

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information  
on Request

# **BOTSWANA**

2019 (Second Round)





# **Global Forum on Transparency and Exchange of Information for Tax Purposes: Botswana 2019 (Second Round)**

PEER REVIEW REPORT ON THE EXCHANGE  
OF INFORMATION ON REQUEST

July 2019  
(reflecting the legal and regulatory framework  
as at May 2019)

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## Reader's guide

**The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum)** is the multi-lateral framework within which work in the area of tax transparency and exchange of information is carried out by over 150 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic).

### **Sources of the Exchange of Information on Request standards and Methodology for the peer reviews**

The international standard of exchange of information on request (EOIR) is primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary and Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries and its commentary. The EOIR standard provides for exchange on request of information foreseeably relevant for carrying out the provisions of the applicable instrument or to the administration or enforcement of the domestic tax laws of a requesting jurisdiction. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including ownership, accounting and banking information.

All Global Forum members, as well as non-members that are relevant to the Global Forum's work, are assessed through a peer review process for their implementation of the EOIR standard as set out in the 2016 Terms of Reference (ToR), which break down the standard into 10 essential elements under three categories: (A) availability of ownership, accounting and banking information; (B) access to information by the competent authority; and (C) exchanging information.

The assessment results in recommendations for improvements where appropriate and an overall rating of the jurisdiction's compliance with the EOIR standard based on:

1. The implementation of the EOIR standard in the legal and regulatory framework, with each of the element of the standard determined to be either (i) in place, (ii) in place but certain aspects need improvement, or (iii) not in place.
2. The implementation of that framework in practice with each element being rated (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant.

The response of the assessed jurisdiction to the report is available in an annex. Reviewed jurisdictions are expected to address any recommendations made, and progress is monitored by the Global Forum.

A first round of reviews was conducted over 2010-16. The Global Forum started a second round of reviews in 2016 based on enhanced Terms of Reference, which notably include new principles agreed in the 2012 update to Article 26 of the OECD Model Tax Convention and its commentary, the availability of and access to beneficial ownership information, and completeness and quality of outgoing EOI requests. Clarifications were also made on a few other aspects of the pre-existing Terms of Reference (on foreign companies, record keeping periods, etc.).

Whereas the first round of reviews was generally conducted in two phases for assessing the legal and regulatory framework (Phase 1) and EOIR in practice (Phase 2), the second round of reviews combine both assessment phases into a single review. For the sake of brevity, on those topics where there has not been any material change in the assessed jurisdictions or in the requirements of the Terms of Reference since the first round, the second round review does not repeat the analysis already conducted. Instead, it summarises the conclusions and includes cross-references to the analysis in the previous report(s). Information on the Methodology used for this review is set out in Annex 3 to this report.

## **Consideration of the Financial Action Task Force Evaluations and Ratings**

The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating terrorist financing (AML/CFT) standards. Its reviews are based on a jurisdiction's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.



The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the definition of beneficial ownership, as the FATF definition is used in the 2016 ToR (see 2016 ToR, annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combating money-laundering and terrorist financing) is different from the purpose of the EOIR standard (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum's mandate.

While on a case-by-case basis an EOIR assessment may take into account some of the findings made by the FATF, the Global Forum recognises that the evaluations of the FATF cover issues that are not relevant for the purposes of ensuring effective exchange of information on beneficial ownership for tax purposes. In addition, EOIR assessments may find that deficiencies identified by the FATF do not have an impact on the availability of beneficial ownership information for tax purposes; for example, because mechanisms other than those that are relevant for AML/CFT purposes exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

These differences in the scope of reviews and in the approach used may result in differing conclusions and ratings.

## **More information**

All reports are published once adopted by the Global Forum. For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published reports, please refer to [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency) and <http://dx.doi.org/10.1787/2219469x>.



## Abbreviations and acronyms

<b>AML/CFT</b>	Anti-Money Laundering/Countering the Financing of Terrorism
<b>BICA</b>	Botswana Institute of Chartered Accountants
<b>BoB</b>	Bank of Botswana
<b>BURS</b>	Botswana Unified Revenue Service
<b>CDD</b>	Customer Due Diligence
<b>CIPA</b>	Companies and Intellectual Property Authority
<b>DTC</b>	Double Tax Convention
<b>EOI</b>	Exchange of information
<b>EOIR</b>	Exchange of information on request
<b>FATF</b>	Financial Action Task Force
<b>FI</b>	Financial Intelligence
<b>FIA</b>	Financial Intelligence Agency
<b>Global Forum</b>	Global Forum on Transparency and Exchange of Information for Tax Purposes
<b>IFSC</b>	International Financial Services Centre
<b>MER</b>	Mutual Evaluation Report
<b>MOU</b>	Memorandum of Understanding
<b>Multilateral Convention (MAAC)</b>	The Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended
<b>NBFIRA</b>	Non-Bank Financial Institution Regulatory Authority
<b>PRG</b>	Peer Review Group of the Global Forum
<b>TIEA</b>	Tax Information Exchange Agreement

<b>TIN</b>	Taxpayer Identification Number
<b>2016 Assessment Criteria Note</b>	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015.
<b>2016 Methodology</b>	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015.
<b>2016 Terms of Reference (ToR)</b>	Terms of Reference related to Exchange of Information on Request (EOIR), as approved by the Global Forum on 29-30 October 2015.

## Executive summary

1. This second round report analyses implementation by Botswana of the standard of transparency and EOIR for tax purposes against the 2016 ToR. It includes an assessment of its legal framework, as well as its operation in practice as it concerns the handling of EOI requests received during the period from 1 January 2015 to 31 December 2017. This second round report concludes that Botswana is rated **Partially Compliant** overall. In 2016, the Global Forum similarly evaluated Botswana against the 2010 ToR and reached an overall rating of Largely Compliant.

2. The following table shows the comparison of results from the first and the second round review of Botswana's implementation of the EOIR standard:

**Comparison of ratings for the First Round Report and the Second Round Report**

Element	First Round Report (2016)	Second Round Report (2018)
A.1 Availability of ownership and identity information	PC	PC
A.2 Availability of accounting information	PC	PC
A.3 Availability of banking information	C	PC
B.1 Access to information	C	C
B.2 Rights and Safeguards	C	C
C.1 EOIR Mechanisms	LC	C
C.2 Network of EOIR Mechanisms	C	C
C.3 Confidentiality	C	C
C.4 Rights and Safeguards	C	C
C.5 Quality and timeliness of responses	LC	PC
<b>OVERALL RATING</b>	<b>LC</b>	<b>PC</b>

C = Compliant; LC = Largely Compliant; PC = Partially Compliant; NC = Non-Compliant

## Progress made since previous review

3. The major issues identified in the Phase 2 report published in March 2016 related to: ensuring monitoring and enforcement of companies' compliance with annual return filing and tax filing obligations, and ensuring that CDD obligations are effectively implemented and monitored (element A.1); ensuring all relevant entities and arrangements are required to keep accounting records (including underlying documentation), and enhancing monitoring and enforcement of the availability of accounting records (element A.2); ensuring that its EOI mechanisms are brought into force expeditiously (element C.1); and monitoring the organisational processes of the EOI unit to ensure effective EOI in practice (element C.5). All other elements were rated Compliant with the EOIR standard.

4. Since the 2016 Report, Botswana has expanded its EOI network from 25 to 30 jurisdictions. Twenty-four EOI agreements are in force and Botswana has ratified five of the six signed agreements. Botswana recently enacted legislation to address issues identified in its MER (see FATF assessment below).

## Key recommendation(s)

5. The recommendations with respect to element A.2 continue to apply. Other issues raised by this report relate to gaps identified regarding: the availability of beneficial ownership information (elements A.1 and A.3); the lack of strong supervision programmes for ensuring the availability of legal and beneficial ownership information and accounting records (elements A.1, A.2, and A.3); and the timeliness of providing requested information to partners and status updates (element C.5). Botswana is also recommended to monitor the implementation of recently enacted laws (elements A.1, A.2, and A.3).

6. Improvements are also recommended in respect of: ensuring that societies are required to maintain a register of members; and ensuring that EOI staff respond to EOI requests within the internal 90 day target.

## EOI practice

7. During the review period, Botswana received four requests from three EOI partners. Botswana fully responded to one request within 180 days; two requests within a year; and one request more than one year after it was received. Status updates were provided for two of the four requests. Botswana did not send any EOI requests during the review period.

## Overall rating

8. Botswana has achieved a rating of Compliant for six elements (B.1, B.2, C.1, C.2, C.3, and C.4), and Partially Compliant for four elements (A.1, A.2, A.3, and C.5). Botswana’s overall rating is Partially Compliant based on a global consideration of Botswana’s compliance with the individual elements.

9. This report was approved at the PRG meeting on 25-28 June 2019 and was adopted by the Global Forum on 29 July 2019. A follow-up report on the steps undertaken by Botswana to address the recommendations made in this report should be provided to the PRG no later than 30 June 2020 and thereafter in accordance with the procedure set out under the 2016 Methodology.

### Summary of determinations, ratings and recommendations

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities ( <i>ToR A.1</i> )		
<p><b>The legal and regulatory framework is in place, but certain aspects of the legal implementation need improvement.</b></p>	<p>Certain beneficial ownership information on companies and partnerships is provided to the tax authority. Some beneficial ownership information on companies and partnerships is also available with specified parties. Further, beginning in June 2019, companies are required to maintain beneficial ownership information and provide such information to the Registrar. However, not all beneficial owners of companies and partnerships may be identified in line with the standard.</p>	<p>Botswana should take further measures to ensure that all beneficial owners of relevant entities and arrangements are identified in line with the standard.</p>

Determinations and Ratings	Factors underlying Recommendations	Recommendations
	Information on the identity of a settlor, a trustee, and beneficiaries of a trust is likely to be available under the tax, AML/CFT, and trust laws. However, none of these laws explicitly require identification of all the beneficial owners of trusts as required under the standard.	Botswana should ensure that all beneficial owners of trusts are required to be identified in line with the standard.
<b>Partially Compliant</b>	Compliance with tax return filings is low and very few tax audits are conducted. Further, compliance with companies' annual return filings is low and minimal enforcement action is taken. As such, the availability of ownership information is not assured. Botswana did introduce laws, taking effect in June 2019, to increase compliance with companies' annual return filings requirements.	Botswana should ensure the availability of ownership information by effectively implementing measures, notably by ensuring that adequate oversight and enforcement activities are carried out.
	The requirement for companies to maintain and report beneficial ownership information to the CIPA begins in June 2019. As such, practical implementation of this requirement has not been assessed.	Botswana should ensure the effective implementation of the obligation for companies to maintain and report beneficial ownership information.
	The measures taken by the AML/CFT supervisors to ensure that the beneficial ownership information maintained by specified parties is adequate, accurate and up to date are insufficient. Also, recent enactments to the AML/CFT laws, which took effect in June 2018, broaden specified parties' obligations to maintain beneficial ownership information. As the new laws only recently came into effect, their implementation in practice is not yet tested.	Botswana should ensure that adequate oversight and enforcement activities of specified parties are carried out and monitor the effective implementation of the new AML/CFT obligations.



Determinations and Ratings	Factors underlying Recommendations	Recommendations
	<p>The Trust Property Control Act requires all trustees in Botswana to register and report ownership information to the Master of the High Court. This law is very recent and covers new persons who were previously not required to register and report to government authorities. There is also no experience with its application and supervision in practice.</p>	<p>Botswana should monitor the effective implementation of the new law, notably by ensuring that adequate oversight and enforcement activities are carried out.</p>
<p>Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)</p>		
<p><b>The legal and regulatory framework is in place, but certain aspects of the legal implementation need improvement.</b></p>	<p>Other than trusts, there is no obligation for any legal entity or arrangement to maintain underlying documentation unless they are carrying on a business.</p>	<p>All relevant entities and arrangements should be required to keep accounting records, including underlying documentation, in accordance with the standard.</p>
<p><b>Partially Compliant</b></p>	<p>Public companies and companies with turnover of more than BWP 10 000 000 (EUR 825 470) file their accounting statements with company's annual returns. However, compliance with the annual return filing obligation is low. Some accounting information is filed on the tax return. However, the auditing of taxpayers' accounting records is undertaken on a relatively small number of taxpayers. It is therefore not clear whether accounting records are always available and retained for at least five years.</p>	<p>Botswana should enhance the monitoring and enforcement of the availability of accounting records of these companies and enhance the monitoring of availability of accounting records for tax purposes.</p>

Determinations and Ratings	Factors underlying Recommendations	Recommendations
	<p>Companies with turnover of BWP 10 000 000 (EUR 825 470) or less are not required to file financial statements and there is no monitoring by the CIPA of the obligation on these companies to maintain accounting records. Some accounting information is filed on the tax return. However, the auditing of taxpayers' accounting records is undertaken on a relatively small number of taxpayers. It is therefore not clear whether accounting records are always available and retained for at least five years.</p>	<p>Botswana should monitor the availability of accounting records in respect of these companies and enhance the monitoring of availability of accounting records for tax purposes.</p>
	<p>A new obligation under the FI Act requires all legal entities to maintain certain accounting information. This law is very recent and it is not clear how this obligation will be supervised.</p>	<p>Botswana should monitor the implementation and the effectiveness of the new obligation.</p>
	<p>The Trust Property Control Act requires all trustees in Botswana to maintain accounting information. This law is very recent and there is no experience with its application and supervision in practice.</p>	<p>Botswana should monitor the implementation and the effectiveness of the new law to ensure that accounting records and underlying documentation of all trusts are available in line with the standard.</p>
<p>Banking information and beneficial ownership information should be available for all account-holders (<i>ToR A.3</i>)</p>		
<p><b>The legal and regulatory framework is in place, but certain aspects of the legal implementation need improvement.</b></p>	<p>Botswana has amended the AML/CFT laws requiring banks to identify beneficial owners of all account-holders. These rules ensure that some beneficial ownership is available with banks; however, not all beneficial owners, as defined under the standard, may be identified.</p>	<p>Botswana should ensure that banks identify and verify the identity of all beneficial owners of all relevant legal entities and arrangements which have an account with a bank in Botswana in line with the standard.</p>

Determinations and Ratings	Factors underlying Recommendations	Recommendations
<b>Partially Compliant</b>	The BoB strengthened its AML/CFT supervision in 2016, which includes verifying that banks are complying with their obligation to identify the beneficial owner of an account holder. However, it was not until June 2018 that the AML/CFT laws contained a definition of beneficial owner. This raises uncertainty regarding the whether the beneficial ownership information maintained by banks throughout the review period was line with the standard.	Botswana should ensure the effective implementation of measures to ensure that banks maintain beneficial ownership information in line with the standard.
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) ( <i>ToR B.1</i> )		
<b>The legal and regulatory framework is in place.</b>		
<b>Compliant</b>		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information ( <i>ToR B.2</i> )		
<b>The legal and regulatory framework is in place.</b>		
<b>Compliant</b>		
Exchange of information mechanisms should provide for effective exchange of information ( <i>ToR C.1</i> )		
<b>The legal and regulatory framework is in place.</b>		
<b>Compliant</b>		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners ( <i>ToR C.2</i> )		
<b>The legal and regulatory framework is in place.</b>		
<b>Compliant</b>		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received ( <i>ToR C.3</i> )		
<b>The legal and regulatory framework is in place.</b>		
<b>Compliant</b>		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties ( <i>ToR C.4</i> )		
<b>The legal and regulatory framework is in place.</b>		
<b>Compliant</b>		
The jurisdiction should request and provide information under its network of agreements in an effective manner ( <i>ToR C.5</i> )		
<b>Legal and regulatory framework determination:</b>	<b>This element involves issues of practice. Accordingly no determination on the legal and regulatory framework has been made.</b>	
<b>Partially Compliant</b>	Botswana has experienced difficulties during the review period to answer EOI requests in a timely manner. This was due to staffing and workload issues within the EOI Unit.	Botswana should ensure that appropriate organisational processes and resources are in place in order to respond to EOI requests in a timely manner in all cases.
	Botswana did not always provide a status update to its EOI partners within 90 days in the event that it was unable to provide a substantial response within that time.	Botswana should provide status updates to its EOI partners in all cases where information cannot be provided within 90 day.

## Overview of Botswana

10. This overview provides some basic information about Botswana that serves as context for understanding the analysis in the main body of the report. This is not intended to be a comprehensive overview of Botswana’s legal, commercial or regulatory systems.

### Legal system

11. Botswana is a parliamentary republic. The system of government is based on the Westminster model, which provides for a separation of powers between the Legislature, the Executive, and the Judiciary. The supreme law is the Constitution of Botswana. The hierarchy of laws is, in decreasing order of rank: (i) the Constitution, (ii) legislation enacted by Parliament, (iii) subsidiary legislation, (iv) common law, and (v) Botswana customary law. International agreements are enacted as legislation and thus rank alongside other acts of Parliament.

12. The Constitution establishes that the head of state is the President. The legislature is the National Assembly, a unicameral parliament comprised of 57 elected members, six Specially Elected members and the President as an ex officio member. In addition, *Ntlo Ya Dikgosi* (the House of Chiefs) acts as an advisory body to the National Assembly, comprised of 35 members that advise on matters of customary and tribal law. The executive is comprised of the President, Vice-President, and a cabinet of Ministers. The highest court is the Court of Appeal, to which final appeals from other courts lie. The High Court has original jurisdiction to hear criminal and civil matters. The Magistrates courts are subordinate courts created by statute and deal with matters such as civil, family and criminal matters.

### Tax system

13. Persons are subject to tax in Botswana if they have income sourced in Botswana or income deemed to be sourced in Botswana. Income of a person is deemed to be sourced in Botswana in a number of circumstances, including

if it is in respect of: a contract made by the person in Botswana for the sale of goods, a service, or work done by the person in Botswana; work rendered by a Botswana resident outside of Botswana for a Botswana employer; work rendered outside of Botswana for the Botswana Government; and disposal of certain interests in mining rights in respect of land in Botswana. In addition, certain foreign income of Botswana residents is deemed to be sourced in Botswana, being if it is in respect of any investment made outside of Botswana or any business carried on outside Botswana. This special deeming rule in respect of foreign income does not apply to individuals that are resident in Botswana but are not citizens of Botswana.

14. Taxable persons include individuals, companies, trustees, partnerships and every other juridical person. An individual is generally resident in Botswana if his/her permanent place of abode is in Botswana, or is present for 183 days in a tax year. A company is resident in Botswana if it has its registered office, place of incorporation, or management and control in Botswana. A trust is resident in Botswana if the trust is established in Botswana or is administered in Botswana.

15. Generally, any person earning taxable income in Botswana must register with, and file an annual return with, the BURS for tax purposes. Resident individuals pay tax at progressive rates between 0 and 25% and non-resident individuals pay tax at progressive rates between 5 and 25%. Resident companies pay tax at a rate of 22% and non-resident companies pay tax at a rate of 30%. Tax in respect of trusts is charged in the hands of the trustee, and will therefore be paid at the relevant rate depending on whether the trustee is an individual or company. Partnerships are not charged tax in their own right, but a partnership with taxable income in Botswana will register for tax purposes and file tax returns. The partners with taxable income in Botswana are also each subject to filing and tax obligations. Certain types of investment income are taxed by withholding, such as dividends and rental income.

