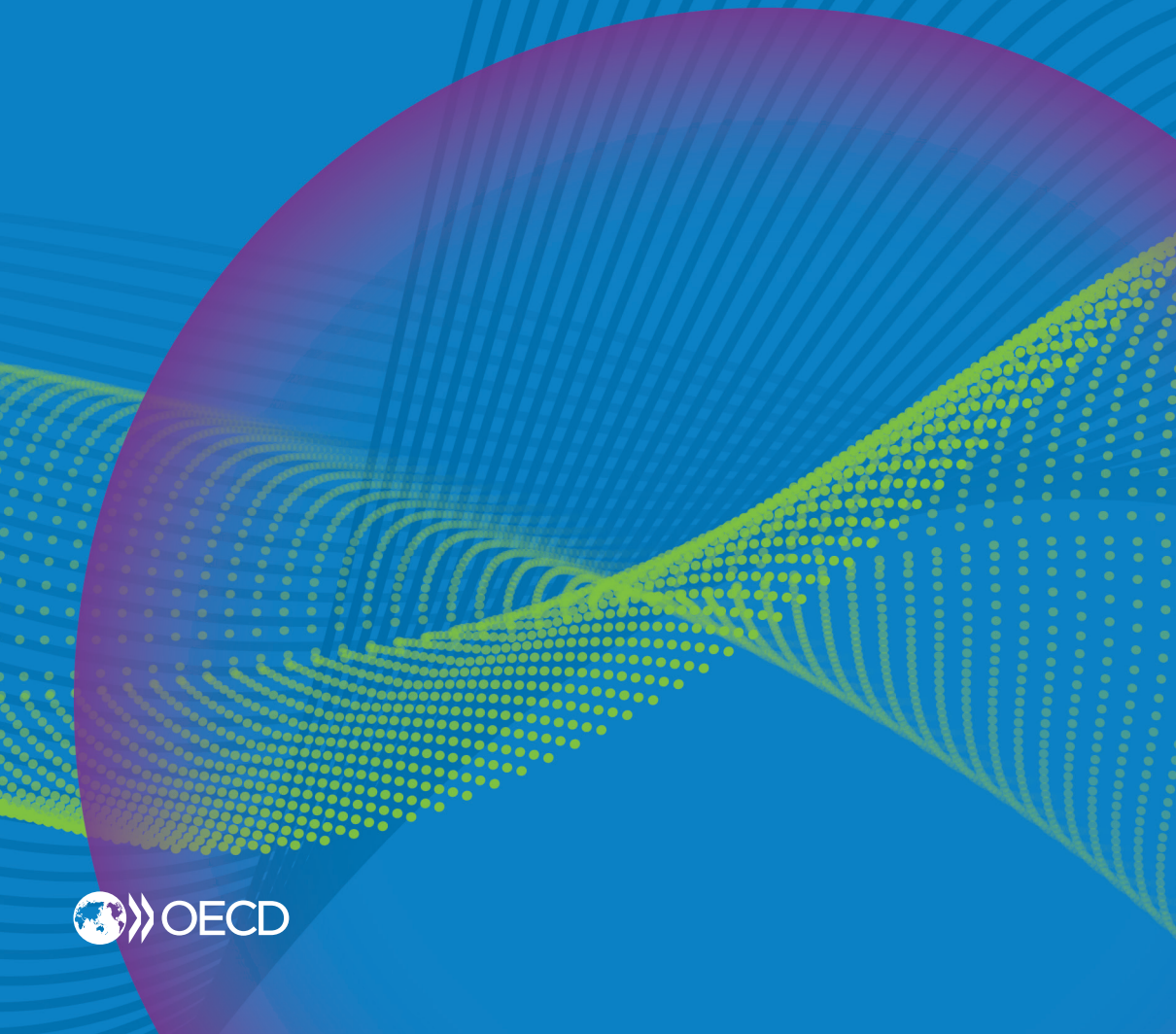
GLOBAL FORUM ON
TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

LESOTHO

2023 (Second Round, Phase 1)



OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: Lesotho 2023 (Second Round, Phase 1)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

This peer review report was approved by the Peer Review Group of the Global Forum on Transparency and Exchange of Information for Tax Purposes on 2 June 2023 and adopted by the Global Forum members on 14 July 2023. The report was prepared for publication by the Secretariat of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

This document, as well as any data and map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Note by the Republic of Türkiye
The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Türkiye recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Türkiye shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union
The Republic of Cyprus is recognised by all members of the United Nations with the exception of Türkiye. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Please cite this publication as:
OECD (2023), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Lesotho 2023 (Second Round, Phase 1): Peer Review Report on the Exchange of Information on Request*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, https://doi.org/10.1787/cd387436-en.

ISBN 978-92-64-70658-3 (print)
ISBN 978-92-64-93566-2 (pdf)

Global Forum on Transparency and Exchange of Information for Tax Purposes
ISSN 2219-4681 (print)
ISSN 2219-469X (online)

Photo credits: OECD with cover illustration by Renaud Madignier.

Corrigenda to OECD publications may be found on line at: www.oecd.org/about/publishing/corrigenda.htm.

Table of contents

Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 160 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 and http://dx.doi.org/10.1787/2219469x.

Abbreviations and acronyms

2016 TOR	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015
AMATM	Agreement on Mutual Assistance in Tax Matters
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Combating the Financing of Terrorism
ATAF	African Tax Administration Forum
BLR Act	Business Licensing and Registration Act, 2019
BLR Regulations	Business Licensing and Registration Regulations, 2020
CBL	Central Bank of Lesotho
CDD	Customer Due Diligence
DNFBPs	Designated Non-Financial Businesses and Professions
DTC	Double Taxation Convention
EOI	Exchange of Information
EOIR	Exchange of Information on Request
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
EU	European Union
EUR	Euro
FATF	Financial Action Task Force
FI Act	Financial Institutions Act, 2012
FI AML Guidelines	Financial Institutions (Anti-Money Laundering) Guidelines, 2000

FI AML/CFT Regulations	Financial Institutions Anti-Money Laundering and Combating of Financing of Terrorism) Regulations, 2015
FI KYC Guidelines	Financial Institutions (Know Your Customer) Guidelines, 2007
FIU	Financial Intelligence Unit
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
ITA	Income Tax Act (Act No. 9 of 1993)
KYC	Know Your Customer
LSL	Basotho Loti (Lesotho currency)
MLPC Act	Money Laundering and Proceeds of Crime Act, 2008
MLAI Guidelines	Money Laundering (Accountable Institutions) Guidelines, 2013
MLPC Regulations	Money Laundering and Proceeds of Crime Regulations, 2019
Multilateral Convention	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
RSL	Revenue Services Lesotho
SACU	Southern Africa Customs Union
SADC	Southern Africa Development Cooperation
TCSP	Trust and Company Service Providers
TIEA	Tax Information Exchange Agreement
TIN	Taxpayer Identification Number
USD	United States Dollar
VAT	Value Added tax

Executive summary

1. This report analyses the implementation of the standard of transparency and exchange of information on request (the standard) in Lesotho on the second round of reviews conducted by the Global Forum. Due to the limited practical experience of Lesotho in exchange of information on request (EOIR), and in accordance with the 2016 Methodology for peer reviews and non-member reviews, as amended in 2021, this report only assesses the legal and regulatory framework in force in Lesotho as at 4 April 2023 against the 2016 Terms of Reference. The assessment of the practical implementation of this framework will be conducted at a later date (Phase 2 review) and launched in June 2026 at the latest (see Annex 3).

2. This report concludes that overall Lesotho has a legal and regulatory framework in place that generally requires the availability, access and exchange of all relevant information for tax purposes in accordance with the standard, however improvement in the availability of several types of information is required.

3. In 2016, the Global Forum evaluated Lesotho in a combined review against the 2010 Terms of Reference for both the legal implementation of the EOIR standard as well as its operation in practice. The report of that evaluation (the 2016 Report) concluded that Lesotho was rated Largely Compliant overall.

Comparison of determinations and ratings for First Round Report and Second Round Report

Element	First Round Report (2016)		Second Round Report (2023)
	Determinations	Rating	Determinations
A.1 Availability of ownership and identity information	Needs improvement	Largely Compliant	Needs improvement
A.2 Availability of accounting information	Needs improvement	Largely Compliant	Needs improvement
A.3 Availability of banking information	In place	Largely Compliant	Needs improvement
B.1 Access to information	In place	Compliant	In place
B.2 Rights and Safeguards	In place	Compliant	In place
C.1 EOIR Mechanisms	In place	Compliant	In place
C.2 Network of EOIR Mechanisms	In place	Compliant	In place
C.3 Confidentiality	In place	Compliant	Needs improvement
C.4 Rights and safeguards	In place	Compliant	In place
C.5 Quality and timeliness of responses	Not applicable	Largely Compliant	Not applicable
OVERALL RATING	**LARGELY COMPLIANT**		**NOT APPLICABLE**

Note: The three-scale determinations for the legal and regulatory framework are: In place, In place but needs improvement, Not in place. The four-scale ratings are Compliant, Largely Compliant, Partially Compliant and Non-Compliant.

Progress made since previous review

4. The 2016 Report concluded that the legal and regulatory framework of Lesotho was in place but needed improvement with two recommendations. Lesotho has not addressed the recommendations.

5. The first recommendation related to availability of ownership and identity information with regard to share warrants that could be issued by public companies (Element A.1). No bearer shares have been issued in practice, but to close this potential gap, the authorities are in the process of amending legislation to clearly abolish this possibility. The recommendation remains in the meantime.

6. The second recommendation related to ensuring the availability of accounting information in Lesotho for trusts that receive only foreign-source income (Element A.2). This recommendation remains.

7. Lesotho reported progress in implementing recommendations related to the implementation of the legal framework in practice, in particular in relation to supervision and enforcement. This will be analysed during the Phase 2 of the review process.

Key recommendations

8. Key recommendations issued to Lesotho refer to a new aspect of the standard inserted in the 2016 Terms of Reference in respect of the availability of beneficial ownership of relevant legal entities and arrangements.

9. In Lesotho, beneficial ownership information on relevant legal entities and arrangements and on bank accounts is primarily available under the anti-money laundering (AML) framework pursuant to the obligation for the AML-accountable persons to conduct customer due diligence (CDD), which includes the identification of the beneficial owners of their customers. However, it is not mandatory for relevant legal entities and arrangements to establish a continuous business relationship with an AML-accountable person. The coverage of the Lesotho framework is therefore narrower than what the standard requires. In addition, although the AML framework has a definition and methodology for the identification of beneficial owners, there is no further guidance for their implementation, including on simplified CDD. Consequently, the beneficial owners may not always be identified in accordance with the standard. In addition, although the AML framework requires an AML-accountable person to monitor its business relationship in an ongoing manner and to verify information when it has doubts about the veracity or adequacy of customer identification and verification documentation or information it had previously obtained, when no such condition applies, the legal and regulatory framework does not prescribe any specified frequency for renewing the CDD information held on customers. Therefore, although the AML framework requires the availability of beneficial ownership information for some relevant legal entities and arrangements and for bank accounts, the available information may not always be adequate, accurate and up to date.

10. In addition, whereas the Companies Act obligates companies established or registered in Lesotho to keep information on their beneficial ownership and control, it does not provide a definition of beneficial owners, a methodology for their identification and modalities for maintaining the information. It cannot be used as a reliable source of information for exchange purposes. Moreover, there is no requirement for nominee shareholders to disclose their nominee status to the company, which may lead to situations where their nominators are not identified in accordance with the standard.

11. Furthermore, contrary to what is organised for companies, not all accounting records and underlying documentation for partnerships, trusts and societies may be available after they cease to exist.

12. Finally, confidentiality provisions in Lesotho's legal framework are not fully consistent with the standard as they do not ensure that information

received from EOI partners may not be disclosed to persons not authorised by the exchange of information agreements.

13. It is therefore recommended that Lesotho address these shortcomings.

Exchange of information in practice

14. Lesotho has a network of international agreements for exchange of information on request which covers 22 jurisdictions through 6 bilateral double taxation conventions (DTCs), 2 bilateral tax information exchange agreements (TIEAs), the regional African Tax Administration Forum Agreement on Mutual Administrative Assistance in Tax Matters (ATAF AMATM) and the Southern Africa Development Community Agreement on Assistance in Tax Matters (SADC Agreement). Exchange can take place with 12 partners with whom an EOI instrument is in place and in force. This framework has no material deficiencies, so no recommendation was issued on this aspect.

15. Lesotho has limited experience in exchange of information – over the years 2019 to 2022, Lesotho sent 12 EOI requests but did not receive any request from its EOI partners. As a result of this limited experience, the assessment of EOI in practice is not covered by this report and will be subject to a future Phase 2 review.

Next steps

16. This report assesses Lesotho's legal and regulatory framework for transparency and exchange of information for tax purposes. Lesotho receives an "in place" determination for Elements B.1, B.2, C.1, C.2 and C.4 and an "in place but needs improvement" determination for Elements A.1, A.2, A.3 and C.3. Each element will be rated and the overall rating given at the conclusion of the Phase 2 review.

17. This report was approved at the Peer Review Group of the Global Forum on 2 June 2023 and was adopted by the Global Forum on 14 July 2023. A follow up report on the measures taken by Lesotho to address the recommendations made in this report should be provided to the Peer Review Group no later than 30 June 2024 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 *(ToR A.1)*		
The legal and regulatory framework is in place but needs improvement	While there are no bearer shares in circulation at present, the mechanisms in place may be insufficient to ensure the availability of identity information of all holders of bearer shares.	Lesotho should take steps to ensure that robust mechanisms are in place to identify owners of bearer shares or eliminate companies' ability to issue such shares.
	There is no requirement for nominee shareholders to disclose their nominee status and the identity of their nominators to the company. In the absence of such a requirement, the company would not be able to know that such a person is acting as a nominee of another person and would not have the identity information on the nominators. If the company is unaware of this status, it cannot inform the Registrar of Companies when submitting information regarding change in shareholders.	Lesotho is recommended to ensure that nominee shareholders disclose their nominee status to the company and identity information on the nominators is available to the company and the Registrar of Companies.

Determinations and ratings	Factors underlying recommendations	Recommendations
	Beneficial ownership information on legal entities and arrangements may be available with an AML-accountable person in Lesotho to the extent that there is a continuing business relationship with such a person. However, such a relationship is not mandatory. For instance, the trustee of a foreign trust that is not an AML-accountable person is not subject to any obligation to identify the parties to and the beneficial owners of the trusts. Consequently, beneficial ownership information available does not cover all relevant entities and arrangements. The AML framework provides a definition and methodology for the identification of beneficial owners. However, there is no further guidance to AML-accountable persons for their implementation. Consequently, the beneficial owners may not always be identified in accordance with the standard. The AML framework requires an AML-accountable person to monitor its business relationship on an on-going basis and to verify its customers where it has doubts about the veracity or adequacy of customer identification and verification documentation or information it had previously obtained. However, the legal and regulatory framework does not prescribe any specified frequency for renewing the CDD information if there is no such doubt, so there could be situations where the available beneficial ownership information is not up to date. AML-accountable persons are permitted to conduct simplified due diligence for low-risk customers. However, there is no guidance on the content of such due diligence and the impact of such simplified due diligence on the identification of beneficial owners of low-risk customers is unknown. The Companies Act requires a company, its directors and shareholders to ensure that there is adequate transparency concerning the	Lesotho is recommended to ensure that adequate, accurate and up-to-date information on the beneficial owners of all relevant entities and arrangements be available in line with the standard.

Determinations and ratings	Factors underlying recommendations	Recommendations
	beneficial ownership and control of the company. The law neither provides a definition of nor the methodology to identify the beneficial owners. It does not either set the modalities to maintain the information. Thus, the Companies Act obligations cannot compensate the deficiencies in the AML framework.	
	In the case where the beneficial ownership information of a legal entity or arrangement is available with an AML-accountable person, except for AML-obliged persons which are companies, the retention of the beneficial ownership information is not ensured for at least five years in the case where the AML-accountable person has ceased to exist.	Lesotho should ensure that beneficial ownership information for all relevant entities and arrangements is kept for at least five years, including in the case where the AML-accountable person has ceased to exist.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The legal and regulatory framework is in place but needs improvement	Only trusts that receive taxable income would be subjected to obligations under the Income Tax Act to keep accounting records. The availability of accounting information is not ensured for trusts that receive only foreign-source income and where the settlor is non-resident.	Lesotho should ensure the availability of accounting records of all trusts in Lesotho, even where the trust is not carrying on business or is not subject to tax in Lesotho.
	Not all accounting information is available after a legal entity or arrangement ceased to exist, except for companies. For societies, the Registrar-General would keep annual returns and auditor's reports that it received, but it does not receive underlying documentation. There is no similar filing requirement for partnerships and trusts. Consequently, accounting records and underlying documentation for partnerships, trusts and societies may not be available in accordance with the standard.	Lesotho should ensure that the accounting information, including the underlying documentation, is kept for at least five years after the relevant legal entities or arrangements ceases to exist.

Determinations and ratings	Factors underlying recommendations	Recommendations
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is in place but needs improvement	The AML framework provides a definition and methodology for the identification of beneficial owners. However, there is no further guidance to banks for their implementation. Consequently, the beneficial owners may not always be identified in accordance with the standard. The AML framework requires a bank to verify its customers where it has doubts about the veracity or adequacy of customer identification and verification documentation or information it had previously obtained. However, the legal and regulatory framework does not prescribe any specified frequency for renewing the CDD information in the absence of doubt, so there could be situations where the available beneficial ownership information for bank accounts is not up to date. Banks are permitted to conduct simplified due diligence for low-risk customers. However, there is no guidance on the content of such due diligence and their impact on the identification of beneficial owners of bank accounts is unknown.	Lesotho is recommended to ensure that, in all cases, adequate, accurate and up-to-date beneficial ownership for all bank accounts is available 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) *(ToR B.1)*		
The legal and regulatory framework is in place		
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 *(ToR B.2)*		
The legal and regulatory framework is in place		

Determinations and ratings	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is in place		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is in place		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The legal and regulatory framework is in place but needs improvement	Confidentiality provisions in Lesotho's domestic legal framework do not ensure that information received from EOI partners may not be disclosed to persons not authorised by the exchange of information agreements. Lesotho authorities consider that in the hierarchy of laws in Lesotho, international agreements formed with legal effect of statutory law precede statutory law. However, there is neither a legal provision nor a court decision to support this.	Lesotho should ensure that disclosure of information received pursuant to its exchange of information agreements is consistent with the standard.
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The legal and regulatory framework is in place		
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework:	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	

Overview of Lesotho

18. This overview provides some basic information about Lesotho that serves as context for understanding the analysis in the main body of the report.

19. Lesotho is a small landlocked country, surrounded by South Africa. Lesotho has 10 administrative districts, each headed by a District Administrator. Maseru is the political and business capital city of Lesotho. The official languages are Sesotho and English. Lesotho nationals are referred to as Basotho (Mosotho in singular). The official currency in Lesotho is the Basotho Loti (LSL)[1] which is fixed on par with the South African Rand.

20. Lesotho is a lower-middle income country[2] in which about three-quarters of the 2 159 067 people (latest estimate from 2021) live in rural areas and engage in subsistence agriculture. Lesotho's GDP as of 2021 is about USD 2.52 billion. Lesotho relies on South Africa for much of its economic activity. In 2019, Lesotho imported 85% of the goods it consumed from South Africa, including most agricultural inputs. Its second most important trade partner is the People's Republic of China, responsible for 5% of all imports to the country. Lesotho is a member of the Southern Africa Customs Union (SACU)[3] and the Southern Africa Development Community (SADC).[4]

1. The exchange rate used for converting the LSL to the Euro is the rate applicable as of 28 November 2022 available at https://www.oanda.com/currency-converter/fr/?from=LSL&to=EUR&amount=1.
2. The World Bank in Lesotho available at https://www.worldbank.org/en/country/lesotho/overview.
3. The SACU consists of Botswana, Lesotho, Namibia, South Africa and Swaziland. The Economic structure of the Union links the Member states by no customs duties between them and a single external tariff. More information is available at https://www.sacu.int/.
4. The SADC is a Regional Economic Community comprising 16 Member States: Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, United Republic of Tanzania, Zambia and Zimbabwe. The mission of SADC is to promote sustainable and equitable economic growth and socio-economic development through efficient, productive systems, deeper co-operation and integration, good governance and durable peace and security; so that the region emerges as a competitive and effective player in international relations and the world economy. More information is available at https://www.sadc.int/member-states.

Legal system

21. The Government of the Kingdom of Lesotho is a constitutional monarchy, and the sovereign is the Head of State. The Prime Minister is the head of government and has executive authority. The sovereign serves a largely ceremonial function and does not possess any executive authority or participate in political initiatives. The Prime Minister heads the Cabinet which is responsible for all government policies and the day-to-day running of the affairs of the State.

22. The Constitution is the supreme law of Lesotho and if any other law is inconsistent with the Constitution, that other law shall, to the extent of the inconsistency, be void (section 2, Constitution). The hierarchy of laws in Lesotho comprises, from the top, (i) the Constitution, (ii) statutory law, (iii) common law (the Roman-Dutch law and the English Common Law) and customary law, which operate on equal footing. Section 70 of the Constitution vests the powers to make laws on Parliament. The dual legal system in Lesotho is based on Roman-Dutch Law and English Common Law, combined with customary law, all operating together on equal footing. Customary law consists of the customs of the Basotho, written and codified in the Laws of Lerotholi and is applied in the Local Courts. Lesotho authorities indicate that treaties prevail over domestic law but there is neither a supporting legal provision nor court decision. As noted in paragraphs 39, 281 and 297, the Tax Administration Bill under consideration by Parliament will explicitly provide that tax treaties prevail over domestic law.

23. The Constitution provides for an independent judicial system. At the head of the judiciary is the Court of Appeal, followed by the High Court with unlimited jurisdiction in both civil and criminal matters, then the Subordinate Courts (Magistrate Courts) with different categories of limited jurisdiction in civil and criminal matters according to the hierarchy of the magistracy, and then the Judicial Commissioners Courts, the Central Courts and the Local Courts. The latter three courts largely deal with customary law. In addition, there are specialised tribunals that deal with specialised areas of the law in terms of relevant statutes. These include the Revenue Appeals Tribunal which sits as a judicial authority for hearing and deciding appeals against the assessments, decisions, rulings, determinations and directions of the Commissioner General of the Revenue Services Lesotho (RSL) under the Customs and Excise Act 1982, Income Tax Act (ITA) 1993 and Value Added Tax (VAT) Act 2001 (section 3(1), Revenue Appeals Tribunal Act 2005). Decisions of the Tribunal are final and conclusive (section 17(4)) and should be published in a general format without revealing the identity of the appellant (section 17(3)). Parties dissatisfied with decisions of the Tribunal may also appeal to the High Court and Court of Appeal (sections 19 and 20).

Tax system

24. Lesotho's tax system comprises direct and indirect taxes. Residents are taxed on world-wide income, and non-residents are taxed on Lesotho-sourced income. The self-assessment system is used for residents and electing non-residents; otherwise, withholding taxes are applied on non-residents. Individual income tax applies to employed and self-employed persons (e.g. sole traders and partners, unincorporated professionals). The applicable rates range between 20% and 30% with a non-refundable tax credit of LSL 10 560 (EUR 592).[5]

25. All companies pay taxes regardless of their legal status (private, public or government-linked[6]). A legal entity (i.e. not partnerships and trusts) is considered a tax resident of Lesotho if it is incorporated or formed under the laws of Lesotho, has its management and control in Lesotho, or undertakes the majority of its operations in Lesotho. The general corporate tax rate is 25% (10% for income from manufacturing).

26. General services income rendered in Lesotho by non-residents is taxed at 10% on the gross amount. Passive income payable to non-residents is taxed at a standard rate of 25% and applies to dividends, interest, royalty, natural resource payment, management and administrative charges. Manufacturing dividends and royalties payable to non-residents are taxed at 15%. Lesotho has a limited capital gains tax regime which imposes a tax on the gains from disposal of assets by non-residents at 25%.

27. The RSL (previously known as the Lesotho Revenue Authority) administers the three laws that govern the tax system – the ITA, the VAT Act and the Customs and Excise Act.

28. Lesotho does not have a separate law for exchange of information (EOI) for tax purposes. Apart from EOIR, Lesotho's EOI instruments provide for the possibility to engage in spontaneous and automatic exchange of information. However, Lesotho has neither exchanged information spontaneously nor automatically. In addition, Lesotho's ITA provides for the possibility

5. According to section 129 of the ITA, the following individuals are exempted from filing an annual tax return: a resident individual whose income is less than the amount of personal credit allowed to the individual or whose income for the year consists solely of employment income below LSL 50 000 (EUR 2 807) derived from a single employer upon which tax has been withheld or a pension from which tax has been withheld. Information regarding individuals exempt from filing an annual tax return is available pursuant to an obligation imposed on all employers to submit an annual return listing their employees and the emoluments paid to such employees during the year.

