlying rating
		institutions, particularly in relation to freezing actions pursuant to S/RES/1373(2001). • For S/RES/1267(1999), No mechanism for bringing delisting requests to the attention of the UNSC for consideration, or for notifying and obtaining the approval of the Al-Qaida and Taliban Sanctions Committee for granting access to frozen assets as is required by S/RES/1452(2004).
SR.IV Suspicious transaction reporting	LC	• Leasing and financing companies have not yet implemented the reporting obligations.
SR.V International co-operation	LC	• The deficiencies highlighted in relation to R. 36 also impact SR. V. • The deficiencies highlighted in relation to R. 38 also impact SR. V. • The deficiency highlighted in R. 39 also impacts on SR.V.
SR VI AML requirements for money/value transfer services	PC	• There is no requirement for an MVT service operator that conducts operations within South Africa to be licensed or registered. • MVT service operators are not subject to the full range of the applicable FATF Recommendations. • The systems in place to monitor and ensure compliance for banks are not adequate and there is no designated AML/CFT supervisor for Postbank. • There are not effective, proportionate, and dissuasive sanctions that can be applied to MVT service operators that fail adequately comply with provisions of the FIC Act. • No substantial action has been taken to address the informal (underground) sector.
SR VII Wire transfer rules	PC	• There is no general legal requirement for all wire transfers to be accompanied by full originator information. • For domestic transfers, there is no general requirement that, where full originator information does not accompany the wire transfer, such information can be made available to the appropriate authorities within three business days of receiving the request. • No general requirement on intermediary financial institutions to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer. • No obligation on beneficiary financial institutions to consider restricting or terminating the business relationship with financial institutions that fail to meet the requirements of Special Recommendation VII. • No indication that PASA specifically checks for compliance with Rule 2.16 to ensure that financial institutions are indeed entering the originator's name and address (in Field 50a), and account number (in Field 57a in the case of debit transfers) or a reference number (in Field 20) as required. • No indication that compliance with the requirement on beneficiary financial institutions to file an STR in situations where originator information is missing is tested or that any tests are conducted to ensure that the information entered into the fields is accurate and complete. • No specific sanctions associated with failing to include full, accurate and meaningful originator information in a message conveying payment instructions across borders. • Although MoneyGram's agent banks collect full originator information, in practice, not all the information that is collected is transferred to the receiving MoneyGram agent or office outside of South Africa.

Nine Special Recommendations	Rating	Summary of factors underlying rating
SR.VIII Non-profit organisations	PC	• No assessment of the potential risks of terrorist financing posed within the NPO sector in South Africa has been undertaken yet. • No outreach programme has been undertaken with the specific aim to protect the sector from terrorist financing abuse. • There is no registration requirement under the NPO Act in as much as registration of NPOs is only voluntary. • The Director has neither the power to sanction office bearers of defaulting NPOs nor the power to impose fines or to freeze accounts of NPOs for violation of oversight measures. • There is no prescribed retention period that applies to the record keeping requirement of NPOs. • There is no specific requirement under the NPO Act, for NPOs to maintain for a period of five years information on the identity of person(s) who own, control or direct their activities, including senior officers, board members and trustees. • There are no formal gateways for the Directorate to exchange non-public information.
SR.IX Cross Border Declaration & Disclosure	PC	• The following aspects of SR IX are not covered in the case of cross-border transportations by persons or by mail: inbound BNI and outgoing BNI payable in foreign currency. • There are no records kept when: (i) there is a false declaration or disclosure and there is no seizure; (ii) there is a suspicion of ML/FT; or (iii) there is a cross-border transportation of BNI through uninsured mail. • There is not yet a requirement to report threshold movements of currency to the Centre or make the information available to the FIU in some other way, and bills of entry for cargo and postal declarations are not available to the Centre. • The sanctions for failing to report a cross-border conveyance of cash are not yet in force. • There are concerns about the effectiveness of measures to monitor the incoming declaration obligation.

Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 & 2)	• It is recommended that South Africa amend section 6 of POCA in order to extend the ML offence of acquisition, possession and use to a person who committed the predicate offence. • South African authorities should consider amending POCA to regularise and standardise ss. 4-6 with ss.2-9 for avoidance of doubt. • The lack of more comprehensive statistics and data maintained by the relevant authorities is another area which the South African authorities should also address.
2.2 Criminalisation of Terrorist Financing (SR.II)	• The maximum term of imprisonment for an offence under the POCDATARA is 15 years whereas the offence for money laundering under POCA provides for a maximum term of 30 years, while that for racketeering is up to life imprisonment. In view of the serious nature of terrorist financing, the authorities may wish to reconsider this anomaly.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• While the value of the proceeds confiscated are high, comprehensive statistics and data should be maintained on matters relating specifically to money laundering and terrorist financing.
2.4 Freezing of funds used for terrorist financing (SR.III)	• Africa should implement effective mechanisms for communicating freezing actions to accountable institutions and others who do not qualify as “interested parties” at the time the freezing order is obtained. The South African authorities should also issue guidance to the financial sector on how to meet its obligations pursuant to Special Recommendation III. • The authorities should enhance their monitoring of all financial institutions for their compliance with these obligations. • South Africa should also implement a mechanism to bring a delisting request to the attention of the UNSC for consideration, and for notifying and obtaining the approval of the Al-Qaida and Taliban Sanctions Committee for granting access to frozen assets as is required by S/RES/1452(2004).
2.5 The Financial Intelligence Unit and its functions (R.26)	• The Centre’s should publish information concerning AML/CFT cases, typologies and trends analysis. • The Centre should consider tailoring STR forms to meet the needs of the non-bank reporting parties. Additionally, the Centre should issue sector-specific guidance concerning the reporting obligation.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	• The South African authorities should focus more pro-actively on pursuing specific money laundering offences. • South Africa should consider additional guidance to law enforcement on obtaining production of privileged documents. • It is recommended that the SAPS consider developing its own expertise in forensic analysis (e.g. in accounting and auditing) as expertise in these fields will always be required in analysing ML and FT trends. There is also need to appoint more prosecutors and provide them with a more skills-based through training. • The SAPS should consider maintaining statistics on cases where special investigative techniques are used (e.g. controlled deliveries

AML/CFT System	Recommended Action (listed in order of priority)
	and undercover operations). This would enable effectiveness of the use of such techniques to be determined.
2.7 Cross Border Declaration & Disclosure	• There is need for South Africa to establish more effective measures to monitor all incoming and outgoing cross-border transportations of currency and BNI, and establish clearer requirements and procedures to declare inbound BNI above the threshold, and outgoing BNI payable in foreign currency. • The proposed amendments to the FIC Act which will enhance that process (including amendments which will make declaration reports available to the Centre and impose sanctions for failing to report cross-border conveyances of currency) should quickly be brought into effect. • There is need for the SAPS to retain readily available records and comprehensive records where there is a false declaration or disclosure and there is no seizure, and when there is a suspicion of ML/FT. • There should also be more detailed statistics of seizures done according to the offence committed, statistics on seizures relating to tax evasion involving ML, and illegal cross-border transportation of cash.
3. Preventive Measures – Financial Institutions	• South African authorities should extend AML/CFT requirements to the currently uncovered financial institutions.
3.1 Risk of money laundering or terrorist financing	• There are no recommendations for this section.
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	South African authorities are recommended to take the following measures to enhance the effectiveness of the existing AML/CFT regime: • Apply adequate CDD requirements to financial institutions that are not currently “accountable institutions” under the FIC Act. • Institute a primary obligation to identify beneficial owners. • Review the provisions of the current Exemptions to ensure that current practices of exempting full CDD requirements in situations where the application of simplified or reduced due diligence would be more appropriate are addressed. • Institute explicit requirements to conduct enhanced due diligence when there is a suspicion of ML or FT, if there are doubts about previously obtained CDD data, and with respect to high-risk customers and transactions. • Establish an explicit obligation for accountable institutions to conduct general on-going due diligence on business relationships and reducing the existing reliance on the obligations under the FIC Act to file an STR and the Regulations to update customer identification and verification particulars to serve this purpose. • Introduce a primary obligation for accountable institutions to identify PEPs and to apply enhanced due diligence with respect to these relationships. • Establishing a specific, enforceable requirement for a bank to perform CDD measures on its respondent institutions and gather sufficient information to fully understand the nature of its respondents’ business, the respondents’ reputation and the quality of AML/CFT supervision being applied to those institutions. • Introduce explicit requirements for accountable institutions to have policies in place or take measure as needed to prevent the misuse of technological developments by money launderers and terrorist financiers.