## **Financial services sector**

16. The Bank of Botswana (BoB) is the central bank, established under the Bank of Botswana Act, which licenses and supervises banks in Botswana. There are 10 commercial banks, three statutory banks, one deposit-taking micro-finance institution, and 61 money exchange offices.

17. The non-bank financial sector includes capital market entities (four brokers, one securities exchange, and one central securities depository), non-bank lenders (top 20 lenders and 304 others), insurance entities (eight life insurers, 11 general insurers, three reinsurers, 10 medical aid funds, and 212 intermediaries), and retirement funds (81 umbrella funds and five stand-alone funds). These entities are licensed and supervised by the NBFIRA.

18. During the review period, AML/CFT obligations on banks were imposed under the Banking Act, the Banking (AML) Regulations, the Financial Intelligence Act (FI Act), and the Financial Intelligence Regulations (FI Regulations). The FI Act and FI Regulations also imposed AML/CFT obligations on non-bank financial institutions and other designated persons, including attorneys and accountants. In 2018, as part of the amendments to the AML/CFT laws, the Banking (AML) Regulations were repealed.

19. In 2003, Botswana established the IFSC, which is marketed on behalf of the Botswana government by the Botswana Investment and Trade Centre (BITC), with the aim of developing Botswana as a hub for cross border financial and business services into Africa and the region. The attraction of the IFSC is the tax benefits that are granted to IFSC companies. These include a discounted corporate tax rate of 15% on profits, although they are taxable on their worldwide income. Payments of interest, dividends, management fees and royalties are exempt from tax when paid to a non-resident and to an IFSC company and specified collective investment undertakings. IFSC companies are also exempted from Value Added Tax (VAT) and capital gains tax.

20. The IFSC is focused primarily on international banking and insurance industries. The activities permitted in the IFSC are: banking and financing operations transacted in foreign currency; the broking and trading of securities denominated in foreign currency; investment advice; management and custodial functions in relation to collective investment schemes; insurance and related activities; registrars and transfer agency services; exploitation of intellectual property; development and supply of computer software for use in the provision of services; accounting and financial administration; holding and administration of group companies; shared financial services; business process outsourcing (BPOs) and call centres; and mutual funds. In practice, the most common activities has been holding and administration of group companies.

21. IFSC companies that carry on their business as a bank or non-bank financial institution are licensed and supervised by the BoB or NBFIRA, as relevant. During the review period, there was one IFSC company that carried on business as a bank.

22. Since its inception, a total of 94 companies have received IFSC certification, 38 of which have since been de-certified, generally on account of the company failing to commence its intended business within the first six months.

23. An Act to create a Special Economic Zone Authority was passed in August 2015, creating an authority to establish, license, and oversee special economic zones. The purpose includes attracting business to Botswana, generating economic growth, and creating employment. The development of the

special economic zones is still at an initial planning stage and no investors have yet been licensed.

## **FATF assessment**

24. The FATF and its regional bodies evaluate jurisdictions for compliance with the AML/CFT standards. Its evaluations are based on a country's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of AML/CFT issues.

25. The second mutual evaluation of Botswana's compliance with the AML/CFT standards was conducted by the Eastern and Southern Africa AML Group (ESAAMLG) in 2016. The MER provides a summary of the AML/CFT measures in place in Botswana as at the date of the onsite visit on 13 to 24 June 2016.

26. The MER concluded that, in general, Botswana's legal framework did not provide for a requirement to identify and verify the identity of legal persons and legal arrangements, or a requirement to identify and retain information on beneficial ownership. Further, Botswana's AML/CFT regime is not fully developed, with competent authorities still in the process of understanding their responsibilities and building their capacities. Also, although the supervisory bodies have powers to issue sanctions for non-compliance, the sanctions are not dissuasive or proportionate, and have not been applied. As such, Immediate Outcome 5 concerning the implementation of rules ensuring the availability of beneficial ownership information in respect of legal persons and arrangements was rated Low. Botswana's technical compliance with FATF's recommendations 10, 24, and 25 was rated Non-Compliant. Compliance with FATF's recommendation 22 was rated Partially Compliant. The complete MER has been published and is available at [www.fatf-gafi.org/media/fatf/documents/reports/mer-fsr/ESAAMLG-MER-Botswana-2017.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsr/ESAAMLG-MER-Botswana-2017.pdf).

27. Botswana's first enhanced follow-up report was discussed at the ESAAMLG meeting in April 2019. This report will be released for publication in May 2019.

## **Recent developments**

28. Following the adoption of the MER, Botswana developed a Post Evaluation Implementation Plan/Strategy which guided the Botswana authorities towards addressing the deficiencies identified in the report. In response, a High Level Committee on AML/CFT was established by the Botswana



Cabinet, which worked with the Technical Committee on AML/CFT. As a result, a total of 25 bills to address the issues identified in the MER were drafted and presented to Parliament at the beginning of 2018. Of these, 12 Acts came into effect on 29 June 2018; four on 4 July 2018; two on 2 August 2018; two on 27 August 2018; one on 28 December 2018; and one has partially commenced on 1 February 2019. Three Acts have not yet entered into force. In addition, regulations under the FIA Act and Counter Terrorism Act have come into effect on 24 and 27 August 2018, respectively.

29. Of the Acts that recently came into effect, one amends the Companies Act to facilitate the registration of companies and improve the availability of ownership information. Another, the Trust Property Control Act requires any person in Botswana acting as a trustee as of 28 June 2018 to register a trust and provide ownership information to the Master of the High Court. Both of these laws are fully described in elements A.1 and A.2.

30. The CIPA will collect beneficial ownership information on companies and partnerships beginning on 3 June 2019. According to Botswana officials, the electronic registration system will clarify which natural person(s) must be identified as the beneficial owner(s) by explaining that a beneficial owner means any individual who may benefit from the company or partnership.



## Part A: Availability of information

31. Sections A.1, A.2 and A.3 evaluate the availability of ownership and identity information for relevant entities and arrangements, the availability of accounting information and the availability of bank information.

### A.1. Legal and beneficial ownership and identity information

Jurisdictions should ensure that legal and beneficial ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

32. The 2016 Report concluded that Botswana’s legal and regulatory framework requiring the availability of legal ownership information in respect of companies, partnerships, and trusts was in place. An in-text recommendation was included due to the lack of a legal obligation on societies to maintain a record of their members and to maintain this information for at least five years.

33. No changes to the legal and regulatory framework in respect of the availability of legal ownership information for partnerships or societies have been made since that report. Therefore, the in-text recommendation relating to societies remains applicable.

34. Recent amendments to the companies and trust laws have been introduced to improve the availability of legal ownership information. As of June 2019, companies will be required to register and file annual returns electronically. Also, external companies (i.e. foreign companies) are now required to provide shareholder information to the Registrar. Amendments have also been introduced to address the issue relating to the large number of companies that are non-compliant with their annual return filing obligations. In terms of trusts, the recently enacted Trust Property Control Act requires any person in Botswana acting as a trustee as of 28 June 2018 to register a trust and provide ownership information to the Master of the High Court. As these recent amendments impose new obligations and cover new persons who were previously not required to register or provide certain information to the

authorities, Botswana is recommended to ensure their effective implementation in practice.

35. Under the 2016 ToR, beneficial ownership information of relevant entities and arrangements is required to be available.

36. During the review period, there were no obligations on companies to maintain or report beneficial ownership information. Recent amendments impose obligations, beginning in June 2019, on companies to maintain and provide beneficial ownership information to the Registrar. However, it is not clear that all beneficial owners of a company will be identified in line with the standard.

37. The BURS should have some beneficial ownership information since taxpayers are required to identify two major beneficial shareholders, partners, or individuals. However, not all beneficial owners of a legal entity or arrangement will be identified in line with the standard.

38. Taxpayers must maintain a bank account in Botswana, therefore banks may also have some beneficial ownership information. During the review period, banks had an obligation to identify the beneficial owners of legal entities and arrangements, but the term “beneficial owner” was undefined and there was no further guidance regarding how this term was to be applied. Therefore, it was unclear as to who was to be identified as the beneficial owners. Accordingly, not all beneficial owners of a legal entity or arrangement may have been identified in line with the standard.

39. During the review period, if a specified party (e.g. a non-bank financial institution, an attorney, or an accountant) was engaged, the AML/CFT laws required the specified party to conduct CDD procedures. However, there were no obligations for the beneficial owners of a legal entity or arrangement to be identified.

40. The AML/CFT laws were recently amended to address the issues identified in the MER. Although these new laws expand banks and specified parties’ CDD obligations, the requirements to identify all beneficial owners of all relevant entities and arrangements are not in line with the standard.

41. Under the Trust Property Control Act, trustees in Botswana must file beneficial ownership information with the Master of the High Court. However, not all beneficial owners will be identified in line with the standard. Also, it is unclear whether this information needs to be updated.

42. While some beneficial ownership information is available, it is not clear that all beneficial owners of relevant entities and arrangements will be identified in line with the standard. It is therefore recommended that Botswana take further measures to ensure that all beneficial owners of all relevant entities and arrangements are identified.

43. The compliance rate of companies with their annual return filing obligations continues to remain low at approximately 30%. During the review period, the Registrar imposed minimal sanctions and deregistered very few non-compliant companies. As such, the accuracy of legal ownership information held with the Registrar cannot be assured. Therefore, the recommendation contained in the 2016 Report continues to apply. Further, a liquidated company must provide its books and papers to the Master of the High Court, but there is no enforcement of this obligation. Accordingly, Botswana should monitor to ensure that liquidated companies are complying with this obligation. Finally, Botswana recently introduced legislation, taking effect in June 2019, to deregister all dormant companies and immediately deregister any company that fails to file an annual return. It is recommended that Botswana ensures effective implementation of the new measures to ensure the availability of legal ownership information with the Registrar.

44. The compliance with tax return filings and the tax audit rate continues to be low. Consequently, the accuracy of ownership information held with the BURS cannot be assured. Botswana is recommended to ensure that adequate oversight and enforcement activities are carried out.

45. Supervision of AML/CFT obligations commenced at the beginning of the review period and the current measures being undertaken by the supervisory authorities are insufficient to ensure the practical availability of legal and beneficial ownership information. Too few specified parties are being reviewed and the lack of sanctions being imposed do not ensure the effective implementation of the relevant requirements. Recent amendments to the AML/CFT laws expand specified parties' obligations to maintain beneficial ownership information. It is recommended that Botswana monitor effective implementation of new AML/CFT obligations, notably by ensuring that adequate oversight and enforcement activities are carried out.

46. During the review period, Botswana received two requests for ownership information (one with respect to companies and one with respect to a trust) and was able to fully respond to these requests. No peers raised any concerns in respect of the availability of ownership information.

47. The new table of determinations and ratings is as follows:

<b>Legal and Regulatory Framework</b>		
	<b>Underlying Factor</b>	<b>Recommendation</b>
<b>Deficiencies identified in the implementation of the legal and regulatory framework</b>	Certain beneficial ownership information on companies and partnerships is provided to the tax authority. Some beneficial ownership information on companies and partnerships is also available with specified parties. Further, beginning in June 2019, companies are required to maintain beneficial ownership information and provide such information to the Registrar. However, not all beneficial owners of companies and partnerships may be identified in line with the standard.	Botswana should take further measures to ensure that all beneficial owners of relevant entities and arrangements are identified in line with the standard.
	Information on the identity of a settlor, a trustee, and beneficiaries of a trust is likely to be available under the tax, AML/ CFT, and trust laws. However, none of these laws explicitly require identification of all the beneficial owners of trusts as required under the standard.	Botswana should ensure that all beneficial owners of trusts are required to be identified in line with the standard.
<b>Determination: The element is in place, but certain aspects of the legal implementation need improvement.</b>		
<b>Practical implementation of the standard</b>		
	<b>Underlying Factor</b>	<b>Recommendation</b>
<b>Deficiencies identified in the implementation of EOIR in practice</b>	Compliance with tax return filings is low and very few tax audits are conducted. Further, compliance with companies' annual return filings is low and minimal enforcement action is taken. As such, the availability of ownership information is not assured. Botswana did introduce laws, taking effect in June 2019, to increase compliance with companies' annual return filings requirements.	Botswana should ensure the availability of ownership information by effectively implementing measures, notably by ensuring that adequate oversight and enforcement activities are carried out.

Practical implementation of the standard		
	Underlying Factor	Recommendation
	The requirement for companies to maintain and report beneficial ownership information to the CIPA begins in June 2019. As such, practical implementation of this requirement has not been assessed.	Botswana should ensure the effective implementation of the obligation for companies to maintain and report beneficial ownership information.
	The measures taken by the AML/CFT supervisors to ensure that the beneficial ownership information maintained by specified parties is adequate, accurate and up to date are insufficient. Also, recent enactments to the AML/CFT laws, which took effect in June 2018, broaden specified parties' obligations to maintain beneficial ownership information. As the new laws only recently came into effect, their implementation in practice is not yet tested.	Botswana should ensure that adequate oversight and enforcement activities of specified parties are carried out and monitor the effective implementation of the new AML/CFT obligations.
	The Trust Property Control Act requires all trustees in Botswana to register and report ownership information to the Master of the High Court. This law is very recent and covers new persons who were previously not required to register and report to government authorities. There is also no experience with its application and supervision in practice.	Botswana should monitor the effective implementation of the new law, notably by ensuring that adequate oversight and enforcement activities are carried out.
<b>Rating: Partially Compliant</b>		

### *A.1.1. Availability of legal and beneficial ownership information for companies*

48. The 2016 Report concluded that legal ownership information in respect of domestic companies and foreign companies doing business in Botswana (known in Botswana as “external companies”) is required to be available in line with the standard. This information must be available under the companies, tax, and AML/CFT laws. There have been no relevant amendments to the tax laws since that report. The Companies Act was recently amended, taking effect in June 2019, and imposes new obligations on companies, including the requirement to register and file annual returns electronically, and on external companies to provide shareholder information

to the Registrar. Also, any existing company that fails to reregister with the Registrar by June 2020 and any company that fails to file an annual return will immediately be deregistered. It is expected that these measures will improve compliance and remove all dormant companies from the register.

49. Under the 2016 ToR, beneficial ownership information on companies is required to be available. During the review period, some beneficial ownership information was available with the BURS and banks. Beginning in June 2019, all companies are required to maintain and provide beneficial ownership information to the Registrar. The AML/CFT laws were also recently amended imposing new obligations on all specified parties (including banks, non-bank financial institutions, attorneys, and accountants) to obtain beneficial ownership information on companies.

50. The following table<sup>1</sup> shows a summary of the legal requirements to maintain legal and beneficial ownership information in respect of companies.

Type	Company law	Tax law	AML/CFT law
Companies limited by shares	Legal – All	Legal – All	Legal – All
	Beneficial – Some	Beneficial – Some	Beneficial – Some
Close companies	Legal – All	Legal – All	Legal – All
	Beneficial – All	Beneficial – All	Beneficial – All
Companies limited by guarantee	Legal – All	Legal – All	Legal – All
	Beneficial – Some	Beneficial – Some	Beneficial – Some
External companies	Legal – All	Legal – All	Legal – All
	Beneficial – Some	Beneficial – Some	Beneficial – Some

### *Legal ownership and identity information requirements*

#### Companies law obligations

51. The Companies Act allows for the formation of domestic companies (i.e. companies limited by shares, close companies, and companies limited by guarantees) and the registration of external companies (i.e. foreign companies doing business in Botswana). The table below sets out the number of newly

1. The table shows each type of company and whether the various rules applicable require availability of information for “all” such entities, “some” or “none”. “All” in this context means that every company of this type is required to maintain ownership information in line with the standard and that there are sanctions and appropriate retention periods. “Some” in this context means that a company will be required to maintain a portion of this information under applicable law.



registered companies and the total number of registered companies during the review period.

	2015	2016	2017
Newly registered companies limited by shares	20 877	26 212	24 944
Newly registered close companies	2	2	1
Newly registered companies limited by guarantee	0	2	1
Newly registered external companies	27	26	29
Total registered companies	209 266	235 508	197 287

52. The Registrar of Companies and Business Names (an office within the CIPA) is responsible for maintaining a register of: business names; all companies registered or deemed to be registered under the Companies Act; and dormant companies. A dormant company is a registered company which has not yet commenced operations and has not filed an annual return for a period of five years because no accounting transaction has occurred during those years that requires the company to make an entry in its accounting records (Companies Act, s. 489). In order to be declared dormant, the company must notify the Registrar. During the review period, the number of companies identified as dormant was: 389 in 2015, 358 in 2016, and 449 in 2017.

53. In order to incorporate in Botswana, an applicant must register the company and a business name with the Registrar. During the review period, the information provided at registration included: the full name and address of the applicant, and each director, secretary, and, except in the case of external companies, all shareholders or members of the company (Companies Act, s. 21). A notice must be filed with the Registrar for any changes to a director or secretary within 20 days of the change (Companies Act, s. 155).

54. Shareholders and members of companies limited by shares and companies limited by guarantees may be either natural persons or entities. Members of a close company must be natural persons and no legal entity or arrangement may directly or indirectly hold a member's interest in a close company (Companies Act, s. 249).

55. A company limited by shares must maintain, in Botswana, a share register, setting out, the names and the latest known address of each person who is, or has within the last seven years been, a shareholder (Companies Act, ss. 83, 84). In order to transfer shares, the transferor must provide a transfer form to the company (or the agent maintaining the register) and the company must enter the transferee's name on the register (Companies Act, s. 81). Also, within 30 days of the transfer, a copy of the updated share register must be filed with the Registrar (Companies Act, s. 48(3A)).

56. A close company, described in paragraph 48 of the 2016 Report, must maintain a register of members, stating the name and address of all members, the date at which each person was entered in the register, and the date at which a person ceased to be a member (Companies Act, s.83(3)). Any changes to members must be updated in the register and notice, in writing, provided to the Registrar within 30 days of the change (Companies Act, s. 261).

57. A company limited by guarantee is subject to similar requirements and must maintain a register of members (Companies Act, s. 83(3)).

58. External companies that either have a place of business in Botswana or are carrying on business in Botswana must register with the Registrar (Companies Act, s. 344). The term “carrying on business in Botswana” includes establishing or using a share transfer office or a share registration office in Botswana; or administering, managing, or dealing with property in Botswana as an agent, or personal representative, or trustee, and whether through its employees or an agent in any other manner. An external company must provide the Registrar with, among other things, copies of its articles of incorporation or registration, a list of its directors, and the name and address of a person resident in Botswana (other than an external company) who is appointed to have responsibility for the management of the company in Botswana, accept service of process and to be answerable for all matters required of the company under the Companies Act. The Registrar must be informed of any changes to this information within one month of the change. Note that during the review period, an external company was not required to provide information to the Registrar concerning the identity of its shareholders nor was the company required to notify the Registrar when there had been a share transfer.