6. This refers to companies in which the Government of Lesotho is a shareholder. It can be either a private or a public company.

for Lesotho to participate in the assistance in recovery of tax claims (section 112(2) and (3)) but Lesotho has neither sent nor received a request for assistance in recovery of tax claims.

29. Tax agreements have to be signed by the Minister of Finance, ratified by the Minister of Foreign Affairs and then tabled before Parliament in order to enter into force.

Financial services sector

30. Lesotho has 4 commercial banks, 2 foreign exchange agencies, 2 collective investment schemes, 47 insurance brokers, 6 insurance companies and 126 microfinance companies. The three South African banks operating in Lesotho accounted for 90.6% of the banking sector total assets amounting, in December 2021 at LSL 21.7 billion (EUR 1.52 billion). The banking assets comprise loans, advances, placements in South Africa and government securities. The banking sector mainly operates locally.

31. At the centre of the financial sector in Lesotho is the Central Bank of Lesotho (CBL), which regulates, supervises and administers financial laws in Lesotho. All financial institutions that want to conduct activities in Lesotho must be licensed or registered by the CBL. The financial institutions in Lesotho are the commercial banks, moneylenders, individual micro-lenders, insurance companies and brokers, foreign exchange bureau, financial leasing companies, credit information bureau, collective investment schemes and asset management bodies.

Anti-Money Laundering Framework

32. The anti-money laundering (AML) framework in Lesotho consists of the Money Laundering and Proceeds of Crime Act 2008 (MLPC Act) and the Financial Institutions Act 2012 (FI Act) as well as regulations and guidelines issued thereunder.

33. Under the MLPC Act, Lesotho has issued the Money laundering (Accountable Institutions) Guidelines in 2013 (MLAI Guidelines) in 2013. In order to address deficiencies established by the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) Mutual Evaluation Report of Lesotho in September 2011,[7] Lesotho amended the MLPC Act in December 2016 and further issued the Money Laundering and Proceeds of Crimes Regulations 2019 (MLPC Regulations) in March 2019. However,

7. Lesotho's Mutual Evaluation Report: https://www.esaamlg.org/reports/Deatiled-MER-for-the-Kingdom-of-Lesotho.pdf.

a First Round Mutual Evaluations – Post Evaluation Progress Report of Lesotho covered the period August 2016 to July 2017 and second one covered the period August 2017 to July 2018,[8] which concluded with Non-Compliant ratings for Recommendation 12 (customer due diligence and record-keeping) and Recommendation 33 (legal persons – access to beneficial ownership and control information) while Recommendation 34 (legal arrangement – access to beneficial ownership and control information) was noted as Partially Compliant. Lesotho is undergoing the second round of mutual evaluation by ESAAMLG.

34. Pursuant to section 71 of the FI Act, the CBL has issued the Financial Institutions (Anti-Money Laundering) Guidelines in 2000 (FI AML Guidelines), the Financial Institutions (Know Your Customer) Guidelines in 2007 (FI KYC Guidelines) and the Financial Institutions (Anti-Money Laundering and Combating of Financing of terrorism) Regulations in 2015 (FI AML/CFT Regulations) as amended in 2019. The FI KYC Guidelines were repealed in September 2021.[9]

35. The AML framework imposes an obligation on "accountable institutions" which is defined to include financial institutions, legal practitioners and accountants as well as other designated non-financial businesses and professions (DNFBPs)[10] such as trust and company service providers (TCSPs) to carry out a range of know your customer (KYC) and customer due diligence (CDD) prior to establishing a business relationship or carrying out an occasional transaction. The term "AML-accountable institution" (referred to in this report as AML-accountable persons) includes individuals employed or contracted by the AML-accountable persons (see paragraph 104).

36. The MLPC Act also establishes the Financial Intelligence Unit (FIU) which is the main regulatory body to ensure that the AML-accountable persons comply with the AML legal provisions, regulations and guidelines. In addition, the MLPC Act designates the RSL, the Directorate on Corruption and Economic Offences and the Police as MLPC "competent authorities" responsible for, among other things, the prevention, investigation and prosecution of money laundering and related predicate offences. The MLPC Act also designates relevant sector supervisory authorities, including the

8. Lesotho's First Round Mutual Evaluations – Post Evaluation Progress Report Covering the Period August 2016 to July 2017: https://www.esaamlg.org/reports/LESOTHO%20R.pdf and Lesotho's First Round Mutual Evaluations – Post Evaluation Progress Report of Lesotho Covering the Period August 2017 to July 2018: https://www.esaamlg.org/reports/Progress%20Report%20Lesotho-2018.pdf.
9. Legal Notice Number 101 of 2021, 17 September 2021.
10. Paragraph 2 of the MLPC Regulations defines "DNFBPs" to mean "designated non-financial business and professions including a business and a profession listed in Schedule 2".

Law Society of Lesotho and the Lesotho Institute of Accountants, to work together with the FIU to supervise the compliance of AML-accountable persons under their supervision with the AML framework.

37. Lesotho's most recent AML Mutual Evaluation Report was published by ESAAMLG in 2011 and ESAAMLG is currently undertaking Lesotho's mutual evaluation and the report is expected to be discussed and adopted in August/September 2023.

Recent developments

38. As noted in paragraph 32, Lesotho has recently amended its AML framework. The MLPC Regulations which became effective in March 2019 provide a definition of "beneficial owner" and establish obligations for AML-accountable persons to identify and verify the identity of their customers and their beneficial owners.

39. Lesotho authorities indicate that a draft Tax Administration Bill, 2022 is under consideration by the Parliament of Lesotho. The Bill, when enacted into law, will empower the responsible Minister, on behalf of the Government of Lesotho, to enter into, amend or terminate a mutual administrative assistance agreement with a foreign government or governments. It will also clarify that where there is any conflict between the terms of such an agreement and a tax law, the mutual administrative assistance agreement will override the tax law. It will further explicitly empower the Commissioner General of RSL to use powers available under the Bill or under any other law to obtain information for the purposes of exchange with Lesotho's EOI partners.

40. Finally, Lesotho authorities indicate that amendments to the Companies Act are being considered, specifically to require availability of beneficial ownership information and to repeal the possibility to issue bearer shares.

41. The present review report is based on the framework in force.

Part A: Availability of information

42. 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 banking 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.

43. The 2016 Report concluded that Lesotho's legal and regulatory framework for ensuring the availability of legal ownership and identity information was in place for all relevant entities and arrangements, but certain aspects of the legal implementation of the element needed improvement. While there are no bearer shares in circulation, the existing mechanisms may not be sufficient to ensure the availability of identity information of holders of bearer shares. Since the 2016 Report, Lesotho has not addressed the recommendation to either strengthen the system or prohibit bearer shares (although some steps have been taken in this direction through proposed amendments to the Companies Act). The recommendation therefore remains.

44. Not discussed in the 2016 Report, but now an integral part of the standard as strengthened in 2016, is the availability of beneficial ownership information on all relevant entities and arrangements. In Lesotho, whereas the Companies Act obligates companies to keep information on their beneficial ownership and control, it does not provide a definition of beneficial owners, a methodology for their identification and modalities for maintaining the information. It cannot be used as a reliable source of information for exchange purposes. In addition, there is no requirement for nominee shareholders to disclose their nominee status to the company which may lead to situations where their nominators are not identified in accordance with the standard.

45. Thus, beneficial ownership information is primarily available through the AML framework which requires AML-accountable persons to obtain and keep the information on the beneficial owners of their clients. However, there is no legal obligation for all relevant legal entities and arrangements to engage an AML-accountable person in a continuous manner, which means beneficial ownership will not be available for all of them. In addition, some aspects of the legal framework need improvement, including the lack of guidance on some elements of the definition and the methodology for the identification of the beneficial owners. Further, although the AML framework requires an AML-accountable person to monitor its business relationships in an ongoing manner and to verify information on its customers where it has doubts about the veracity or adequacy of customer identification and verification documentation or information it had previously obtained, in the absence of doubt, there is no requirement to renew the beneficial ownership information obtained pursuant to customer due diligence (CDD) at any specified frequency. Finally, the AML framework does not provide guidance on the simplified CDD procedures to be followed by AML-accountable persons. This may lead to situations where the beneficial owners of relevant entities and arrangements are not identified in accordance with the standard and the beneficial ownership information held by AML-accountable persons may not always be accurate, adequate and up to date.

46. The 2016 Report assessed the implementation of the legal framework on availability of ownership information in practice. Lesotho was recommended to monitor the implementation of a then new programme to monitor compliance with the obligations of the Companies Act and exercise enforcement powers as appropriate to ensure that ownership and identity information for domestic and foreign (external) companies is available in Lesotho. In addition, Lesotho was recommended to put in place an oversight programme to ensure compliance with the obligations to maintain ownership and identity information of partnerships, all types of trusts and societies and exercise its enforcement powers as appropriate to ensure that such information is available in practice. Element A.1 was rated Partially Compliant. These aspects are not part of the current review and will be assessed in the Phase 2 of the review.

47. The conclusions are as follows:

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement

Deficiencies identified/Underlying factor	Recommendations
While there are no bearer shares in circulation at present, the mechanisms in place may be insufficient to ensure the availability of identity information of all holders of bearer shares.	Lesotho should take steps to ensure that robust mechanisms are in place to identify owners of bearer shares or eliminate companies' ability to issue such shares.
There is no requirement for nominee shareholders to disclose their nominee status and the identity of their nominators to the company. In the absence of such a requirement, the company would not be able to know that such a person is acting as a nominee of another person and would not have the identity information on the nominators. If the company is unaware of this status, it cannot inform the Registrar of Companies when submitting information regarding change in shareholders.	Lesotho is recommended to ensure that nominee shareholders disclose their nominee status to the company and identity information on the nominators is available to the company and the Registrar of Companies.
Beneficial ownership information on legal entities and arrangements may be available with an AML-accountable person in Lesotho to the extent that there is a continuing business relationship with such a person. However, such a relationship is not mandatory. For instance, the trustee of a foreign trust that is not an AML-accountable person is not subject to any obligation to identify the parties to and the beneficial owners of the trusts. Consequently, beneficial ownership information available does not cover all relevant entities and arrangements. The AML framework provides a definition and methodology for the identification of beneficial owners. However, there is no further guidance to AML-accountable persons for their implementation. Consequently, the beneficial owners may not always be identified in accordance with the standard. The AML framework requires an AML-accountable person to monitor its business relationship on an on-going basis and to verify its customers where it has doubts about the veracity or adequacy of customer identification and verification documentation or information it had previously obtained. However, the legal and regulatory framework does not prescribe any specified frequency for renewing	Lesotho is recommended to ensure that adequate, accurate and up-to-date information on the beneficial owners of all relevant entities and arrangements be available in line with the standard.

Deficiencies identified/Underlying factor	Recommendations
the CDD information if there is no such doubt, so there could be situations where the available beneficial ownership information is not up to date. AML-accountable persons are permitted to conduct simplified due diligence for low-risk customers. However, there is no guidance on the content of such due diligence and the impact of such simplified due diligence on the identification of beneficial owners of low-risk customers is unknown. The Companies Act requires a company, its directors and shareholders to ensure that there is adequate transparency concerning the beneficial ownership and control of the company. The law neither provides a definition of nor the methodology to identify the beneficial owners. It does not either set the modalities to maintain the information. Thus, the Companies Act obligations cannot compensate the deficiencies in the AML framework.	
In the case where the beneficial ownership information of a legal entity or arrangement is available with an AML-accountable person, except for AML-obliged persons which are companies, the retention of the beneficial ownership information is not ensured for at least five years in the case where the AML-accountable person has ceased to exist.	Lesotho should ensure that beneficial ownership information for all relevant entities and arrangements is kept for at least five years, including in the case where the AML-accountable person has ceased to exist.

Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

The Phase 2 recommendations issued in the 2016 Report are reproduced below for the reader's information.

Deficiencies identified/Underlying factor	Recommendations
Domestic and external companies were not regularly monitored during the review period. However, in December 2015 a programme was put in place to monitor compliance of the obligations in the Companies Act. As a result, 17 591 out of 29 030 companies were struck off from the Companies Registry and a new regular oversight programme was established to systematically monitor compliance with these obligations.	Lesotho should monitor the implementation of this new oversight programme and exercise its enforcement powers as appropriate to ensure that ownership and identity information for domestic and foreign (external) companies is available in practice.

Deficiencies identified/Underlying factor	Recommendations
Lesotho authorities do not have regular oversight to monitor the compliance of legal obligations to ensure that ownership and identity information is available for general partnerships, any types of trusts (including voting trusts) and societies. Existing enforcement provisions to ensure that ownerships and identity information is available for these type of entities or arrangements have never been applied in practice.	Lesotho should put in place an oversight programme to ensure compliance with the obligations to maintain ownership and identity information of partnerships, all types of trusts and societies, and exercise its enforcement powers as appropriate to ensure that such information is available in practice.

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

48. The 2016 Report indicated that companies are incorporated and registered under the Companies Act 2011 and the Companies Regulations 2012. Since the 2016 Report, Lesotho has enacted the Business Licensing and Registration Act 2019 and the Business Licensing and Registration Regulations 2020 (as amended in 2021) to provide additional rules regarding the incorporation, registration and operations of companies. Relevant changes are mentioned in the report.

49. The following types of companies can be incorporated and registered under Lesotho's laws:

- **Private companies** can be formed by up to 50 members. Private companies restrict the right to transfer shares and do not offer their shares or debentures to the public (section 2, Companies Act). They are identified by having both the words "Proprietary" or "Pty" and "Limited" or "Ltd" at the end of the company's name (section 15(1), Companies Act).
- **Public companies** are defined as any company that is not a private company (section 2, Companies Act). They offer shares to the public and may be quoted on a stock exchange. They are identified by having the word "Limited" or "Ltd" at the end of the company name (section 15(1), Companies Act).
- **Non-profit making companies** are associations that are registered as companies as they operate in the interests of the public or a section of the public. The payment of dividends to members is prohibited. A non-profit company enjoys all the privileges associated with a company and is subject to all the obligations of a company, except that it cannot use the word "Limited" as part of its name (sections 15(2) and (3), Companies Act).

50. A foreign company (a body corporate incorporated outside Lesotho, referred to as external companies in section 2 of the Companies Act) that establishes a place of business within Lesotho must be registered in Lesotho (section 11(1), Companies Act).

51. The Lesotho authorities have had difficulties providing and explaining statistics on the number of registered companies and this will be further discussed in the Phase 2 of the review.

Registered companies	2016	December 2022
Private companies	11 228	27 813
Public companies	155	533
Non-profit making companies	55	142
Foreign (external) companies (tax resident)	56	123

52. Upon registration, a company acquires a separate legal personality (section 9(1), Companies Act) and, subject to the Companies Act and the company's articles of association, acquires the capacity, rights, powers and privileges of a natural person, including: (a) the right to sue and be sued; (b) the right or power to acquire, hold, use or dispose of any interest in a property, shares or obligations in another company; (c) the power to enter into contracts, incur liabilities, issue bonds and obligations and secure its obligations with its property; and (d) the power to lend and invest its fund (section 9(2), Companies Act).

Legal Ownership and Identity Information Requirements

53. The legal ownership and identity requirements for companies are found mainly in the Companies Act 2011 and the Companies Regulations 2012, as described in the 2016 Report and whose rules are unchanged, and the more recent Business Licensing and Registration Act 2019 (BLR Act) and the Business Licensing and Registration Regulations 2020 (as amended in 2021) (BLR Regulations). The following table shows a summary of the legal requirements to maintain legal ownership information in respect of companies.

Companies covered by legislation regulating legal ownership information[11]

Type	Company Law	Tax Law	AML Law/CDD
Private companies	All	Some	Some
Public companies	All	Some	Some
Non-profit making companies	All	Some	Some
Foreign (external) companies (tax resident)	All	Some	Some

Company law requirements

54. Company law requirements include the obligation to register any new company with the Registrar of Companies, to keep a shareholder register at a location in Lesotho, and to provide updated ownership information to the Registrar of Companies. Legal ownership information is therefore available with both the companies themselves and the Registrar of Companies in Lesotho.

55. Any person, known as the "promoter" (section 2, Companies Act), can make an application for the incorporation and registration of a company (manually or electronically) to the Registrar of Companies, an administrative authority under the supervision of the Ministry of Trade and Industry. The promoters must use a prescribed form (section 5(3)(a), Companies Act) that will include the proposed name, form (private or public) and the registered and main address of the company as well as a clause indicating that the liability of members is limited. The maximum number of directors as well as the details of the first directors (names, nationality and passport number, residential address, telephone numbers, email address and postal address plus a copy of the identification documents) as well as the details of the first shareholders (subscribers) (full names, occupation, contact details, number of shares subscribed and signature) must be included in the form. In addition, the articles of incorporation (articles of association) signed by each promoter must be annexed to the application failing which it will be deemed that the company has adopted the model articles of incorporation developed by the Registrar of Companies under section 87(4) of the Companies Act (section 6, Companies Act).

56. The Registrar of Companies can only register the company after receiving properly completed application forms together with all supporting documents. Thereafter, it will issue a certificate of incorporation (section 7(1), Companies Act). A company cannot legally exist in Lesotho without this certificate (section 7(2)(c), Companies Act). The Registrar of Companies will also

11. The table shows each type of entity and whether the various rules applicable require availability of information for "all" such entities, "some" or "none". "All" means that the legislation, whether or not it meets the standard, contains requirements on the availability of ownership information for every entity of this type. "Some" means that an entity will be covered by these requirements if certain conditions are met.

issue the company with a "business identification card" to enable it carry on a business activity in Lesotho (sections 13 and 14, BLR Act).[12]

57. The Registrar of Companies keeps a register of companies incorporated or registered in Lesotho and a similar register for foreign (external) companies.

58. Section 29 of the Companies Act obligates each company to maintain a **share register** that must state, with respect to each class of shares, for the last 10 years: (a) the names and the latest known address of each person who is or has been a shareholder; (b) the number of shares of that class held by each shareholder; and (c) the date of issue of shares, the repurchase or redemption of shares from or the transfer by or to each shareholder as well as the names or persons to whom the shares have been transferred from and to.

59. The entry of a person's name in the share register is conclusive evidence of that person's legal title to the shares (Art. 29(3), Companies Act). A person who is not listed as a shareholder cannot exercise any right or receive any benefit shareholders are entitled to under the Companies Act or the articles of incorporation (section 32(1), Companies Act) including the right to receive company documents or information (sections 33 and 34, Companies Act), the right to receive dividends (section 35, Companies Act) and the right to exercise pre-emptive rights (section 36, Companies Act). This means that the shareholder entered into the share register of a company would be considered the legal owner of the shares of that company and that all shareholder rights and duties apply in respect of the person recorded as shareholder.

60. The Companies Act requires that changes in shareholders be reflected in the share register maintained by the company. The transferor of the shares or his personal representative must sign a form in favour of the transferee and this form must be delivered to the company to effect the change of name in the share register (section 28(2), Companies Act). Copies of the identification documents of the transferor and transferee must also be attached (section 15(1), Companies Regulations). Unless the board resolves to refuse or delay registration of the transfer (within 15 days of receiving the transfer)[13] the company must enter the name of the transferee in the share

12. No person can commence a business activity unless the person is issued with a business identification card by the Registrar of Companies (section 14(1) and (2), BLR Act). This does not impose any obligation to keep or provide ownership and identity information.

13. Such refusal or delay may arise if the transferor has failed to pay the company an amount due in respect of those shares, whether by way of consideration for the issue of the shares or in respect of sums payable by the holder of the shares in accordance with the company's articles of incorporation (section 28(4), Companies Act).

register as the new owner of the shares within 15 days of receiving the duly signed transfer form (section 28(3), Companies Act). Although there is no mechanism for compelling the transferor and transferee to notify the company of any changes in the ownership of the shares, listing the names of the transferees in the share register serves as evidence of their legal title to the shares (section 29(3), Companies Act) without which the shareholders rights cannot be exercised. Section 29 of the Companies Act obligates each company director to take reasonable steps to ensure that the share register is properly kept and that shares transfers are promptly entered on it.[14]

61. In addition to updating its internal share register, the company is required to file with the **Registrar of Companies** a notice of the share transfer within 30 working days of effecting the transfer in the internal share register (section 15(3), Companies Regulations).[15] The notice must contain: (a) a certified copy of the identification document of a person appointed to act on behalf of the company; (b) a certified copy of the identification document of the transferee; (c) a death certificate in case of a deceased shareholder (section 15(2), Companies Regulations). Section 21(2) of the Companies Regulations requires that the Register of Companies contain the following items for each company:

- the name and registration number,
- the date of incorporation
- the physical address, the postal address and the address for service of documents
- the business activity
- the names of the shareholders and the details of the shareholders' identification documents
- the names of the directors and the details of the directors' identification documents

14. Section 30 of the Companies Act provides that if the name of a person is wrongly entered in, or omitted from, the share register of a company, and if the company refuses the person's request to correct the entry, the aggrieved person or shareholder may apply to court for rectification, compensation from loss arising from the error or both.

15. Each time the company issues new shares, the board of the company must lodge with the Registrar of Companies a report stating the number and the nominal amount of the shares issued and names and addresses of the persons to whom the shares have been issued within 15 working days of issuing the shares (section 20(3), Companies Act). This report must include, the name of new shareholders, their occupation and contacts (physical address, email, telephone, fax etc), the number of shares and the nominal value. Changes in shareholding structure must also be communicated to the Registrar of Companies within 15 days of the board resolving to subdivide any class of shares into series or consolidate any class of shares (section 20(4)).

- in case of an external company, the name and particulars of the person authorised to accept service of documents (see paragraph 66).

62. Lesotho authorities indicate that the Registrar of Companies indefinitely retains all information and records in the register of companies. The sanction for failure to inform the Registrar about a change of owner is low. A non-compliant company is liable to a late filing fee of LSL 5 (EUR 0.28) daily until the form is filed (Section 15(3) and Schedule 7, Companies Regulations). Therefore, there is no strong incentive to respect the reporting requirements. Although failing to comply with the annual filing requirements described in paragraph 64 could lead to deregistration and would therefore have complemented this low sanction, the annual filing requirement does not include an obligation to file ownership and identity information. The effectiveness of the system of enforcement of these low financial sanctions will be further examined in the Phase 2 review (see Annex 1).

63. The Companies Act requires the availability of ownership and identity information for companies in Lesotho. The articles of incorporation, share register, register of directors, full names and addresses of the current directors and executive directors must be kept at the company's **registered office** in Lesotho (section 84(1), Companies Act). The share register can also be kept at another office of the company in Lesotho where the maintenance of the register is carried out, or by an agent of the company, or at the office of another person in Lesotho if the company has contracted such person to maintain the register on its behalf but the company must notify the Registrar of Companies of the place where it is kept (section 82, Companies Act).[16] In general, the board of directors is collectively responsible for keeping and maintaining these documents and records (section 84(2), Companies Act). The records of a company must be kept either in written form or in an electronic form which can easily be accessible and convertible into written form and the board must ensure that adequate measures exist to prevent and detect falsification of the company's records (sections 84(4) and (5), Companies Act).

64. In addition to the obligation to maintain a share register and update it with changes as well as file this information with the Registrar of Companies, all companies are obligated to file an annual report with the Registrar of Companies.[17] The annual report will, among other things, have

16. In addition to the registered office, a company must have a physical address for service of documents in Lesotho, which must be the company's registered office or another place described as such in the Registrar's register. It cannot be a post office box or private bag at a post office (section 83, Companies Act).

17. Sections 94 and 104 of the Companies Act requires companies to prepare annual accounts and annual reports respectively within three months of the end of their financial year. Section 105 of the Companies Act require the company to lodge the

identity information on the current and former directors[18] and their remuneration and value of other benefits received during the financial year. It must also state the registered office of the company, the address for service, the postal and e-mail address, the place where the register of shareholders and other company documents are kept (if they are not kept at the registered office) as well as the number of shares issued for cash and for consideration other than cash (section 105(1), Companies Act). Failure to file the annual report may lead to deregistration, as described from paragraph 90 to 92. Nonetheless, it does not include ownership and identity information in respect of the company's shareholders.

65. Consequently, the information on the legal owners of companies established or registered in Lesotho is available with the Registrar of Companies at the time of registration, by inclusion in the articles of incorporation. Afterwards, the Registrar of Companies must be notified of any transfer of shares in every company. Therefore, current ownership and identity information on the company should be available with the Registrar of Companies. Companies are also obligated to maintain a share register and to update it whenever there is a change in shareholders. Upon dissolution, ownership and identity information maintained in the shareholders register of a domestic company will be available with the liquidator (see below).

Foreign (external) companies

66. The Companies Act requires the availability of ownership and identity information of foreign (external) companies. An external company must apply for registration within 10 days of establishing a place of business within Lesotho, using a form which must state: (a) the name of the company; (b) full names, nationality and residential, postal and email addresses of the directors; (c) full address of the place of business in Lesotho; and (d) full name and address of one or more persons resident in Lesotho who are authorised to accept service of documents on behalf of the external company (section 11, Companies Act). In addition, it must provide a certified copy of its incorporation certificate from the jurisdiction where it is registered and articles of incorporation, translated into English, if necessary, a power of attorney appointing the person accepting service on behalf of the external company in Lesotho and a certified copy of the identification document of such a person and the directors (section 7, Companies Regulations). The Registrar of Companies can only issue a certificate of registration

annual report with the Registrar of Companies within three months of the anniversary date of its incorporation.