AML/CFT System	Recommended Action (listed in order of priority)
3.3 Third parties and introduced business (R.9)	• South Africa should adopt specific measures to implement the requirements of Recommendation 9. • There should be a more definitive timeline attached to the "undertaking" to forward the appropriate information in Exemption 5(c) to ensure that the accountable institution relying on the third-party verification obtains the relevant CDD documentation immediately and that the other accountable institution be under an obligation to provide that information within that time frame. • South African authorities should include a specific obligation on accountable institutions relying on customer identification and verification undertaken by third parties indicating that they are ultimately responsible for customer identification and verification even though they may be satisfied by the services provided by the third parties.
3.4 Financial institution secrecy or confidentiality (R.4)	• There are no recommendations for this section.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	• For financial institutions outside the banking sector, there should be a specific obligation to collect sufficient information to reconstruct financial transactions; there should also be a general obligation to keep account files and business correspondence. • South African authorities should establish a general, enforceable obligation to require: all wire transfers to be accompanied by full originator information (or, in the case of domestic transfers, full originator information to be made available to the authorities within three business days of receiving the request), for the intermediary financial institutions to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer, and for beneficiary financial institutions to consider restricting or terminating business relationships with financial institutions that fail to meet the requirements of Special Recommendation VII and/or consider filing an STR. • Effective systems for monitoring compliance with these obligations should be implemented, including the possibility of imposing more effective, proportionate, and dissuasive sanctions where appropriate.
3.6 Monitoring of transactions and relationships (R.11 & 21)	• South Africa should introduce an explicit requirement that all financial institutions pay special attention to all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic purposes. • Authorities should establish requirements to pay special attention to customers and transactions relating to countries that do not, or insufficiently apply, the FATF Recommendations. Authorities should also establish institutionalised mechanisms for routinely advising accountable institutions of concerns about weaknesses in the AML/CFT regimes of other countries. • Authorities should clarify the application of Exemption 5 and section 29 of Guidance Note 3 with respect to countries with equivalent AML/CFT systems and strengthen the provisions of section 29 to ensure that accountable institutions are routinely and consistently paying special attention to business relationships and transactions with countries that do not or insufficiently apply the FATF standards.
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• The Centre should consider tailoring reporting forms for non-bank financial institutions and DNFBPs. • The Centre should provide general feedback in respects to the current techniques, methods and trends of money laundering, and sanitised examples of actual money laundering cases either in the its annual

AML/CFT System	Recommended Action (listed in order of priority)
	reports or typology reports separately.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	• The FIC Act should be amended to specify that compliance officers should be at the management level and that employee training be on-going. • There should also be more specific requirements for financial institutions to screen all employees and, for non-bank financial institutions, to maintain internal audit procedures to ensure compliance with AML/CFT policies and procedures. • There should be more specific requirements that foreign branches and subsidiaries apply AML/CFT measures consistent with the FATF Recommendations, and apply the higher of either domestic or South African standards, and inform the home supervisor if it is unable to do so.
3.9 Shell banks (R.18)	• South Africa should create a more direct and specific prohibition on financial institutions entering into or continuing correspondent banking relationships with shell banks and requirements for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	• *R.23:* For financial service providers, fit and proper tests should apply to all directors. • Directors of collective investment schemes or long-term insurers should be submitted to fit and proper tests. • There should also be licensing or registration requirements to natural or legal persons conducting money/value transfer within South Africa. • *R.29:* Clearer authority should be provided for the SARB and the FSB to inspect for compliance for the provisions of the FIC Act (and is expected once amendments to the FIC Act enter into force in 2009). • *R.17:* South Africa should enhance the authority to apply sanctions that are more broadly effective, proportionate, and dissuasive. This is also expected once amendments to the FIC Act enter into force in 2009. • *R.25:* South African authorities should issue comprehensive guidance on CDD and other FIC Act measures to the other financial institutions and also issue guidance containing ML/FT trends and methods. • *R.30:* South African authorities should consider expanding the staff for the BSD's review team and FSB compliance areas. Ongoing AML/CFT training for BSD staff should also be enhanced.
3.11 Money value transfer services (SR.VI)	• South African authorities should subject natural and legal persons conducting remittance only within South Africa subject licensing or registration. • South African authorities should also expand the scope of obligations to comply with the applicable FATF Recommendations.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• South African authorities should most importantly expand the scope of the FIC Act to more broadly cover the requirements in R.5, 6, and 8-11 for DNFBPs as well as financial institutions. Authorities should also the broaden the scope of obligations for the various DNFBP sectors to enhance CDD obligations as follows: • Casinos should not be exempt from collecting and verifying the residential address and income tax registration number of natural