59. All companies registered in Botswana (including external companies) are required to keep at its registered office, or at such place as identified to the Registrar, the following records: share/member register; minutes of all meetings and resolutions of shareholders within the last seven years; minutes of all meetings and resolutions of directors and directors’ committees within the last 10 years; and the full names and addresses of the current directors and secretary (Companies Act, s. 186). Penalties apply for failure to maintain these records. Also, notwithstanding that a person ceases to hold office as a director (e.g. by vacating the office, removal of the company from the register, or the dissolution of the company), a director remains liable for acts or omissions while that person was a director (Companies Act, s. 152).

60. All companies must file an annual return with the CIPA within 28 days of the company’s annual general meeting (Companies Act, s.217). The annual return includes updated information on the name, address and identity number of directors and all shareholders; and a list of the shares transferred since the last annual return (including the name of the transferor

and transferee). Failure to file an annual return subjects the directors to a penalty of up to BWP 20 000 (EUR 1 650).

61. Although external companies are required to file annual returns, in practice, the CIPA does not require these companies to include the name and address of each shareholder or information about share transfers but simply fill in “not applicable” for these sections of the annual return.

62. A company must be in good standing with the CIPA in order to maintain their business licence, which is an authorisation to carry on business or trade in Botswana, issued by the Minister of Trade (Trade Act, s. 3). Licenses must be renewed annually. To demonstrate good standing, a company must provide copies of its submitted annual return to the Ministry of Trade. Penalties apply for a failure to obtain a licence and for providing false information and fraudulent use of a business licence.

63. As explained in paragraphs 57 and 58 of the 2016 Report, companies may be deregistered (i.e. struck off the register) voluntarily or for non-compliance. Prior to deregistering a company, the BURS will be contacted to determine whether it has an objection to deregistering the company.

64. Pursuant to sections 461 and 480 of the Companies Act, when a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidator should be delivered by a director, secretary, or manager of the company to the Master of the High Court. Such books and papers would include ownership information and must be maintained by the Master for five years from the date of wind-up or dissolution.

65. In respect of IFSC companies, there is no special regime that applies. Applicants for certification of IFSC status must first be incorporated in Botswana under the Companies Act, obtain a business license, secure other industry specific licenses (such as a banking license), register with the BURS, and file tax returns. These companies are therefore subject to the same requirements described above. Once IFSC certification is granted, it is indefinite but subject to de-certification. The IFSC Certification Committee may de-certify a company where there has been non-compliance with regulatory requirements (including failure to comply with tax obligations or Companies Act obligations).

66. In summary, legal ownership information in respect of companies registered in Botswana will be available with the companies themselves and/or the Registrar.

### Tax law obligations

67. As explained in paragraph 70 of the 2016 Report, companies (including IFSC companies) are subject to tax obligations if they are earning taxable

income in Botswana. External companies are subject to tax in Botswana in respect of their Botswana source income. Taxpayers (other than individual taxpayers earning less than BWP 36 000 (EUR 2 970) per year) must initially register with the BURS. In order to register, the applicant must provide legal ownership information, including the name and address of two directors. Attachments must be submitted with the registration form, which include the memorandum and articles of a company. The BURS must be informed of any changes to directors.

68. Tax returns are filed annually. The return for companies requires a full list of shareholders (including the name, address, number and class of shares of each beneficial shareholder where such shares are held by a nominee). There are penalties for failure to file a tax return or document (including a tax registration form) and filing an incorrect return.

69. Taxpayers are required to maintain and preserve, in Botswana, all books of account and documents for a period of eight years after the end of the tax year or accounting period to which such books of account or documents relate (Income Tax Act, s. 144). Penalties for failure to maintain records may be applied.

70. To conclude, legal ownership information must be reported to the BURS as part of the tax registration and annual filing requirements.

### *Beneficial ownership information requirements*

#### Companies law obligations

71. During the review period, there were no obligations on companies limited by share, companies limited by guarantee, or external companies to maintain beneficial ownership information or to file such information with the Registrar. For close companies, beneficial ownership information will be available with the Registrar since members must be natural persons and this information is reported to the Registrar.

72. Botswana recently enacted amendments to the companies law, taking effect on 3 June 2019. These include a new Registration of Business Names Act, a Re-Registration of Business Names Act, amendments to the Companies Act, and a Companies Re-Registration Act.

73. Under the amendments, new and previously registered companies are required to register with the Registrar and register a business name. Registration and the filing of annual returns will be electronic. Every company registered under the old law must re-register before 3 June 2020 or the company and the business name of that company will be deregistered and immediately removed from the register (Companies Re-Registration Act,

s. 5; Re-Registration of Business Names Act, ss. 3, 5). According to Botswana officials, this will improve the availability of information since all dormant companies and non-compliant companies will be removed from the register.

74. Under the new laws, information to be provided to the CIPA by all companies (including external companies) includes the full name, nationality, age, gender and residential address of every shareholder, director, member, and beneficial owner (Companies Act, ss.21, 345; Companies Reregistration Act, s. 4; Registration of Business Names Act, s. 7). A notice must be delivered to the CIPA within 14 days of changes to any filed information (including beneficial ownership information) (Registration of Business Names Act, s. 11). A beneficial owner means “a natural person who, directly or indirectly through any contract, arrangement, understanding, relationship or otherwise, is the ultimate beneficiary of a share or other securities in a company” (Companies Act, s.2; Registration of Business Names Act, s. 2). The term “ultimate beneficiary” is not defined and further guidance on how “beneficial owner” is to be interpreted has not been published. Botswana is of the view that the issue of ultimate beneficiary is embedded within the broader definition of beneficial owner. The “contracts, arrangements, understanding, relationship or any other form of agreement” as contained within the definition refers to agreements between shareholders and individuals exercising control through other means other than ownership of the shares in the company.

75. Nevertheless, the definition is uncertain, open to other interpretations, and in the absence of clear binding guidance, it is unclear whether all beneficial owners of a company will be identified in line with the standard. Each natural person who directly or indirectly controls the company through an ownership interest of a share or other securities in a company will be identified. However, as the term “ultimate beneficiary” is undefined and the beneficial owner definition only refers to “a share or other securities in a company”, it is not clear that this would ensure that individuals exercising control through other means than ownership or based on formal position held within the company will be identified as the beneficial owners.

76. Other relevant changes to the companies laws include:

- External companies must provide the names and addresses of shareholders and beneficial owners (as defined above), and any changes to shareholder information must be lodged with the Registrar within one month of the change (Companies Act, s.347). The Act is silent as to whether changes to beneficial ownership information must be lodged with the Registrar; however, section 11 of the Registration of Business Names Act requires a notice to be delivered to the CIPA within 14 days of any changes to beneficial ownership information.

- Companies must file an updated share register with the Registrar within 20 days of a transfer (Companies Act, ss.48(3A), The annual return includes updated information on the name, address and identity number of all shareholders; and a list of the shares transferred since the last annual return (including the name of the transferor and transferee).
- Where a company fails to register or update information (including beneficial ownership information) with the Registrar, the company and every director commits an offence and is liable to a fine not exceeding BWP 200 000 (EUR 16 500) for the company and BWP 20 000 (EUR 1 650) for each director (Companies Act, s.21). Also, under the Registration of Business Names Act, failure to register or update information may result in a fine not exceeding BWP 2 500 (EUR 206) for each day on which the failure occurs or continues to occur, up to a maximum of 90 days. If the failure continues past 90 days, the CIPA may cancel the registration of the business name (Registration of Business Names Act, s.12). A company carrying on a business under a cancelled business name commits an offence (Registration of Business Names Act, s.16).
- Failure to file an annual return results in a fine not exceeding BWP 20 000 (EUR 1 650) for a director or secretary. Also, the company will be immediately deregistered (Companies Act, ss.331, 333). Botswana officials expect that the possibility of immediate deregistration will increase compliance rates for filing annual returns.
- Section 489 (i.e. the provision for dormant companies) is repealed. The effect is that there will only be active companies listed on the register in Botswana. It is expected that this will have a positive effect on compliance rates for filing annual returns.

### Tax law obligations

77. When registering with the BURS, in addition to providing legal information ownership information, two major beneficial shareholders (defined in the registration form to mean a natural person exercising control of the company) must be identified. The BURS must be informed of any change in identity of these shareholders.

78. Identifying a company's two major beneficial shareholders ensures that certain beneficial ownership information is available with the BURS. However, not all beneficial owners may be identified as required under the standard. First, according to BURS officials, it is expected that corporate taxpayers identify two beneficial owners and to a large extent this has been done. However, it may be possible for registrants to not provide any beneficial

shareholder information. The BURS is in the process of updating the registration form to ensure that beneficial owners must be identified. Second, only two beneficial owners must be identified. Finally, the requirement is to identify two individuals who “exercise control of the company”. There is no further guidance as to what this means, consequently, it is not clear whether the two individuals identified as the major beneficial shareholders are the persons with ultimate effective ownership or control, as required by the definition of “beneficial owner” in the 2016 ToR.<sup>2</sup>

79. Taxpayers are required to maintain a bank account in Botswana and provide bank account information to the BURS. As such, some beneficial ownership information may be available with Botswana banks (see section on AML/CFT laws obligations below).

### AML/CFT laws obligations – during the review period

80. During the review period, CDD obligations were imposed on banks in the Banking Act and Banking (AML) Regulations. In addition, the FI Act and FI Regulations required specified parties (defined in the FI Act to include banks, non-bank financial institutions, attorneys, and accountants) to carry out CDD procedures. Trust and company services are provided by notaries (who must be registered as attorneys with the Law Society of Botswana) and therefore subject to the FI Act. However, attorneys and accountants are not required for the establishment or administration of a company.

#### (a) Banking laws – CDD obligations during the review period

81. Under section 44 of the Banking Act, a bank may only open an account when it is satisfied, having acted with due diligence and with reasonableness, that it has established the identity of the person in whose name the funds are to be deposited or credited. Any records used by the bank in order to identify a customer must be kept for at least five years after the closure of the account. Any bank that fails to comply is guilty of an offence and liable to a fine of BWP 10 000 (EUR 825).

82. The Banking (AML) Regulations provide additional guidance. A bank, when establishing a business relationship or conducting a transaction, must obtain a national identity card or passport from an individual customer and “take reasonable measures to obtain information about the true identity of the person” on whose behalf an account is being opened or a transaction conducted (Banking (AML) Regulations, ss. 5,9). If, in the course of the business relationship, the bank has doubts as to the identity of the customer, the

2. See 2016 ToR, footnote 8, as explained through the sources of the standard in respect of that definition set out in para. 21 of 2016 ToR.

bank must have the customer renew his/her identification. A bank is also required to identify the beneficial owner of an account; however the term “beneficial owner” is not defined in the Banking Act or Banking (AML) Regulations.

83. In the case of a company, the bank must verify the legal existence of the company and identify the directors, the beneficial owners and the management of the company (Banking (AML) Regulations, s. 7). Again, the term “beneficial owner” is not defined. The bank is required to obtain: the certification of incorporation; details of the registered office and the place of business; details of the nature of the company’s business; and where there is more than one signatory to the account, satisfactory evidence of the identity of at least two signatories and, where necessary, two directors, one of whom must be an executive director.

#### (b) Financial intelligence laws – during the review period

84. The FI Act and Regulations impose CDD obligations on specified parties. Under section 9 of the FI Act, specified parties are required to implement and maintain CDD policies and procedures. A specified party must, before establishing a business relationship or conducting a transaction, verify the identity of the customer; if the customer is acting on behalf of another person, establish the identity of that other person and the customer’s authority to act on behalf of that other person; or if another person is acting on behalf of the customer, verify the identity of the customer and the other person’s authority to act on behalf of the customer (FI Act, s. 10). A specified party may establish a business relationship or take preparatory steps to conclude a transaction before verifying the identity of a customer but it must verify the customer’s identity before the customer receives any benefit from the transaction (FI Regulations, s. 4). The FI Act and its Regulations do not provide for enhanced or simplified CDD procedures.

85. In order to establish the identity of a natural person, the specified party must obtain the individual’s name, nationality, a national identity card or passport, date of birth, residential address, occupation or source of income, nature and location of business activities, and source of funds (FI Regulations, s. 5).

86. In order to establish the identity of a company, the specified party must obtain the registered name and number of the company, the address from which the company operates in Botswana (or in the case of an external company, the address in the country in which it is incorporated), the nature of the company’s business, and the company’s TIN. In addition, the specified party must obtain the full name, nationality, or a national identity card for the manager of the company, each member of a close company, or each natural



person who is authorised to act on behalf of the company (FI Regulations, s. 6). There is no obligation under the FI laws to identify the beneficial owners of the company or understand a company’s ownership and control structure.

87. Identity information must be verified by comparing the obtained information to information set out in: a national identification document issued by the person’s country of origin; a passport; a birth certificate; any documentation of authorisation to act on behalf of such person; a company’s constitution or certificate of incorporation; or any reliable document, data or information that reasonably serves to verify the information (FI Regulations, s. 11).

88. Identity information, along with verification records, must be kept for at least five years from the date a transaction is concluded (FI Act, ss. 11, 12).

89. A specified party that fails to apply the CDD procedures is liable to a fine not exceeding BWP 250 000 (EUR 20 630). A bank that fails to maintain records as required is liable to a fine not exceeding BWP 100 000 (EUR 8 252). Any customer that provides false information to a specified party is guilty of an offence and liable to a fine not exceeding BWP 100 000, imprisonment for a term not exceeding five years, or both (FI Act, ss. 10, 15).

## Discussion

90. With respect to close companies, beneficial ownership information will be available with specified parties. With regard to the other type of companies, although taxpayers in Botswana must maintain a bank account in Botswana, during the review period, banks’ requirements to identify the beneficial owner and the CDD procedures were not in line with the standard. First, while banks were required to identify the beneficial owners of a company, the term “beneficial owner” was not defined in the Banking Act or Regulations, and there was no further guidance. Therefore it was unclear as to who must be identified as beneficial owners. Further, there was no obligation on specified parties (other than banks) to identify the beneficial owners of a company. Finally, the FI laws did not require specified parties to understand a company’s ownership and control structure.

## Recently enacted AML/CFT legislation

91. To address issues identified in the MER and some of those explained in paragraph 90, Botswana recently enacted amendments to the AML/CFT laws. Although the Banking Act was amended, there were no amendments relevant to the availability of ownership information of companies (or any other type of entity or arrangement). The Banking (AML) Regulations were repealed.

92. Amendments to the FI Act and Regulations, taking effect on 29 June 2018, require all specified parties to implement and maintain an AML/CFT programme. The FI Act now includes a definition of “beneficial owner” (FI Act, s. 2). This definition is identical to the definition in the Companies Act, set out in paragraph 74. This definition is not in line with the standard as the issues identified in paragraph 75 also apply here.

93. A specified party must undertake CDD measures when establishing a business relationship; when the customer wants to carry out a transaction in an amount equal to or above BWP 10 000 (EUR 825); when carrying out a domestic or international transfer of funds; when there is doubt about the veracity or adequacy of previously obtained customer identification data; or there is a suspicion of money laundering or the financing of terrorism (FI Regulations, s. 4A). Also, before a specified party can conclude a transaction for an existing customer (i.e. business relationship established prior to 29 June 2018), the specified party must re-verify the identity of the customer, the person acting on behalf the customer, or the person on whose behalf the customer is acting (FI Regulations, s. 4B).

94. The CDD measures require a specified party to establish and verify the identity of the customer and beneficial owner of legal entities and arrangements; if the customer is acting on behalf of another person, establish the identity of that other person and the customer’s authority to act on behalf of that other person; or if another person is acting on behalf of the customer, verify the identity of the customer and the other person’s authority to act on behalf of the customer. In addition, the specified party must obtain information on the customer or beneficial owner’s occupation and source of funds and information on the intended nature of the business relationship. There have been no changes to the acceptable identification documents or the procedures to verify these documents.

95. The fine for failing to comply with the CDD requirements has increased to BWP 1 000 000 (EUR 82 520). The sanctions for a customer that provides false information to a specified party have also increased to a fine not exceeding BWP 500 000 (EUR 41 260), imprisonment for a term not exceeding 10 years, or both.

96. If a specified party is not satisfied with the identification information received from a customer, the specified party must not open an account, commence a business relationship with that customer, or perform a transaction (FI Regulations s. 3A). In addition, a specified party is prohibited from opening or keeping anonymous accounts or accounts in obviously fictitious names (FI Act, s. 10C).

97. A specified party may conduct simplified CDD where the risks of money laundering or the financing of terrorism are considered to be low

by the specified party (FI Regulations, s.4C). There is no difference to the information that must be collected (see paragraphs 85-86) or the verification procedure (see paragraph 87) under the simplified CDD measures. However, under the simplified CDD measures, the specified party may verify the identity of the customer or beneficial owner after the establishment of a business relationship; reduce the frequency of customer identification updates; reduce the degree of ongoing monitoring and scrutinising of transactions; and infer the purpose and intended nature of the business relationship (FI Regulations, s.4C). Simplified CDD measures do not apply when a specified party is dealing with a customer acting on behalf of a partnership or legal arrangement or a customer from a high risk jurisdiction or a transaction for a high risk business (FI Act, s. 10). In such cases, the specified party must apply enhanced CDD procedures, which require the identification of the beneficial owners “by determining the identity of each natural person who, independently or together with another person, has controlling ownership interest in the partnership or trust” (FI Act, s. 10A).

98. Specified parties are not permitted to rely on third parties or introduced business to perform CDD measures on their behalf or to introduce business to them.

99. A specified party must, on an ongoing basis, conduct CDD with respect to an existing business relationship which includes periodic reviews of accounts to maintain current information relating to customers and beneficial owners (FI Act, s. 9B). The Act does not specify how often identification information should be updated; however, according to BoB officials, for low risk customers, identification information is to be updated at least every five years, and for high risk customers, identification information is to be updated annually. A specified party that fails to comply with this obligation commits an offence and is liable to a fine not exceeding BWP 1 500 000 (EUR 123 785).

100. All information, data or documents collected under the CDD procedure must be kept up to date (FI Act, s. 11). CDD documentation must be kept for at least five years from the date a transaction is concluded and after the termination of a business relationship (FI Act, s. 12). Failure to maintain records results in a fine not exceeding BWP 500 000 (EUR 41 260).

101. The FI Act was also amended to add a company secretarial service provider and an IFSC company as a specified party (FI Act, Schedule I).

## Discussion

102. Information on all beneficial owners of a close company and some beneficial owners of other types of companies should be available with the CIPA and specified parties under the recently enacted amendments. However,

it is not clear that all beneficial owners of a company will be identified as required under the standard. The concerns outlined in paragraph 75 regarding the definition of beneficial owner apply to the FI laws as well. Also, there is no explicit requirement under the FI laws for specified parties to understand the ownership and control structure of the company. This may hinder the proper identification and verification of beneficial owners. It is therefore recommended that Botswana take further measures to ensure that all beneficial owners of companies are identified in line with the standard.