18. In addition, the company must notify the Registrar of any changes in its directors within 30 days of such changes, and provide detailed information accompanied with copies of identification documents (section 74).

once satisfied that the foreign company has fulfilled all the registration requirements (Section 11(4), Companies Act).

67. The Registrar of Companies maintains a register of external companies (separate from the register of domestic companies) in which all documents and information related to the external companies are maintained (section 91, Companies Act). Lesotho authorities indicate that the Registrar of Companies indefinitely retains all records and information in the register of external companies.

68. All the other provisions of the Companies Act applicable to domestic companies, as described above, apply to the external company, including maintaining a share register containing ownership and identity information at the company's registered office in Lesotho, updating the share register with changes in shareholders and notifying the Registrar of Companies of any changes in the internal share register. Where there is any change in its directors or persons authorised to accept service of documents on its behalf or an amendment to its articles of incorporation, an external company must, within 20 days of such change, so notify the Registrar of Companies (section 12(2), Companies Act).

69. Consequently, ownership and identification information in respect of foreign (external) companies registered in Lesotho is available with the foreign (external) company and with the Registrar of Companies. Upon dissolution of a foreign company registered in Lesotho, ownership and identity information maintained in the shareholders register will be available with the liquidator as described in paragraphs 70 to 76.

Companies that cease to exist

70. A company that intends to cease business operations must notify the Registrar of Companies within three months before the last day of the business activity.[19] The notification must be accompanied by a statement from RSL indicating that the company has no outstanding tax liabilities; financial statements drawn up until the date of intended cessation, indicating that the company is not indebted to anyone in Lesotho; documentary evidence that the intended cessation was published in a newspaper and radio with nationwide circulation/coverage; and a special resolution indicating that the shareholders approved deregistration of the company (section 26, Companies Regulations). Similar obligations are imposed on an external company that intends to cease to have a place of business in Lesotho (section 154, Companies Act).

71. The process for dissolution by shareholders (voluntary winding up) is governed by Part XVIII of the Companies Act. Section 163 which provides

19. Redomiciliation of a company in or out of Lesotho is not provided for in legislation.

the grounds that must be met before such an application can be admitted by the Court requires shareholders to approve the proposal for dissolution. Section 164 stipulates that the company can only commence dissolution proceedings after it has delivered a notice of dissolution to the Master of the High Court and the Registrar of Companies indicating, among other things, the particulars of the liquidator appointed by the company. As required by section 127(7) of the Companies Act, before taking up the appointment, a liquidator must provide the Master of the High Court with security for the performance of his/her duties and must have an address for service within Lesotho which is also the liquidators active place of business.

72. Part XIX of the Companies Act outlines the process for judicial dissolution. A company can be liquidated by an order of Court if, pursuant to an application by the Registrar of Companies, the company, a shareholder, a director or creditor of the company, the court determines that the company is unable to pay its debts or is satisfied that 75% of the issued share capital of the company has been lost or has become useless for the company (section 125(1), Companies Act).

73. Unless the court orders otherwise, the shares in the company cannot be transferred once the liquidation proceedings have commenced. In addition, there can be no alteration to the rights and liabilities of a shareholder of the company and to the articles of incorporation (section 128(1), Companies Act). On the commencement of the liquidation of a company, every present or former director and employee of the company is obligated to deliver to the liquidator, or in accordance with the liquidator's directions: (a) all property of the company in or under his/her custody or control; and (b) all books, documents or records belonging to the company in or under his/her custody or control (section 154(3), Companies Act).

74. The company will be considered dissolved when the proceedings have been completed and the Registrar of Companies has endorsed in the companies register and in the company's record that the company is dissolved.[20] The business identification card, issued as described in paragraph 56 and that enables the company to undertake its business activities, lapses on the dissolution of the company (section 15(6), BLR Act). Whereas the liquidator ceases to hold office after delivering to the Registrar of Companies a final report, the final accounts and the statement of completion of liquidation, this does not limit the Court's or the Master of the High Court's supervision of the liquidation or enforcement of the liquidator's duties, including with respect to keeping the company's records (section 152(3), Companies Act).

20. The provisions of section 152(3) covers liquidations in general while section 170(2) is specific to voluntary dissolutions and section 174 to judicial dissolutions.

75. On completion of the liquidation process, the liquidator[21] must retain the accounts and records of the liquidation and of the company (including share register, register of directors and accounting records and underlying documentation which a company is obligated to maintain under the Companies Act or other laws) for not less than 10 years, unless the Master of the High Court orders otherwise (section 134(2)(d), Companies Act). Lesotho authorities indicate the period for maintaining these records may be extended rather than shortened by the Master of the High Court.

76. Consequently, ownership and identification information in respect of companies that have ceased to exist is available with the liquidator pursuant to obligations imposed on him/her by the Companies Act. This information is also available with the Master of the High Court pursuant to the obligations on the liquidator to file copies of the records with the Court (see paragraphs 89 to 93 regarding inactive companies).

Tax law requirements

77. The process of incorporating a company is undertaken at the One Stop Business Facilitation Centre of Lesotho which is housed within the Registrar of Companies who serves as its director. The Centre comprises representatives from different agencies that have deployed personnel, namely the Ministry of Trade and Industry; Ministry of Small Business Development, Cooperatives and Marketing; Ministry of Labour and Employment; Ministry of Home Affairs; and the RSL. The incorporation of a company includes its registration as a taxpayer. A certificate of incorporation, a business identification card and a taxpayer identification number (TIN) (which is different from the registration number in the certificate of incorporation) are concurrently issued when an application has fulfilled all requirements for registration.

78. As described in paragraph 55 the application documents include the identification of all legal owners of the company and directors. As a policy, all identity information and copies of the passports regarding the owners of the entity or legal arrangement are required during the registration process and available to the RSL. Nevertheless, the RSL will generally not have updated ownership and identity information in respect of companies, since these documents are only submitted during registration with the One Stop Business Facilitation Centre and there is no obligation to update the RSL

21. It appears from section 126 of the Companies Act that lists the qualifications of liquidators that only individuals can be appointed as liquidators. This position is supported by section 30 of the Companies Regulations which provides that for a person to be appointed as a liquidator, the person shall be either a legal practitioner registered under the Legal Practitioners Act, 1983 or an accountant registered with the Lesotho Institute of Accountants, and that such a person must maintain an office in Lesotho.

of changes in the shareholders or members of the company, for example through the annual tax returns.

79. In practice, in order to open a bank account or obtain or renew trading licence, a company is administratively required to produce a tax clearance certificate from the RSL. The RSL can only issue this certificate to companies previously issued with a TIN and who are compliant with the requirements of the ITA. This is an additional incentive to comply with the registration obligation.

80. Consequently, the tax law requirements will not always ensure the availability of accurate and up to date ownership and identity information for companies. They are a partial or supplemental source of ownership and identity information with respect to companies, which complement the obligations imposed by the Companies Act.

Anti-money laundering requirements

81. Some ownership and identity information is available pursuant to the AML framework. AML-accountable persons are obligated to undertake CDD procedures when entering into a business relationship, carrying out an occasional wire transfer or carrying out some transactions (section 16(1)(a), MLPC Act; MLPC Regulation 3). An AML-accountable person must identify the customer using reliable, independent source documents, data, or information (Regulation 3(2), MLPC Regulations).

82. The AML-accountable person must adequately identify and verify the legal existence and structure of a legal entity, including information relating to the: (a) name, legal status, address and directors; (b) principal owners and beneficiaries and control structure; and (c) provisions regulating powers to bind the entity and to verify that any person purporting to act on behalf of the customer is so authorised and identify those persons. To verify particulars of identity provided on behalf of a legal entity, the AML-accountable person must obtain its proof of existence i.e. certificate of incorporation or registration, memorandum and articles of incorporation and a certificate showing its registered office as well as documentation indicating particulars of current directors (Section 16(1), MLPC Act; paragraph 6(3) and (4), MLAI Guidelines; MLPC Regulation 3(4)). Moreover, the AML-accountable person is obligated to report any customer who has established or attempted to establish a business relationship with it under a false identity (paragraph 8, MLAI Guidelines). Finally, the AML-accountable person must identify and verify the customer where it has doubts about the veracity or adequacy of the customer identification and verification documentation or information it had previously obtained or where it suspects a commission of a money laundering offence or the financing of terrorism or where the client is carrying out an electronic funds transfer (section 16(2), MLPC Act).

83. The AML framework is only a partial and secondary source of legal ownership information. First, legal entities established in Lesotho are not obligated to enter into a continuing business relationship with AML-accountable persons as described in paragraph 117. Therefore, not all relevant legal entities may be subject to the AML framework. Second, whereas an AML-accountable person is required to obtain the articles of association of its customer, this would only contain the names of shareholders and members of the companies at the time of registration. The AML-obliged person may, therefore, not hold up to date legal ownership information in respect of legal entities that engage it. Third, the requirement to identify the beneficial owners of the client (see below) does not necessarily lead to identifying all its legal owners, once beneficial owners of at least 75% of the shareholding are identified. Consequently, the legal ownership information may be available with the AML-accountable persons in some cases (for instance in simple structures where the same persons are legal and beneficial owners), and only partially in other cases.

84. As described in more detail in paragraphs 114 to 116, the record keeping and retention requirements under Lesotho's AML framework are not fully consistent with the standard. While CDD information and the results of any analysis undertaken must be maintained for a period of at least five years following the end of the business relationship or completion of the occasional transaction, this information would only be available when an AML-accountable person that is a financial institution (which must be a company) ceases to exist. There are no similar obligations for ensuring the availability of ownership and identity information for at least five years where an AML-accountable person takes the form of a legal arrangement or is an individual and they cease to exist.

Nominees

85. The Companies Act does not expressly permit shares to be held by nominees. However, section 2(4) provides that in determining whether a company is a subsidiary of another company, shares held or a power excisable by a person as a nominee for that other company (except where that other company is concerned only in a fiduciary capacity) or by a nominee for a subsidiary which is concerned only in a fiduciary capacity shall be treated as held or excisable by that other company. In addition, section 68 exempts a director from disclosing shares or securities acquired or disposed of in their capacity as a nominee for the company or a related company. From these sections, it can be concluded that nominee shareholding is permitted in Lesotho.

86. Pursuant to section 29(9), a personal representative of a deceased shareholder, whose name is registered in the share register of a company as a shareholder, must notify the company of the registered shareholder's

demise. The personal representatives name will then be entered into the share register as a representative of the deceased until the final will is read and the shares transferred to the persons named in the will. Similarly, section 29(10) allows that a trustee of the property of an insolvent person, whose name is in the share register of a company as a shareholder, to be registered as the holder of that share. In these limited cases, the company may have knowledge that they are representing a deceased shareholder or an insolvent person. Other than these limited circumstances, there is neither a requirement for a shareholder to disclose its nominee status to the company when submitting a share transfer for the purpose of having their name entered into the share register held by the company nor the identity of their nominators. In the absence of a requirement for a shareholder to declare its status as a nominee and the identity of its nominators, the company would not be able to know that such a person is acting as a nominee shareholder. If the company is unaware of this status, it cannot inform the Registrar of Companies when submitting information regarding shareholders. Therefore, information on the nominator who is the real owner behind the nominee may not be always available in line with the standard. **Lesotho is recommended to ensure that nominee shareholders disclose their nominee status to the company and identity information on the nominators is available to the company and the Registrar of Companies**.

Legal ownership information – Enforcement measures and oversight

87. Oversight and enforcement activities are performed by the Registrar of Companies, the RSL and the CBL.

88. The Registrar of Companies oversees the requirements of the Companies Act.

Inactive companies and non-compliant companies

89. Lesotho's legal and regulatory framework does not contain any reference to, or a definition of an "inactive" company. In practice, actions are taken on companies that do not perform the business for which they are registered and/or do not comply with some reporting obligations.

90. The Registrar of Companies is empowered to remove a company from the Company Register if: (a) it has failed to commence business within 12 months of the time stated in its certificate of incorporation; (b) it has failed to submit an annual report; (c) it has ceased to carry on business for a period of 12 consecutive months; (d) it has been absent from its registered address of service for 6 consecutive months (section 87(5), Companies Act) or it has failed to submit an annual tax return as required by the ITA (section 108(1) of the Companies). These provisions are applicable also

to a foreign (external) company that carries on business in Lesotho (section 108(3), Companies Act). A company that has been removed from the companies register loses its legal personality. The process to reach this result is as described in the following paragraphs.

91. If a company has failed to submit annual returns or fails to meet one of the conditions described in paragraph 90, the Registrar of Companies is empowered to send it a registered letter enquiring whether it is still carrying on business or in operation. If it does not respond within one month, the Registrar of Companies publishes a notice in newspapers with nationwide circulation and on the national radio that he/she intends to remove the company from the register. After the expiration of 14 days of the last publication, the Registrar of Companies shall remove the company from the register (section 87(5), Companies Act; and section 27, Companies Regulations).

92. Another 14-day period is open before the Registrar of Companies applies to court for the company's dissolution. During this period the Registrar may, upon application, reinstate the company if satisfied that there are reasonable grounds for reinstatement (section 87(7), Companies Act; and section 27(4), Companies Regulations). However, the Companies Act does not provide guidance on what is a reasonable ground for reinstatement. Failure to apply for reinstatement within the 14-day period can be a ground for judicial dissolution of the company under section 171(a)(iii) of the Companies Act. The processes of dissolving "inactive" and non-compliant companies, if applied in practice, reduces the risk that legal ownership information would not be available or updated with respect of these companies.

93. A company that is deemed "inactive" can also be subject to sanctions under sectoral laws, for instance losing its licence.[22] The suspension or cancellation notice from the Licensing Officer is copied to the Registrar of Companies (which is also located within the Ministry of Trade) and RSL, and published in a widely circulating newspaper and any other media (BLR Regulation 15(5)). This notice may trigger the RSL to initiate oversight activities with regard to the company to ensure compliance with the tax laws.

22. For example, section 14(2) of the BLR Regulations empowers the Licensing Officer to suspend or cancel the licence upon receipt of an inspection report indicating the licensee: (a) has ceased operations for a period exceeding three months or failed to commence operations for at least six months, after proposed commencement date; (b) is no longer using the premises for the same commercial activity for which it was licensed; (c) failed to comply with rules and regulations related to health, environment, occupational safety or labour laws; or (d) failed to comply with any condition of the licence or any other laws relating to relevant business activities (e.g. failure to settle the licence fees for three years).

Falsification of records

94. The Companies Act does not explicitly contain a sanction for failure to maintain a share register or to update it. As noted in paragraph 59, shareholders rights only crystallise on persons whose names appear on the share register maintained by the company. Moreover, as noted in paragraph 60, the company is required to update its share register and to notify such changes to the Registrar of Companies as described in paragraph 61. This compels the company to maintain a share register which shareholders may inspect and request that the company correctly reflects their particulars. In addition, a person who falsely and deceitfully impersonates an owner of a share as if the impersonator were the true and lawful owner commits an offence and shall be liable, on conviction, to a fine of LSL 10 000 (EUR 561) or to imprisonment for a period of three years or both (section 29(4), Companies Act).

95. The Registrar of Companies is empowered to investigate a company if he/she suspects any fraud or irregularity (section 87(9), Companies Act). If the Registrar of Companies becomes aware during his/her investigations or on the basis of an auditor's report (as described in paragraph 191) that a person might be guilty of a criminal offence, he/she must refer the matter to the Director of Public Prosecutions and his/her report can be used as prosecution evidence (section 87(10), Companies Act). All officers, auditors and agents of a company are required to produce all documents (including the share register) required by the Registrar during an investigation of the company and the Registrar of Companies has the authority to examine any person on oath in relation to the affairs and business of the company under investigation (section 87(11), Companies Act). Any person who fails to comply with such order to produce a document or oral evidence is liable on conviction, to a fine of LSL 20 000 (EUR 1 122) or imprisonment for three years or both.

96. The Companies Act further provides that making or authorising a false statement to be made, or making an omission leading to the false statement is an offence liable to a fine of LSL 20 000 (EUR 1 122) or to imprisonment for a period of three years, or both. A director, officer or employee of a company who makes, authorises or permits the making of a statement or report that relates to the affairs of the company that is false or misleading in a material way also commits an offence, and is liable to a fine of LSL 500 000 (EUR 28 089) or to imprisonment for a term of 20 years, or both (section 175, Companies Act).

97. Falsification of records (including a share register) by a director, employee or shareholder of a company who, with intent to defraud or deceive another person, is an offence liable to a fine of LSL 20 000 (EUR 1 122) or to imprisonment for a term of three years, or both. Where the offence relates to falsifying any mechanical, electronic, or other device is used in connection with keeping or preparation of any register, accounting or other records,

index, book, paper, or other document for the purposes of a company or the Companies Act, the sanction is a fine of LSL 500 000 (EUR 28 089) or imprisonment for a term of 20 years, or both (section 177, Companies Act).

Monitoring activities

98. The RSL is the authority responsible for administering the ITA. The enforcement measures and oversight with regards to the ITA are as described under Element A.2. The CBL is responsible for the enforcement of the requirements of the AML framework. The enforcement measures and oversight with regards to the CBL are as described in the next section on beneficial ownership.

99. The 2016 Report (paragraph 56) noted that although domestic and foreign (external) companies were not regularly monitored in 2012-14, a regular oversight programme was established in 2015 to systematically monitor compliance with obligations under the Companies Act, including those that may lead to deregistration. Therefore, it was recommended that Lesotho monitor the implementation of this new oversight programme and exercise its enforcement powers as appropriate to ensure that ownership and identity information for domestic and foreign (external) companies is available in practice. Lesotho authorities provided the number of annual returns filed, although this could not be compared with the total number of registered companies as these numbers are unclear (see paragraph 51). Lesotho authorities indicate that in 2019, 2020 and 2021 a total of 906, 2 942 and 5 972 companies filed their annual returns with the Registrar of Companies. The compliance rates are very low but progressing over years. A total of 211 companies were penalised for late filing while 1 359 companies were struck off for failure to comply with the obligation to file annual returns in 2019. Lesotho authorities further indicate that, due to the Covid-19 pandemic, the Registrar of Companies did not carry out any enforcement measures during the years 2020 and 2021 to ensure the availability of ownership and identity information, specifically information maintained by companies in the share register. Nonetheless, Lesotho authorities indicate that appropriate steps are now being taken to ensure compliance with respect to the Companies Act requirements. However, Lesotho authorities also indicate that since a new regular oversight programme was established to systematically monitor compliance with Companies Act obligations in December 2015 (see paragraph 151 of the 2016 Report), a total of 17 591 had been struck off from the Companies Register by the end of 2019 for non-compliance. The supervisory measures taken since 2016, the effectiveness of the system of enforcement and oversight for the availability of legal ownership and identity information for companies, including the filing of ownership and identity information at registration or after registration

by all companies, the obligation to maintain a share register and keeping it updated with changes in ownership and the process of reinstating non-compliant companies that have been struck-off the register, will be further examined in the Phase 2 review (see Annex 1).

Availability of legal ownership information in EOIR practice

100. Lesotho did not receive EOIR requests in the years 2019-21. The implementation of the legal framework and the availability of legal ownership information on companies in practice will be examined in the Phase 2 review.

Availability of beneficial ownership information

101. The standard was strengthened in 2016 to require that beneficial ownership information be available on companies. In Lesotho, this aspect of the standard is met through the AML framework which obligates AML-accountable persons to identify the beneficial owners of their customers as well as an obligation for non-profit organisations[23] to maintain the information on their beneficial owners and the Companies Act.

102. Each of these legal regimes is analysed below.

Companies covered by legislation regulating beneficial ownership information

Type	Company Law	Tax Law	AML Law/ legal entity	AML Law/CDD
Private companies	All	None	None	Some
Public companies	All	None	None	Some
Non-profit making companies	All	None	All	Some
Foreign (external) companies (tax resident)[24]	All	None	None	All

23. A non-profit organisation is only mentioned in the context of the MLPC Regulations. Lesotho authorities indicate that the reference in the MLPC Regulations is intended to implement the FATF Recommendation 8 on measures to prevent the misuse of non-profit organisations. Lesotho authorities also indicate that there are no non-profit making organisations registered in Lesotho. However, there are non-profit making companies registered in Lesotho as described in paragraph 49.

24. Where a foreign company has a sufficient nexus, then the availability of beneficial ownership information is required to the extent the company has a relationship with an AML-obligated service provider that is relevant for the purposes of EOIR. (Terms of Reference A.1.1 Footnote 9)

Scope of the AML framework

103. The AML framework in Lesotho consists of two sets of texts – one applicable to all AML-accountable persons, and one applicable to financial institutions.

104. The MLPC Act 2008 (as amended in 2016), the MLAI Guidelines 2013 and the MLPC Regulations 2019 apply to all AML-accountable persons ("accountable institutions") which means "a person or institution referred to in Schedule 1 including branches, associates or subsidiaries outside of that person or institution and a person employed or contracted by such person or institutions" (Section 2, MLPC Act). The AML-accountable persons listed in Schedule 1 of the MLPC Act include: (a) a legal practitioner as defined in the Legal Practitioners Act 1983; (b) an accountant as defined in the Accountants Act of 1977; and (c) a financial institution as defined in the FI Act. It also lists, among others, a person who "carries on the business of company service providers" (TCSPs).MLPC Regulation 22(4)[25] and (5)[26] further elaborates that DNFBPs (as defined by the these Regulations) include lawyers, notaries, other independent legal professional and accountants and TCPs acting for clients under specified circumstances. All AML-accountable persons are subject to the CDD and KYC obligations as well as record-keeping and retention obligations.

---

25. Schedule 2 of MLPC Regulations includes lawyers, notaries and other legal professionals who are sole practitioners, partners or employed within law firms, but do not include internal professionals that are employees of other types of businesses or government agencies. It also includes accountants working as sole practitioners, partners or employed accountants working within an accountancy firm but do not include accountants that are employees of other types of business or government agencies. Pursuant to MLPC Regulation 22(4), they must conduct CDD when they prepare for or carry out transactions for their clients or customers concerning the following activities: management of bank, savings or securities accounts or books of accounts; organisation of contributions for the creation, operation or management of companies; creation, operation or management of legal persons or arrangements among others.
26. According to Schedule 2 of the MLPC Regulations, TCSPs include persons or businesses providing the following services to third parties: (a) acting as a formation agent of legal persons; (b) acting as or arranging for another person to act as director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons; (c) providing a registered office; business address or accommodation, correspondence or administrative address of a company, a partnership or any other legal person or arrangement; (d) acting as or arranging for another person to act as a trustee of an express trust or performing the equivalent function for another firm or legal arrangement; or (e) acting as or arranging for another person to act as a nominee shareholder for another person (see also MLPC Regulation 22(5)(a) to (c)).

105. Financial institutions[27] are also subject to the FI Act 2012, the FI AML Guidelines 2000 and the FI AML/CFT Regulations 2015 (as amended in 2019). Until it was repealed in September 2021, financial institutions were also obligated to implement the FI KYC Guidelines 2007. Financial institutions are subject to the general CDD obligations above and to additional specific CDD requirements, as discussed under Element A.3.

Definition of beneficial owner in the AML framework

106. The definition of beneficial owner in the AML framework is in line with the standard. As provided in MLPC Regulation 2:

> "beneficial owner" means a natural person who ultimately owns or controls a client or customer and the natural person on whose behalf a transaction is being conducted, and includes those persons who exercise ultimate effective control over a legal person or arrangement.

107. The MLPC Regulations outline the different steps that AML-accountable person should follow for the identification and the verification of the identity of the beneficial owners.[28] Where a customer is a legal person, MLPC Regulation 6(6) requires the AML-accountable person to take reasonable measures to verify the identity of the beneficial owners through the following information:

> (a) the identity of the natural person or persons who ultimately has a controlling ownership interest in a legal person;
>
> (b) to the extent that there is doubt under paragraph (a) above or where no natural person exerts control through ownership interest, the identity of the natural person or persons exercising control over the legal person or through other means; or
>
> (c) where no natural person is identified under paragraphs (a) or (b), the identity of relevant natural person or persons holding the position of senior management

27. A financial institution is defined to mean "a deposit taking institution or a non-deposit taking institution carrying out financial activities as stipulated in its licence irrespective of whether it is banking or non-banking financial institution" (section 2, FI Act).

28. A non-profit organisation is required to comply with the CDD obligations imposed by the AML framework in respect of its beneficiaries, donors, and person(s) who own, control or direct its activities, including senior officers, board members and trustees. It is also obligated to keep and maintain information on the purpose and objective of its stated activities, as well as establish and verify the identity, credentials and good standing of its beneficiaries (MLPC Regulations 24 and 25). Failure to do so may attract an administrative penalty not exceeding LSL 50 000 (EUR 2 807).