AML/CFT System	Recommended Action (listed in order of priority)
	persons (Exemption 14), unless this can be justified on the basis of demonstrated low risk • Accountants should also be specifically covered when: buying and selling real estate or business entities; managing bank, savings or securities accounts; organising contributions for the creation, operation or management of companies; and creating, operating or managing legal persons or arrangements. • Attorneys should be required to apply AML/CFT obligations in relation to company services when dealing with a South African company. • Dealers in precious metals and stones should be made to be accountable institutions. • Company service providers (other than lawyers or accountants) should be required to apply appropriate AML/CFT measures. • South African authorities should also consider the best ways to deal with the particular risks in the real estate sector relating to the non-face to face transactions, the use of cash, and obligations to identify the buyer of real property.
4.2 Suspicious transaction reporting (R.16)	• South African authorities should work with the dealers in precious metals and stones sector and real estate sectors to determine whether they are adequately identifying and reporting suspicious activity. • The Centre should work with the legal profession to further clarify the issue of how legal privilege applies in the context of reporting. • Authorities should strengthen the requirements relating to R.15 and R.21 in relation to all DNFBPs.
4.3 Regulation, supervision and monitoring (R.24-25)	• South Africa should bring into effect as soon as possible provisions that will provide adequate authority for the DNFBP supervisors/monitoring bodies to inspect for and apply a range of sanctions that is effective, proportionate, and dissuasive for non-compliance with the FIC Act. • A comprehensive AML/CFT monitoring regime needs to be developed for dealers in precious metals and dealers in precious stones. • South Africa should also address the scope issues identified under R.12 to ensure that the full range of DNFBPs have comprehensive AML/CFT obligations and supervision or monitoring. • If the Provincial Licensing Authorities are designated as AML/CFT supervisors for casinos, consideration needs to be given as to whether they have sufficient resources to meet their new supervisory and enforcement obligations. • Comprehensive AML/CFT guidance should also be issued for casinos and dealers in precious metals and dealers in precious stones.
4.4 Other non-financial businesses and professions (R.20)	There are no recommendations for this section.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	• South Africa should broaden the requirements on beneficial ownership so that information on ownership/control is readily available in a timely manner.
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	• Steps should be taken to ensure that the information held in the Trusts Registry is accurate (e.g. verification), and that the remaining paper files are uploaded into the register. • South African authorities should consider providing the Masters of the

AML/CFT System	Recommended Action (listed in order of priority)
	High Court the authority to report suspected ML/FT directly to the Centre
5.3 Non-profit organisations (SR.VIII)	• South Africa should assess potential risks of terrorist financing posed within its NPO sector. • The legislation governing the NPO sector in South Africa should further be reviewed to require the mandatory registration of NPOs in South Africa. • The enforcement powers under the NPO Act should be reviewed to provide additional sanctions including, the power to sanction office bearers, impose fines and freeze accounts of NPOs for violation of oversight measures. • Regulations should be passed to specify the retention period that applies to the record keeping requirement of NPOs under section 17(3) of the Act. • The NPO laws should be amended to provide for the requirement for NPOs to maintain for a period of at least five years information on the identity of person(s) who own, control or direct their activities, including senior officers, board members and trustees. • Outreach programme should be undertaken with the specific aim to protect the NPO sector from terrorist financing abuse.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	• Authorities should ensure that effective policy coordination continues.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	• South Africa should amend its money laundering offence to be fully consistent with the Palermo and Convention and enact stronger customer identification measures.
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	• The South African authorities should consider having a similar provision (along the lines of section 205 of the CPA) in section 8(1) of the ICCMA so as to make it simpler for routine production orders. • Measures should be taken to address this issue of the requirement that foreign restraining orders must have been finalised.
6.4 Extradition (R.39, 37 & SR.V)	• South Africa should maintain proper statistics for extradition requests, as it is currently not possible to assess the effectiveness of the measures in place.
6.5 Other Forms of Co-operation (R.40 & SR.V)	There are no recommendations for this section.
7. Other issues	
7.1 Resources and statistics	• South African authorities should consider the best ways to address the challenges with attracting and appointing qualified applicants to the NPA. • South Africa should review the effectiveness of its systems for combating money laundering and terrorist financing on a regular basis. • South Africa should improve its system for collecting and maintaining comprehensive data on money laundering investigations, prosecutions and convictions. • Statistics should be maintained concerning the number of cases and the amounts of property frozen, seized, and confiscated in relation to money laundering and terrorist financing.

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	• There should be more adequate statistics on cross border transportations of currency and BNI over the thresholds. • South Africa should keep comprehensive statistics of mutual legal assistance and extradition matters.