*Implementation of obligations to keep legal and beneficial ownership information in practice*

103. Element A.1 was rated Partially Compliant in the 2016 Report because ownership information held by the CIPA and the BURS may not be accurate due to the low compliance rates of companies with their annual return and tax filing obligations. It was also recommended that Botswana monitors the compliance with the recently enacted CDD obligations. There have been no significant changes made to the supervisory and enforcement practice since the 2016 Report.

(a) Practical availability of information with the Registrar

104. When an application for registration is received, the Registrar verifies that all information provided is complete (such as the directors are over age 18, and if a director is a non-citizen that a copy of the passport has been provided). The Registrar does not verify that the information provided is correct. The information in the form is then entered into the CIPA database.

105. The filing of annual returns is monitored by the CIPA on its database, which displays the due date for annual returns. The database allows the CIPA to run a report to generate a list of companies for which the annual return is outstanding and fees are owing. This is done on an ad hoc basis, but generally once per year. Reminder letters are sent to companies that have failed to file their annual return, which is then followed up by telephone.

106. The table below sets out the number of annual returns filed and the penalties imposed for late filing of returns. These figures include both domestic and external companies, although external companies represent only a small number of the total companies in existence. In some cases, the number of filings includes cases where a company has filed several of its outstanding annual returns in one year.

		2015	2016	2017
<b>Companies limited by shares</b>	Annual returns filed	44 630	47 054	52 005
	Penalties applied	BWP 12 785 460 (EUR 1 063 210)	BWP 15 403 200 (EUR 1 280 900)	BWP 12 172 200 (EUR 1 012 215)
	Deregistered	1 637	62 903	199
<b>Close companies</b>	Annual returns filed	118	169	117
	Penalties applied	BWP 72 300 (EUR 6 010)	BWP 106 200 (EUR 8 830)	BWP 53 400 (EUR 4 440)
	Deregistered	1	24	0
<b>Companies limited by guarantee</b>	Annual returns filed	96	72	72
	Penalties applied	BWP 28 200 (EUR 2 340)	BWP 18 000 (EUR 1 500)	BWP 22 800 (EUR 1 895)
	Deregistered	1	70	0
<b>Total number of companies registered in Botswana</b>		209 266	235 508	197 287
<b>Total number of annual returns filed</b>		44 844	47 295	52 194
<b>Percentage of compliant companies</b>		25.5%	27.9%	29.6%

107. The compliance rate for filing annual returns (which has improved slightly since the 2016 Report<sup>3</sup>) continues to remain low. Note that the approximately 63 000 companies deregistered in 2016 were those identified in paragraph 58 of the 2016 Report (this number is reflected in the 2017 total number of registered companies). Since then, although approximately 70% of companies were non-compliant with their filing obligations, the CIPA took very limited measures against these companies. As such, the accuracy of ownership information held by the CIPA cannot be assured. CIPA officials indicate that all registered companies (including dormant companies) have obligations to maintain ownership information and notwithstanding that a person ceases to hold office as a director, a director remains liable for acts or omissions while that person was a director. Further, liquidated companies are to provide its books and papers to the Master of the High Court, but there is no enforcement of this obligation. Accordingly, Botswana should monitor to ensure that liquidated companies are complying with this obligation. Finally, according to Botswana officials, the new obligations under the Companies Act (i.e. electronic filing of annual returns, immediate deregistration for failing to file an annual return) should increase the compliance rate and will remove all dormant companies from the register. Nevertheless, it is recommended that Botswana ensures the effective implementation of measures to ensure the availability of ownership information, notably by ensuring that adequate oversight and enforcement activities are carried out.

3. The percentage of compliance reported in the 2016 Report was approximately 20%.

## (b) Practical availability of information with the tax administration

108. Supervision of legal and beneficial ownership requirements is carried out by the BURS mainly through tax filing obligations and tax audits.

109. The BURS monitors the failure to register for tax, which can be examined through third party information from banks (which must collect the TIN of certain clients), employers, other government sources, and informants. Where failure to register is detected, the policy of the BURS has been to ensure the taxpayer is registered, rather than imposing fines.

110. The BURS also monitors the failure to file a tax return. The taxpayer database system will generate reports automatically and identify the taxpayers that have not filed their return. A standard demand notice is issued, with a period for the taxpayer to file within 14 days. If the return is still outstanding, a second reminder is sent. In the event that the non-compliance continues, the BURS can raise an estimated assessment of tax liability and can garnish the bank account to collect payment.

111. In terms of tax audits, taxpayers are targeted based on risk models, such as high net worth individuals, taxpayers that suppress sales, and taxpayers with government contracts. Taxpayers who do not file tax returns may also be subjected to audits on the basis of risk profiling. Where an audit is undertaken, the BURS will look at the taxpayer's files as well as third party information. Ownership information will necessarily be pertinent to the analysis conducted in many company audits; however, analysing beneficial ownership information has not yet formed a key area of tax audits.

112. The BURS imposes penalties on a case by case basis depending on the quantum of the possible tax loss and the nature of non-compliance. In respect of individuals, the compliance policy during the review period was focused on taxpayer education and voluntary compliance.

113. The table below sets out the number of registered taxpayers, the percentage of all taxpayers that filed a tax return, the number of audits conducted (includes filers and non-filers), and the amount of penalties imposed (including failure to file a return) in 2015 to 2017.

	2015	2016	2017
<b>Number of registered taxpayers</b>	302 911	328 655	360 006
<b>Percentage of all taxpayers that filed a tax return</b>	55%	49%	51%
<b>Number of corporate taxpayers</b>	67 201	77 973	90 681
<b>Number of audits</b>			
Companies	226	189	163
Partnerships	0	0	2
Individuals	111	105	81
<b>Penalties applied</b>	BWP 32 208 231 (EUR 2 649 465)	BWP 19 401 235 (EUR 1 595 955)	BWP 23 168 792 (EUR 1 905 875)

114. Comparing the taxpayer compliance and audit rates to those reported in the 2016 Report there has been a decrease.<sup>4</sup> According to BURS officials, the decrease in the number of audits conducted is due to staffing issues. The decrease in these rates are cause for concern because the accuracy of the ownership information held by the BURS cannot be assured. Therefore it is recommend that Botswana ensure that adequate oversight and enforcement activities are carried out.

(c) Practical availability of information with specified parties

115. Obligations under the AML/CFT laws are supervised by the BoB (in respect of banks), the NBFIRA (in respect of non-bank financial institutions), the Law Society of Botswana (in respect of attorneys and notaries), the BICA (in respect of accountants), and by other named regulatory authorities in respect of other types of specified parties (FI Act, s.2). Each supervisory authority is required to regulate and supervise the relevant specified parties for compliance with the law (FI Act, s.27). The 2016 Report indicated that the supervisory authorities were in the process of building capacity to undertake more active oversight of specified parties' AML/CFT compliance. Consequently, most supervisory activity commenced at the beginning of the current review period.

116. Monitoring of banks' compliance is described in element A.3 below.

117. The NBFIRA supervises capital market entities, non-bank lenders, insurance entities, and retirement funds. A new AML/CFT supervision department within the NBFIRA was created in July 2015. Supervision is carried out through onsite and offsite inspections, modelled after the BoB's supervisory approach (described in element A.3 below). During an onsite inspection, clients' files are reviewed to monitor for AML/CFT compliance. The NBFIRA conducted 34 onsite inspections in 2015, eight onsite inspections in both 2016 and 2017, and 38 onsite inspections in the first 10 months of 2018.

118. In general, the NBFIRA finds that the larger institutions, with foreign branches or parents, have a better understanding of their AML/CFT obligations while compliance issues have been identified with the smaller entities. The main issue identified has been the entity's failure to designate an AML compliance officer, although some deficiencies with regards to record keeping obligations have also been identified. The NBFIRA may impose sanctions, including issuing warnings or directives, imposing fines or revoking licenses. No entity has lost its license due to non-compliance with AML/

4. According to the 2016 Report, approximately 65% of taxpayers filed a tax return and the BURS conducted between 514 and 911 tax audits per year.

CFT obligations. According to NBFIRA officials, entities are becoming more compliant as they increase their awareness of their AML/CFT obligations as a result of the NBFIRA’s educational programmes, the onsite inspections, and the possible imposition of sanctions.

119. There are approximately 439 legal practitioners registered with the Law Society of Botswana. Although attorneys are specified parties under the FI Act, there appears to be very limited awareness of their AML/CFT obligations. The Law Society does not conduct any AML/CFT supervision due to lack of capacity.

120. As of October 2018, there were 4 571 accountants, 62 auditors, 33 audit firms, and 174 non audit firms registered with the BICA. It is only recently that supervision of AML/CFT obligations commenced, and, in general, the BICA finds that most firms are not aware of their obligations. At this point, rather than imposing sanctions, the BICA’s policy is to educate its members regarding their obligations.

121. The supervisory authorities continue to build capacity to undertake more active oversight of the AML/CFT obligations, as well as educate the specified parties regarding their obligations under the laws. The current measures being undertaken by the supervisory authorities are insufficient to ensure the practical availability of ownership information in all cases. Too few specified parties are being reviewed and the lack of sanctions being imposed do not ensure the effective implementation of the relevant requirements. Therefore, it is recommended that Botswana ensure that adequate oversight and enforcement activities are carried out and monitor the effective implementation of the new AML/CFT obligations on specified parties.

#### *Availability of ownership information in practice*

122. In practice, Botswana received one request for ownership information in relation to five companies and was able to fully respond to this request. No concerns regarding the availability of ownership information were raised by peers.

#### Nominees in Botswana

123. The 2016 Report concluded that information on nominee shareholding does not need to be reported to the Registrar when a company is initially registering or filing annual returns. However, under the tax laws, a company must declare the name, address, number and class of shares of each beneficial shareholder where such shares are held by a nominee (Form SAT ITA-22). As such, the company has the onus of obtaining ownership and identity information as to any of its shareholders which are acting as nominees. Given the



potential for a criminal conviction for failure to do so, the disclosure requirement on the tax return should be significant in evaluating the availability of information regarding nominee shareholders; however, as discussed in paragraph 114, the low taxpayer compliance and audit rates may not ensure the accuracy of the legal and beneficial ownership information held by the BURS. Accordingly, Botswana should ensure the availability of information on nominee shareholders, notably by ensuring that adequate oversight and enforcement activities are carried out.

124. There is no obligation for a shareholder nominee to be a specified party. However, under the AML/CFT laws, if a specified party is acting as a nominee, they have obligations to conduct CDD which includes an obligation to establish and verify the identity of the customer; the person on whose behalf the customer is acting; or the person acting on behalf of the customer (FI Act, s. 10(1)).

125. During the review period, Botswana did not receive any requests with respect to nominees.

### ***ToR A.1.2. Bearer shares***

126. The 2016 Report concluded that while there were no explicit prohibitions on bearer shares in the Companies Act, the rights attaching to the ownership of a share do not transfer until the transferee's name is entered in the share register. As such, any bearer shares purported to be issued by a company in Botswana would not have legal status. There has been no change in this respect since the first round review.

### ***ToR A.1.3. Partnerships***

127. There are no statutory provisions relating to the formation or governance of partnerships under Botswana's laws. Partnerships are therefore governed by the common law. The 2016 Report concluded that partner information was required to be available in any case where the partnership was subject to business name registration requirements, tax filing obligations, and AML/CFT obligations. There have been no changes to the tax filing obligations since the 2016 Report; however, after the review period, a new Registration of Business Names Act and amendments to the AML/CFT laws were enacted (see paragraphs 129 and 135).

#### *Identity of partner information requirements*

128. During the review period, partnerships (including foreign partnerships) carrying on a business in Botswana were required to register a business name with the CIPA (Registration of Business Names Act, s. 4). Information

must be filed with the CIPA within 28 days of the commencement of business, including the names and addresses of each partner (individual and legal entities). Any changes to this information must be filed with the CIPA within 28 days of the change (Registration of Business Names Act, ss. 6, 8, 9). There is a penalty for failure to register or update the information.

129. A new Registration of Business Names Act and the Re-Registration of Business Names Act were enacted in June 2018, taking effect on 3 June 2019. Partnerships (including foreign partnerships) carrying on a business in Botswana are still required to register a business name with the CIPA. Every partnership carrying on business under a name registered under the old Act must re-register with the CIPA before 3 June 2020 or the CIPA will cancel the registration of the business name of that partnership (Re-Registration of Business Names Act, ss. 3, 5). Information to be filed with the CIPA will now include the full name, nationality, age, gender and residential address of the individual(s) who are partners, and the corporate name, registered and principal place of business of every body corporate that is a partner (Registration of Business Names Act, s. 7). Any changes to the information must be filed with the CIPA within 14 days of the change (Registration of Business Names Act, s. 11). The penalty for failure to register or update the information is the same as described in paragraph 76.

130. As explained in paragraphs 91 to 94 of the 2016 Report, partnerships (including foreign partnerships) carrying on business in Botswana must register for tax purposes. The registration process requires disclosure of the name and contact details of two major partners (defined in the tax registration form to mean a natural person exercising control of the partnership), details of the partnership bank account and a copy of the partnership agreement, which will identify all of the partners (individual or legal person). The tax obligations apply irrespective of whether the partnership is comprised of resident or non-resident partners.

131. Partnerships earning income chargeable to tax in Botswana are required to file a tax return, and each partner must also file an individual return. The partnership return requires that the name and TIN of each partner be included. The tax return used by individual partners requires the partner to disclose the share of profit and loss from the partnership. Record keeping obligations and penalties for non-compliance are the same as those described in paragraphs 68 and 69.

132. In summary, obligations under the business name registration and tax laws ensure that identity of partnership information will be available.

### *Beneficial ownership information requirements*

133. As described in paragraph 130, under the tax law, the requirement to identify a partnership’s two major beneficial partners ensures that certain beneficial ownership information is available with the BURS. However, not all beneficial owners may be identified as required under the standard.

134. Under the AML/CFT laws, specified parties are required to undertake CDD procedures, as described in section A.1.1 above. During the review period, there were specific requirements set out in the FI Regulations that applied where the customer was a partnership, which included ascertaining the name of the partnership, and for each individual partner and any other natural person authorised to act on behalf of the partnership, the name, address, date of birth and national identity card number or passport number (FI Regulations, s. 8). The information ascertained was to be verified by comparing the information to the partnership agreement, national identification document, or other reliable document (FI Regulations, s. 11).

135. In order to address issues identified in the MER, Botswana recently introduced amendments to the AML/CFT laws taking effect on 29 June 2018. There were no amendments made to specified parties’ obligations set out in section 8 of FI Regulations (described in paragraph 134). However, new enhanced CDD procedures apply if the customer is acting on behalf of a partnership. The specified party must now establish the ownership and control structure of the partnership and “the identity of the beneficial owners by determining the identity of each natural person who, independently or together with another person, has a controlling ownership interest” in the partnership (FI Act, s. 10A).

136. Some beneficial ownership information should be available with specified parties, since all taxpayers must maintain a bank account in Botswana for tax purposes. However, the recent amendments to the FI Act do not ensure the availability of information on the partners and beneficial owners of a partnership as required under the standard. First, the term “beneficial owner”, as defined in the FI Act, seems only to apply to a company since it means the “ultimate beneficiary of a share or other securities in a company” (FI Act, s. 2). Therefore, it is uncertain how this term applies in the case of a partnership. Second, the term “controlling ownership interest” is undefined and it is unclear who exactly would be identified and whether this would require the identification of any natural person exercising ultimate effective control over the partnership including through a chain of control/ownership. Accordingly, it is recommended that Botswana take further measures to ensure that all partners and beneficial owners of partnerships are identified as required under the standard.

*Implementation of obligations to keep partner and beneficial ownership information in practice*

137. The 2016 Report concluded that the relevant legal requirements as they applied to partnerships were properly implemented in practice.

138. Practical supervision of the availability ownership information is mainly carried out through supervision of the tax law and AML/CFT obligations. Supervision and enforcement of partnerships' obligations under the tax law and specified parties' obligations under the AML/CFT laws are the same as those described in section A.1.1 above. As explained, these supervisory measures are inadequate to ensure the practical availability of ownership information, therefore improvement is recommended.

139. New obligations have been imposed on specified parties under the amendments to the AML/CFT laws. It is therefore recommended that Botswana monitor the effective implementation of these measures.

*Availability of partner and beneficial ownership information in practice*

140. During the review period, Botswana did not receive any requests for information regarding partnerships. No peers raised any concerns.

***ToR A.1.4. Trusts***

141. The 2016 Report determined that identity information of the settlor, trustee, and all beneficiaries of a trust is required to be available in line with the standard. The availability of this information was based on obligations under common law principles and tax and AML/CFT laws. The Trust Property Control Act was recently introduced which imposes new obligations on trustees and specified parties.

*Identification of settlor(s), trustee(s), and beneficiary(ies) requirements*

142. Prior to the enactment of the Trust Property Control Act, trusts could exist in Botswana without being registered. However, a trust could be registered with the Registrar of Deeds like any other property related deed. In order to register, the trust had to be registered by a notary. In practice, the Registrar of Deeds required the identification of trustees and beneficiaries of the trust, a resolution of the board of trustees, and the address where the trust would be operating from. The Registrar would verify that this information was provided but did not verify its accuracy. Once registered, any changes to this information had to be filed with the Registrar, through a notary. During the review period, there were 175 registered trusts.

143. As described in paragraph 100 of the 2016 Report, under the common law, a trustee owes fiduciary obligations to the trust beneficiaries. In order to fulfil its fiduciary duties, a trustee must generally know the identity of any other trustee, settlor(s), all beneficiaries, and any other person who exercises control over the trust.

144. Identity information on the trustee, settlor, and beneficiaries of a trust must also be available under the tax law. As explained in paragraph 101 of the 2016 Report, a trust is resident in Botswana if the trust was established in Botswana or is administered in Botswana. Trusts are identified as a person for tax purposes and must register with the BURS and file tax returns if earning income from Botswana sources or sources deemed to be from Botswana. The trustee is responsible for the initial registration with the BURS and must provide a certified copy of the trust deed. Generally, the trust deed will provide the identity of the settlor, trustee, and beneficiaries or the class of potential beneficiaries. Any changes to this information, including changes to the trust deed, must be filed with the BURS. There are currently 1 067 trusts registered with the BURS.

145. The trustee is also responsible for filing the tax return. The tax return requires details of the name and TIN of each beneficiary (irrespective of whether the beneficiary is entitled to a distribution in the year), as well as a schedule explaining any payment, benefit, or property provided to a beneficiary during the year. Record keeping obligations and penalties for non-compliance are the same as those described in paragraphs 68 and 69.

146. Obligations under the common law and tax law ensure the availability of identity information of the settlor, trustee, and all beneficiaries of a trust.

### *Beneficial ownership information requirements*

147. Specified parties are required to undertake CDD procedures, as described in section A.1.1 above. During the review period, banks were required to know and understand the structure of a trust sufficiently to determine the provider of the funds and those who had control over the funds (Banking (AML) Regulations, s. 8). There was no explicit obligation to verify this information.