108. The methodology for the identification of the beneficial owners of legal persons contains the principal elements required by the standard. However, guidance and definitions are missing. The concepts "ultimately owns or controls" and "controlling ownership interest" used in the definition of beneficial owner are not explained or defined in the MLPC Act, MLAI Guidelines or the MLPC Regulations. It is also unclear whether the term "ultimately has a controlling ownership interest" encompasses only individuals or whether it allows for the identification of joint holding by several persons, including through contract, understanding, relationship, intermediary or tiered entity. In addition, it is not confirmed whether control under the first step includes any person or persons who controls the legal person acting directly or indirectly. Moreover, there is no guidance on the application of any threshold when determining whether a natural person(s) ultimately has a controlling ownership interest in the company and whether, in this case, all natural persons have to be identified. Finally, there are no further guidelines on how to interpret the concept of "control through other means". Considering these aspects, the methodology for the identification of beneficial owners does not appear sufficiently clear, practical or workable and therefore, the beneficial owner(s) may not always be determined in accordance with the standard.

Customer due diligence

109. AML-accountable persons are obligated to identify and verify the identities of the beneficial owners of their customers using reliable and relevant information or data obtained from reliable independent sources prior to establishing a business relationship or conducting an occasional transaction (section 16(1A)(a), MLPC Act; MLPC Regulation 6(2) and (3)). Lesotho authorities indicate that in practice, the information required in respect of customers who are individuals as described in paragraph 239 would be required for the identification and verification of the beneficial owners.

110. AML-accountable persons are prohibited from entering into a business relationship or conducting an occasional transaction where a potential or prospective customer fails to provide the requisite identification information or data or where the identification information or data obtained cannot be verified by appropriate sources. It must also terminate the business relationship where the identification information or data provided cannot be verified by an appropriate source during the course of conducting enhanced CDD[29] (section 16(7A), MLPC Act). This is amplified by MLPC

29. In accordance with Section 16(1A), MLPC Act, enhanced CDD is undertaken when an AML-accountable person establishes that the customer is a foreign politically exposed person. Paragraph 16(1)(f) of the MLAI Guidelines also require that an

Regulation 7(1)[30] with respect to new accounts or business relationships and MLPC Regulation 7(2)[31] with respect to an existing accounts or business relationship.

111. AML-accountable persons are permitted to conduct simplified CDD for low-risk clients except where there is a suspicion of money laundering or terrorist financing (section 20(2)(c), MLPC Act; MLPC Regulation 5(5)).[32] Nevertheless, there is no further guidance on the content of the simplified CDD and its impact on the identification of beneficial owners, verification of their identity or frequency for renewing the CDD information held on such beneficial owners. This lack of guidance on simplified CDD may result in situations where the beneficial owners are not always identified in accordance with the standard.

112. The AML framework obligates AML-accountable persons to monitor their business relationships on an ongoing basis (section 16(1A)(b), MLPC Act; paragraph 16(1)(a), MLAI Guidelines; MLPC Regulation 4(b)). This obligation includes the scrutiny of transactions undertaken throughout the course of the business relationship to ensure that the transactions conducted are consistent with the AML-accountable person's knowledge of the customer, the business and risk profile (i.e. a risk-based approach). Ongoing CDD requires that AML-accountable persons collect and verify additional KYC information, establish a transaction monitoring programme and put in place an enhanced CDD programme[33] (paragraph 16(1)(b), MLAI Guidelines). Lesotho authorities indicate that for high-risk customers,

---

enhanced CDD programme be undertaken immediately if there is a high money laundering risk, or a suspicious transaction activity has arisen.

30. MLPC Regulation 7(1)(a) to (d) stipulates that an AML-accountable person is prohibited from opening an account or establishing a business relationship if: (a) it cannot identify a client or customer and beneficial owner; (b) if it cannot independently verify a client or customer and beneficial owner; (c) if it cannot establish the ownership or control structure of a client or customer in the case of a legal person; or (d) if it fails to obtain information on the nature of the business relationship.
31. MLPC Regulation 7(2)(a) and (b) requires the AML-accountable person to terminate the business relationship where it cannot obtain and verify the client's additional information on identification data; fails to obtain additional information on the intended nature and purpose of the business relationship; fails to obtain information on the source of funds or wealth of the client or customer; or where the client or customer is involved in money-laundering or terrorist financing activities.
32. Similarly, section 15(3) of the FI KYC Guidelines provides that the financial institution shall put in place a system of periodical review of risk categorisation of accounts and apply enhanced due diligence measures.
33. Paragraph 16(1)(f) of the MLAI Guidelines require that an enhanced CDD programme must be undertaken immediately it is determined that there is a high money laundering risk, or a suspicious transaction activity has arisen.

AML-accountable persons are obligated to renew the CDD information annually, but no legal provisions are available to support this. Lesotho authorities also indicate that AML-accountable persons must indicate the frequency for renewing CDD information for medium and low risk customers in their individual AML policies and this ranges in practice from two to five years. However, there is no further guidance on what AML-accountable persons must take into account when designing a framework for ongoing CDD or monitoring of customers or the frequency with which the CDD information must be renewed. AML-accountable persons are at liberty to determine when it may be necessary to collect further or update existing KYC information (paragraph 16(1)(d), MLAI Guidelines). This may result in situations where the beneficial ownership information held by the AML-accountable persons on their customers is not up to date, which is not in line with the standard.

113. The conditions for relying on CDD conducted by an intermediary of third party are broadly in line with the standard. Section 16(7) of the MLPC Act allows an AML-accountable person to rely on intermediaries or third parties to undertake its CDD obligations or to introduce a customer but on the condition that it shall:

- immediately obtain all CDD information or documentation obtained by the intermediary or third party during the onboarding of the customer (as laid out in section 16(1) and (2), MLPC Act)
- ensure that copies of the identification data and other relevant documentation relating to CDD undertaken during the customer onboarding process will be made available to the AML-accountable person from the intermediary or the third party upon request without delay
- satisfy itself that the third party or intermediary is regulated and supervised for, and has measures in place to comply with the requirements of the MLPC Act
- take into account information available on whether a country in which the third party or intermediary being relied upon is situated undertakes CDD measures and sufficiently applies customer's identification and verification processes to fight money laundering and counter financing of terrorism
- bear the ultimate responsibility for the CDD process.[34]

34. MLPC Regulation 9 reiterates the conditions outlined in section 16(7) of the MLPC Act for financial institutions or financial service-providers.

114. The record keeping and retention requirements under Lesotho's AML framework are not fully consistent with the standard. Section 17(1) of the MLPC Act requires an AML-accountable person to maintain a record that indicates the nature of the evidence obtained pursuant to the CDD obligations imposed by section 16 of the MLPC Act. Such records must comprise either a copy of the evidence of the information obtained during CDD or such information as would enable a copy thereof to be obtained.

115. Further specifications on the records to be maintained are outlined in the MLPC Regulations and MLAI Guidelines. MLPC Regulation 11 compels the AML-accountable person to keep records of all domestic and international transactions in a manner that enables it swiftly to comply with information requests from the MLPC "competent authorities",[35] a sector supervisory authority or the FIU. This include records and information obtained pursuant to CDD obligations, account files, business correspondence and results of any analysis undertaken in order to comply with CDD obligations (MLPC Regulation 11(3)). Paragraphs 17(1) and (3) of the MLAI Guidelines further specify that these records includes daily records of transactions, receipts, paying-in books, correspondence with clients and cheques, records of documents used to verify the identity of the client, supporting evidence and records showing a business transaction or service as well as documents used to verify the identity of beneficial owners.

116. Finally, AML-accountable persons must keep the records described above for at least five years beginning from the date the relevant business relationship or transaction was terminated (section 17(5), MLPC Act; MLPC Regulation 11(4); paragraph 17(1) of the MLAI Guidelines).[36] When an AML-accountable person that is a financial institution ceases to exist, section 57 of the FI Act provides that the provisions of the Companies Act relating to winding up and judicial management of companies and foreign companies apply. This requires that the CDD information are part of the company records maintained by the liquidator when the company (financial institution) ceases to exist as described in paragraphs 70 to 76. However, there is no similar obligation for AML-accountable persons that are legal arrangements or who are individuals. Therefore, **Lesotho should ensure that beneficial ownership information for all relevant entities and arrangements is kept for at least five years, including in the case where the AML-accountable person has ceased to exist**.

35. These are the Revenue Services Lesotho, the Directorate on Corruption and Economic Offences and the Lesotho Mounted Police Service (section 2 and 11, MLPC Act).

36. MLPC Regulation 11(5) indicates that such records may be retained for a longer period but not exceeding another five years if so required.

117. While the AML obligations cover a wide range of professionals (see paragraph 104), there is no obligation for the legal entities established or registered in Lesotho to engage in a continuing relationship with an AML-accountable person. In addition, Lesotho authorities are not aware of how many of the legal entities established or registered in Lesotho engage an AML-accountable person for example through holding a bank account in Lesotho. Therefore, all legal entities established in Lesotho may not always be covered by the CDD obligations imposed on AML-accountable persons to identify their beneficial owners.

Companies Act

118. Since 2011, section 59(6) of the Companies Act requires a company, its directors and shareholders to ensure that there are adequate procedures and safeguards in place, which include adequate transparency concerning the beneficial ownership and control of the company, to prevent the unlawful use of the company in relation to serious criminal activities as defined under the MLPC Act or any other law. Nevertheless, the Companies Act neither provides a definition of a beneficial owner nor a methodology for companies to identify their beneficial owners. In addition, the obligation to ensure "adequate transparency concerning the beneficial ownership" does not include an express obligation to obtain information on their beneficial owners, to ensure that this information is up to date and to maintain this information for at least five years, even in cases where the company ceases to exist. Therefore, the Companies Act does not ensure the availability of beneficial ownership information for all relevant entities and arrangements in accordance with the standard.

Conclusion on the adequacy of the legal and regulatory framework

119. The AML framework is the main source of beneficial ownership information in Lesotho. It obligates an AML-accountable person to identify and verify the identity of its customers and their beneficial owners and keep and maintain this information.

120. Therefore, beneficial ownership information on legal entities and arrangements may be available with an AML-accountable person in Lesotho to the extent that there is a continuing business relationship with such a person. However, it is not mandatory for relevant legal entities and arrangement to establish a continuous business relationship with an AML-accountable person (see paragraph 117).

121. In addition, there are several shortcomings that have been identified in the KYC and CDD requirements that may not ensure the availability on beneficial ownership information for relevant entities in accordance with

the standard in all cases. First, the AML framework provides a definition and methodology for the identification of beneficial owners. However, there is no further guidance to AML-accountable persons for the implementation of the definition of beneficial owner(s) and the methodology for identifying them in the context of CDD. Consequently, the beneficial owners may not always be identified in accordance with the standard (see paragraph 108). Second, the AML framework does not provide for a specified frequency for AML-accountable persons to update CDD information, so there could be situations where the available beneficial ownership information is not up to date (see paragraph 112). Third, AML-accountable persons are permitted to conduct simplified due diligence for low-risk clients. However, there is no guidance on the content of such due diligence and their impact on the identification of beneficial owners (see paragraph 111).

122. In addition to the AML framework, the Companies Act requires a company, its directors and shareholders to ensure that there are adequate procedures and safeguards in place, which include adequate transparency concerning the beneficial ownership and control of their company. However, it neither provides a definition of beneficial owner nor the methodology for the companies, directors and shareholders to identify their beneficial owners. In addition, there is no explicit provisions on who should keep and how the beneficial ownership information should be kept and maintained to meet the requirements of the Companies Act (see paragraph 118).

123. Therefore, **Lesotho is recommended to ensure that adequate, accurate and up-to-date information on the beneficial owners for all companies be available in line with the standard**.

Beneficial ownership information – enforcement measures and oversight

124. The FIU is the main supervisor of the AML obligations contained in the MLPC Act, MLAI Guidelines and MLPC Regulations pursuant to section 15A(a) and 18A of the MLPC Act. The FIU is assisted in some respects by the MLPC "competent authorities", i.e. the RSL, the Directorate on Corruption and Economic Offences and the Police (sections 2 and 11, MLPC Act).[37]

37. According to section 11(2) of the MLPC Act, these "competent authorities" may, among other things: "(a) conduct an investigation into a serious offence including money laundering and financing of terrorism; (b) instruct an accountable person to take such steps as may be appropriate to facilitate an investigation anticipated by a competent authority; (c) consult with a relevant person, institution or organisation in relation to its functions; (d) co-operate and exchange information with any other competent authority in the performance of its function."

125. In addition, sector supervisory authorities have responsibility over their respective sector, i.e. the Law Society of Lesotho over legal practitioners, the Lesotho Institute of Accountants over accountants and the CBL over financial institutions (section 18A, MLPC Act).

126. The FIU and the sector supervisory authorities have the power, in respect of AML-accountable persons, to conduct inspections, compel the production of any information relevant to monitoring compliance with the AML framework; issue out directives, instructions, guidelines or rules for proper and appropriate implementation of the AML framework; impose sanctions for failure to comply with the AML obligations; and prescribe appropriate administrative sanctions to enforce compliance (section 18B, MLPC Act).

127. The sector supervisory authorities have authority to impose administrative sanctions prescribed under their respective regulatory laws to ensure an AML-accountable person complies with the requirements of the MLPC Act (MLPC Regulation 18(1)). Moreover, in accordance with section 18D(1) of the MLPC Act, a sector supervisory authority may impose an appropriate administrative sanction against an AML-accountable person, its servants or agents for non-compliance with the measures and obligations imposed by the MLPC Act. MLPC Regulations 18(2) and 23 provides that these administrative sanctions include:

- suspension of a licence for a specified period up to 12 months
- revocation of a licence or permit as the case may be
- additional conditions on the licence or permit
- a public statement to the effect that the relevant AML-accountable person is not compliant with the MLPC Act or any regulations or guidelines issued under the Act
- a directive obliging the AML-obliged person to perform a specific act or refrain from performing specified acts
- forfeiture of certain rights and privileges.

128. In addition to these administrative sanctions, the sector supervisory authority or the FIU may impose a financial penalty not exceeding LSL 100 000 (EUR 5 614) in respect of a natural person and LSL 1 000 000 (EUR 56 140) in respect of a legal person (section 18D(2), MLPC Act). Section 113 of the MLPC Act further provides that where no specific penalty is provided for under the Act, a person who fails to comply with any of its provisions commits an offence and is liable, on conviction, to not less than LSL 10 000 (EUR 561) or to imprisonment for a period not less than 30 months and in the case of a legal person a fine of not less than LSL 100 000 (EUR 5 614). This penalty is applicable for failure to fulfil the requirements with respect to undertaking CDD.

129. The CBL is the authority in charge of supervising compliance with the FI Act and related texts. Available sanctions and penalties are as described in paragraph 269.

130. The effectiveness of the system of enforcement and oversight of the availability of beneficial ownership information will be further examined in the Phase 2 review (Annex 1).

Availability of beneficial ownership information in EOIR practice

131. The implementation of the legal framework and the availability of beneficial ownership information on companies in practice will be examined during the Phase 2 review.

A.1.2. Bearer shares

132. As noted in the 2016 Report (paragraphs 88 to 94), there is no legislation in Lesotho regarding bearer shares, as the issuance of bearer shares is effectively impeded through registration requirements under the Companies Act. As a person can only be legally entitled to the rights associated with the shares of a company when that person's name is entered in the company's share register and there is an obligation for companies to update its shares register whenever there is a transfer of shares and to notify the Registrar of Companies of such changes (see paragraphs 60 and 61 of this report), it means that it is not possible to own shares in a company without having your name entered in the share register. However, from the model articles of incorporation provided in the Companies Regulation 2012, which public companies may adopt, it appears that "share warrants to bearer" may be issued by a public company in Lesotho if allowed under the company's articles of incorporation (section 9, Companies Regulation Schedule 3). It was therefore concluded that even though there were no bearer shares in circulation, the mechanisms in place may have been insufficient to ensure the availability of identity information of all holders of share warrants, should a public company adopt the model articles of incorporation.

133. Lesotho authorities indicate that an amendment to the Companies Act to prohibit issuance of bearer shares and to the Companies Regulations 2012 to remove the issuance of bearer shares from the standard model articles of association is under consideration and will address this recommendation. The legal and regulatory framework is not in place until these changes are made. Therefore, **Lesotho should take steps to ensure that robust mechanisms are in place to identify owners of bearer shares or eliminate companies' ability to issue such bearer shares**.

A.1.3. Partnerships

134. The 2016 Report concluded that while Lesotho's legal and regulatory framework was in place to ensure the availability of identity information for partnerships, in practice, Lesotho authorities did not have regular oversight to monitor the compliance with legal obligations to ensure that ownership and identity information is available for general partnerships. The existing enforcement had never been applied on general partnerships in practice. In light of this, Lesotho was recommended to put in place an oversight programme to ensure compliance with the obligations to maintain ownership and identity information of partnerships and exercise its enforcement powers as appropriate to ensure that such information is available in practice. These aspects are not part of the current review and will be assessed in the Phase 2 of the review.

Types of partnerships

135. Partnerships are governed by the Partnership Proclamation No. 78 of 1957, which provides for two types of partnerships:

- A **partnership (general partnership)** which is defined as any legal relationship between 2 to 20 persons,[38] who carry on, or intend to carry on, any lawful business or undertaking to which each person contributes something, with the object of making a profit and of sharing it between them (section 1, Partnership Proclamation). As of 31 December 2022, there were 284 partnerships registered in Lesotho.
- A **limited partnership** which must bear all the requirements of a partnership as defined but it is distinct in that it consists of two classes of partners: general partners, who are jointly and severally liable for the debts of the partnership and who have the authority to transact on behalf of the partnership, and one or more special partners who contribute specific sums of money and whose liability for the debts of the partnership is generally limited to their contributions and have no authority to transact on behalf of the partnership (sections 11 and 12, Partnerships Proclamation). As of 31 December 2022, there were no limited partnerships registered in Lesotho.

136. Upon registration, a general partnership and limited partnership both acquire a separate legal personality capable of suing and being sued, holding property or assets, holding certificates of allotment or rights to acquire land, holding deeds relating to immovable property (section 4, Partnership Proclamation).

38. Section 1 of the Partnerships Proclamation does not limit the persons forming a partnership to individuals. As such, legal persons or arrangements may be party to the partnership.

Identity information

137. The Partnership Proclamation requires the availability of identity information for partnerships. A partnership agreement (deed) has to be signed by all partners before a notary or an administrative officer (section 2(1), Partnership Proclamation) and delivered to the Registrar of Deeds (within the Ministry of Local Government) for registration within 60 days of being signed and attested by the said notary or administrative officer. A partnership deed must include the full names of all partners as well as their postal and residential address, amount of capital or assets brought into the partnership by every partner, the duties and degree of participation of each partner in the business of the partnership and proportion of profits or losses attributable to each partner. It must also indicate the date on which the partnership is formed, the purpose for which it is formed as well as the period for which it is intended to exist and the place where the partnership business will be carried on (section 5(1), Partnership Proclamation).

138. For limited partnerships, section 13 of the Partnerships Proclamation requires that, in addition to the information above, the partnership deed specify the names of the general partners and special partners as well as the amount of capital contributed by each special partner.

139. All general and limited partnerships are required to record any changes in the information included in the partnership deed, including the names of partners. All partners must sign an amended partnership deed containing such changes before a notary or administrative officer who is required to attest the changes. The amended deed must be registered with the Registrar of Deeds within 60 days of the changes (section 6(1), Partnership Proclamation). In case there is an alteration in the names of the partners, the nature of the business or the amount of capital of a limited partnership, it is deemed dissolved and any business carried on after such deemed dissolution is deemed to be on in the form of a general partnership (section 17, Partnerships Proclamation).

140. All general and limited partnerships must similarly submit an amended partnership deed, signed by all partners and attested by a notary or administrative officer, indicating that the partnership is dissolved (section 7, Partnerships Proclamation).[39] Where the period for which a limited partnership was formed has ended and it has not communicated its continuation in a partnership deed signed by the partners and attested by a notary, it will be considered to continue operating as a general partnership (section 14, Partnerships Proclamation).

39. As an exception the partnership is not required to submit an amended Partnership Deed where the dissolution of the partnership is caused by death of a partner, lapse of time, completion of the purpose for which such partnership was formed, insolvency or an order of the court.

141. The Registrar of Deeds is in charge of registering partnerships. Pursuant to section 10(1) of the Partnerships Proclamation, the Registrar of Deeds must examine all partnership deeds submitted for registration and confirm that it contains all information required by law. The Registrar of Deeds may refuse to register any general or limited partnership whose deed does not comply with the requirements of the Partnerships Proclamation. An unregistered partnership has no legal status and cannot enforce any rights arising out of a contract made or entered on its behalf (section 28, Partnerships Proclamation).

142. In addition to the requirements of the Partnership Proclamation, the BLR Act requires the availability of identity information for any partnership which seeks to carry out any of the business activities listed in Schedule 1 of the BLR Act as they must first obtain a licence before commencing the specified business activities (Section 4(1), BLR Act). For these partnerships (whether general or limited), the Licensing Officer is required to keep and maintain an up-to-date business register which contains the full names of the partners and the full names and identification number of the holder of the licence or registered business activities (the partnership).

143. The ITA also requires the availability of identity information for partnerships. All partnerships are required to file a return of income as described under Element A.2 (from paragraph 205). The form prescribed by the Commissioner General under section 128(2) of the ITA for a partnership return of income requires that identity information on all partners in the partnership be included, with a list of all partners, their TIN, postal address, information on their residency, interest held in the partnership and the profit allocation formula. In addition to filing a return of income for the partnership, every partnership that makes payment of Lesotho-source interest, dividends, royalties, management fees, rent or other income must make a return of such payments to the Commissioner General within 28 days of the end of year of assessment which the payments were made. Such return must include the name, address and where appropriate, the TIN of each person to whom such payments were made and the amount paid (section 130, ITA). Moreover, the ITA requires that partnerships that carry on business or derive income in Lesotho have a nominated officer for tax purposes, resident in Lesotho, and where one of the partners is a resident, that partner should be the nominated officer. The nominated officer is required to keep all information regarding the partnership in Lesotho, including identity information and accounting records (as described in paragraphs 201 to 203) which is consisted with the standard. The RSL is the authority in charge of supervising the partnership's compliance with the requirement to file an annual return, as described in paragraph 225 of this report.

144. The AML framework also requires the availability of identity information for partnerships that engage an AML-accountable person. In the context of partnerships, Lesotho authorities indicate that AML rules are applied to include the obligation for TCSPs to keep all identity information for partnerships. As noted under Element A.3 (see paragraphs 244 to 248), specific obligations imposed on banks under the FI Act, FI AML Guidelines and FI AML/CFT Regulations further require the availability of identity information for partnerships in accordance with the standard. Moreover, until September 2021, the FI KYC Guidelines granularly detailed the information that must be obtained by banks to verify the identity of parties to a partnership (see paragraphs 249 to 251 under Element A.3).

145. Consequently, the information on the partners established or registered in Lesotho is available with the Registrar of Deeds under the Partnership Proclamation, the Licensing Officer under the BLR Act, with AML-accountable persons where a partnership engages AML-accountable persons and with the nominated officer of the partnership pursuant to the requirements of the ITA.

Beneficial ownership

146. The standard requires that information in respect of each beneficial owner of a relevant partnership be available. Where any partner is a company or other entity or arrangement, information on the beneficial owners of that entity or arrangement should be available. The availability of beneficial ownership information on partnerships in Lesotho relies on the AML framework.

147. The CDD procedures that AML-accountable persons must conduct in respect of each customer, as required by section 16 of the MLPC and amplified by the MLAI Guidelines and MLPC Regulations, also apply where the customer is a partnership. As there is no requirement for a partnership to engage in a continuous business relationship with an AML-accountable person, beneficial ownership information for partnerships that do not engage an AML-accountable person may not be available. However, this gap may be mitigated to the extent that a notary (who is an AML-obliged person as described in paragraph 104) must attest the partnership deed (see paragraph 137) and any changes to the partnership deed (see paragraph 139). The notary would then have to establish the beneficial ownership of the partnerships, but this would not capture all instances when beneficial ownership may change without a change of partner.

148. In addition, whereas the definition of a beneficial owner in the MLPC Regulations is broadly in line with the standard, there is no further explanation or guidance on the identification of the beneficial owners of a partnership,

taking into account the specificities of the decision-making in the different types of partnerships. For example, there is no guidance on how to identify the beneficial owners of general and limited partnerships and what steps to follow where a legal person or arrangement is party to the partnership as well as the identification of natural persons who control the partnership through other means.

149. Moreover, the other deficiencies in the AML framework identified under Element A.1.1 also affect the availability of adequate, accurate and up-to-date information on the beneficial owners of partnerships. As noted in paragraphs 108 and 121, Lesotho has not issued regulatory guidance relating to key concepts in the definition of beneficial owners and the methodology for the identification of beneficial owners, such as "ultimately owns or controls" and "controlling ownership interest". Consequently, the definition of beneficial owners may not be appropriately applied to identify beneficial owners of relevant partnerships in line with the standard. Second, the frequency for renewing the CDD information held by AML-accountable persons is not specified so it is not ensured that the beneficial ownership information kept by the AML-accountable persons, for partnerships that engage such a person, is up to date (see paragraphs 112 and 121). Third, the lack of guidance on simplified CDD may result in situations where the beneficial owners of relevant partnerships are not identified in accordance with the standard (see paragraphs 111 and 121).

150. For these reasons, the recommendation under the Element A.1.1 also applies to partnerships. Therefore, **Lesotho is recommended to ensure that adequate, accurate and up-to-date information on the beneficial owners for all relevant partnerships be available in line with the standard**.

Oversight and enforcement

151. The Registrar of Deeds is in charge of registering partnerships and receiving notifications in respect of any subsequent changes to the partnership deed. Enforcement and oversight of obligations under the ITA are as described under Element A.2 (see paragraphs 225 to 227). Enforcement and oversight of the obligations under the AML framework are described under sub-Element A.1.1 (see paragraphs 124 to 129). Oversight and enforcement will be assessed in Phase 2 of the review.

Availability of partnership information in EOIR practice

152. The implementation of the legal framework and the availability of identity and beneficial ownership information on partnerships in EOIR practice will be examined during the Phase 2 review.

A.1.4. Trusts

153. The 2016 Report concluded that while Lesotho's legal and regulatory framework was in place to ensure the availability of identity information for trusts (including foreign trusts), in practice Lesotho authorities did not have regular oversight to monitor the compliance of legal obligations to ensure that identity information is available for all types of trusts (including voting trusts). The existing enforcement provisions had never been applied in practice. Lesotho was recommended to put in place an oversight programme to ensure compliance with the obligations to maintain identity information of all types of trusts and exercise its enforcement powers as appropriate to ensure that such information is available in practice. These aspects are not part of the current review and will be assessed in the Phase 2 of the review.

154. There is no statutory law dedicated to trusts in Lesotho. Nevertheless, trusts can be created under common law, guided by the principles and rules under the Friendly Societies Act of 1882 with a general duty on trustees to maintain proper records of the trust property and to have knowledge of all documents pertaining to the formation and management of the trust (see paragraph 114, 2016 Report). These documents typically include the identity of settlors, beneficiaries and other trustees. A copy of the identification document of the parties to the trust, duly certified by a commissioner of oaths, must be included in the application for registration sent to the Registrar of Deeds. As of 31 December 2022, there were 286 trusts registered with the Registrar of Deeds and 76 trusts registered with the RSL in Lesotho. At the time of the 2016 Report, there were 40 trusts registered with the Registrar of Deeds and 52 with the RSL.[40] Lesotho authorities have not provided an explanation for the notable rise in the number of trusts registered in Lesotho. It is not mandatory to register trusts, but Lesotho authorities explained that in practice the trust will register because it is legally deemed to exist upon registration. The deed as registered will be required by the banks and the RSL.

155. Lesotho laws do not prohibit a resident of Lesotho from acting as a trustee or otherwise in a fiduciary capacity in relation to a trust formed under foreign law. Likewise, Lesotho laws also do not prohibit a resident of Lesotho from administering a trust governed under foreign law.

40. In the 2016 Report (para 114), there were divergences in the reported number of trusts with the Registrar of Deeds reporting 40 and the RSL reporting 52. These divergencies persist in the current report. Lesotho authorities indicate that this is due to the fact that the trusts registered with RSL are those that engage in commercial activity that is subject to tax, for example those that engage in financial and insurance services or real estate activities.

Identity information

156. A combination of the Friendly Societies Act, the Income Tax Act and the AML framework, coupled with the fiduciary duties under the common law require that identity information on settlors, trustees and beneficiaries of domestic trusts be available in line with the standard. These obligations are described below.

Friendly Societies Act of 1882

157. Trusts are not explicitly provided for under the Friendly Societies Act, but the Lesotho authorities consider that this law applies equally to societies and trusts. Under section 10 of the Friendly Societies Act, persons intending to establish or register a trust are required to develop rules (trust deed) for the regulation, government and management of the trust. Such rules may, among other things, provide for the appointment and removal of general committee of management of the trust and must be submitted to the Registrar of Deeds for registration (section 2). Every trust established or registered under the Act must appoint one or more trustee(s) and deposit a resolution signed by the appointed trustee(s) with the Registrar of Deeds in whom all movable and immovable property belonging to the trust is vested for the benefit of the trust (sections 2 and 3). A trust is required to notify the Registrar of Deeds of any amendment to its rules by filing an original copy of the amended rules signed by all the trustees (section 12). The trust deed must provide for the audit of the accounts (section 10(5)) and the trust must prepare annual returns to be submitted to the Registrar of Deeds outlining how its funds have been utilised (section 19). Lesotho authorities indicate that the provisions on registering a trust also apply to a foreign trust seeking to operate in Lesotho (through having a trustee resident in Lesotho or holding property in Lesotho, etc.).

158. The 2016 Report (paragraph 119) noted that while there is no explicit requirement for the trust to keep or report any identity information on all parties to the trust, the information may be in the trust deed as is typically the case for most trusts established under common law.[41] Since trusts are not explicitly provided for under the Friendly Societies Act, it was also unclear how any of the obligations of this Act could be enforced in practice. In practice, the provisions of the Friendly Societies Act were not being enforced in respect of trusts. Notwithstanding these deficiencies, the 2016 Report

41. In particular, in the 2016 Report (paragraph 119) Lesotho authorities indicated that the policy adhered to by trusts in Lesotho was that a trust deed is created by the lawyer nominated by the person(s) who wish to start a trust. The deed is thereafter submitted to the Ministry of Local Government for registration into the Deeds Registry.

concluded that there are complementary obligations under the ITA and the AML framework as discussed below. The implementation of the Friendly Societies Act in practice with regard to trusts will be analysed during the Phase 2 review (Annex 1).

Income Tax Act

159. Section 2(1) of the ITA defines a "trust" to include the estate of a deceased person but distinguishes it from a "grantor trust" or a "qualified beneficiary trust". A "grantor trust" is defined as a trust in which the grantor (or settlor)[42] has (either in whole or in part): (a) the power to revoke or alter the trust so as to acquire a beneficial interest in the corpus or income; or (b) a reversionary interest in either the corpus or income (section 80, ITA). A "qualified beneficiary trust" is defined as a trust in which a person has a power solely exercisable by that person to vest the corpus or income in that person or a trust whose sole beneficiary is an individual or an individual's estate or appointees (section 80, ITA). The ITA also provides for unit trusts which are established in the terms of a deed under the Lesotho Unit Trust Act 2003.

160. Section 3(1) of the ITA broadly defines a "trustee" to include:

- an executor, administrator, tutor or curator
- a liquidator or judicial manager
- a person having or taking on the administration or control of property subject to a trust
- a person acting in a fiduciary capacity
- a person having the possession, control or management of the property of a person under a legal disability.

161. Under sections 4(1), 11 and 81(1) of the ITA, a trust is subject to pay income tax as a separate entity. However, a grantor trust or a qualified beneficiary trust is not treated as a separate taxable entity (section 81(2), ITA). Income from a grantor trust is reported directly on the grantor's tax return, and income from a qualified beneficiary trust is reported directly on the beneficiary's return (see paragraph 122, 2016 Report).

162. A unit trust is exempt from all taxes under the ITA (section 83A). However, when filing their tax returns, the unit holders must include in income any returns realised from the unit trust, except if there are bonus

42. A grantor is defined in section 80 of the ITA to mean a person who transfers property to, or confers a benefit on, a trust for no consideration or for consideration less than its open market value.

units, which in such cases the sale of such bonus shall be deemed as equivalent to dividends and may be subjected to tax pursuant to section 83C of the ITA.

163. Except for a "grantor trust", a "qualified beneficiary trust" and a "unit trust", a trust that "carries on business in Lesotho or derives Lesotho-source income" is required to have a nominated officer (see paragraph 204) responsible for any tax obligation imposed on the trust (section 211(1), ITA), including the filing of tax returns (section 211(6), ITA). All trusts (other than a superannuation fund) with a resident trustee, must include the resident trustee as the nominated officer (section 211(2), ITA). Since every entity must have a nominated officer for tax purposes, it may be inferred that trusts without a resident trustee but that "carries on a business in Lesotho or derives Lesotho-source income" must appoint a nominated officer who must be a person resident in Lesotho, which is consistent with the requirements for other entities that the nominated officer must be a person resident in Lesotho (section 211(2), ITA), and that all records for tax purposes are to be maintained in Lesotho (section 169, ITA), for which this obligation would presumably be imposed on the nominated officer. All trusts must appoint the nominated officer in the first year of assessment and notify the RSL, failing which the RSL will specify the person to be the nominated officer (sections 211(3) and (4), ITA). Trusts must also notify the RSL of any changes to their nominated officers (section 211(5), ITA).

164. A trust is required to file an annual return of income as described under Element A.2 (paragraph 201 and paragraphs 207 to 209). Lesotho authorities confirm that the annual filing obligation applies regardless of whether the trust has made an income or a loss. The tax return should be in a form prescribed by the Commissioner General (as provided in section 128(2) of the ITA) and will contain information on the income, expenditure and details of the nominated officer. The ITA is not explicit as to whether the tax return has to indicate the identity information on the settlor, trustee and beneficiary of each trust. Notwithstanding this, and as noted in the 2016 Report (paragraph 126), in view of the tax treatment of trusts, identity information of the trustees would be included in the returns to determine the taxable income since trusts are taxed at the trustee level. As trustees would have to prove the residence status of the settlor to determine its taxable income, it should follow that identity information of the settlor would also have to be included in the returns. The identity information on beneficiaries would also be known in some cases since beneficiaries are responsible for filing their own income tax returns on their share of trust income.[43] In addition,

43. Trust income or loss is calculated as if the trust were a resident individual taxpayer, minus personal deductions and credits. Trust income is taxed in the hands of trustees (section 83(1), ITA) where the trustee is liable for income tax on the chargeable

nominated officers are also obligated to notify the RSL of the identity of any non-resident beneficiaries (s. 211(6), ITA).

165. However, since the obligations under the ITA only apply where the trust income is taxable, there may still be gaps as regards the availability of ownership information of trusts that have a nexus to Lesotho (i.e. established in Lesotho under common law, has a resident trustee in Lesotho or administered in Lesotho) (see paragraph 127 of the 2016 Report). Identity information may not be available for trustees and settlors of a trust, which only receives foreign-source income and where the settlor is not a resident. Such trust income would not be liable to tax and the trustee of such a trust, even if there is a resident trustee, would not be required to register or file a tax return. In addition, there may also be a gap in the availability of identity information of beneficiaries who are (i) resident in Lesotho but are not entitled to any of the trust income for the year; (ii) resident in Lesotho and entitled to trust income which is foreign-sourced and where the settlor is non-resident; and (iii) non-resident in Lesotho but whose entitled share of the trust income is foreign-sourced. The implementation of the ITA in practice with regard to trusts will be analysed during the Phase 2 review (Annex 1).

Beneficial ownership information under the Anti-Money Laundering framework

166. As described under sub-Element A.1.1, the AML framework obligates AML-accountable persons, including persons who may act as professional trustees such as financial institutions, legal practitioners, accountants and TCSPs (see paragraphs 103 to 105), to maintain beneficial ownership information of all parties to the trust.

167. The MLPC Regulations provide a methodology for the identification and the verification of the identity of the beneficial owners of trusts that is in accordance with the standard. Regulation 6(5) requires that where the client or customer is a legal arrangement, the AML-accountable person must take

---

trust income. The chargeable trust income includes Lesotho-source income and foreign-source income and is calculated by subtracting the amount included in the gross income of any beneficiary (section 83(3), ITA). The foreign-source income that is included refers to when the settlor is resident at the time of making a transfer to the trustee; or is a resident in the year of assessment in question; or where a resident person may ultimately benefit from the income (s. 83(1)) and subtracting the gross income of any beneficiary (s. 83(2)). Beneficiaries are taxable on their share of trust income to which they are presently entitled (s. 82) and are therefore responsible in all instances for filing their own income tax returns. Non-resident beneficiaries are only taxed on Lesotho-source income of the trust to which the beneficiary is presently entitled (s. 82(2)).

reasonable measures to verify the identity of the beneficial owner(s) through the following information:

(a) for trusts, the identity of the settlor, the trustee[44] or trustees, the protector (if any), the beneficiaries[45] or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, including through a chain of control or ownership;

(b) for beneficiaries of trusts designated by characteristics or class, the identity of the beneficiary at the time of pay out or whenever the beneficiary intends to exercise vested rights; or

(c) for other types of legal arrangements, the identity of persons in similar or equivalent positions in paragraph (a) above.

168. In addition, paragraph 6(4)(b) of the MLAI Guidelines require AML-accountable persons to obtain and verify particulars of the identity of trustees, nominees, or fiduciaries and the underlying beneficiary on whose behalf a business transaction is entered into and the purpose for such transaction.

169. However, the gaps identified in the AML framework as described under paragraphs 120 and 121 also apply to trusts. First, it is not mandatory for trusts to establish a continuous business relationship with an AML-accountable person. As a result, information on the beneficial owners of trusts that do not engage an AML-accountable person may not be available in accordance with the standard. Second, the legal framework does not provide guidance on the steps that AML-accountable persons should follow when a legal entity or arrangement is party to the trust to require that information in respect of the natural persons who are beneficial owners of the interposed legal entity of arrangement should be available. Consequently, the beneficial owners of trusts may not always be identified in accordance with the standard. Third, the AML framework does not provide for a specified frequency for AML-accountable persons to update CDD information, so there could be situations where the beneficial ownership information available on trusts is not up to date. Last, although AML-accountable persons are permitted to conduct simplified CDD for low-risk clients (including trusts classified as low-risk), there is no guidance on the content of such simplified CDD and their impact on the identification of beneficial owners. Therefore,

44. MLPC Regulation 2 defines a "trustee" to mean "a person under whose control assets have been placed by another person, the settlor, for the benefit of a beneficiary or for a specified purpose".

45. MLPC Regulation 2 defines a "beneficiary" to mean a natural or legal person or arrangement whom in the case of a trust is entitled to the benefit of a trust arrangement.

Lesotho is recommended to ensure that adequate, accurate and up-to-date information on the beneficial owners for all relevant trusts be available in line with the standard.

Oversight and enforcement

170. The Registrar of Deeds is responsible for registering trusts. However, the availability of the identity and beneficial ownership information in relation to trusts largely relies on the ITA and the AML framework. Therefore, the same enforcement and oversight of AML obligations as described in paragraphs 124 to 129 and the oversight of ITA obligations as described in paragraphs 225 to 227, apply in the case of trusts and legal arrangements. The application of this in practice will be assessed in Phase 2 of the review.

Availability of trust information in EOIR practice

171. The implementation of the legal framework and the availability of identity and beneficial ownership information on trusts and other legal arrangements in practice will be examined during the Phase 2 review.

A.1.5. Foundations

172. As noted in the 2016 Report, most entities called "foundations" are established as non-profit making companies but are called "foundations". They are registered to pursue non-profit activities intended to benefit the public. In addition, the members do not receive any distribution or benefit from the sale of their assets or property. Moreover, they are also exempted from paying tax and must seek approval of their activities from the Registrar before licensing. The 2016 Report therefore concluded that while there was no legal framework for foundations in Lesotho, the features of the "foundations" that may be established in Lesotho were not relevant for the work of the Global Forum (see paragraphs 139 to 143, 2016 Report). This remains unchanged.

Other relevant entities and arrangements – Societies

173. The 2016 Report (paragraph 147) concluded that societies are likely to be of more limited relevance for EOI as they generally don't conduct business, but the fact that companies, partnerships or trusts can register a society under the Societies Act was enough to require Lesotho to have ownership and identity information of societies. The 2016 Report (paragraph 147) concluded that Lesotho's legal and regulatory framework ensures the availability of information on societies' members.

174. The Societies Act, section 2(1), provides that "any club, company, partnership or association of ten or more persons, whatever its nature or object" can be registered as a society as long as it is legal and does not conduct business for "the acquisition of financial gain and of sharing the profit or loss between such persons". Nevertheless, entities regulated by other legislation such as the Companies Act, Partnerships Proclamation or Friendly Societies Act cannot be registered as a society (section 3, Societies Act). As of 31 December 2022, there were 313 societies registered under the Societies Act compared to 1 899 in the 2016 Report. Lesotho authorities have not provided any explanations for the drastic decrease in the number of registered societies.

Ownership and identity information

175. The Societies Act requires the availability of ownership and identity information in line with the standard. A society is registered by lodging with the Registrar-General the rules of the society containing, among other things, the name, registered office and objectives of the society; the appointment, removal from office, powers and remuneration (if any) of the officers of the society; and the conditions under which any member may be entitled to any benefit and the nature and extent of such benefit (paragraph 6, Societies Rules). The Registrar-General issues a certificate of registration when satisfied that all information required has been submitted (paragraphs 7 and 8, Societies Rules). The Registrar-General may, at any time, call upon the society to provide a true and complete copy of the rules of the society, a true and complete list of office bearers and of the members of the Society distinguishing those residing in Lesotho or present in Lesotho, a true and complete return of the number and place of meetings of the society held within the last six months and such accounts and returns as the Registrar-General may require (section 14(1), Societies Act). This obligates all societies to keep updated ownership and identity information on all members of the society so that it may be produced when required.

176. The president or chairman and secretary and every member of the governing body of a society are personally obligated to maintain and supply the information that the Registrar-General may require (section 15(1), Societies Act). If the society does not have a president, chairman, secretary or governing body, the obligation falls upon every person holding any office managing or assisting in the management of the society. The Registrar-General may open an investigation against the society for failure to comply with any requirements of the law and the cost of such investigation will be borne by the society. During such investigation, the Registrar-General may require any person to produce all the securities, books or documents and information of such society in his/her possession (paragraph 11, Societies

Rules). A fine of up to LSL 200 (EUR 11) or imprisonment for up to six months may be imposed for failure to supply the Registrar-General with any information within the timeframe stipulated in the request (sections 15, 20 and 28, Societies Act).

177. In addition, a societies registry is established at Maseru where the records and registers relating to societies required under the Societies Act are maintained (section 4, Societies Act; paragraph 5, Societies Rules). The register of societies must contain the registration number of the deed under which the society is registered, the date and time of registration, the registered name and head office, the objectives for which the society is formed, the persons who registered the society and the date of registration, if any (paragraph 5, Societies Rules).

178. There is no provision in the Societies Act that deals with retention of information. However, Lesotho authorities have confirmed that the office of the Registrar General in practice keeps all information for 5 years from the date the Society is deregistered from the Register of Societies. The implementation of the Societies Act, including the effectiveness of the enforcement of low financial sanctions described in paragraph 176, to ensure availability of ownership and identity information will be reviewed during the Phase 2 review (see Annex 1).

Beneficial ownership information

179. The availability of beneficial ownership information on societies in Lesotho relies on the AML framework. Therefore, information on the beneficial owners of societies may be available through the CDD obligations imposed on AML-accountable persons as described under sub-Element A.1.1 (see paragraphs 109 to 117). However, there is no requirement for a society to engage AML-accountable persons, which means that the AML framework may not cover societies that do not engage AML-accountable persons. Moreover, the other deficiencies in the AML framework identified under Element A.1.1 may also impact the availability of adequate, accurate and up-to-date information on the beneficial owners of societies. Lesotho has not issued regulatory guidance relating to key concepts in the definition of beneficial owner and the methodology for the identification of beneficial owners, such as “ultimately owns or controls” and “controlling ownership interest”. In addition, there is no guidance on how to identify beneficial owners of societies where a legal entity or arrangement is party to the society. Second, the frequency for renewing the CDD information held by AML-accountable persons is not specified so it is not ensured that the beneficial ownership information kept by the AML-accountable persons be up to date. Third, although AML-accountable persons are permitted to conduct simplified CDD for low-risk clients (including societies classified

as low-risk), there is no guidance on the content of such simplified CDD and their impact on the identification of beneficial owners. For these reasons, the recommendation under the Element A.1.1 also applies to societies. Therefore, **Lesotho is recommended to ensure that adequate, accurate and up-to-date information on the beneficial owners for all relevant societies be available in line with the standard**.

A.2. Accounting records

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

180. The 2016 Report concluded that the legal and regulatory framework on the availability of accounting records was in place, but certain aspects of the legal implementation of the element needed improvement. The availability of accounting information was not ensured for trusts that received only foreign-sourced income and where the settlor was non-resident. Lesotho was recommended to ensure the availability of accounting records of all trusts in Lesotho. The recommendation remains unaddressed.

181. Apart from this deficiency, a combination of the requirements under the Companies Act, the FI Act and the ITA ensure the availability of accounting records and underlying documentation for relevant legal entities and arrangements for at least five years. However, this retention period does not extend to cases where partnerships, trusts, societies and other legal arrangements cease to exist. Lesotho is therefore recommended to address this gap.

182. In practice, although there was a regular oversight programme to ensure that the accounting requirements prescribed by the ITA were complied with, the compliance level for partnerships was low. Moreover, trusts that only received foreign-source income and trusts with a non-resident settlor were not covered by the oversight programme. Lesotho was recommended to put in place a comprehensive oversight programme to ensure compliance with and enforcement of the obligation to maintain reliable accounting records and underlying documentation for all relevant entities and arrangements and rated “Largely Compliant”. These aspects are not part of the current review and will be assessed in the Phase 2 of the review.

183. The conclusions are as follows:

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement

Deficiencies identified/Underlying factor	Recommendations
Only trusts that receive taxable income would be subjected to obligations under the Income Tax Act to keep accounting records. The availability of accounting information is not ensured for trusts that receive only foreign-source income and where the settlor is non-resident.	Lesotho should ensure the availability of accounting records of all trusts in Lesotho, even where the trust is not carrying on business or is not subject to tax in Lesotho.
Not all accounting information is available after a legal entity or arrangement ceased to exist, except for companies. For societies, the Registrar-General would keep annual returns and auditor's reports that it received, but it does not receive underlying documentation. There is no similar filing requirement for partnerships and trusts. Consequently, accounting records and underlying documentation for partnerships, trusts and societies may not be available in accordance with the standard.	Lesotho should ensure that the accounting information, including the underlying documentation, is kept for at least five years after the relevant legal entities or arrangements ceases to exist.

Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

The Phase 2 recommendations issued in the 2016 Report are reproduced below for the reader's information.

Deficiencies identified/Underlying factor	Recommendations
Lesotho authorities monitor compliance with the accounting record keeping obligations prescribed by the tax laws but this supervision is limited to registered taxpayers, which include domestic and foreign (external) companies, partnerships and trusts deriving income in Lesotho. There is a regular oversight programme which covers that the accounting requirements prescribed by the Income Tax Act are complied with. However, the compliance level for partnerships is low and trusts that only receive foreign-source income and where the settlor is a non-resident are not covered by the oversight that LRA RSL conducts.	Lesotho should put in place a comprehensive oversight programme to ensure compliance with and enforcement of the obligation to maintain reliable accounting records and underlying documentation for all relevant entities and arrangements.

A.2.1. General requirements

184. The availability of the accounting records derives from a combination of the requirements under the Companies Act, complemented by sector-specific requirements, and the ITA. These legal regimes are analysed below.

Company Law

185. The Companies Act requires the availability of accounting records for companies in accordance with the standard.

186. Records must be kept in Lesotho for an appropriate period of time. Pursuant to section 84(1), a company is required to keep at its registered office, or at some other place in Lesotho: accounting records as required by the Companies Act, copies of all accounts, detailed inventory of company property including any registered bonds or other charges on the property and copies of all written communications (including annual reports), all of which must cover the last 10 years. Section 82 makes it mandatory for a company to have its registered office in Lesotho. These requirements apply to all companies, domestic companies and, to foreign (external) companies that are registered in Lesotho pursuant to section 11(1). It also applies to entities that hold assets and receive passive income in Lesotho.

187. The requirements on the accounting records to be maintained are complete and meet the standard. Pursuant to section 96(1), the accounting records must:

- correctly reflect and explain the financial transactions of the company
- provide the financial position of the company at any time with reasonable accuracy
- enable the accounts of the company to be readily available for audit purposes.

188. In addition, section 96(2) requires that accounting records contain entries of money received and money spent each day and the matters to which it relates, as well as a record of the assets and liabilities of the company. If the company's business involves dealing in goods, the accounting records must contain a record of physical stock held at the end of the financial year together with stock records, if any, during the year. If the company's business involves providing services, the accounting records must contain a record of services provided and relevant invoices and documents.

189. Furthermore, a company must prepare an annual report on the affairs of the company for the financial year, within three months of the end of the financial year (section 104(1)), which must be lodged with the Registrar of Companies (section 105(3)) who retains them indefinitely. Among other things, the annual report must include annual accounts (with any auditor's

report) and describe any changes in accounting policies made since the previous annual report (section (105(1)). A company must ensure that annual reports, accounts (including group accounts) are available for inspection by shareholders (section 107). The requirement to prepare and submit an annual report further supplements the obligation to keep accounting records.