148. During the review period, specified parties were required, under sections 9 and 11 of the FI Regulations, to obtain and verify against the trust deed, national identification document, or other reliable document: the name of the trust, the jurisdiction of creation, the management company of the trust (if any), and the name, national identity card or passport number and date of birth of the trustee, settlor, and beneficiaries. Where a beneficiary was not identified by name in the trust deed, the specified party had to use reasonable

efforts to identify the beneficiary and notify the FIA of the inability to identify them. These obligations do not require the identification of a protector or any natural person exercising ultimate effective control over the trust including through a chain of control/ownership.

149. Amendments were recently enacted to the AML/CFT laws, taking effect in June 2018. Specified parties must now conduct enhanced CDD procedures if the customer is acting on behalf of a trust (FI Act, s. 10). Under the enhanced CDD procedure, a specified party must apply the general CDD procedures (described in paragraph 94), establish the ownership and control structure of the trust, and determine “the identity of each natural person who, independently or together with another person, has a controlling ownership interest” in the trust (FI Act, s. 10A).

150. There are a number of concerns regarding the new enhanced CDD procedures. First, the term “beneficial owner”, as defined in the FI Act, seems only to apply to a company since it means the “ultimate beneficiary of a share or other securities in a company” (FI Act, s. 2). Therefore, it is uncertain how this term applies in the case of a trust. Second, the term “controlling ownership interest” is undefined and for that reason it is unclear who exactly would be identified and whether this would require the identification of any natural person exercising ultimate effective control over the trust including through a chain of control or ownership.

151. The Trust Property Control Act, which took effect on 29 June 2018, codifies trustees’ fiduciary obligations and requires trustees to register the trusts they are administering with the Master of the High Court. The Master is required to maintain a register that is open to public inspection (Trust Property Control Act, s. 4).

152. Any person in Botswana acting as a trustee must register with the Master before he/she assumes control of the trust property (Trust Property Control Act, s. 5). Trustees administering a trust prior to the enactment of this Act are required to register and file the trust deed with the Master before 30 December 2018 (Trust Property Control Act, s. 26). This Act also applies to a foreign trustee who is administering trust property in Botswana (Trust Property Control Act, s. 9).

153. In order to register, the trustee must file the trust deed, information on the “beneficial owners”, and an address for service. Any amendment to the trust deed must be filed with the Master; however, there is no explicit timing requirement as to when the amendment must be filed. The Master must be notified of any changes to the address for service within 14 days of the change. There does not appear to be any obligation to update the information on the “beneficial owners” with the Master. (Trust Property Control Act, ss. 5, 6, 7).

154. In relation to the “beneficial owners” of a trust, the trustee must provide the Master with the name, nationality, age, gender, and residential address of the “natural person who, directly or indirectly through any contract, arrangement, understanding, relationship or otherwise, is the ultimate beneficiary of a trust” (Trust Property Control Act, s. 7). The term “ultimate beneficiary” is not defined and further guidance regarding how the term “beneficial owner” is to be interpreted has not been published. A strict reading of this definition would seem to imply that only the beneficiaries of the trust need to be identified. It does not appear that any other natural person exercising ultimate effective control over the trust including through a chain of control/ownership needs to be identified. Consequently, the ownership information available with the Master will be the identity of the trustee(s), settlor(s), and beneficiaries of a trust.

155. Pursuant to section 18 of this Act, a trustee must maintain: the trust deed and any other document containing the terms of the trust; any variations made to the trust deed; all records associated with the trust property; any records of trustee decisions; any written contracts entered into; any documents of appointment or removal of trustees; and any documents kept by a former trustee during his/her trusteeship and passed on to the current trustee. These documents must be kept by the trustee for 10 years from the termination of the trust. The trustee must provide to the Master, upon written request, any record or document relating to the trustee’s administration or disposal of the trust property (Trust Property Control Act, s. 17). According to section 19, where a trustee does not comply with sections 17 or 18, the Master may seek a court order directing the trustee to comply. Further, the Master may, at any time, remove a trustee from his or her office if the trustee fails to “perform satisfactorily” any duty imposed upon the trustee under the Act or to comply with any request of the Master (Trust Property Control Act, s. 21).

156. A person who acts as a trustee without registering with the Master commits an offence and is liable to a fine of BWP 20 000 (EUR 1 650), a term of imprisonment not exceeding two years, or both (Trust Property Control Act, s. 27).

157. In summary, identity information on the settlor, trustee, and beneficiaries of a trust will be available with trustees, the BURS, the Master, and specified parties. However, not all beneficial owners of a trust will be identified in line with the standard. In particular, there is no obligation to identify a protector or any natural person exercising ultimate effective control over the trust including through a chain of control/ownership. It is therefore recommended that Botswana take further measures to ensure that all beneficial owners of trusts are identified in line with the standard.

*Implementation of obligations to keep trust ownership information in practice*

158. The 2016 Report concluded that the relevant legal requirements as they applied to trusts were properly implemented in practice. There have been no changes to the practical supervision since that report.

159. Supervision of the availability of ownership information is mainly carried out through the tax law and AML/CFT obligations. These supervisory measures are the same as those described in section A.1.1 above. As explained, these measures are inadequate to ensure the practical availability of trust ownership information, therefore improvement is recommended.

160. In respect of the recent enactments, the AML/CFT laws expand specified parties' obligations. The Trust Property Control Act imposes new obligations on trustees and there is no experience with its implementation in practice. Further, it is not clear how trustees' obligations to maintain ownership information will be supervised. It is therefore recommended that Botswana monitor the implementation of the new requirements and ensure that adequate oversight and enforcement activities are carried out.

*Availability of trust ownership information in practice*

161. Botswana received one request for ownership information in relation to a trust during the reviewed period and was able to fully respond to this request. No peers raised any concerns.

***ToR A.1.5. Foundations***

162. The 2016 Report determined that Botswana's laws did not provide for the establishment of foundations. There has been no change since that report.

***Other relevant entities and arrangements***

163. Botswana's laws allow for the creation of societies. Societies include any association of 150 or more persons, formed for religious purposes, and any club or association of 20 or more persons, but does not include, for example, companies, trade unions, or building societies. Most societies are religious organisations, sporting clubs, and cultural groups. The 2016 Report concluded societies cannot be formed for the sole purpose of carrying on a business (and if they do, they are subject to tax filing obligations), therefore they are likely to be of limited relevance for EOI. However, it was found that there was no legal requirement for societies to maintain a record of their members and maintain this information for at least five years. As such, there was an in-text recommendation.



164. There are currently 9 483 registered societies in Botswana. As described in paragraphs 109 to 114 of the 2016 Report, societies must register with the Registrar of Societies and provide identity information concerning the name and address of the officers of the society. The Registrar must be informed of any change of officer. There are no rules requiring that a register of each member of the society be maintained. However, a list of members can be compelled at any time (Societies Act, s. 16). Failure to provide such information may result in cancellation of registration, and is a criminal offence punishable by fine imposed on the office bearer (Societies Act, s. 11).

165. All societies must submit an annual return, which includes a list of the attendees of the annual meeting (which may not include all members) and the identity of the executive committee. Approximately 15% of societies comply with this obligation. The Registrar is empowered to cancel registration of a society for non-compliance. Since 1973, 156 societies have had their registration cancelled.

166. The Societies Act is silent regarding the obligations to maintain ownership information on societies that have had their registration cancelled or that cease to exist. However, the Registrar keeps information indefinitely.

167. In terms of tax obligations, if a society is generating profits that were not applied for the purposes of the society (such as a church renting out a property and not applying the revenue for the purposes of the church), it would be obligated to register for tax purposes and file tax returns. The information that would be included in a tax return would include the names of two persons holding positions of responsibility in the society, such as the manager or chairman of the society.

168. Under the amended AML/CFT laws, societies, themselves, are subject to AML/CFT obligations. Further, if a society engages a specified party, the specified party must obtain, among other things, the registered name and registration number of the society, and the full name, address and the national identity card or passport of the natural person authorised to establish a business relationship or conclude a transaction with the specified party on behalf of the society (FI Regulations, s. 7). There are no obligations to identify members of a society or any other beneficial owners, as required under the standard.

169. In summary, societies, the BURS, and specified parties do not maintain information on a society's membership and compliance with annual return filing obligations is low, with minimal sanctions applied. However, as societies generally do not conduct business, they continue to be of limited relevance for EOI, therefore the in-text recommendation from the 2016 Report that Botswana ensure that societies are required to maintain a register of members continues to apply. Further, Botswana should ensure that the beneficial owners of societies are identified in line with the standard.

170. During the review period, Botswana did not receive any EOI requests in relation to societies.

## A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

171. The 2016 Report concluded that Botswana’s legal and regulatory framework generally requires legal entities and arrangements that are carrying on a business under commercial law and tax laws to maintain accounting records for at least five years. There was, however, no obligation for any entity or arrangement that was not carrying on a business to maintain underlying documentation. It was recommended that Botswana ensure that all relevant entities and arrangements be required to keep accounting records, including underlying documentation.

172. Although an amendment to the FI Act was enacted in 2018 requiring any legal entity registered or incorporated in Botswana to “provide proper record keeping of financial statements”, this new requirement is not in line with the standard and does not address the recommendation from the 2016 Report. Therefore the recommendation remains applicable. Further, this new requirement is very recent, applies to entities that previously may not have had an obligation to maintain accounting information, and it is not clear how this obligation will be supervised in practice, it is recommended that Botswana monitors its implementation.

173. New obligations to maintain accounting records have also been imposed on trustees. As these rules are very recent and there is no experience with its application and supervision in practice, Botswana should monitor their implementation.

174. The 2016 Report concluded that it was not clear whether accounting records for companies were always available and retained for at least five years due to the low compliance rate for filing annual returns with the CIPA and the low tax audit rate. The report included two recommendations that Botswana enhance the monitoring and enforcement of the availability of accounting records for companies. Botswana has not taken measures to address these recommendations; however, there has not been any negative impact on EOI. Therefore these recommendations continue to apply. Additionally, a liquidated company must provide its accounting records to the Master of the High Court, but there is no enforcement of this obligation. Botswana should monitor to ensure that liquidated companies are complying with this obligation.

175. During the review period, Botswana received four requests for accounting information and was able to provide responses to all requests.

176. The new table of determinations and ratings is as follows:

<b>Legal and Regulatory Framework</b>		
<b>Deficiencies identified in the implementation of the legal and regulatory framework</b>	<b>Underlying Factor</b>	<b>Recommendation</b>
	Other than trusts, there is no obligation for any legal entity or arrangement to maintain underlying documentation unless they are carrying on a business.	All relevant entities and arrangements should be required to keep accounting records, including underlying documentation, in accordance with the standard.
<b>Determination: The element is in place, but certain aspects of the legal implementation need improvement.</b>		
<b>Practical implementation of the standard</b>		
	<b>Underlying Factor</b>	<b>Recommendation</b>
<b>Deficiencies identified in the implementation of EOIR in practice</b>	Public companies and companies with turnover of more than BWP 10 000 000 (EUR 825 470) file their accounting statements with company's annual returns. However, compliance with the annual return filing obligation is low. Some accounting information is filed on the tax return. However, the auditing of taxpayers' accounting records is undertaken on a relatively small number of taxpayers. It is therefore not clear whether accounting records are always available and retained for at least five years.	Botswana should enhance the monitoring and enforcement of the availability of accounting records of these companies and enhance the monitoring of availability of accounting records for tax purposes.
	Companies with turnover of BWP 10 000 000 (EUR 825 470) or less are not required to file financial statements and there is no monitoring by the CIPA of the obligation on these companies to maintain accounting records. Some accounting information is filed on the tax return. However, the auditing of taxpayers' accounting records is undertaken on a relatively small number of taxpayers. It is therefore not clear whether accounting records are always available and retained for at least five years.	Botswana should monitor the availability of accounting records in respect of these companies and enhance the monitoring of availability of accounting records for tax purposes.

Practical implementation of the standard		
	Underlying Factor	Recommendation
	A new obligation under the FI Act requires all legal entities to maintain certain accounting information. This law is very recent and it is not clear how this obligation will be supervised.	Botswana should monitor the implementation and the effectiveness of the new obligation.
	The Trust Property Control Act requires all trustees in Botswana to maintain accounting information. This law is very recent and there is no experience with its application and supervision in practice.	Botswana should monitor the implementation and the effectiveness of the new law to ensure that accounting records and underlying documentation of all trusts are available in line with the standard.
<b>Rating: Partially Compliant</b>		

### ***ToR A.2.1. General requirements and A.2.2. Underlying documentation***

177. As explained in paragraphs 128 to 131 and 135 of the 2016 Report, all companies (domestic and external) are required to maintain accounting records that: correctly record and explain the transactions of the company; enable the financial position of the company to be determined with reasonable accuracy; enable the preparation of financial statements. This also includes an obligation to maintain records containing entries of money received and spent each day and the matters to which it relates.

178. Companies must maintain accounting records for the current accounting period and the last seven completed accounting periods. These records must be maintained at its registered office (Companies Act, s. 186).

179. Companies must prepare financial statements that give a true and fair view of the state of affairs of the company and the profit and loss or income and expenditure. These financial statements must be in accordance with the International Financial Reporting Standards (IFRS) for public companies and companies with total assets of BWP 5 000 000 (EUR 412 610) or more and annual turnover of BWP 10 000 000 (EUR 825 222) or more, or in accordance with generally accepted accounting principles for other companies (Companies Act, ss. 2(3), 205, 206 and Companies Regulations, s. 2).

180. Where the board of directors fails to maintain accounting records in accordance with the law, each director is liable to a fine of BWP 20 000 (EUR 1 650) (Companies Act, s. 189(4)). Notwithstanding that a person ceases

to hold office as a director (e.g. by vacation of office or removal of the company from the register), directors remain liable for acts or omissions while that person was a director (Companies Act, ss. 152(3), 339).

181. Pursuant to sections 461 and 480 of the Companies Act, when a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidator should be delivered by a director, secretary, or manager of the company to the Master of the High Court. Such books and papers must be maintained by the Master for five years from the date of dissolution. There is no enforcement to ensure that companies are complying with their obligations. Botswana should monitor to ensure that liquidated companies are complying with this requirement.

182. Also, the Act provides that the former directors or shareholders' liabilities in the dissolved company are not eroded by the removal of the company from the register, in respect of any act or omission that took place before the removal (Companies Act, ss. 339, 441). The liability continues and maybe enforced as if the company had not been removed from the register. Dissolved companies may also be restored to the register where it has been satisfied that at the time of removal the company was still carrying on business or other reasons existed for the company to continue in existence; or the company was party to legal proceedings; or for any other reason that is just and equitable to restore the company to the register.

183. Public companies and companies with an annual turnover of BWP 10 000 000 (EUR 825 222) or more must submit audited financial statements to the CIPA with their annual returns (Companies Act, s. 209). CIPA maintains this information indefinitely.

184. As described in paragraphs 132 and 133 of the 2016 Report, under the income tax law, every person carrying on a business must maintain and preserve accounting recordings, including underlying documentation. The term "business" is defined to mean, "any business, trade, adventure or concern in the nature of trade, profession or vocation" (*Income Tax Act*, s. 2) and this would include income from property rental. As such, a trust or partnership is not required to maintain accounting records where the partnership or trust merely holds passive investments. There is no specific requirement in the tax law for the maintenance of accounting records, including underlying documents, by an entity or arrangement that is not carrying on business.

185. The tax return of a person that carries on a business in a tax year must be accompanied by a copy of the accounts, with a certificate stating the nature of books and documents from which the accounts were prepared and whether the accounts present a true and fair view of the profits (*Income Tax Act*, s. 71). The tax returns require a company, partnership or trust to attach copies of the trading, profit, and loss, and appropriation accounts with the balance sheet for all business activities of the company, trust or partnership in the accounting period.

186. Records must be kept in Botswana for a period of eight years after the end of the tax year or accounting period to which such books of account or documents relate (Income Tax Act, s. 144). Penalties for failure to maintain records may be applied, but there have been no instances where such penalties have needed to be imposed.

187. A new obligation under the FI Act was imposed on “any legal entity registered or incorporated under any law” to: (i) provide for proper record keeping of financial statements with a detailed breakdown of income and expenditure; (ii) have controls in place to ensure that all funds are fully accounted for and spent in a manner consistent with the intended purposes and objectives of the legal entity; and (iii) maintain a record of domestic and international transactions (FI Act, s. 27A). This provision took effect on 28 June 2018.

188. There are a number of concerns with this new obligation under the FI Act. First, it applies to legal entities and does not apply to legal arrangements, such as trusts. Second, there is no explicit requirement for a legal entity to maintain underlying documentation, such as invoices and contracts.

189. The Trust Property Control Act, effective on 28 June 2018, requires a trustee must maintain: (i) any records of the trust property that identify the assets, liabilities, income and expenses of the trust and that are appropriate to the value and complexity of the trust property; (ii) any records of trustee decisions made during the trustee’s trusteeship; (iii) any written contracts entered into during the trustee’s trusteeship; (iv) any accounting records and financial statements prepared during the trustee’s trusteeship; and (v) any other document necessary for the administration of the trust (Trust Property Control Act, s. 18). Such records must be kept for 10 years from the termination of the trust. The term “accounting records” is not defined in the Act.

190. Although the Trust Property Control Act does not explicitly provide that underlying documentation must be maintained, it may be inferred, when reading section 18 of the Act in its entirety, that trustees maintain underlying documentation.

191. The trustee must also provide to the Master of the High Court, upon written request, any record or document relating to the trustee’s administration or disposal of the trust property (Trust Property Control Act, s. 17). Non-compliance may result in sanctions (see paragraph 155).

192. There are no specific requirements under the Societies Act regarding the maintenance of accounting records. However, the Registrar may, at his or her discretion, require the production of accounts (Societies Act, s. 17). Societies generally do not conduct business, but if they did, they would be subject to tax obligations (and have obligations to maintain accounting information). With regard to new section 27A of the FI Act, it is unclear whether it applies to societies, however, even if it did apply, there are a number of concerns with this section (as described in paragraph 188).

193. To conclude, the 2016 Report identified a legal gap with respect to the absence of an obligation on any entity or arrangement that is not carrying on a business to maintain underlying documentation. New section 27A of the FI Act does not fully address this recommendation. However, this recommendation has been partially addressed for trusts with the enactment of the Trust Property Control Act. Therefore, the recommendation from the 2016 Report remains applicable to legal entities and arrangements, other than trusts. It is also recommended that Botswana monitor the implementation of the new requirements of the FI Act and Trust Property Control Act because these Acts impose new obligations and it is not clear how obligations under these Acts to maintain accounting records will be supervised.

#### *Implementation of obligations to maintain accounting records*

194. In practice, the supervision of accounting requirements, including the maintenance of underlying documentation, is mainly carried out through tax audits. As described in section A.1.1 above, taxpayers are targeted based on risk models. During an audit, accounting records are examined and records can be printed from the taxpayer's accounting system. The BURS has found that, generally, accounting records, including invoices, have been available and retained for more than five years.