190. The Companies Act identifies the persons responsible for maintaining the records. If a company has designated executive officers, the secretary or chief executive officer, such an officer is the custodian of the accounting records (section 84(2)). Where the company has not made such designations, the custodian of the accounting records is the managing director or chairperson of the board of directors and/or the board of directors collectively. It is the duty of the board to ensure that adequate measures exist to prevent falsification of the company's records, and for detecting any falsification of them (section 84(5)). In addition, a company's board of directors is obligated to ensure that the company's accounts in respect of a financial year (annual accounts) are prepared and signed by them within three months of the end of that financial year (section 94(1)). Such accounts must be prepared under and in compliance with financial reporting standards issued by the Lesotho Institute of Accountants (section 95).

191. Accounting obligations are supplemented by external audit for some companies (section 94(2)).[46] A company must appoint auditors (section 98(1)) and the board must ensure that the auditors have access to accounting records or other relevant documents at all times (section 101). Section 103 details the obligations on audits. The auditor follows the auditing standards issued by the Lesotho Institute of Accountants. The auditor's report to the shareholders must state whether: (a) the auditor has obtained all information and explanations that he/she required; (b) in the auditor's opinion, proper accounting records have been kept by the company; (c) in the auditor's opinion, the accounts comply with the requirements of the law and where they do not, the respects in which they fail to comply; and (d) in the auditor's opinion, the financial statements give a true and fair view of the financial position of the company, the results of its operations comply with accounting and auditing standards issued or adopted by Lesotho Institute of

46. Pursuant to section 98, unless the articles of incorporation of a company provide otherwise, a company shall, at each annual meeting, appoint an auditor to hold office from the conclusion of the meeting until the conclusion of the next annual meeting to audit the accounts of the company and, if the company is required to complete group accounts, the group accounts for the financial year of the company. Section 98(3) provides an exception that a private company shall not be required to appoint an auditor if (a) the number of shareholders in the company is less than 10; (b) none of the shareholders in the company is a company; (c) 75% of the shareholders agree that an auditor shall not be appointed; or (d) the company is a single shareholding company.

Accountants. The auditor's report must be kept in Lesotho (at the registered office of a company) and be available for inspection by the shareholders, directors and creditors. Furthermore, where the auditor identifies any irregularity, he/she is obligated to report such irregularities to the Registrar of Companies within seven days of becoming aware of them. The requirement to prepare annual accounts and have them audited complements the obligation to keep accounting records.

192. When a company ceases to exist, the Companies Act also requires the availability of accounting records, notably during the process of judicial management and/or liquidation, in accordance with the standard. Where a company has been placed under judicial management,[47] the judicial manager appointed by the court is obligated to keep accounting records that meet the requirements of section 96 (see paragraphs 187 and 188) and submit an annual report to the Master of the High Court together with any other periodic report that may be required (section 160). Where the judicial management is converted into liquidation (section 161), the obligation to maintain the accounting records passes on to the liquidator appointed by the court.

193. During the process of liquidation (section 134), the liquidator is required to open a liquidation account and provide the Master of the High Court with banking details of the company including the account numbers, account types and account names. The liquidator is also obliged to keep accounts and records of the liquidation and permit those accounts and records, and the accounts and records of the company (which are typically required to be kept under the Companies Act as described above) to be inspected by interested persons. On completion of the liquidation process, the liquidator must retain all these documents for not less than 10 years, unless the Master of the High Court orders otherwise. Lesotho authorities interpret this provision in a way that only a longer retention period may be ordered.[48]

47. Judicial management may be ordered by the Court to enable the company to meet its obligations. It is covered by Part XVII of the Companies Act. The Court may order judicial management when an application for liquidation has been submitted to court by the Registrar, the company, a shareholder, a director or creditor of the company (under section 125) or upon application by any shareholder, director or creditor if it appears to the Court that: (a) it is desirable that the company be put under judicial management by reason of mismanagement; (b) the directors or other officers of the company have acted in a way that is contrary to the provisions of the Companies Act; or (c) the assets of the company are being misapplied and the viability of the company is threatened. Where judicial management has failed, the judicial manager is required to apply to Court for the cancellation of the judicial management order and issuance of a liquidation order.

48. The requirement for the liquidator to provide the Master of the High Court with reports every two months or whenever so required indicating the progress of liquidation also ensure availability of these records when the liquidator has died.

Licensing requirements and Financial Institutions Act

194. On top of the requirements of the Companies Act, a company (or any other legal entity or arrangement) which has been licensed under the BLR Act is obligated to keep such records or books as are necessary to exhibit the state of affairs of the enterprise and to explain the transactions and the financial position of the enterprise and to produce such records or books to the Licensing Officer as required (section 11(1), BLR Act and BLR Regulation 7). Such records or books include financial statements, audit report employment figures, operational challenges and order records and data (section 11, BLR Act).

195. The FI Act requires the availability of accounting records in accordance with the standard for companies licensed to operate as financial institutions in Lesotho. Only a company established or registered under the Companies can be licensed as a financial institution (bank) under the FI Act. Therefore, in addition to its obligations under the Companies Act, a financial institution must also comply with the FI Act which requires it to prepare financial statements in accordance with the internationally accepted accounting standards adopted by the Lesotho Institute of Accountants (section 39, FI Act).

196. Section 40 of the FI Act requires a financial institution to keep in relation to its activities, a full and true written record of every transaction it conducts. Such records must include:

- accounting records exhibiting clearly and correctly the state of its business affairs, explaining its transactions and financial position so as to enable the CBL to determine whether the financial institution has complied with all provisions of the FI Act
- financial statements.

197. In addition, a financial institution is obligated to prepare annual accounts in respect of all business transacted by it (and for foreign financial institutions, in respect of all business transacted through its places of business in Lesotho) within three months of the end of the financial year. After preparation, the financial institution must submit its audited financial statements, audited balance sheets and profit and loss account for that financial year to the CBL and publish them in the Gazette (section 41, FI Act).

198. A financial institution must also appoint an independent auditor with the prior, annual approval by the CBL to audit its operations and provide an opinion on whether the balance sheet and profit and loss account annual financial statement are full and fair and properly drawn up, whether they exhibit a true and correct statement of the affairs on the financial institution in accordance with the auditing standards as well as compliance with the

FI Act. The independent auditor is obligated to inform the CBL of, among others, any violation of the FI Act or any other Act to which the FI is subject to or which in his/her opinion may be of concern to the CBL regarding its supervisory function. The independent auditor is also obligated to make available to the CBL any document, management letters and such other information relating to the audit on request. Furthermore, the CBL may, from time to time, convene meetings of all approved independent auditors of financial institutions and discuss issues relating to compliance by financial institutions (sections 35 and 36, FI Act).

199. The record retention requirements for accounting records under the FI Act are in line with the standard. Section 40 of the FI Act requires that the records must be in written form or electronic form, that the records must be kept for a period at least 10 years after the completion of the transaction to which they relate, and that they must be kept at the principal office or other location of the financial institution in Lesotho. Where the records are kept by a third party, they must be easily accessible and available within three days of being demanded by the CBL.

Tax Law

200. The ITA requires the availability of accounting records for relevant legal entities and arrangements in accordance with the standard. The accounting records are available with an officer nominated by the legal entity or arrangement and with the RSL.

201. As noted under Element A.1, the One Stop Business Facilitation Centre ensures that all relevant legal entities and arrangement are registered with RSL and issued with a TIN during incorporation or registration. This imposes an obligation on the legal entity or arrangement to file an annual tax return which must be in the form, state the information required and be filed, as prescribed by the Commissioner General.[49] The tax return must be accompanied by a balance sheet, a statement of income and expenses or other supporting documents (section 102, Income Tax Regulation). Additionally, sections 75(1) and 81(7) impose specific obligations for a partnership and trust to file a return of income as described below. In addition,

49. According to section 4(1) of the ITA, every individual, trustee, company and non-resident who has a chargeable income for the year of assessment is liable to pay income tax. The reference to "chargeable income" exempts from income tax a religious or charitable organisation, an amateur sporting association or a trade union or similar organisation (section 25(1), ITA) subject to obtaining a written ruling from the Commissioner General of the RSL finding that it is an exempt organisation and none of its income or assets confers, or may confer, a private benefit on any person (section 25(2), ITA).

a company or partnership that makes payment of Lesotho-source interest, dividends, royalties, management fees or rent must make a return of such payments within 28 days of the end of year of assessment in which the payments were made. Such return must include the name, address, and where appropriate, the TIN of each person to whom such payments were made, and the amount paid (section 130, ITA).

202. On top of the requirements to file an annual return,[50] section 169(1) of the ITA requires each taxpayer to maintain in Lesotho such records as may be necessary for the accurate determination of the tax payable in either the Sesotho or English language. The Commissioner General may disallow a claim for deduction if the taxpayer is unable, without reasonable excuse, to produce a receipt or other record of a transaction or evidence to support the claim (section 169(2), ITA).

203. The record retention period under the ITA is in line with the requirements of the standard. According to section 169(3) of the ITA, such records must be maintained by the taxpayer for so long as they remain "material in the administration" of the ITA. Since section 135(2) of the ITA specifies that the Commissioner General may amend assessments within four years after service of the notice of assessment, this means that the taxpayer must retain the information for at least five years. Moreover, where fraud or gross or wilful neglect has been committed by or on behalf of a person subject to income tax, the Commissioner General may amend the persons assessment at any time. Such a person would be required to produce records that support the income declared and any claims for deductions. This ensures the availability of accounting records for at least five years after the end of the year to which they relate.

204. The obligation to maintain the records under the ITA falls upon an officer which every company, partnership or trust which carries on business in Lesotho or derives Lesotho-source income is required to nominate and notify to the RSL in the first year of assessment of such company, partnership or trust and each time he/she changes (section 211, ITA)[51] failing which the nominated officer will be the person specified by the Commissioner General (section 211(4), ITA). The nominated officer is responsible for any

50. As noted in paragraph 24, Lesotho applies withholding taxes to non-residents. The person who withholds taxes from the non-resident is required to capture the details of the non-residents from whom the tax is withheld, the amount subjected to the withholding tax and to remit the taxes withheld plus the information to the RSL.

51. Section 211(2) of the ITA specifies that in the case of a partnership with a resident partner, the nominated officer must be a resident partner; or in the case of a trust (other than a superannuation fund) with a resident trustee, the nominated officer must be a resident trustee; or in the case of a company with a resident officer, the nominated officer must be a company officer resident in Lesotho.

obligation imposed on the company, partnership or trust under the ITA and must notify the Commissioner General of the identity of any non-resident partners, beneficiaries, or shareholders (section 211(6), ITA).

Partnerships

205. Partnerships are subject to the accounting information record-keeping obligations imposed by the ITA as described under paragraphs 200 to 204. Section 75(1) of the ITA guides that the partners rather than the partnership are taxed. According to section 7 of the ITA, a partnership is considered a resident partnership if one or more partners was a resident of Lesotho at any time during the year of assessment. In all cases, the partnership (including foreign partnerships) is required to file a return of income for the partnership (section 75(1), ITA) through its nominated officer as stipulated in section 128 who must be resident in Lesotho as required by section 211(2) (see paragraph 204). The partnership return must be accompanied with the partnerships financial statements as described in paragraph 201 and the partnerships must retain records supporting the return of income as described in paragraph 203. The account information record keeping obligations imposed on partnerships under the ITA are in line with the standard.

206. The are no detailed obligations under the Partnerships Proclamation of 1957 requiring partnerships to keep accounting information. However, pursuant to section 5(1)(i) to (o) of the Partnership Proclamation, the partnership deed is required to contain provisions regarding the drawing up of balance sheets within six months after its formation and thereafter at intervals of not more than 12 months. It is also required to provide for the keeping of proper books of account and access of partners to such books, the auditing of the partnership books at the expense of the partnership within six months after the formation of the partnership and thereafter at intervals of not more than 12 months.

Trusts

207. The 2016 Report (paragraphs 169 to 170) described the accounting record-keeping requirements with respect to trusts and these remain the same.

208. The accounting record keeping obligations under the ITA apply to trusts that carry on a business in Lesotho or have taxable income in the same way as they apply to companies and partnerships. These include the requirements to prepare and submit annual tax returns supported by financial statements and maintain accounting records that support the tax returns in Lesotho.

209. However as noted in Element 1.4 (see paragraph 165), the gap under the ITA with regards to ensuring the availability of accounting information for trusts that do not receive a taxable income or trusts with a non-resident settlor remains (see paragraph 169, 2016 Report). Only trusts that receive taxable income from Lesotho would be subjected to obligations under the ITA to keep accounting records. Trusts that receive only foreign-sourced income and have a non-resident settlor are not subject to the obligations under the ITA. Lesotho authorities indicate that since Lesotho imposes taxes on the worldwide income for its residents, the onus would be on the resident trustee to keep all relevant accounting information to prove that all the trust income does not accrue to him/her to avoid being taxed. However, there are no express provisions that ensure that all trusts that exist in Lesotho would have to be registered with the tax authorities regardless of their taxable status, and therefore subjected to all obligations of the ITA. Therefore, it is not clear that accounting record keeping obligations would be observed by trustees of trusts that do not receive taxable income.

210. In addition to the obligations under the ITA, under common law, all trustees resident in Lesotho are subject to a general fiduciary duty to the beneficiaries to keep proper records and accounts of their trusteeship. Lesotho authorities indicate that this imposes an obligation on the trustees to keep accounting records in accordance with the accounting standards applicable in Lesotho. However, as noted in the 2016 Report (paragraph 185) a gap exists with regards to trusts that do not receive taxable income in Lesotho as described under paragraphs 165 and 209, and therefore, the obligations under the ITA and common law fiduciary duty alone may not be sufficient to ensure the availability of accounting information. **Lesotho should ensure that all trusts in Lesotho maintain accounting records even where the trust is not carrying on business or is not subject to tax in Lesotho**.

Societies

211. A combination of the ITA and the Societies Act requires the availability of accounting information in line with the standard.

212. The rules of the society submitted to the Registrar-General for registration must contain information relating to the maintenance of correct books of account and a provision to ensure that, in the case of trust funds, such funds are kept in separate account apart from the expenses of management, the financial year of the society, the appointment of auditors of the society and the duration of such appointment and the appointment of a liquidator in the case of a voluntary dissolution (paragraph 6, Societies Rules). Section 30(1)(d) of the Societies Act requires registered societies to submit to the Registrar General “accounts relating to the assets and

liabilities and income and expenditure". In addition, section 14(d) empowers the Registrar General to require a registered society, at any time, to submit "such accounts, returns and other information as he may deem fit". Lesotho authorities interpret these provisions as requiring a registered society to keep accounting information ready for submission whenever the Registrar of Societies calls for them. Paragraph 6 of the Societies Rules sets the time limit and requires every society, within six months from the expiration of its financial year, to furnish the Registrar General with:

- a revenue account showing the revenue and expenditure for the year including the expenses of management of the society and any contribution towards such expenses
- a balance sheet showing the financial position of the society at the close of that year
- in the case of a society which controls trust funds, a certificate by a suitably qualified person approved by the Registrar-General that such trust funds are correctly controlled and invested
- a copy of any special report by the auditor relating to the activities of the society during the financial year to which the documents relate
- a copy of any annual report that the society may have issued to its members or shareholders in respect of the said financial year
- a copy of any other statement that the society may have presented to its members or shareholders in respect of any of its activities during such financial year.

213. The Registrar-General may reject the documents filed if he/she is of the opinion that any revenue account or balance sheet does not comply with the provisions of the Societies Act or Societies Rules or does not correctly reflect the revenue and expenditure or the financial position of the society (paragraph 10, Societies Rules). In such cases, the society shall be deemed not to have furnished the required documents.

214. The Registrar-General may, at the expense of the society, initiate an investigation into the failure to file a return within 60 days of being required to do so, failure to provide information required by the Registrar-General within 30 days of being required to do so and/or if the returns filed show that the Society has failed to comply with the Societies Act and Societies Rules. The Registrar-General may also initiate such investigation if an auditor appointed by the Society has informed the society of an irregularity that needs correction, and the society has not corrected that irregularity within 30 days of being so required by the Registrar-General (paragraph 11, Societies Rules).

215. The ITA obligations as described from paragraph 200 to 204 also requires the availability of accounting information in respect of societies in accordance with the standard.

Companies that ceased to exist and retention period

216. The legal and regulatory framework in Lesotho does not require the availability of accounting records for legal entities and arrangements that cease to exist in line with the standard. As noted under paragraph 203, all persons subject to the ITA must keep the accounting records and the underlying documentation for at least five years from the end of the relevant accounting period (section 169, ITA). This retention period is in line with the standard. However, the ITA does not explicitly extend this obligation to cases where the legal entity or arrangement has ceased to exist.

217. For companies, this may be ameliorated by requirements to deliver to the Registrar of Companies, annually, their audited financial statements together with the auditor's report which the Registrar of Companies retains indefinitely following the dissolution of the company (see paragraphs 192 and 193). Although this does not include the accounting records themselves or the underlying documentation, following the completion of the liquidation of a company, the liquidator must keep the accounting records and underlying documentation for at least 10 years.

218. For Societies, this may be relieved by the requirement to deliver an annual return and auditors report to the Registrar-General (see paragraph 211). However, the accounting information submitted to the Registrar-General does not include the accounting records themselves or the underling documentation to the accounting records.

219. There is no similar requirement for partnerships and trusts.

220. Consequently, **Lesotho is recommended to ensure that the accounting information, including the underlying documentation, is kept for at least five years after the relevant entities and arrangements cease to exist**.

A.2.2. Underlying documentation

221. Lesotho's legal and regulatory framework requires relevant entities and arrangements to keep underlying documentation of the accounting information in line with the standard. As noted above, section 96 of the Companies Act requires companies to keep the relevant documents to support the accounting records (see paragraphs 185 to 188). Similarly, section 169 of the ITA requires the availability of the underlying documentation of the accounting information for companies, partnerships, trusts and

societies as it imposes an obligation on relevant entities and arrangements to keep the relevant documents that support their annual tax return including receipts or other records of the transaction that support a claim for deduction (see paragraph 202). The only gap would be for trusts that do not receive taxable income as noted in paragraph 209.

Oversight and enforcement of requirements to maintain accounting records

222. Oversight and enforcement of the requirements to maintain accounting records are performed in Lesotho by several authorities: the Registrar of Companies, the Revenue Service and the Central Bank.

223. The Registrar of Companies is the authority in charge of supervising the compliance of the companies with the accounting record-keeping requirements of the Companies Act. A company that fails to submit an annual return meeting the requirements of section 105 of the Companies Act may be removed from the register of companies in accordance with section 87(5) of the Companies Act as described in paragraphs 89 to 92. In addition, the company or its officers may be subjected to a penalty as determined in the guideline issued pursuant to the Companies Act (section 108(2), Companies Act). These provisions are applicable to a foreign (external) company that carries on business in Lesotho (section 108(3), Companies Act).

224. In addition, a director, employee or shareholder of a company who, with intent to defraud or deceive another person, destroys or falsifies records (including accounting records, books, paper or other documents) commits an offence and is liable on conviction to a fine of LSL 20 000 (EUR 1 122) or to imprisonment for three years, or both (section 177(1), Companies Act). Falsification of records maintained in mechanical, electronic, or other devices is also an offence subject to a fine of LSL 50 000 (EUR 2 807) or to imprisonment for a term of 20 years, or both (section 177(2), Companies Act).

225. The RSL is the authority in charge of supervising the compliance with the ITA. Penalties apply to various offences so as to encourage the filing of tax returns with their accompanying accounting records, which would then be available directly with the tax authorities, and the keeping of accurate books and records by the entities themselves.

226. First, a person who fails to file a tax return or document as required by the ITA is guilty of an offence and liable on conviction to a fine not exceeding LSL 5 000 (EUR 280) or to imprisonment for a term not exceeding six months, or both (section 175(1), ITA). If the failure to file the return or document continues after conviction, the offender is liable, on conviction, to a fine of LSL 1 000 (EUR 56) for each day during which the failure

continues, and to imprisonment for three months without the option of a fine in lieu of imprisonment (section 175(2), ITA). Filing false or misleading statement may also result in additional tax equal to double the amount of tax suppressed due to the false or misleading statement (section 198, ITA).

227. Second, failing to maintain proper records as required by the ITA is an offence and liable on conviction to a fine not exceeding LSL 5 000 (EUR 280) or to imprisonment for a term not exceeding six months or both. In addition, if such a person knowingly or recklessly kept incorrect records, he/she is liable on conviction to a fine not exceeding LSL 10 000 (EUR 561) or to imprisonment for a term not exceeding two years or both. Failure to maintain such proper records may also result in additional tax equal to double the amount of tax payable by the taxpayer (section 197, ITA).

228. The CBL is the regulatory authority in charge of the supervision of banks as described under Element A.3 (see paragraph 269).

229. The implementation of the legal framework and the availability of accounting information on relevant legal entities and arrangement in practice, as well as the application of the oversight and enforcement measures, will be examined during the Phase 2 review.

Availability of accounting information in EOIR practice

230. The availability of accounting information in EOIR practice will be examined in the Phase 2 review.

A.3. Banking Information

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

231. The 2016 Report concluded that the legal and regulatory framework in Lesotho requires the availability of banking information as per the standard.

232. Since the 2016 Report, the standard was strengthened with an additional requirement of ensuring the availability of beneficial ownership information on all bank accounts. Information on beneficial owners of bank accounts is collected and verified by banks under the AML framework. However, the problems identified in section A.1.1, with regards to the lack of guidance relating to the definition and methodology for the identification of beneficial owners, the lack of a specified frequency for updating the CDD information and absence of guidance for conducting simplified CDD for

low-risk customers may affect the availability of information on the beneficial owners of bank accounts.

233. With regard to the implementation of the legal and regulatory framework in practice, the 2016 Report concluded that there was no oversight on compliance by banks regarding their customer due diligence requirements and Lesotho was recommended to put in place an oversight programme to ensure compliance with AML regulations and effectively apply enforcement measures on banks regarding their customer due diligence requirements. Element A.3 was rated Largely Compliant. These aspects are not part of the current review and will be assessed in the Phase 2 of the review.

234. The conclusions are as follows:

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement

Deficiencies identified/Underlying factor	Recommendations
The AML framework provides a definition and methodology for the identification of beneficial owners. However, there is no further guidance to banks for their implementation. Consequently, the beneficial owners may not always be identified in accordance with the standard. The AML framework requires a bank to verify its customers where it has doubts about the veracity or adequacy of customer identification and verification documentation or information it had previously obtained. However, the legal and regulatory framework does not prescribe any specified frequency for renewing the CDD information in the absence of doubt, so there could be situations where the available beneficial ownership information for bank accounts is not up to date. Banks are permitted to conduct simplified due diligence for low-risk customers. However, there is no guidance on the content of such due diligence and their impact on the identification of beneficial owners of bank accounts is unknown.	Lesotho is recommended to ensure that, in all cases, adequate, accurate and up-to-date beneficial ownership for all bank accounts is available in line with the standard.

Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

The Phase 2 recommendations issued in the 2016 Report are reproduced below for the reader's information.

Deficiencies identified/Underlying factor	Recommendations
During the review period there was no oversight on compliance of AML regulations by banks regarding their customer due diligence requirements.	Lesotho should put in place an oversight programme to ensure compliance with AML regulations and effectively apply enforcement measures on banks regarding their customer due diligence requirements.

A.3.1. Record-keeping requirements

235. There are four banks in Lesotho. Only persons licensed by the CBL are authorised to carry out banking or credit business in Lesotho (sections 2 and 5, Companies Act).

Availability of banking information

236. The 2016 Report concluded that in Lesotho, banks' record keeping requirements and their implementation in practice were in line with the standard. Since the 2016 Report, Lesotho has amended the MLPC Act in 2016 and issued the MLPC Regulations effective from 29 March 2019. Banks are also subject to another set of AML rules – the FI AML Guidelines, FI AML/CFT Regulations and, until September 2021, the FI KYC Guidelines.

Transactional information

237. Banks are subject to the accounting record-keeping and retention requirements of the Companies Act, since the CBL can only grant a banking licence to a company established or incorporated under the Companies Act.

238. These general obligations are complemented by more specific obligations regarding transactions set in the AML framework. Section 17 of the MLPC Act requires an AML-accountable person to establish and maintain records of all transactions carried out by it. The records to be maintained must contain particulars sufficient to identify:

- the name, address and occupation or where appropriate business and principal activity of each person conducting the transaction or on whose behalf the transaction is conducted
- the nature and date of the transaction
- the type and amount of currency involved

- the type and identifying number of any account with the accountable person involved in the transaction
- if the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee, if any, the amount and date of the instrument, the number, if any, of the instrument and details of any endorsements appearing on the instrument
- the name and address of the accountable person, and of the officer, employee or agent of the accountable person who prepared the report.

239. Banks must identify their customers using reliable, independent source documents, data, or information (Regulation 3(2), MLPC Regulations). Where the transaction is conducted by a natural person, the bank must adequately identify and verify his/her identity including information relating to the person's name, address, occupation and place of work; the national identity card or copy of passport or other applicable official identifying document (section 16(1)(b), MLPC Act; paragraph 6(1), MLAI Guidelines).[52] For legal entities, banks must obtain and verify the information described in paragraph 82.

240. The sector-specific rules add that a bank must keep, in relation to its activities, a full and true written record of every transaction it conducts (section 40(1), FI Act). In addition to the accounting records that a bank is obligated to keep include: (a) records showing, for each customer, at least on a daily basis, particulars of its transactions with or for the account of that customer, and the balance owing to or by that customer; and (b) proper credit documentation.

241. The FI AML Guidelines also require that banks keep records account files and business correspondence and other necessary records that enable them to comply with information requests from supervisory authorities. Such records must be kept in a form that permit the reconstruction of individual transactions (including the amounts and types of currencies involved) so as to provide evidence in criminal proceedings (paragraphs 8 and 9).

242. These requirements meet the standard.

52. Section 16(1)(ba) of the MLPC Act further requires that if a transaction is conducted on behalf of a natural person, the AML-accountable persons must verify that the person purporting to be acting on behalf of the natural person is so authorised; identify and verify the identity of that person by obtaining sufficient identification data to verify the identity of the person.

Identification of clients

243. The CDD/KYC obligations under the AML framework imposed on banks to identify and verify the identity of their customers prior to establishing a business relationship or conducting an occasional transaction and to keep records pertaining to their customers, require the availability of ownership and identity information for bank accounts. Anonymous accounts are therefore prohibited.

244. In addition, a set of guidelines and regulations issued under section 71 of the FI Act (FI AML Guidelines, FI AML/CFT Regulations and, until September 2021, the FI KYC Guidelines) contain sector-specific obligations for banks.

245. Pursuant to the FI AML Guidelines,[53] banks must develop AML programmes which include customer identification procedures and record keeping programmes (section 5). Banks are prohibited from opening or keeping anonymous or fictitious accounts (section 6(1) and must identify, on the basis of official or other reliable identifying document and record, the identity of their customers (paragraph 6(1) and (2), FI AML Guidelines). The obligation to identify and verify the identity of a customer extends to:

- the opening of accounts or passbooks
- fiduciary transactions
- the renting of safe-deposit boxes
- the use of safe custody facilities
- large cash transactions.

246. When a customer opens an account or conducts a transaction on behalf of another person, the financial institution must require that the customer disclose the identity of the person on whose behalf it is opening the account or conducting the transaction (paragraph 7(1), FI AML Guidelines). The FI AML Guidelines further requires registered companies, corporations, associations, partnerships, foundations, trust, attorney trusts or fund or other bodies or persons which or who do not conduct any commercial or manufacturing business or any other form of commercial operations in the country where their registered offices are located to comply with the previous provision on disclosure of identity of the person on whose behalf they are acting (paragraph 7(2) FI AML Guidelines).

53. Among other objectives, the FI AML Guidelines are to require financial institutions to establish and maintain specific policies and procedures to guard against the use of the financial system for money laundering and enable financial institutions to recognise suspicious transactions and to provide an audit trail of transactions with customers who come under investigation (paragraph 3, FI AML Guidelines).

247. In addition to the FI AML Guidelines, the FI AML/CFT Regulations require banks to establish, among other things, well documented policies and processes for CDD and record-keeping that are communicated to all relevant staff and integrated into the bank's overall risk management system (paragraphs 5 and 11(2)). Such customer acceptance policy must identify business relationships that the bank shall not accept based on identified risks as well as outline customer identification and verification procedures adopted by the bank which must involve understanding the purposes and nature of the business relationship on an on-going basis (paragraph 11(4)).

248. The record keeping and retention requirements of the FI AML Guidelines and FI AML/CFT Guidelines meet the requirements of the standard. Banks must keep records on customer identification such as copies or records of official identification documents like passports, identity cards, driving licences or similar documents, that enable them to comply with information requests from supervisory authorities for at least 10 years after an account is closed (paragraphs 8 and 9, FI AML Guidelines).

249. Until its repeal in September 2021, the FI KYC Guidelines granularly detailed the requirements with respect to CDD procedures and KYC obligations for banks. Banks were obligated to develop a KYC policy incorporating four key elements: a customer acceptance policy, customer identification procedures, a policy for monitoring of transactions and risk management policy (paragraph 5, FI KYC Guidelines). The customer acceptance policy must have provided guidelines on the opening of new accounts and laid down the criteria for acceptance of customers. In addition to prohibiting banks from opening or keeping anonymous or fictitious accounts, banks were also precluded from opening or closing an existing account where it is unable to apply appropriate CDD measures and verify the identity or obtain documents required due to non-co-operation of the customer or non-reliability of the information furnished to it (paragraph 6, FI KYC Guidelines). In addition to the customer acceptance policy, banks were obligated to identify customers based on a customer identification procedure, approved by its board of directors, which governed the establishment of a banking relationship, authentication of documents relating to customer identification and confirmation of the adequacy of previously obtained customer identification information (paragraph 7, FI KYC Guidelines).[54] Paragraph 8(1) of the FI KYC Guidelines further obligated banks to maintain a customer profile i.e. a "record which obtains

54. Paragraph 2, FI KYC Guidelines defined "identification" to mean "the process of identifying and verifying a customer's identity by using reliable, independent source documents or information" while "verification means "a process of taking steps by a bank to ensure that the identification information, which has been accumulated is valid and reliable".

information about a customer to enable a bank to establish the customer's identification against which future account activity could be monitored" (paragraph 2, FI KYC Guidelines). The customers profile to be maintained by banks included, among other things, the customers identity, type of entity, nature of business activity, location and transactional details (such as mode of payments, volume of turnover, product type, source of funds, transaction type, and value) (Paragraph 8(2), FI KYC Guidelines). Banks were specifically required to be vigilant to seek information from the customer and any other source pertaining to the customer's risk category when preparing the customers profile and be in position to satisfy its supervisors that it undertook CDD when preparing the customer's profile (paragraph 8(3) and (5), FI KYC Guidelines). Except for the prohibition against a bank closing an existing account where it is unable to apply appropriate CDD measures and verify the identity or obtain documents required due to non-co-operation of the customer or non-reliability of the information furnished to it, all the other requirements described above in this paragraph are covered by the AML framework as discussed under Element A.1 and the FI AML Guidelines and FI AML/CFT Guidelines.

250. Schedule I of the FI KYC Guidelines further outlined the customer identification requirements for banks which included the following:

- **companies and other legal entities**: before opening an account for a company or other legal entity, a bank was required to determine the source of the funds and identify the natural persons who have a controlling interest and comprise the management of the entity by examining the control structure of the legal person or entity.
- **trusts, nominee or intermediary**: banks were obligated to determine whether a customer was acting on behalf of another person as trustee, nominee or any other intermediary.
    - for trusts, the bank was obligated to take reasonable precautions to verify the identity of the trustees and the settlers of the trust, including any person settling assets into the trust, grantors, protectors, beneficial owners and signatories.
    - for foundations, banks were obligated to take reasonable measures to verify the identity of the founders, managers or directors and beneficial owners.
    - for other intermediaries, banks were obligated to obtain satisfactory evidence of the identity of the intermediary and of the person on whose behalf the intermediary was acting as well as details of the nature of the relationship or arrangement in place.

- **accounts opened by professional intermediaries**: banks were obligated to obtain information regarding the identification of a customer whose account was opened by a professional intermediary as well as their beneficial owners.

251. In addition, Schedule II of the FI KYC Guidelines outlined, for each type of customer, the nature of information to be provided to banks to identify and verify their identity and their beneficial owners:

- **individuals**: to verify the legal name and any other names used by an individual customer, a bank was obligated to obtain a passport, voters identity card, drivers' licence, national identity card, letter from a recognised public authority verifying his/her identity and/or residence and any documents which provides customer information subject to the satisfaction of the financial institution. The postal and physical address must also be verified using a utility bill (e.g. telephone or electricity bill), bank account statement not older than two months, letter from a recognised public authority verifying residence of the customer, letter from employer or any documents which provide his/her information.
- **companies and other legal entities**: a bank was obligated to obtain a certificate of incorporation and memorandum and articles of association, the board's resolution to open an account and the identification of those who have authority to operate the account, power of attorney granted to its managers, officers or employees to transact business on its behalf, traders licence, utility bill (e.g. telephone or electricity bill), tax registration certificate and/or any other information which provides customer information. For other legal entities banks were required to obtain and verify the constituting documents, members resolutions, letter from recognised public authority and any document which provides the entity's information to the satisfaction of the institution.
- **partnerships**: a bank was obligated to verify the name of the partnership, its postal and physical address and the names of all partners and their postal and physical addresses by obtaining a registration certificate, the partnership deed, power of attorney granted to a partner or employee of the partnership to transact business on its behalf and any valid official document identifying the partners. In addition, the bank was obligated to obtain a tax registration certificate and utility bill (e.g. telephone or electricity bill) or any other document which provides customer information.
- **trusts**: a bank was obligated to obtain and verify the certificate of registration, the trust deed or founding document, power of

attorney granted to transact business on its behalf, any official valid document to identify the trustees, settlers, signatories, founder, managers, directors' beneficial owners as well as a tax registration certificate and utility bill (electricity of telephone bill).

- **foundation**: a bank was obligated to take reasonable precautions to verify the identity of the founders, managers or directors and the beneficial owners.

252. Nonetheless, the AML framework and the FI AML Guidelines and the FI AML/CFT Regulations continue to require banks to understand the ownership structure of their customers albeit without going into details on the information to be obtained. Lesotho authorities indicate that in practice banks will require information similar to the ones that were outlined in Schedules I and II of the FI KYC Guidelines. The effect of the repeal of the FI KYC Guidelines on the availability of banking information will be examined in the Phase 2 review (Annex 1).

Beneficial ownership information

253. The standard was strengthened in 2016 to specifically require that beneficial ownership information be available in respect of all account holders.

254. Banks are clearly identified as AML-accountable persons (section 2, MLPC Act) and are, therefore, subject to the CDD and KYC requirements imposed by the MLPC Act, MLAI Guidelines and MLPC Regulations as described under Element A.1 (see paragraphs 81 to 84 and 109 to 117). These CDD requirements have some deficiencies which are summarised in paragraphs 120 and 121 and also largely apply to the banks.

Definition and methodology of identification

255. First, the AML framework provides a definition and methodology for the identification of beneficial owners. However, there is no further guidance for the implementation of the definition of beneficial owner(s) and the methodology for identifying them in the context of CDD.

256. For banks, this may be mitigated by section 2 of the FI Act which defines control to mean "having a relationship with a person that makes it possible to exercise a direct or indirect power to determine its financial and operational policy or to influence its decision-making or management pursuant to its Memorandum and Articles of Association or to an agreement or in any other manner".

257. However, the concepts of "ultimately owns or controls" and "controlling ownership interest" are not further explained or defined in the FI Act, FI AML Guidelines or FI AML/CFT Regulations. Consequently, the beneficial owners may not always be identified in accordance with the standard.[55]

258. Until its repeal in September 2021, paragraph 10 of the FI KYC Guidelines provided an indicative list of the nature and type of information that may be provided for customer identification for each type of customer (i.e. individuals, companies, partnerships, trusts and foundations and other legal entities). Now, the FI AML/CFT Regulations more generally require that the CDD programmes of banks must encompass the verification of beneficial owners and an understanding of the nature and purpose of the business relationship (paragraph 11(4), FI AML/CFT Regulations).

259. **Lesotho is recommended to ensure that, in all cases, adequate, accurate and up-to-date beneficial ownership for all bank accounts is available in line with the standard**.

Updating of the information

260. Lesotho's legal and regulatory framework does not ensure that banks have up-to-date information on the beneficial owners of their customers. The FI AML/CFT Regulations requires banks to verify the identity of their customers and their beneficial owners on an on-going basis, which includes the scrutiny of transactions undertaken throughout the course of the relationship to ensure that the transactions conducted are consistent with their knowledge of the customer, the business and risk profile (section 16(1A)(b), MLPC Act; MLPC Regulation 4(b)).

261. The only more specific provision is that the bank must identify and verify the customer where it has doubts about the veracity or adequacy of the customer identification and verification documentation or information it had previously obtained or where it suspects a commission of a money

55. Until September 2021, paragraph 9 of the FI KYC Guidelines required that for clients that are legal persons or entities, a bank was obligated to "identify and verify the ownership of at least 25% and control structure of the customer and determine the natural persons who ultimately control the legal person". However, the lack of explanation of the concepts of "ultimately owns or controls" and "controlling ownership interest" could have led to interpretational issues such as whether the 25% referred to shares or voting power or whether more than one natural person should have been identified as a beneficial owner where more than one met the threshold. It could also have limited the interpretation of "controlling ownership interest" to the holding of the voting rights and in such a case the person holding a significant number of shares without voting rights would not be identified as a beneficial owner of the company. Those interpretations would be contrary to the standard.

laundering offence or the financing of terrorism or where the client is carrying out an electronic funds transfer (section 16(2), MLPC Act).

262. However, absent such doubt, there is no specified frequency for renewing the CDD information held on account holders, including the beneficial owners of bank accounts. This lack of specified frequency for renewing CDD information may lead to situations where the information gathered on beneficial owners of bank accounts is not up to date.[56]

263. Therefore, **Lesotho is recommended to ensure that adequate, accurate and up-to-date information on the beneficial owners of bank accounts be available in line with the standard**.

Introduced business and subcontracting

264. Banks are allowed to rely on intermediaries or third parties to undertake their CDD obligations on the condition that the ultimate responsibility and accountability for the CDD measures undertaken by the intermediary or third party remains with the bank (section 16(7), MLPC Act; MLPC Regulation 9). As noted in paragraph 113 under Element A.1, the conditions imposed on banks relying on CDD undertaken by intermediaries or third parties are broadly in line with the standard.

Retention period

265. The record-keeping requirements for banks are in line with the standard.

266. First, the MLPC Act, the MLAI Guidelines and MLPC Regulations obligations discussed under Element A.1, which are in accordance with the standard, require all AML-accountable persons to keep records for five years after the end of the business relationship, completion of the transaction to which they relate to or occasional transaction.

56. Until September 2021, the FI KYC Paragraph 7(3) of the FI KYC Guidelines required that the customer identification procedure adopted by a financial institution includes processes for the confirmation of the adequacy of the previously obtained customer identification information. Paragraph 15(2) thereof obligated financial institutions to monitor transactions in an account and review the CDD when any unusual pattern is observed while paragraph 15(1) indicated that the extent of monitoring transactions in an account was dependent on the risk sensitivity of the account (paragraph 11 required banks to classify customers in terms of risk namely high, medium or low risk based on the customers profiled and due diligence undertaken by the bank). Nonetheless, the FI KYC did not specify a frequency for renewing CDD information held on account holders.

267. The sector-specific AML rules impose a longer retention period. Banking records must be kept for at least 10 years after the end of the business relationship, closure of the account or end of the occasional transaction (section 40, FI Act; paragraph 8, FI AML Guidelines paragraph 16 FI AML/CFT Regulations).

268. In addition, pursuant to section 57 of the FI Act, the provisions relating to winding up and judicial management of both domestic and external companies as described from paragraphs 70 to 76 apply to banks.

Oversight and enforcement

269. The CBL supervises banks with respect to their obligations under the FI Act and the guidelines and regulations issued thereunder. Section 31 of the FI Act provides that a person who, with intent to deceive, makes or causes a false entry to be made; omits or causes any entry to be omitted; or falsifies any book or record or in any report, slip, statement or other document whatsoever relating to the business affairs, transactions, condition, property, assets, liabilities or accounts of a licensed institution commits an offence liable to a fine of LSL 40 000 (EUR 2 245) or to imprisonment for a term not exceeding 2 years, or both. Section 32 of the FI Act provides for a general penalty for the contravention of any provision of the FI Act, including failure to keep accounting records. The prescribed penalty is a maximum of LSL 500 000 (EUR 28 073) and in the case of a continuing offence, an additional daily penalty not exceeding LSL 5 000 (EUR 280) for each day the offence continues. The provision of a false and misleading statement or omission to any statement that should be made in any book, account, report or statement or the obstruction of an auditor from performing his duties is also an offence subject to, on conviction, a fine of LSL 40 000 (EUR 2 245) or to imprisonment for a term of 2 years, or to both (section 47, FI Act). Failure to produce any records for examination by CBL or its duly appointed examiners under section 53 of the FI Act is an offence subject to, on conviction, a fine of LSL 100 000 (EUR 5 614) (section 54(2), FI Act). Providing such examiners with false information is also an offence subject tom on conviction, a fine of LSL 100 000 (EUR 5 614).

270. Banks are also subject to the supervision of both the FIU and the CBL (sector supervisory authority) under the AML framework. The sanctions for non-compliance under the MLPC Act, MLAI Guidelines and MLAI Regulations are as described in under Element A.1 (see paragraphs 124 to 128).

271. The implementation of the legal framework and the availability of banking information in practice will be examined during the Phase 2 review.

Availability of banking information in EOIR practice

272. The implementation of the legal framework and the availability of banking information in EOIR practice will be examined during the Phase 2 review.

Part B: Access to information

273. 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).

274. The 2016 Report concluded that Lesotho's Competent Authority has broad access powers to obtain all types of information, including ownership and identity, accounting and banking information from any person in order to comply with obligations under Lesotho's EOI instruments. The legal and regulatory framework was determined as "in place" and Lesotho rated "Compliant" with Element B.1 of the standard.

275. The Competent Authority's access powers can be used for EOI purposes regardless of the absence of a domestic tax interest. No special procedures are required, as the same powers and procedures used to access information in domestic cases are used to access information to answer a request under Lesotho's EOI instruments. Lesotho has in place enforcement provisions to compel the production of information, including criminal sanctions and search and seizure powers. Secrecy provisions in Lesotho are compatible with effective EOI.

276. As Lesotho did not receive a request for information during the last few years, the access powers were not used to obtain information for exchange under Lesotho's EOI instruments. Their implementation in practice will be assessed during the Phase 2 of the review.

277. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the legislation of Lesotho in relation to access powers of the Competent Authority.

Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

B.1.1. Ownership, identity and banking information

278. The Competent Authority for EOI in Lesotho is the Commissioner General of the RSL. The Commissioner General has delegated the Competent Authority powers and functions to the Manager of the International Tax Cooperation Unit which is the EOI unit. The EOI unit Manager reports to the Deputy Commissioner, Tax Advisory Services, who reports to the Commissioner Support Operations, who in turn reports to the Commissioner General.

Accessing information generally

279. The Competent Authority can rely on wide domestic powers to gather and provide information requested under Lesotho's EOI instruments directly from the tax administration's databases and other governmental authorities as well as from the taxpayer and third-party information holders. These powers can be exercised by the EOI unit.

280. The information gathering powers of the Competent Authority are contained in sections 170 and 171 of the ITA and include:

- full and free access to any premises, place, book, record or computer, and the right to make an extract or copy at all times and without prior notice (section 170(1)(a) and (b), ITA)
- the right to be provided with all reasonable facilities and assistance by any persons on the premises or place where the tax officer must exercise powers to access information (section 170(3), ITA)
- the power to issue a written notice to require any person, "whether a taxpayer or not", to produce information indicated in the notice (section 171(1), ITA)
- the power to issue a notice to require any person "whether a taxpayer or not", to be examined under oath and give evidence regarding the tax affairs of the person or of any other person, as

well as produce any book, record or computer-stored information in the control of that person (section 171(2), ITA)

- the right to be provided with a translation of any book or record requested under sections 170 and 171 of the ITA, into the Sesotho or English language (section 172, ITA).

281. As noted in the 2016 Report (paragraph 212 and 213), it is reasonable to consider that the information gathering powers can be used to answer an EOI request under an applicable EOI instrument, despite the silence of the ITA to this effect.[57]

282. In particular, section 171 of the ITA, provides for clear and broad access to information held by any person, i.e. not only the taxpayer. In addition, Lesotho authorities take the view that treaty provisions override domestic law, therefore the broader information gathering powers under section 171 of the ITA can be applied for EOI purposes.

283. Lesotho authorities indicate that if the information requested pursuant to an EOI agreement is not already at the disposal of the RSL, the Competent Authority's access powers may be used to access and obtain such information, from any person who is in possession of the information. The EOI Manual indicates that the EOI unit may allocate the case to a RSL Operations Division to assist in the collection of the information. There are no specific procedures or additional conditions, such as application for a court order or warrant, to use the information gathering powers in respect of different types of information or information holders. The use of the domestic access powers to reply to an EOI request in practice will be analysed during the Phase 2 review.

Accessing legal and beneficial ownership information

284. Lesotho's Competent Authority can directly (electronically) access the legal ownership and identity information held by the Registrar of Companies. As described under Element A.1, the RSL also receives

57. Since the 2016 Report, Lesotho has drafted the Tax Administration Bill, 2022 which is under consideration by the Parliament of Lesotho. Section 72(1) empowers the responsible Minister, on behalf of the Government of Lesotho, to enter into, amend or terminate a mutual administrative assistance agreement with a foreign government or governments. Section 72(3) clarifies that where there is any conflict between the terms of such an agreement and a tax law, the mutual administrative assistance agreement will override the tax law. Section 72(4) provides the Commissioner General with express powers to use powers available under the Tax Administration Bill or under any other law to obtain information for the purposes of exchange with Lesotho's EOI partners, provide assistance in the recovery of taxes or service of documents.

legal ownership and identity information at incorporation, a process which includes concurrent registration as a taxpayer and the issuance of a TIN at the One Stop Business Facilitation Centre. However, as noted under Element A.1, the information in the internal database of the RSL is not up to date as there is no requirement to update the information provided to the RSL at registration, for example by inclusion in the tax returns filed periodically.

285. Sections 170 and 171 of the ITA (see paragraphs 280 to 283) provide that the Commissioner General can obtain information from any person, whether a taxpayer or not, and whether this information concerns such person or a third party. Ownership and identity information can thus be gathered directly from the entities subject of an EOI request.

286. As described under Element A.1 and Element A.3 beneficial ownership information may only be available in Lesotho pursuant to the AML framework as the Company Law obligation is not further elaborated. Lesotho's Competent Authority has power to obtain information on the beneficial owners of bank accounts kept by AML-accountable persons pursuant to the requirements of the AML framework. Most AML-accountable persons are subject to professional secrecy (see section B.1.5).

287. Moreover, the RSL is also a designated "competent authority" under section 2(1) of the MLPC Act, which means that, pursuant to section 11, the RSL may consult with any relevant person, institution or organisation in relation to its functions and co-operate and exchange information with any other "competent authority" in the performance of its functions. Section 32 of the MLPC Act further provides that obligations as to secrecy or other restriction on disclosure of information imposed by law or otherwise is overridden. Lesotho authorities indicate that there is no legal provision that prevents the RSL from sending information it receives in its capacity as a "competent authority" under the MLPC Act to its EOI partners.

288. The MLPC Act mandates the FIU to obtain information on all suspicious activities, including ownership and identity information (section 12(1) and (2), MLPC act). The FIU may transmit any information derived from its examination of any suspicious transaction to the appropriate domestic or foreign law enforcement authority. If tax matters are identified on the basis of its analysis, then the FIU should pass on such information to RSL. Lesotho authorities confirm that given its mandate, the FIU will obtain and provide the RSL with information which is the subject of an EOI request. Nevertheless, in practice, the RSL has never had to request the FIU to provide information in order to answer an EOI request. The effectiveness in practice of Lesotho's Competent Authority's access powers with regards to obtaining legal ownership and beneficial ownership information will be further assessed during the Phase 2 review (Annex 1).

Accessing banking information

289. Lesotho's Competent Authority powers to obtain information held by banks or other financial institutions derives from sections 170(1)-(3) and 171 of the ITA. The legal framework does not outline special procedures for obtaining information from banks.

290. There are no limitations in Lesotho's EOI agreements or domestic law, on the ability of the Competent Authority to obtain information held by a bank or other financial institution for either civil or criminal tax purposes to respond to an EOI request. Lesotho authorities indicate that, in order to process a request for banking information, they would prefer that, to the extent possible, the name of the bank, address of the branch, the name and address of the account holder, and the account number be included in the request to enable the identification of the correct account holder and account. However, Lesotho authorities indicate that where this information is not available, the account number will be sufficient.

291. Lesotho did not receive a request for banking information during the recent years. Lesotho authorities indicate that, for domestic cases, the Competent Authority can usually obtain banking information within a month from the time of notifying the banks. Lesotho had received a request for banking information during the period under review in the Round 1 and gathered the information without problem (see 2016 Report, paragraph 222). The effectiveness in practice of obtaining banking information will be further assessed during the Phase 2 review.