195. The table in paragraph 113 sets out the number of audits conducted in 2015 to 2017. As noted in section A.1.1, the compliance rate and the tax audit rate have decreased since the 2016 Report which raises concerns because the accuracy of accounting information held by taxpayers and the BURS cannot be assured.

196. With respect to the monitoring of annual returns filed with the CIPA, it is as described in section A.1.1 above. As indicated, compliance by companies is low. Although public companies and companies with an annual turnover of BWP 10 000 000 or more must submit audited financial statements with their annual returns, the CIPA does not verify the statements. No monitoring is undertaken by the CIPA with respect to the maintenance of accounting records by private companies with a turnover of less than BWP 10 000 000.

197. In summary, the 2016 Report included two monitoring recommendations. Botswana has not taken measures to address these recommendations, nevertheless, there has not been any negative impact on EOI. Accordingly, the recommendations continue to be applicable. The rating for this element remains the same.

*Availability of accounting information in practice*

198. During the review period, Botswana received four requests for accounting information and was able to provide the requested information in all cases. No peers raised any concerns.

**A.3. Banking information**

Banking information and beneficial ownership information should be available for all account holders.

199. The 2016 Report concluded that banks' record keeping requirements and their implementation in practice were in line with the standard. All banks in Botswana (including those operating in the IFSC) are supervised by the BoB. The 2016 Report found that the BoB took adequate supervisory and enforcement measures to ensure banks' compliance with their record keeping obligations.

200. During the current review period, banks were required to verify the identity of account-holders and certain beneficial owners. Recently enacted laws have broadened banks' CDD obligations. Although beneficial ownership information will be available to large extent, not all beneficial owners will be identified in line with the standard. It is therefore recommended that Botswana take appropriate measures to ensure that beneficial ownership information of account holders is available in line with the standard.

201. The BoB employs a risk-based approach to supervision and carries out full-scope and limited scope onsite prudential and consumer compliance examinations. The BoB strengthened its AML/CFT supervision in 2016 and 2017, which includes verifying that banks are complying with their obligation to identify the beneficial owner of an account holder. However, it was not until June 2018 that the AML/CFT law contained a definition of beneficial owner. This raises the uncertainty as to the standard applied by the banks and the BoB in carrying out its supervisory measures of beneficial ownership information in 2016 and 2017. Accordingly, it is not clear that beneficial ownership information maintained by banks throughout this review period was in line with the standard. Further, new laws broaden banks' AML/CFT obligations and have applied only since June 2018. It is recommended that Botswana ensures effective implementation of AML/CFT obligations to ensure the availability of beneficial ownership information.

202. During the review period, Botswana received one request for banking information and was able to fully respond. No concerns were raised by peers.



203. The new table of determinations and ratings is as follows:

<b>Legal and Regulatory Framework</b>		
	<b>Underlying Factor</b>	<b>Recommendation</b>
<b>Deficiencies identified in the implementation of the legal and regulatory framework</b>	Botswana has amended the AML/CFT laws requiring banks to identify beneficial owners of all account-holders. These rules ensure that some beneficial ownership is available with banks; however, not all beneficial owners, as defined under the standard, may be identified.	Botswana should ensure that banks identify and verify the identity of all beneficial owners of all relevant legal entities and arrangements which have an account with a bank in Botswana in line with the standard.
<b>Determination: The element is in place, but certain aspects of the legal implementation need improvement.</b>		
<b>Practical implementation of the standard</b>		
	<b>Underlying Factor</b>	<b>Recommendation</b>
<b>Deficiencies identified in the implementation of EOIR in practice</b>	The BoB strengthened its AML/CFT supervision in 2016, which includes verifying that banks are complying with their obligation to identify the beneficial owner of an account holder. However, it was not until June 2018 that the AML/CFT laws contained a definition of beneficial owner. This raises uncertainty regarding the whether the beneficial ownership information maintained by banks throughout the review period was line with the standard.	Botswana should ensure the effective implementation of measures to ensure that banks maintain beneficial ownership information in line with the standard.
<b>Rating: Partially Compliant</b>		

### ***ToR A.3.1. Record-keeping requirements***

204. The 2016 Report concluded that banks' record keeping requirements and their implementation in practice were in line with the standard. Banks' CDD obligations are described in element A.1 above. As explained, new AML/CFT laws came into effect in June 2018 and broadened banks' CDD obligations and includes a definition of beneficial owner.

205. Botswana has 10 commercial banks, which are all subsidiaries of international banks, and three statutory banks (the same numbers reported in the 2016 Report). Each bank must be formed as a Botswana domestic company under the Companies Act, must register with the BURS, and file tax returns. Also, every bank must be licensed by the BoB (Banking Act, s.3). Licenses are renewed annually and are not transferrable without the prior written approval of the BoB (Banking Act, ss.6(7), 9(2)).

206. Banks wishing to operate as IFSC companies are also licensed by the BoB. These banks only conduct their business with non-Botswana residents and in currency other than Botswana Pula. These banks are supervised by the BoB and subject to the banking and AML/CFT laws (described in element A.1 and below). During the review period, there was one IFSC company carrying on business as a bank.

207. In order to be licensed, the BoB examines the financial viability of the applicant and evaluates the members and senior management as to expertise and integrity (fit and proper test), and any potential for conflict of interest. The fit and proper test includes: (i) skills and relevant experience of conducting financial operations commensurate with the intended activities of the bank; and (ii) record of criminal activities or adverse regulatory judgments that would make a person unfit to uphold an influential position in a bank. The organisational structure of the applicant is examined, including the identity and reputation of the majority shareholders. The applicant's major shareholders, including the ultimate beneficial owners, and others that may exert significant influence are identified by the BoB. The BoB also assesses the transparency of the ownership structure, the sources of initial capital and the ability of the shareholders to provide additional financial support where needed. Any change in ownership or management requires regulatory approval. The same background checks are undertaken in respect of the new applicant.

208. Every bank in Botswana must keep records that exhibit clearly and accurately the state of its affairs and to explain its transactions and financial position so as to enable the BoB to determine whether the bank concerned has complied with the provisions of the law (Banking Act, s. 18).

209. As discussed in element A.1, banks in Botswana must also conduct CDD and keep records of their customers and their transactions. During

the review period, these requirements were contained in the Banking Act, Banking (AML) Regulations, FI Act, and FI Regulations. Pursuant to these laws, banks were required to verify the identity of their customer and beneficial owners. The term “beneficial owner” was not defined in the law. However, pursuant to the FI Regulations, banks were required to verify the identity of the manager of the company, each individual member of a close company, or each natural person who was authorised to act on behalf of the company. In respect of partnerships, banks needed to identify each individual partner. For trusts, banks were to identify the trustee, settlor, and beneficiaries. And for other legal entities (i.e. societies), banks were to identify the natural person purporting to be authorised to establish a business relationship with the bank.

210. Botswana amended its AML/CFT laws, taking effect on 29 June 2018. Banks must now identify customers and beneficial owners when establishing a business relationship; when the customer wants to carry out a transaction in an amount equal to or above BWP 10 000 (EUR 825); when carrying out a domestic or international transfer of funds; when there is doubt about the veracity or adequacy of previously obtained customer identification data; or there is a suspicion of money laundering or the financing of terrorism. Also, before a bank can conclude a transaction for an existing customer (i.e. a business relationship established prior to 29 June 2018), the bank must re-verify the identity of the customer and beneficial owners.

211. Pursuant to the new laws, a “beneficial owner” means a natural person who, directly or indirectly through any contract, arrangement, understanding, relationship or otherwise, is the ultimate beneficiary of a share or other securities in a company (FI Act, s. 2).

212. Banks are required to verify the identity of customers and beneficial owners, according to risk-based procedures (see paragraph 87). A bank may conduct simplified CDD where the risks of money laundering or the financing of terrorism are considered to be low by the bank (see paragraph 97). Simplified CDD measures do not apply when a bank is dealing with a customer acting on behalf of a partnership or legal arrangement. In such cases, banks are required to apply enhanced CDD and identify the beneficial owners “by determining the identity of each natural person who, independently or together with another person, has controlling ownership interest in the partnership or trust” (FI Act, s. 10A).

213. The new laws require banks to implement and maintain appropriate risk-based procedures for conducting ongoing CDD and banks must maintain and update customer information, including beneficial ownership. According to BoB officials, identification information for low risk customers is to be updated at least every five years, and for high risk customers, annual updates.

214. Banks are not permitted to rely on third parties or introduced business to perform CDD measures on their behalf or to introduce business to them.

215. All information, data or documents collected under any CDD procedure must be kept for at least five years from the date a transaction is concluded and after the termination of a business relationship.

216. There are a variety of civil sanctions applicable to banks for violations of the AML/CFT laws, including failure to comply with CDD requirements and record keeping requirements (as described in element A.1).

### *Discussion*

217. Although Botswana has broadened banks' CDD obligations, a number of concerns exist:

- not all beneficial owners of a company required to be identified under the standard will be identified. Each natural person who directly or indirectly controls a company through an ownership interest will be identified, but it is not clear that individuals exercising control through other means than ownership or based on formal position held within the company will be identified.
- with respect to identifying the beneficial owners of a partnership, trust, or foundation, the definition “beneficial owner”, seems only to apply to a company, therefore, it is uncertain how it applies in the case of other legal entities and arrangements.
- the term “controlling ownership interest” used in the enhanced CDD procedures (section 10A of the FI Act) is undefined. It is therefore unclear who exactly would be identified and whether this would require the identification of any natural person exercising ultimate effective control over the partnership or trust including through a chain of control/ownership.
- when a customer is a partnership or trust, banks are required to understand the ownership and control structure of that entity or arrangement. However, with respect to companies, there is no explicit obligation on banks to understand the ownership and control structure of the customer. This may hinder the proper identification and verification of the customer’s beneficial owner(s).

218. Given these concerns, it is recommended that Botswana take appropriate measures to ensure that beneficial ownership information of account holders is available with banks as required under the standard.

*Implementation of obligations to keep banking and beneficial ownership information in practice*

219. The BoB supervises banks in Botswana. In accordance with section 24 of the Banking Act, the BoB employs a risk-based approach to supervision and carries out full-scope and limited scope onsite prudential and consumer compliance examinations. Full scope prudential onsite examinations generally review the financial condition and performance of the bank in question and, according to the BoB Annual Supervision Report, should be conducted at least every 18 months. As of 2016, these full scope examinations include a review of AML/CFT obligations (more details provided in paragraph 223). A limited scope prudential onsite examination focuses on specific risks such as credit risks or operational risk. Beginning in 2016, the BoB carried out limited scope onsite examinations which focused on AML/CFT compliance. Consumer compliance examinations focus on compliance with policies and notices relating to consumer issues.

220. On average a full onsite prudential examination takes four to six weeks and a limited scope prudential examination may take one to three weeks. During the onsite inspections, the BoB inspectors undertake interviews of senior management to understand the CDD policies, when they were implemented, when they were last reviewed, and how new officers are trained. Interviews of bank tellers are also undertaken to assess their awareness and compliance with the policies. The inspectors also review a representative sample of customer files and verify if the required CDD documentation are present.

221. Following an onsite inspection, the BoB will produce an examination report, detailing deficiencies or weaknesses in the examined bank and recommendations. The bank must provide quarterly updates to the BoB regarding the actions being taken to address the recommendations. The BoB will assess these quarterly updates. If the BoB is satisfied with the updates, then it will close the report. However, if the recommendations are not being addressed, a follow-up onsite may be required (which often occurs 12 months after the initial onsite inspection). If a bank fails to address the recommendations, fines may be imposed.

222. The number of onsite inspections conducted during the review period was as follows:

	2015	2016	2017
Full scope prudential examination	1	2	3
Limited scope prudential examination	1	1	3
Full scope consumer compliance examination	6	7	3
Limited scope consumer compliance examination	2	3	0

223. In 2015, the prudential onsite examinations were primarily focused on compliance with licensing and prudential requirements, not AML/CFT compliance. In 2016, the BoB carried out full scope onsite examinations on two banks, and one limited scope (AML/CFT) onsite examination. The full scope examinations included a review of the prudential requirements and an assessment of operational risk, legal, and compliance risk, as well as AML/CFT compliance. The limited onsite examination was carried out in collaboration with the FIA and revealed that the bank's management of the AML/CFT processes and procedures were inadequate. All of the examined banks were ordered to implement corrective actions. In 2017, the BoB intensified its AML/CFT onsite examinations of banks by conducting three full scope and three limited scope examinations focused on AML/CFT compliance. The examinations indicated that the banks had limited CDD documentation. The examined banks were ordered to implement corrective actions.

224. According to BoB officials, all of the examined banks provided quarterly updates on the progress to implement corrective actions. The BoB was satisfied with the updates provided by all of the banks except two. During the review period, two follow-up inspections were conducted. The BoB imposed fines for non-compliance once in 2015 and in 2016, and twice in 2017; however, these fines were in relation to liquidity and prudential issues. Where the examined banks were found to have deficiencies regarding AML/CFT obligations, fines were not imposed, rather the BoB opted to require these banks to implement corrective actions to remedy the identified issues.

225. To conclude, Botswana supervisory framework for licensing and prudential issues is well developed; however, the number of examinations carried out during the review period is inconsistent with the BoB's policy to conduct a full scope examination of a bank every 18 months, as not all banks were reviewed during the three-year review period. The BoB strengthened its AML/CFT supervision in 2016 and 2017, which includes verifying that banks are complying with their obligation to identify the beneficial owner of an account holder. However, it was not until June 2018 that the AML/CFT law contained a definition of beneficial owner. This raises the uncertainty as to the standard applied by the banks and the BoB in carrying out its supervisory measures of beneficial ownership information in 2016 and 2017. Accordingly, it is not clear that beneficial ownership information maintained by banks during this time was in line with the standard.

226. The new AML/CFT laws define beneficial owner and broaden banks' obligations. This will require adjustment in the banks' processes and practices to ensure their implementation. Botswana is therefore recommended to ensure effective implementation of banks' AML/CFT obligations to ensure the availability of beneficial ownership information.

*Availability of banking information in practice*

227. During the review period, Botswana received one request for banking information and was able to fully respond to this request. No peers raised any concerns.





## Part B: Access to information

228. Sections B.1 and B.2 evaluate whether competent authorities have the power to obtain and provide information that is the subject of a request under an EOI arrangement from any person within their territorial jurisdiction who is in possession or control of such information; and whether rights and safeguards are compatible with effective EOI.

### B.1. Competent authority’s ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

229. The 2016 Report concluded that the Commissioner General of BURS has broad access powers to obtain all types of information, including ownership, accounting and banking information, from any person both for domestic tax purposes and in order to comply with obligations under Botswana’s EOI agreements. These broad access powers can be used for EOI purposes, regardless of domestic tax interest. Access powers are available also in cases where information is requested for criminal tax purposes. In the case of failure to provide the requested information, the BURS has adequate powers to compel the production of information. In terms of the secrecy provisions, the report concluded that these were in line with the standard. No relevant changes have been made to the legal framework or practice since that report.

230. The BURS’ access powers are also effectively used in practice. During the review period, Botswana received four EOI requests and fully responded to all requests. No issue in respect of the scope of the tax administration’s access powers arose during the period under review.

231. The new table of determinations and ratings is as follows:

<b>Legal and Regulatory Framework</b>
<b>Determination: In place</b>
<b>Practical implementation of the standard</b>
<b>Rating: Compliant</b>

***ToR B.1.1. Ownership, identity and bank information and  
ToR B.1.2. Accounting records***

232. The 2016 Report concluded Botswana’s legal and regulatory framework permitted access to information for the purposes of responding to a valid request for information pursuant to an EOI agreement. No changes to the legal or regulatory framework have been made since this report.

233. Pursuant to the Income Tax Act, the Commissioner General of BURS may require any person to furnish any information that the Commissioner General considers necessary to enable him or her to fulfil his or her duties under this Act, including providing assistance pursuant to EOI agreements (Income Tax Act, ss. 53 and 69(3)).

234. While the power granted to the Commissioner General under subsection 69(3) is quite broad, it is not coupled with the same compulsory powers as the general powers the BURS has to require information for domestic tax assessment purposes as contained in subsection 69(1). Subsection 69(1) permits the use of search and seizure powers granted under section 70 for the purposes of obtaining information necessary to the determination of a liability of tax. However, a person who fails to supply any information as requested under the Act is guilty of an offence and liable to a fine of BWP 1 000 (EUR 83) and imprisonment for one year (Income Tax Act, s. 122).

*Access to ownership, accounting, and banking information in practice*

235. A large amount of ownership and accounting information is already at the disposal of the BURS in its database. Further, the BURS has direct access to the database of the CIPA, which allows it to obtain relevant information. However, given the low rates of compliance by companies with their annual return filings, the information in the CIPA database may not always be accurate. The BURS can also access information held on the databases of the national identity card, the government procurement contracts system, and the immigration authorities. In addition, the BURS has entered into working arrangements on information sharing with the Registrar of Deeds, and MOUs with other agencies, being the FIA and the NBFIRA.

236. Where the requested information is not already at the disposal of the BURS, it will use its access powers to obtain the requested information. The procedure to obtain ownership, accounting and banking information is the same. A letter from the Commissioner General is sent to the information holder requesting that information be provided within 30 days (15 days in the case of banks) of the date of the letter. If no response is received, a follow-up letter is sent to the information holder with additional time (less than 30 days) granted to the information holder to respond. If this period elapses without a full response, the EOI Unit management will decide the next action to take. During the review period, the EOI Unit sought information from a third party, who provided the information requested. As such, the EOI Unit has not had to decide what further action to take if the information holder fails to provide a full response within the time period. BURS officials advise that the most likely course of action would be to apply sanctions under section 122 of the Income Tax Act.

237. Botswana received four EOI requests during the review period and was able to respond to all requests. No peers raised any concerns.

### ***ToR B.1.3. Use of information gathering measures absent domestic tax interest***

238. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes.

239. The 2016 Report concluded that the powers granted to the Commissioner General of BURS to obtain information can be used to respond to an EOI request regardless of whether the BURS has any need for the information for its own tax purposes. There has been no change in the applicable rules since that report.

240. Botswana’s ability to provide information regardless of domestic tax interest was confirmed in practice. There was no case where a domestic tax interest restriction prevented the BURS from accessing and providing the requested information. This was also confirmed by peers.

### ***ToR B.1.4. Effective enforcement provisions to compel the production of information***

241. Jurisdictions should have in place effective enforcement provisions to compel the production of information.

242. The 2016 Report concluded that the compulsory powers, including the search and seizure powers granted to the Commissioner General, apply for the purposes of obtaining information necessary to the determination of a liability for tax in Botswana. To the extent that the exercise of power to

obtain information necessary to enable the Commissioner General to provide assistance pursuant to EOI agreements does not relate to the determination of a liability of tax in Botswana, therefore the power to access information is not supported by the search and seizure powers. However, a person who fails to supply any information as requested under the Act is guilty of an offence and liable to a fine of BWP 1 000 (EUR 83) and imprisonment for one year (Income Tax Act, s. 122).

243. In practice, during the review period, the BURS had no issues accessing information in order to respond to EOI requests and no punitive measures for failure to provide information were necessary.

### ***ToR B.1.5. Secrecy provisions***

244. The 2016 Report concluded there were no statutory bank secrecy or professional secrecy provisions in place that restricted the Commissioner General's access powers or prevented effective EOI. There has been no change to the legal framework since that report.

245. Subsection 43(1) of the Banking Act provides that information maintained by banks concerning any customer's deposits, borrowings or transactions, or other personal, financial or business affairs, may not be disclosed without the written and freely given permission of the customer concerned. However, this confidentiality provision does not apply where the information is required by the BURS for the purposes of responding to a valid request for information under an EOI agreement.

246. Section 17 of the NBFIRIA Act provides that NBFIRIA officers are bound by secrecy regarding any information obtained in the course of his or her duties. However, disclosure of such information to the Commissioner General of BURS is specifically authorised.

247. According to BURS officials, they have not had any access issues in obtaining information from banks and non-bank financial institutions.

248. Legal professional privilege is governed by the common law in Botswana, and applies in respect of "information communicated by a lawyer to his client or vice versa, [where] such information is of a confidential nature and furnished for the purpose of obtaining legal advice."<sup>5</sup> There have been no changes since the 2016 report, therefore the scope of this privilege continues to be in accordance with the international standard.

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5. Masita v. Mukuwa and Others In Re Leseriseri Pty Ltd and Another v. Mukuwa and Others 2010 1 BLR 581 HC; see also Moremi and Another v. African Banking Corporation of Botswana Ltd 2009 2 BLR 18 HC.

249. During the review period, there were no issues in practice regarding a claim of privilege to avoid responding to an EOI request. No peers raised any concerns.

## B.2. Notification requirements, rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

250. Application of rights and safeguards in Botswana does not restrict the scope of information that the BURS can obtain. The 2016 Report found the notification rules and safeguards in Botswana to be in line with the standard. There have been no changes to the applicable legal framework since the 2016 Report.

251. The 2016 ToR contain a new requirement to have an exception to time-specific, post-exchange notification.<sup>6</sup> There is no post-exchange notification requirement set out in the Income Tax Act.

252. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework
<b>Determination: In place</b>
Practical implementation of the standard
<b>Rating: Compliant</b>

### *ToR B.2.1. Rights and safeguards should not unduly prevent or delay effective exchange of information*

253. The rights and safeguards that apply to persons in the requested jurisdiction should be compatible with effective EOI. For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction) and time specific post exchange notification.

254. As described in the 2016 Report, the Income Tax Act is silent on the need to inform a taxpayer when information is exchanged. This is interpreted

6. A requested jurisdiction should provide for an exception from time-specific, post-exchange notification in cases where notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction and the requesting jurisdiction has made a request for the application of such an exception on this basis that is founded on reasonable grounds.

as not requiring the BURS to inform the taxpayer when fulfilling such an exchange. There has been no change to the law or to this interpretation since the first round review. This interpretation also applies to post-exchange notification.

255. In practice, when seeking information from an information holder, the letter will provide only the minimum amount of information needed to allow the information holder to provide the required information. Generally, the letter does not indicate that the taxpayer should not be notified of the request. However, the BURS' policy continues to be that taxpayers are not to be notified that a request for information pertaining to that taxpayer has been received or that information pertaining to that taxpayer has been provided to Botswana's EOI partner. The only circumstance that notification is envisaged is if the information required is only available from the taxpayer. If the requesting competent authority had stated that the taxpayer is not to be notified, and the taxpayer is the only available source of information, the BURS would advise the requesting competent authority before contacting the taxpayer.

256. In practice, during the review period, the BURS did not need to contact the taxpayer in order to obtain the information necessary to respond to an EOI request.

257. Botswana taxpayers do not have the right to access their taxpayer file. In any case, all EOI files are kept separately from individual taxpayer files.

258. Taxpayer's appeal rights are limited to an appeal of a determination of tax liability or ruling by the Commissioner General. An EOI request is not interpreted by the BURS to fall within the meaning of a determination or ruling and thus it is not expected that a taxpayer or an information holder would have any legal standing to appeal against an EOI request (including responding to an EOI request). To date, no taxpayers have attempted to appeal against an EOI request.

259. During the review period, no practical difficulties were experienced by Botswana with regards to any rights and safeguards. No peers raised any concerns.

## Part C: Exchanging information

260. Sections C.1 to C.5 evaluates the effectiveness of Botswana’s EOI in practice by reviewing its network of EOI mechanisms – whether these EOI mechanisms cover all its relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether it respects the rights and safeguards of taxpayers and third parties and whether Botswana could request and provide information relevant for tax purposes in an effective manner.

### C.1. Exchange of information mechanisms

Exchange of information mechanisms should provide for effective exchange of information.

261. The 2016 Report concluded that Botswana’s network of EOI mechanisms was in line with the standard and provided for effective EOI. The report did include a recommendation that Botswana swiftly bring its 11 remaining agreements into force and ensure that all new agreements are brought into force expeditiously. Since that report, nine of the 11 EOI signed agreements have entered into force. Botswana completed the necessary procedures to bring one EOI agreement into effect and will send notification to its EOI partner in order to bring the agreement into force. The final remaining agreement has not been ratified.

262. Botswana’s EOI network now covers 30 jurisdictions through bilateral agreements. Out of the 30 jurisdictions, Botswana has an EOI instrument in force with 24 of them. Of the five EOI agreements signed since the 2016 Report, one has entered into force. Botswana has completed the necessary procedures to bring three agreements into effect and is awaiting notification from its EOI partners. One EOI agreement was recently signed, Botswana is in the process of bringing it into effect.

263. Botswana is currently engaged in DTC negotiations with 11 jurisdictions. Botswana is committed to signing the MAAC before the end of 2019.

264. In practice, the time taken between signing and ratification by Botswana has decreased from more than two years to less than one year. Botswana’s EOI agreements are applied in line with the standard. No issue in this respect was identified in the first round review and no issue was identified during the current period under review. Botswana provides information to the widest possible extent as was also confirmed by peers.

265. The new table of determinations and ratings is as follows:

<b>Legal and Regulatory Framework</b>
<b>Determination: The element is in place.</b>
<b>Practical implementation of the standard</b>
<b>Rating: Compliant</b>

### ***ToR C.1.1. Foreseeably relevant standard***

266. Exchange of information mechanisms should allow for EOIR where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. This concept, as articulated in Article 26 of the OECD Model Tax Convention, is to be interpreted broadly, but does not extend so far as to allow for “fishing expeditions”. The Article 26 commentary recognizes that the standard of “foreseeable relevance” can be met when alternative terms are used in an agreement, such as “necessary” or “relevant”. The 2016 Report concluded that all of Botswana’s agreements met this standard. This continues to be the case.

267. All of Botswana’s agreements use the specific language “foreseeably relevant” or an alternative wording that is consistent with the standard (e.g. “is necessary”, or “is relevant”). Agreements signed or amended after 2010 use the specific “foreseeably relevant” wording.

268. Concerning the practical application of the criteria of foreseeable relevance, the 2016 Report did not identify any issues. This continues to be the case and no concerns were raised by peers.

269. Botswana does not require its partner jurisdictions to complete a standardised template for the formulation of requests and instead receives and accepts requests in a wide variety of formats, if they conform to the information required to be included in an EOI request as listed in Article 5(5) of the Model TIEA. If Botswana receives a request and it is unclear whether the foreseeable relevance standard has been met, Botswana would request additional information or clarifications from the requesting jurisdiction to resolve the identified issues.

270. During the period under review, Botswana did not refuse to answer any EOI requests on the basis of lack of foreseeable relevance and there were



no cases where it requested clarification on belief that the request was overly broad or vague.

### *Group requests*

271. None of Botswana’s EOI agreements or domestic law contains language prohibiting group requests. Botswana interprets its agreements and domestic law as allowing it to provide information requested pursuant to group requests in line with Article 26 of the OECD Model Tax Convention and its commentaries.

272. During the period under review Botswana did not receive or make any group request. The same access powers and general procedures will apply as in respect of other types of requests (see further section C.5.2).

### ***ToR C.1.2. Provide for exchange of information in respect of all persons***

273. The 2016 Report concluded that all of Botswana’s EOI relationships allow for EOI with respect to all persons and there is no change in this respect. Further, no restriction in respect of persons on whom information can be exchanged has been experienced in practice and no peers raised any concerns.

### ***ToR C.1.3. Obligation to exchange all types of information***

274. The OECD Model Tax Convention Article 26(5) and the Model TIEA Article 5(4), which are authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

275. The 2016 Report concluded that Botswana’s EOI agreements with 12 jurisdictions included the equivalent of Article 26(5) or Article 5(4),<sup>7</sup> but Botswana’s other EOI agreements did not contain this language. This should have been reported as 14 EOI agreements, since all DTCs, Protocols, and TIEAs negotiated since 2010 contain the equivalent of Article 26(5) or Article 5(4).

276. The 2016 Report found that there were no restrictions in Botswana nor at least nine of its DTC partners’ domestic laws regarding access to bank

7. These are the DTCs with Seychelles, South Africa, Sweden, and the United Kingdom and the TIEAs with Denmark, Faroe Islands, Finland, Greenland, Guernsey, Iceland, Isle of Man and Norway.

information that prevented the exchange of bank information. Mozambique, Namibia and Zimbabwe had not yet been reviewed by the Global Forum and it was therefore not possible to confirm that the EOI agreements with regards to these jurisdictions met the standard. No changes to these three DTCs have been made since the 2016 Report.

277. The five EOI agreements and the Protocols negotiated since the 2016 Report contain the equivalent of Article 26(5) or Article 5(4).

278. During the period under review, Botswana received a request for banking information and was able to provide the requested information. No issues were reported by peers (see further sections B.1 and C.5).

#### ***ToR C.1.4. Absence of domestic tax interest***

279. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party. Such obligation is explicitly contained in the OECD Model Tax Convention Article 26(4) and the Model TIEA Article 5(2).

280. The 2016 Report concluded that 12 of Botswana's EOI agreements contained wording akin to Model TIEA Article 5(2).<sup>8</sup> This should have been reported as 14 jurisdictions because all DTCs, Protocols, and TIEAs negotiated since 2010 contain the equivalent of Article 5(2).

281. The 2016 Report found that although Botswana's other EOI agreements did not contain wording akin to Article 5(2), there was no limitation in Botswana nor at least nine of its partner jurisdictions' domestic law that prevented EOI absent a domestic tax interest. Mozambique, Namibia and Zimbabwe had not yet been reviewed by the Global Forum and it was therefore not possible to confirm that the EOI agreements with regards to these jurisdictions met the standard. No changes to these three DTCs have been made since the 2016 Report.

282. In practice, no issues linked to domestic tax interest arose during the current review period and this is confirmed by peers.

#### ***ToR C.1.5. Absence of dual criminality principles***

283. There are no dual criminality provisions in any of Botswana's EOI agreements, including those entered into since the 2016 Report. In practice, there has been no case where Botswana declined a request because of a dual criminality requirement. This has been confirmed by peers.

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8. *Ibid.*

***ToR C.1.6. Exchange information relating to both civil and criminal tax matters***

284. All of Botswana’s EOI agreements provide for EOI in both civil and criminal matters. In practice, Botswana answered all requests during the review period, whether they related to civil or criminal tax matters. Peers have not raised any issues.

***ToR C.1.7. Provide information in specific form requested***

285. There are no restrictions in Botswana’s EOI agreements or domestic laws that would prevent it from providing information in a specific form. During the review period, Botswana provided information in the specific form requested by a partner, if so indicated. No peers raised any concerns.

***ToR C.1.8. Signed agreements should be in force***

286. The 2016 Report concluded that the time taken between signing and entry into force of agreements was more than two years, and out of Botswana’s 25 EOI agreements, only 14 were in force. It was recommended that Botswana swiftly bring the remaining agreements into force and ensure that all new agreements are brought into force expeditiously.

287. Since that report, all of Botswana’s TIEAs<sup>9</sup> (excluding the TIEA with Guernsey) and the DTCs with China, Ireland, and the Kingdom of Eswatini have been brought into force. Botswana ratified the TIEA with Guernsey and will send notification to Guernsey in order to bring the agreement into force.

288. The 2016 Report noted that Botswana had signed an agreement with Lesotho in April 2010 but that this agreement did not contain the equivalent of the current version of Article 26 of the OECD or UN Model Tax Conventions. Since that report, Botswana and Lesotho signed in October 2017 an amended agreement that meets the international standard. This agreement has not yet come into force.

289. Botswana’s EOI network now covers 30 jurisdictions through 22 DTCs and eight TIEAs. Since the 2016 Report, Botswana has signed DTCs with Belgium, Luxembourg, Malawi, Malta and the United Arab Emirates. The DTC with Malta has been ratified and Botswana has completed the necessary procedures to bring three agreements into effect and is awaiting notification from its EOI partners. One EOI agreement was very recently signed and Botswana is in the process of bringing it into effect. In addition,

9. These are the TIEAs with Denmark, Faroe Islands, Greenland, Iceland, Isle of Man and Norway.

Botswana has concluded and signed protocols with France and Mauritius, and these have entered into force.

290. In practice, the time taken between signing and ratification by Botswana has decreased from more than two years to less than one year.

291. The following table summarises outcomes of the analysis under element C.1 in respect of Botswana’s bilateral EOI mechanisms:

A	Total number of DTCs/TIEAs	A = B + C	30
B	Number of DTCs/TIEAs signed but not in force	B = D + E	6
C	Number of DTCs/TIEAs signed and in force	C = F + G	24
D	Number of DTCs/TIEAs signed (but not in force) and to the Standard	D	6
E	Number of DTCs/TIEAs signed (but not in force) and not to the Standard	E	0
F	Number of DTCs/TIEAs in force and to the Standard	F	24
G	Number of DTCs/TIEAs in force and not to the Standard	G	0 <sup>a</sup>

Note: a. 3 EOI agreements have not been reviewed by the Global Forum (see paragraph 281).

### ***ToR C.1.9. Be given effect through domestic law***

292. For EOI to be effective, the parties to an EOI agreement must enact any legislation necessary to comply with the terms of the agreement. Botswana has in place the legal and regulatory framework to give effect to its EOI agreements.

293. International agreements do not have the force of law in Botswana until ratified by Parliament and enacted into domestic law. A signed EOI agreement, once vetted by the Office of the Attorney General and approved by the Ministry of Finance and Economic Development, is published in the Gazette and is laid before Parliament. Once approved by Parliament, the EOI agreement comes into effect or is deemed to have come into effect on the date specified in the agreement.

294. Effective implementation of EOI agreements in domestic law has been confirmed in practice as there was no case encountered where Botswana was not able to obtain and provide the requested information due to unclear or limited effect of an EOI agreement in Botswana’s law. No issues were reported by peers.

## C.2. Exchange of information mechanisms with all relevant partners

The jurisdiction's network of information exchange mechanisms should cover all relevant partners.

295. The 2016 Report did not identify any issue in respect of the scope of Botswana's EOI network or its negotiation policy. It was recommended that Botswana continue to develop its EOI network with all relevant partners.

296. Since that report, Botswana has expanded its EOI network from 25 to 30 jurisdictions, comprising of 22 DTCs (and Protocols) and eight TIEAs. Botswana is currently engaged in DTC negotiations with 11 jurisdictions, including two that are ready to be signed.

297. As the standard ultimately requires that jurisdictions establish an EOI relationship up to the standard with all partners who are interested in entering into such relationship, Botswana is recommended to continue to develop its EOI network with all relevant partners.

298. No peer advised that Botswana had refused to negotiate or sign an EOI agreement with it.

299. The new table of determinations and ratings is as follows:

<b>Legal and Regulatory Framework</b>
<b>Determination: In place</b>
<b>Practical implementation of the standard</b>
<b>Rating: Compliant</b>

## C.3. Confidentiality

The jurisdiction's information exchange mechanisms should have adequate provisions to ensure the confidentiality of information received.

300. The 2016 Report concluded that the applicable EOI agreement provisions and statutory rules that apply to officials with access to EOI information and the practice in Botswana regarding confidentiality were in accordance with the standard. Since that report, Botswana has continued to ensure that its EOI confidentiality practices meet the requirements of the standard. There are adequate confidentiality provisions protecting tax information under Botswana's domestic tax laws. No case of breach of confidentiality has been encountered in the EOI context and no concerns have been reported by peers.

301. The new table of determination and rating remains as follows:

<b>Legal and Regulatory Framework</b>
<b>Determination: The element is in place.</b>
<b>Practical implementation of the standard</b>
<b>Rating: Compliant</b>

***ToR C.3.1. Information received: disclosure, use and safeguards***

302. The 2016 Report concluded that all of Botswana’s EOI agreements meet the standards for confidentiality including the limitations on disclosure of information received, and use of the information exchanged, which are reflected in Article 26(2) of the OECD Model Tax Convention and Article 8 of the OECD Model TIEA.

303. There are adequate confidentiality provisions protecting tax information contained in Botswana’s domestic laws which are supported by administrative and criminal sanctions applicable in the case of breach of these obligations. There has been no change in these provisions since the 2016 Report.

304. BURS officials are subject to fines or imprisonment for disclosing taxpayer information in violation of the confidentiality laws (Income Tax Act, s. 5). BURS authorities reported that there are no cases of improper disclosure of EOI information in the current review period.

305. The information contained in an EOI request received by Botswana is treated as secret. Information received from a treaty partner is only used for the purposes provided for it in the EOI agreement.

306. All EOI related tasks are centralised within a single EOI Unit within the BURS and all EOI Unit staff are trained on confidentiality principles. In addition, all BURS employees undergo training of their confidentiality obligations.

307. Only EOI officers have access to the EOI files and EOI database. When an EOI file is not being worked on, it is kept in a fire-proof locked cabinet in the EOI Manager’s office. This office is locked whenever the manager is not in the office.

308. All documents pertaining to an EOI request are stamped “confidential” and the responses provided by Botswana always contain the standard wording stating that the information is furnished under the provisions of a tax treaty and is subject to tax confidentiality under the provisions of that treaty. All responses are sent by registered mail as the BURS does not have the capability to send encrypted emails.

309. If it is necessary to ask other officials in the BURS to gather information to respond to an EOI request, for instance officials in regional offices or officials that have the access to other government databases, they are advised only of the minimum information necessary to collect the information. It would be made clear to the person asked to obtain such information that the information is treaty-protected confidential information. The letter would state that the information must be kept confidential, that the documents must be stored in a secure place, and that copies of the material should not be made, nor should e-mails containing the information be forwarded, without consent of the EOI Manager.

310. If a third party information holder outside of the BURS is requested to provide information, they are not informed that the information is required in order to respond to an EOI request. In addition, MOUs signed with other government authorities for providing assistance and information include confidentiality clauses protecting the nature or content of the information sharing with the BURS from being disclosed. If it were necessary for EOI related information to be disclosed outside of the EOI Unit, the consent of the foreign competent authority would be obtained in advance.

311. No case of breach of the confidentiality obligation in respect of EOI has been encountered by the Botswana authorities and no peers raised any concerns.

### ***ToR C.3.2. Confidentiality of other information***

312. Confidentiality rules should apply to all types of information exchanged, including information provided by a requesting jurisdiction in a request, information transmitted in response to a request and any background documents to such request. Botswana authorities confirm that in practice they consider all types of information relating to an EOI request confidential (including communications between Botswana and the requesting jurisdiction).

## **C.4. Rights and safeguards of taxpayers and third parties**

The information exchange mechanisms should respect the rights and safeguards of taxpayers and third parties.

### ***ToR C.4.1. Exceptions to requirement to provide information***

313. The international standard allows requested parties to not supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise. Among other reasons,

an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege.

314. The 2016 Report concluded that Botswana’s legal framework and practices concerning the rights and safeguards of taxpayers and third parties were in line with the standard. No relevant changes have occurred since the last review.

315. Since the 2016 Report, all of Botswana’s negotiated DTCs (and Protocols) and TIEAs allow for the exceptions from the obligation to provide the requested information akin to the exemption contained in the OECD Model Tax Convention and OECD Model TIEA.

316. There was no instance during the review period where a person refused to provide the requested information because of professional secrecy. Further, Botswana did not decline to provide the requested information because it was covered by legal professional privilege or any other professional secret. No peer indicated any issue in this respect.

317. The new table of determination and rating remains as follows:

<b>Legal and Regulatory Framework</b>
<b>Determination: The element is in place.</b>
<b>Practical implementation of the standard</b>
<b>Rating: Compliant</b>

## C.5. Requesting and providing information in an effective manner

The jurisdiction should request and provide information under its network of agreements in an effective manner.

318. In order for EOI to be effective, jurisdictions should request and provide information under its network of EOI mechanisms in an effective manner. In particular:

- *Responding to requests*: Jurisdictions should be able to respond to requests within 90 days of receipt by providing the information requested or provide an update on the status of the request.
- *Organisational processes and resources*: Jurisdictions should have appropriate organisational processes and resources in place to ensure quality of requests and quality and timeliness of responses.



- *Restrictive conditions*: EOI assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions

319. The 2016 Report concluded that Botswana had adequate resources and organisational processes in place to handle incoming EOI requests, but as Botswana had not yet received any incoming requests, it was recommended to monitor implementation of its procedures once it started receiving requests.

320. During the current review period, Botswana received four requests and fully responded to one request within 180 days; two requests within a year; and one request more than one year after it was received. Status updates were not provided in all cases. According to Botswana officials, the delays in responding and providing status updates are attributable to staffing and workload issues. Notwithstanding the timeliness of response times, peer input was positive regarding Botswana's EOI practices.

321. The new table of determination and rating is as follows:

<b>Legal and Regulatory Framework</b>		
<b>Determination: This element involves issues of practice that are dealt with in the implementation of EOIR in practice. Accordingly, no determination has been made.</b>		
<b>Practical implementation of the standard</b>		
	<b>Underlying Factor</b>	<b>Recommendation</b>
<b>Deficiencies identified in the implementation of EOIR in practice</b>	Botswana has experienced difficulties during the review period to answer EOI requests in a timely manner. This was due to staffing and workload issues within the EOI Unit.	Botswana should ensure that appropriate organisational processes and resources are in place in order to respond to EOI requests in a timely manner in all cases.
	Botswana did not always provide a status update to its EOI partners within 90 days in the event that it was unable to provide a substantial response within that time.	Botswana should provide status updates to its EOI partners in all cases where information cannot be provided within 90 day.
<b>Rating: Partially Compliant</b>		

### *ToR C.5.1. Timeliness of responses to requests for information*

322. Over the period under review (1 January 2015 to 31 December 2017), Botswana received a total of four requests for information. The information requested related to (i) ownership information (two cases), (ii) accounting information (four cases), (iii) banking information (one case) and (iv) other type of information (one case).<sup>10</sup> The legal entities and arrangements for which information was requested are broken down to companies (seven cases) and trusts (one case).<sup>11</sup>

323. The following table relates to the requests received during the period under review and gives an overview of response times needed by Botswana to provide a final response to these requests, together with a summary of other relevant factors impacting the effectiveness of Botswana's EOI practice during the reviewed period.

	Year 1		Year 2		Year 3		Total	
	Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received [A+B+C+D+E]	1	25	2	50	1	25	4	100
Full response: ≤ 90 days	0	0	0	0	0	0	0	0
≤ 180 days (cumulative)	1	25	0	0	0	0	1	25
≤ 1 year (cumulative) [A]	1	25	1	25	1	25	3	75
> 1 year [B]	0	0	1	25	0	0	1	25
Declined for valid reasons	0	0	0	0	0	0	0	0
Status update provided within 90 days (for outstanding cases with full information not provided within 90 days, responses provided > 90 days)	1	100	1	50	0	0	2	50
Requests withdrawn by requesting jurisdiction [C]	0	0	0	0	0	0	0	0
Failure to obtain and provide information requested [D]	0	0	0	0	0	0	0	0
Requests still pending at date of review [E]	0	0	0	0	0	0	0	0

*Notes:* a. Botswana counts each request with multiple taxpayers as one request, i.e. if a partner jurisdiction is requesting information about 4 persons in one request, Botswana counts that as 1 request. If Botswana received a further request for information that relates to a previous request, with the original request still active, Botswana will append the additional request to the original and continue to count it as the same request.

b. The time periods in this table are counted from the date of receipt of the request to the date on which the final and complete response was issued.

10. Please note that some requests entailed more than one information category.

11. Please note that some requests entailed more than one individual or entity type.

324. As shown in the table, Botswana responded to one request within 180 days; two requests within a year; and one request more than one year after it was received. According to Botswana officials, the main reason for these delays are a result of staffing and workload issues, as explained below.

325. Despite the timeliness of response times, peer input was positive with respect to Botswana's EOI practices.

### ***ToR C.5.2. Organisational processes and resources***

326. The Competent Authority of Botswana is the Minister of Finance and Economic Development represented by the Commissioner General of BURS or his authorised representative. In practice, this function is delegated to both the Commissioner of Domestic Taxes and the Commissioner of Operations. The contact details of the Competent Authority are published on the BURS website and in the Global Forum's secure competent authorities database.

327. The Botswana EOI Unit currently comprises of four staff, all of whom work in the Domestic Taxes of BURS and are trained in EOI matters. These are the Director of the Technical Services Section (the manager of the EOI Unit), the Revenue Manager of the Tax Treaties and Agreements Unit (supervisor of the EOI Unit), and two Principal Revenue Officers (the case officers in the EOI Unit). This is an increase of one case officer from the 2016 Report. However, this has not addressed the issue of timeliness.

328. With respect to the timeliness to responding to EOI requests, Botswana officials explained that the delayed response time was due to staffing and workload issues in the EOI Unit. In addition to handling EOI requests, the EOI Unit is responsible for other international tax matters, such as cross border taxation and EOI agreement negotiations, interpretation and implementation. Further, the EOI Unit is reliant on other sections within the BURS and outside to provide the requested information, any delays on the information holder providing the information has implications on how quickly Botswana may respond to an EOI request. Training has been provided to field officers by EOI Unit staff to sensitise them on the need to promptly provide the requested information pertaining to an EOI request. According to Botswana officials, in order to improve timeliness, additional staff in the EOI Unit is needed. Therefore, it is recommended that Botswana ensure that appropriate organisational resources are in place in order to respond to all incoming EOI requests in a timely manner.

### *Incoming requests*

329. The EOI Unit uses a computerised database (based on the EOI database developed by the Global Forum) for easier tracking and monitoring of EOI requests.

330. The procedures for handling incoming EOI requests remain the same as those described in the 2016 Report. An EOI Work Manual based on the Global Forum's EOI Working Manual was developed in 2015 and updated in March 2019. The manual sets out the procedures for handling incoming requests, provides template forms for EOI, and information on confidentiality.

331. The 2016 Report included an in-text recommendation regarding the timeframe to obtain information from a third party. According to the EOI Work Manual, when information needs to be obtained from a third party, the information should be provided to the requesting jurisdiction within six months. The EOI Manager advised that the target is to provide the answer within 90 days and the six month timeframe was intended to allow for situations where additional time was required in order to obtain the information. As such, Botswana was encouraged to continue to ensure that EOI staff did all things practicable to reach the 90 day target.

332. During the current review period, the EOI Unit did seek information from a third party in order to respond to an EOI request. Although the process for obtaining information from a third party has been tested in practice, practice has been very limited. Therefore, it is recommended that Botswana ensure that appropriate organisational processes are in place in order to respond to all incoming EOI requests in a timely manner.

333. The EOI Work Manual specifically instructs EOI officers to provide a status update if a complete response to a request cannot be given in 90 days. In practice, Botswana sent status updates in two out of four cases. According to Botswana officials, status updates were not sent in all cases due to staffing issues in the EOI Unit. As status updates were not provided in all cases, it is recommended that Botswana ensures that status updates are provided in all cases where requests take longer than 90 days to fulfil.

### *Outgoing requests*

334. The 2016 ToR also addresses the quality of requests made by the assessed jurisdiction. Jurisdictions should have in place organisational processes and resources to ensure the quality of outgoing EOI requests.

335. Botswana did not make any EOI requests during the review period; however, the EOI Manual does provide rules for handling outgoing requests and establishes procedures to ensure the quality of EOI requests. All outgoing

requests would be made through the EOI Unit and would follow standard procedures to ensure consistency, all of which are contained in the EOI Work Manual.

### *Communication*

336. Botswana accepts requests in English. If the request is not in English, the requesting competent authority will be asked to translate the request. Botswana sends outgoing requests in English as agreed with the particular treaty partner.

337. Official internal communication within the BURS is carried out by telephone, in person, or by internal courier system.

338. Communication with other Competent Authorities is done mostly through registered mail. E-mails are used for sending acknowledgment letters or to provide status updates. The BURS has not made any requests for clarification; however, email would be used to send this type of request. EOI information is not sent by e-mail because the BURS does not have the capability to send encrypted emails.

### ***ToR C.5.3. Unreasonable, disproportionate or unduly restrictive conditions for EOI***

339. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions. There are no factors or issues identified under this element that could unreasonably, disproportionately or unduly restrict effective EOI in Botswana.

### *Conclusion*

340. During the current review period, Botswana displayed difficulties in responding to EOI requests in a timely manner, which has been verified by peer input. These difficulties are attributable to staffing issues.



## Annex 1: List of in-text recommendations

Issues may have arisen that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, there may be a concern that the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, such recommendations should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be mentioned in the text of the report. However, in order to ensure that the Global Forum does not lose sight of these “in text” recommendations, they should be listed in an annex to the EOIR report for ease of reference.

- **Element A.1.1:** Botswana should monitor to ensure that a liquidated company complies with its obligation to provide books and records (which includes ownership information) to the Master of the High Court.
- **Element A.1.5:** Botswana should ensure that societies be required to maintain a register of members.
- **Element A.1.5:** Botswana should ensure that the beneficial owners of societies are identified in line with the standard.
- **Element A.2:** Botswana should monitor to ensure that a liquidated company complies with its obligation to provide accounting records to the Master of the High Court.
- **Element C.2:** Botswana should continue to develop its EOI network to the standard with all relevant partners.

## Annex 2: List of Botswana's EOI mechanisms

### Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement (DTC, TIEA, other)	Date signed	Date entered into force (ToR C.1.8)
1	Barbados	DTC	23-Feb-2005	01-Jul-2006
		Protocol	04-Sept-2014	11-Dec-2015
2	Belgium	DTC	30-Nov-2017	Not yet in force
3	China (People's Republic of)	DTC	11-Apr-2012	18-Sep-2018
4	Denmark	TIEA	20-Feb-2013	14-May-2015
5	Faroe Islands	TIEA	20-Feb-2013	26-Mar-2016
6	Finland	TIEA	20-Feb-2013	16-May-2015
7	France	DTC	15-Apr-1999	01-Jun-2003
		Protocol	27-Jul-2017	20-June-2018
8	Greenland	TIEA	20-Feb-2013	11-Oct-2015
9	Guernsey	TIEA	10-May-2013	Not yet in force
10	Iceland	TIEA	20-Feb-2013	18-Aug-2015
11	India	DTC	08-Dec-2006	30-Jan-2008
12	Ireland	DTC	10-Jun-2014	03-Feb-2017
13	Isle of Man	TIEA	14-Jun-2013	05-Mar-2016
14	Kingdom of Eswatini	DTC	20-Apr-2010	16-Mar-2017
15	Lesotho	DTC	20-Apr-2010	Not yet in force
16	Luxembourg	DTC	19-Sept-2018	Not yet in force
17	Malawi	DTC	15-Mar-2016	Not yet in force
18	Malta	DTC	02-Oct-2017	13-Nov-2018
19	Mauritius	DTC	26-Sep-1995	01-Jul-1996
		Protocol	15-Aug-2015	13-Jul-2016



	<b>EOI partner</b>	<b>Type of agreement (DTC, TIEA, other)</b>	<b>Date signed</b>	<b>Date entered into force (ToR C.1.8)</b>
20	Mozambique	DTC	27-Feb-2009	24-Nov-2011
21	Namibia	DTC	16-Jun-2004	01-Jul-2005
22	Norway	TIEA	20-Feb-2013	26-Mar-2016
23	Russia	DTC	08-Apr-2003	23-Dec-2009
24	Seychelles	DTC	26-Aug-2004	01-Jul-2005
		Protocol	12-Mar-2013	08-Apr-2014
25	South Africa	DTC	07-Aug-2003	20-Apr-2004
		Protocol	21-May-2013	19-Aug-2015
26	Sweden	DTC	19-Oct-1992	01-Jul-1993
		Protocol	20-Feb-2013	14-May-2015
27	United Arab Emirates	DTC	12-Oct-2018	Not yet in force
28	United Kingdom	DTC	09-Sep-2005	01-Jul-2007
29	Zambia	DTC	09-Mar-2013	14-Aug-2015
30	Zimbabwe	DTC	16-Jun-2004	25-Feb-2008

### **Annex 3: Methodology for the review**

The reviews are based on the 2016 ToR, conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and the 2016-21 Schedule of Reviews.

The current evaluation provides the outcomes of the second peer review of Botswana's implementation of the EOIR standard conducted by the Global Forum.

#### **Laws, regulations and other material received**

Bank of Botswana Act

Banking Act and Banking (AML) Regulations

Collective Investment Undertakings Act

Companies Act

Companies Re-Registration Act

Constitution

EOI Work Manual

Financial Intelligence Act and Financial Intelligence Regulations

Income Tax Act and Income Tax Act Subsidiary Legislation

Non-Bank Financial Institutions Regulatory Authority Act

Proceeds and Instruments of Crime Act

Registration of Business Names Act

Registration of Business Names Re-Registration Act

Societies Act and Registration of Societies Regulations

Trust Property Control Act

## **Administrations and organisations interviewed during the onsite visit**

Bank of Botswana  
Botswana Accountancy Oversight Authority  
Botswana Institute of Chartered Accountants  
Botswana Investment and Trade Centre  
Botswana Unified Revenue Service  
Companies and Intellectual Property Authority  
Department of Industrial Affairs  
Financial Intelligence Agency  
Gaborone City Council  
Law Society of Botswana  
Ministry of Finance and Economic Development  
Non-Bank Financial Institutions Regulatory Authority  
Office of the Attorney General  
Registrar of Deeds  
Registrar of Societies

## **Current and previous reviews**

Botswana previously underwent an EOIR review through three assessments during the first round of reviews: the 2010 Phase 1 Report, the 2014 Supplementary Phase 1 Report, and the 2016 Phase 2 Report. These assessments were conducted according to the ToR approved by the Global Forum in February 2010 (2010 ToR) and the Methodology (2010 Methodology) used in the first round of reviews.

This evaluation was based on information available to the assessment team including the EOI agreements signed, laws and regulations in force or effective as of 30 April 2019, Botswana's EOIR practice in respect of EOI requests made and received during the review period (1 January 2015 to 31 December 2017), Botswana's responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Botswana during the onsite visit that took place from 10 to 12 October 2018 in Gaborone, Botswana.

Information on each of Botswana’s reviews is listed in the table below.

<b>Review</b>	<b>Assessment Team</b>	<b>Period under review</b>	<b>Legal Framework as of</b>	<b>Date of adoption by Global Forum</b>
<b>2010 Report</b>	Ms Hyonae Park of Korea; Ms Oshna Maharaj of South Africa; and Mr Andrew Auerbach of the Global Forum Secretariat.	Evaluation of the legal and regulatory framework only	May 2010	September 2010
<b>2014 Report</b>	Ms Yanga Mputa of South Africa; Ms Ann Andréasson of Sweden; and Ms Melissa Dejong of the Global Forum Secretariat.	Evaluation of the legal and regulatory framework only	February 2014	April 2014
<b>2016 Report</b>	Mr Morne van Niekerk of South Africa; Ms Ann Andréasson of Sweden; and Ms Melissa Dejong of the Global Forum Secretariat.	1 January 2012 to 31 December 2014	December 2015	March 2016
<b>2019 Report</b>	Dr Vivek Upadhyay of India; Mr Stefan Schenker of Switzerland; and Ms Kaelen Onusko of the Global Forum Secretariat.	1 January 2015 to 31 December 2017	April 2019	July 2019

## **Annex 4: Botswana’s response to the review report<sup>12</sup>**

Botswana accepts the result presented by the Global Forum Peer Review Group (PRG) on the 28 June 2019 wherein Botswana was rated ‘Partially Compliant’. It must be noted that following the 2016 Part 1 of the Phase 2 Review, Botswana made tremendous efforts to address recommendations posed by the PRG. These efforts included making legislative changes to embrace the Beneficial Ownership concept as envisaged in the 2016 Terms of Reference as well as, in some instances, setting up new offices solely for purposes of complying with these requirements, installation of e-service systems as well as embarking on expanding Botswana’s network of Exchange of Information Instruments. Based on these initiatives which, to a large extent, demanded new resources, Botswana was of the view that the country has become compliant or at least largely compliant to transparency and exchange of information standards. It was in this light that the country was taken a bit aback by the rating which, unfortunately, is even lower than that of the previous review.

However, Botswana takes this review result in a positive light, as a lesson to learn from and graduate to the desired standard. Botswana is therefore committed to implement all that is required for the country to be compliant to the standard. It is in this view that Botswana pledges to address all the recommendations of the current review in readiness for the next review.

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12. This Annex presents the Jurisdiction’s response to the review report and shall not be deemed to represent the Global Forum’s views.



## **ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

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GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report on the Exchange of Information  
on Request BOTSWANA 2019 (Second Round)**

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 150 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

This report contains the 2019 Peer Review Report on the Exchange of Information on Request of Botswana.

Consult this publication on line at <https://doi.org/10.1787/d32b72f9-en>.

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