B.1.2. Accounting records

292. As described under Element A.2, all companies must file an annual return accompanied by financial statements. In addition, the ITA requires all taxpayers including companies, partnerships and trusts to maintain proper accounting records as well as any records necessary for the accurate determination of the tax payable by the taxpayer.

293. The Competent Authority can directly access the accounting information available with the RSL (from tax returns and records submitted as part of a tax audit or investigation), Registrar of Companies, Registrar of Deeds and Registrar-General. If the accounting records are not directly available with any of these authorities, the Competent Authority can use its access powers (see paragraphs 280 to 283) to access accounting records kept by relevant legal entities and legal arrangements. The effectiveness in practice of obtaining accounting information will be further assessed during the Phase 2 review.

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

294. The concept of "domestic tax interest" describes a situation where a contracting party can obtain and provide information to another contracting party only if it has an interest in the requested information for its own tax purposes. Competent authorities should use all relevant information-gathering measures to obtain the information requested, notwithstanding that the requested jurisdiction may not need the information for its own tax purposes.

295. Lesotho's tax legislation does not contain a limitation to gather the information due to the domestic tax interest.

296. The Commissioner General's powers include the right to seize and retain any book or record for purposes of enforcement of the ITA for as long as it may be required for determining the person's tax liability or for any proceeding under the ITA and the power to seize and retain a computer for as long as is necessary to copy the information required (where a hard copy of computer disk of information stored on a computer is not provided) (section 170(1), ITA). The Lesotho authorities interpret the reference to "any proceeding" as capturing exchange of information.

297. As noted under paragraphs 280 to 283, although the ITA does not explicitly state that the domestic powers can be used for non-domestic purposes, the Commissioner General can summon any person to provide the information and/or to be examined under oath to provide evidence regarding the tax affairs of that person or of any other person, as well as produce any book, record or computer-stored information in their control. Therefore, the Competent Authority has wide powers to obtain information from any person even where it has no domestic tax interest. Moreover, when enacted, the Tax Administration Bill will explicitly empower the Commissioner General to use powers available under the Bill or under any other law to obtain information for the purposes of exchange with Lesotho's EOI partners.

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

298. The ITA contains enforcement provisions to sanction the information holder who would not comply with a notice to produce the information. These are applicable based on court decision.

299. Failure to comply with a notice to provide information issued under section 170 or 171 of the ITA, and failure to provide the RSL with all reasonable facilities and assistance to access any premises, place, book, record, or computer and to make an extract or copy or seize and retain such

records, may result in a general penalty fine of LSL 5 000 (EUR 280) and/or imprisonment of up to six months (sections 182 and 183, ITA). In addition, providing false or misleading statements is an offence that may result in a general penalty of a fine not exceeding LSL 5 000 (EUR 280) or to imprisonment for a term not exceeding six months or both (section 188(1) and (4), ITA). If such statement was made knowingly or recklessly, the person is liable on conviction to a fine not exceeding LSL 10 000 (EUR 561) or to imprisonment for a term not exceeding two years, or both (section 188(2), ITA). Furthermore, obstructing a tax officer from performing his/her duties (including accessing information under section 170 or 171 of the ITA) is an offence subject to a fine not exceeding LSL 10 000 (EUR 561) or to imprisonment for a term not exceeding two years, or both (section 189, ITA).

300. As noted in the 2016 Report (paragraph 228), whilst the ITA does not require a search warrant, Lesotho authorities indicate that, in practice, the RSL applies for one where the search for information covers any person's residential premises, a practice adopted to pre-empt resistance from the information holder on the basis of constitutional rights.

301. The effectiveness in practice of Lesotho's powers to compel the production of information will be further assessed during the Phase 2 review.

B.1.5. Secrecy provisions

302. Jurisdictions should not decline on the basis of secrecy provisions (e.g. bank secrecy, corporate secrecy) to respond to a request for information made pursuant to an exchange of information mechanism.

Bank secrecy

303. Bank secrecy is set in section 29(5), Financial Institutions Act. Any employee is forbidden from disclosing to any person any information of non-public nature relating to their office or to the affairs of any person including any customer of the bank which they have acquired in the performance of their duties or the exercise of their functions. This may be interpreted to include legal ownership and identity as well as beneficial ownership information of the bank accounts, and transactional information (details of deposits and withdrawals) concerning bank accounts. A person who contravenes this section commits an offence and is, on conviction, liable to a fine of LSL 40 000 (EUR 2 247) or to imprisonment for a term of two years or both (section 29(3), FI Act).

304. However, section 29 also provides an exception, and such protected information can be provided when it is "required pursuant to the provisions of any law or an order of a court". In view of this exception, Lesotho

authorities have confirmed that the Competent Authority can access all protected information for purposes of answering a request for information from another jurisdiction since its access powers under the ITA impose an obligation on all persons, including financial institutions, to produce the information required by the notice from the Commissioner General (as discussed in sections B.1.1 above).

Professional secrecy

305. The scope of legal professional privilege in Lesotho is in line with the standard.

306. As noted in the 2016 Report (paragraph 234), legal professionals (which includes lawyers, notaries and conveyancers[58]) is governed by the Legal Practitioners Act of 1983. However, the law is silent on client privileges and duties of confidentiality. Therefore, the general common law principle that a person cannot be required to provide information or produce documents to which a claim to privilege could be maintained in legal proceedings applies. This principle is also incorporated in section 32 of the MLPC Act that preserves the common law privilege of communication between a legal practitioner and a client concerning communication made in confidence between them for purposes of legal advice or litigation that is contemplated or that has commenced.

307. Lesotho authorities indicate that the Competent Authority can obtain information from legal professionals when they are not acting in their legal professional capacity. Lesotho's tax laws do not impose any restriction on the Competent Authority's powers to obtain information from any of the legal professionals or accountants. However, the 2016 Report (paragraph 235) noted that Lesotho's legal system takes reference from South African case law which recognises the common law principle of legal professional privilege as a just cause to refuse to comply with a request to produce information to the tax authorities. Legal professional privilege could only be successfully claimed when all of the following four essential requirements are met:

- the communications that are sought to be protected must have been made to a legal advisor acting in a professional capacity
- the information must have been supplied in confidence
- the information must have been supplied for the purpose of a pending litigation or for obtaining professional legal advice
- the client must claim the privilege, i.e. the Court will not invoke it.

58. Attorneys acting for a client in transaction that involves transfer of property.

308. Therefore, the professional secrecy applicable under the common law in Lesotho, which takes reference from the South African case law, does not impede the Competent Authority from obtaining and exchanging relevant information in accordance with the standard.

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.

309. The 2016 Report concluded that the rights and safeguards that apply to persons in Lesotho were compatible with effective EOI. The legal and regulatory framework was determined as "in Place" and Lesotho was rated "Compliant" with Element B.2 of the standard. There has been no change to the legal framework since the 2016 Report.

310. There is no requirement to notify taxpayers of a request for information, or when the Competent Authority collects information from a third party to fulfil a request for information under Lesotho's EOI instruments.

311. There are also no specific legal provisions allowing the person subject of the request for information to appeal the exchange of the requested information.

312. The conclusions are as follows:

Legal and Regulatory Framework: in place

The rights and safeguards that apply to persons in Lesotho are compatible with effective exchange of information.

Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

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

313. Lesotho's legislation does not require the notification of the person who is the subject of a request for information, either before the information is exchanged (prior notification) or after the information is exchanged (time specific post-notification), whether the information is gathered from the taxpayer or from a third party to fulfil an EOI request.

314. If the Competent Authority must contact the taxpayer or a third-party information holder to gather the information requested, the notice of the Competent Authority to provide the information contains the domestic legal basis for obtaining the information but does not make reference to the EOI purpose of the notice. Therefore, the risk that the taxpayer be informally informed of the existence of the EOI request is limited.

315. There are no specific legal provisions allowing the taxpayer or a third-party information holder to appeal the exchange of information with Lesotho's EOI partners. Although a taxpayer may apply for judicial review, to challenge the decision-making process of the RSL, it is unlikely that a taxpayer would apply for a judicial review in relation to an EOI request since the Competent Authority is not obligated to notify the taxpayer of the request and the exchange of the information. In addition, the request and the information provided to Lesotho's EOI partners is not kept in the taxpayer's files. Therefore, if a taxpayer were to apply for a judicial review on a tax matter other than EOI request, this taxpayer will not have access to any EOI correspondence. Lesotho authorities further indicate that although there have been no cases of judicial review challenging the provision of information requested by an EOI partner, if a judicial review application in relation to EOIR were to be instituted, the Competent Authority would first consult the Competent Authority of the requesting jurisdiction before disclosing the EOI correspondence during the judicial review process. Such a practice would be in accordance with the standard. In addition, the judicial review process has no suspensive effect so the information requested will be exchanged with the EOI partner despite the application for such judicial review.

Part C: Exchange of information

316. Sections C.1 to C.5 evaluate the effectiveness of Lesotho's network of EOI mechanisms – whether these EOI mechanisms provide for exchange of the right scope of information, cover all of Lesotho's relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether Lesotho's network of EOI mechanisms respects the rights and safeguards of taxpayers and whether Lesotho can provide the information requested in an effective manner.

C.1. Exchange of information mechanisms

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

317. At the time of the 2016 Report, Lesotho had 14 EOI relationships through 5 bilateral DTCs, 2 Tax Information Exchange Agreements (TIEAs), the African Tax Administration Forum Agreement on Mutual Administrative Assistance in Tax Matters (ATAF AMATM[59]) and the Southern Africa Development Community Agreement on Assistance in Tax Matters (SADC Agreement[60]). Only three DTCs and the two TIEAs were in force, so that Lesotho was able to exchange information with only five partners. Although Lesotho had ratified and deposited the instruments of ratification of the ATAF AMATM and the SADC Agreement, they were not yet in force.[61]

59. The ATAF AMATM allows for effective exchange of information and assistance among the Tax Authorities of the Member States which are Parties to the Agreement; and to increase co-operation among tax authorities to combat tax avoidance and evasion. It came into force on 23 September 2017. See Annex 2.

60. The SADC Agreement provides for exchange of information automatically, spontaneously or upon request between the relevant competent authorities. It is not in force. See Annex 2.

61. The ATAF AMATM could only enter into force 30 days after 5 ATAF Member States had deposited their instruments of ratification. The SADC Agreement could only enter into force 30 days after two thirds of the SADC Member States submitted their instrument of ratification.

318. Lesotho's EOI mechanisms were found to be in line with the standard, except for the DTC with Seychelles and Lesotho was invited to bring this agreement in line with the standard. The Exchange of information mechanisms of Lesotho were found globally "in place" and Lesotho was rated "Compliant" with Element C.1 of the standard.

319. Since the 2016 Report, Lesotho has signed a new DTC with Eswatini which entered into force on 2 October 2020. Lesotho has also renegotiated three DTCs (with Botswana, Mauritius and the United Kingdom) and clarified the interpretation of some provisions of the TIEA with Guernsey through a memorandum of understanding (MoU). The entry into force of the ATAF AMATM in September 2017 allows for full exchanges with South Africa, Gambia, Liberia, Mozambique, Nigeria and Uganda.

320. Lesotho now has EOI relationships covering 22 jurisdictions through 6 DTCs, 2 TIEAs, the ATAF AMATM and the SADC Agreement, which are in force except for one DTC (with Seychelles) and the SADC Agreement (signed by Lesotho on 18 August 2012 and ratified on 7 October 2014).

321. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the EOI mechanisms of Lesotho.

Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

C.1.1. Standard of foreseeable relevance

Clarifications and foreseeable relevance in practice

322. Exchange of information mechanisms should allow for exchange of information on request where it is foreseeably relevant to the administration and the enforcement of the domestic taxes of the requesting jurisdiction.

323. All of Lesotho's DTCs and TIEAs provide for the exchange of information that is "foreseeably relevant" to the administration and enforcement of the domestic laws of the contracting parties concerning taxes covered in the DTCs. This is consistent with the standard.

324. The TIEAs with Guernsey and the Isle of Man include qualifying language that the requested jurisdiction shall use "at its own discretion" all relevant information gathering measures "necessary" to provide the information requested. Lesotho authorities confirm that this slight deviation from the text in the OECD Model TIEA is interpreted in line with the standard (see

paragraph 256 of the 2016 Report). In addition, the 2016 Report noted that the TIEAs with Guernsey and the Isle of Man deviated from the wording in Article 2 of the OECD Model TIEA[62] (see paragraph 257). The interpretation of the TIEA with Guernsey has since been clarified through a MoU to align it on the OECD Model TIEA. Lesotho authorities indicate that they have initiated similar measures to align the interpretation of the wording of the TIEA with the Isle of Man. This issue remains untested as Lesotho has not exchanged information with the Isle of Man and will be further reviewed during the Phase 2 review (Annex 1).

325. While Lesotho's EOI manual does not explicitly define what is "foreseeably relevant", it does indicate that the process of handling an EOI request begins when Lesotho receives a request "with a view to exchange information that is foreseeably relevant".

Group requests

326. None of Lesotho's EOI instruments exclude the possibility to exchange information pursuant to a group request. As part of validating both an outgoing and an incoming request, the EOI Manual requires that a group request should contain:

- a detailed description of the group and the specific facts and circumstances that have led to the request
- an explanation of the applicable law and why there is reason to believe that the taxpayers in the group for whom information is requested have been non-compliant with that law and supported by a clear factual basis
- proof that the requested information would assist in determining compliance by the taxpayers in the group.

327. Lesotho authorities also confirm that the Competent Authority would apply the guidance contained in paragraph 5.2 of the Commentary on Article 26 of the OECD Model Tax Convention to all existing treaties, including the ATAF AMATM and the SADC Agreement. This is in line with the standard.

62. The TIEAs with Guernsey and the Isle of Man provide that the requested party is not obliged "to provide information which is neither held by its authorities nor in possession of or obtainable by persons who are within its territorial jurisdiction" but used the words "obtainable by" instead of the expression "in control of".

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

328. For exchange of information to be effective, it is necessary that a jurisdiction's obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested.

329. All of Lesotho's EOI relationships are in line with the standard with respect to exchanging information in respect of all persons. Lesotho's DTCs all provide that the EOI provision is not restricted by Articles 1 (persons covered) and 2 (taxes covered). The two TIEAs contain the same wording as Article 2 of the OECD Model TIEA, which does not restrict the exchange of information by the residence or the nationality of the relevant persons. The ATAF AMATM and the SADC Agreement both provide for exchange of information in respect of all persons.

C.1.3. Obligation to exchange all types of information

330. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity (see Article 26(5) of the OECD Model Tax Convention and Article 5(4) of the OECD Model TIEA).

331. Five DTCs contain language akin to Article 26(5) of the OECD Model Tax Convention. Both TIEAs, ATAF AMATM and the SADC Agreement contain a provision similar to Article 5(4) of the OECD Model TIEA.

332. The DTC signed with Seychelles in 2011 does not contain a provision similar to Article 26(5) of the OECD Model Tax Convention and its protocol indicated that "If the request [for banking information] does not identify both a specific taxpayer and a specific bank or financial institution, the Competent Authority of the requested State may decline to obtain any information that it does not already possess." This provision was not in conformity with the standard, as the identification of the taxpayer can be done by all means (including a bank account number) and the identification of the bank should be done, if possible, but not necessarily. The protocol was repealed by exchange of diplomatic notes between Lesotho and Seychelles on 27 January 2014. A new protocol was agreed on 8 August 2014 and the Seychelles are ready to sign it once Lesotho finalises the process of obtaining internal approvals to sign it. Neither the DTC nor the protocol are in force (see section C.1.8).

C.1.4. Absence of domestic tax interest

333. A contracting state may not decline to supply information solely because it does not have an interest in obtaining the information for its own tax purposes (see Article 26(4) of the OECD Model Tax Convention).

334. In 2016, save for the DTC with Seychelles and South Africa, the other DTCs (with Botswana, Mauritius and the United Kingdom) did not contain provisions similar to Article 26(4) of the OECD Model Tax Convention, which oblige the contracting parties to use their information gathering measures to obtain and provide information to the requesting jurisdiction even in cases where the requested party does not have a domestic tax interest in the requested information.[63] Since then, Lesotho has renegotiated the DTCs with Botswana, Mauritius and the United Kingdom to include wording consistent with Article 26(4) of the OECD Model Tax Convention. The new DTC with Eswatini as well as the ATAF AMATM and the SADC Agreement also contain wording consistent with Article 26(4) of the OECD Model Tax Convention. Moreover, there is no domestic tax interest restrictions on Lesotho's powers to access information for EOI purposes (see Section B above).

C.1.5 and C.1.6. Civil and criminal tax matters

335. The standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as "civil tax matters"). Therefore, information may be requested both for tax administration purposes and for tax prosecution purposes.

336. Lesotho's network of EOI agreements provides for exchange of information in both civil and criminal tax matters and there are no EOI agreements that contain a dual criminality requirement. In addition, the process for exchanging information related to criminal matters is the same as that for civil matters.

C.1.7. Provide information in specific form requested

337. There are no restrictions in Lesotho's EOI instruments that would prevent Lesotho from providing information requested in a specific form (including depositions of witnesses and production of authenticated copies of original documents) as long as this is consistent with Lesotho's domestic laws.

63. There is no domestic tax interest restriction on Lesotho's access powers for EOI purposes. In addition, the partner jurisdictions had been reviewed by the Global Forum and none of them required a domestic tax interest to exchange information. Therefore, the presence or absence a provision in line with Article 26(4) of the OECD Model Tax Convention in those agreements did not result in them being inconsistent with the standard.

C.1.8 and C.1.9. Signed agreements should be in force and be given effect through domestic law

338. In accordance with section 112(1) of the ITA, the Minister of Finance may, on behalf of the Government of Lesotho, enter into, amend or terminate a double taxation agreement with the Government of another country. This includes an agreement with a foreign government providing for reciprocal administrative assistance in the enforcement of tax liabilities (section 112(4), ITA). Lesotho has confirmed that this provision is interpreted to cover all international agreements that provide for EOI, including double taxation conventions (DTCs), tax information exchange agreements (TIEAs) as well as regional and global instruments that provide for EOI in tax matters.

339. Following the conclusion of a draft EOI agreement between Lesotho and a foreign government, the Ministry of Finance prepares a cabinet memorandum seeking approval from the Cabinet to sign the agreement. Once the agreement is signed, approval to ratify the agreement is thereafter sought from the sovereign, in whom the "executive authority" is vested as per Article 86 of the Constitution. Once the sovereign approves, the "Instrument of Ratification" is issued and the EOI agreement is considered ratified.

340. Before the EOI agreement enters into force in Lesotho, it must be "domesticated" by an Act of Parliament. Lesotho authorities have advised that in order to shorten the process by which the treaty would have to be debated in parliament in the form of a Bill, the Lesotho Cabinet has taken a decision that all treaties would be tabled before Parliament for "notice and information only", at least 12 days prior to the execution of the instruments of ratification. This process gives the Parliament an opportunity to highlight any relevant considerations before the EOI agreement enters into force in Lesotho. Following this parliamentary process, the EOI agreement is considered ready to enter into force in Lesotho. The "domestication process" then commences with publishing a Legal Notice to inform the public about the new EOI agreement and its date of entry into force.

341. Seven of the eight bilateral EOI agreements are in force (see Annex 2). Only the DTC with Seychelles, signed by Lesotho on 5 September 2011 is not in force, but the relationship is also covered through the SADC Agreement signed in 2012 and while the Agreement is not yet in force, both partners have deposited their instrument of ratification.

342. The ATAF AMATM is in force in Lesotho. The number of ratifications of the SADC Agreement required for its entry into force has not yet been reached, and Lesotho is among the signatories that have already deposited its instruments of ratification.

343. The table below summarises outcomes of the analysis under Element C.1 in respect of Lesotho's EOI mechanisms.

EOI mechanisms

Total EOI relationships, including bilateral and multilateral or regional mechanisms	22
In force	12
In line with the standard	12
Not in line with the standard	0
Signed but not in force	10 [a]
In line with the standard	10
Not in line with the standard	0
Total bilateral EOI relationships not supplemented with multilateral or regional mechanisms	3 [b]
In force	3
In line with the standard	3
Not in line with the standard	0
Signed but not in force	0

Notes: a. **DTC**: Seychelles; **ATAF AMATM**: Ghana, Malawi; **SADC Agreement**: Angola, Democratic Republic of Congo, Madagascar, Malawi, Namibia, Seychelles, Tanzania, Zambia, Zimbabwe.

b. **DTC**: United Kingdom; **TIEA**: Guernsey and the Isle of Man.

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

The jurisdiction's network of information exchange should cover all relevant partners, meaning those jurisdictions who are interested in entering into an information exchange arrangement.

344. The 2016 Report concluded that Element C.2 was "in place" and rated as "Compliant". Lesotho was recommended to continue to develop its EOI network with all relevant partners.

345. Since the 2016 Report, Lesotho's EOI network grew from 14 to 22 partners through a new DTC with Eswatini as well as the increased numbers of signatories to the regional agreements (the ATAF AMATM and the SADC Agreement). In addition, the ATAF AMATM came into force on 23 September 2017. Lesotho's EOI network now covers 22 jurisdictions through 10 EOI instruments comprising of 8 bilateral instruments (6 DTCs and 2 TIEAs) and two regional instruments. Lesotho's EOI network covers significant partners, including South Africa, its most significant trading partner.

346. Lesotho is not a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. Lesotho authorities indicate that a Bill is pending in Parliament that would allow Lesotho to initiate the process of becoming a party to the Multilateral Convention.

347. Comments were sought from Global Forum members in the preparation of this report and no jurisdiction has indicated that Lesotho refused to negotiate an EOI instrument with them. 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, Lesotho should continue to conclude EOI agreements with any new relevant partner who would so require (see Annex 1).

348. The conclusions are as follows:

Legal and Regulatory Framework: in place

The network of information exchange mechanisms of Lesotho covers all relevant partners.

Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

C.3. Confidentiality

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

349. The 2016 Report concluded that the applicable treaty provisions and statutory rules that apply to officials with access to treaty information and the practice in Lesotho regarding confidentiality were in accordance with the standard. The legal and regulatory framework was determined as "in place" and Lesotho was rated "Compliant" with Element C.3 of the standard.

350. All the new EOI mechanisms entered into by Lesotho subsequent to the 2016 Report are in line with the international standard with respect to confidentiality.

351. However, confidentiality provisions in Lesotho's legal framework are not fully consistent with the standard as they do not ensure that information received from EOI partners may not be disclosed to persons not authorised by the exchange of information agreements.

352. The conclusions are as follows:

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement

Deficiencies identified/Underlying factor	Recommendations
Confidentiality provisions in Lesotho's domestic legal framework do not ensure that information received from EOI partners may not be disclosed to persons not authorised by the exchange of information agreements. Lesotho authorities consider that in the hierarchy of laws in Lesotho, international agreements formed with legal effect of statutory law precede statutory law. However, there is neither a legal provision nor a court decision to support this.	Lesotho should ensure that disclosure of information received pursuant to its exchange of information agreements is consistent with the standard.

Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

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

353. The 2016 Report noted that while the articles in Lesotho's old DTCs may have varied slightly in wording, these provisions contained all the essential aspects of Article 26(2) of the OECD Model Tax Convention.[64] Lesotho's TIEAs with the Isle of Man and Guernsey contain confidentiality provisions modelled on Article 8 of the OECD Model TIEA. Since the 2016 Report, the DTCs (see paragraph 319) as well as the new DTC with Eswatini, all contain confidentiality provisions modelled on Article 26(2) that ensure that the information exchanged will be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes, or the oversight of the above. Articles 8 of the ATAF AMATM and the SADC Agreement are also in line with the standard.

354. The Terms of Reference, as amended in 2016, clarified that although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where the EOI

64. Only the DTC with the United Kingdom did not refer to the confidentiality provision of the domestic laws of the Contracting States but, in the case of Lesotho, this did not prevent the enforcement of the confidentiality duty since information received from partner jurisdictions are received on the basis of an international agreement signed in application of the Income Tax Act, and therefore the domestic confidentiality provisions applied (see paragraph 299 of the 2016 Report).

agreement provides for the party supplying the information to authorise the use of information for purposes other than tax purposes and where tax information may be used for other purposes in accordance with their respective laws. Except for the DTC with Seychelles and the SADC Agreement, all of Lesotho's DTCs, TIEAs and the ATAF AMATM provide for this possibility.

355. Section 202(1) of the ITA prohibits RSL officials from communicating information received in an official capacity to any other person, except in the performance of their duties under the ITA or by act of a competent court. A person who contravenes the obligation to keep information secret as required by section 202(1) of the ITA is guilty of an offence and liable, on conviction, to a fine not exceeding LSL 5 000 (EUR 280) or to imprisonment for a term not exceeding six months or to both (section 186, ITA).

356. Section 202(3)(c) of the ITA permits the disclosure of information "when the competent authority of the government of a country with which an [EOI] agreement exists, to the extent permitted under that agreement" (see paragraph 338). The conditions to permitting the disclosure of information to a foreign Competent Authority are deferred to the provisions in Lesotho's EOI agreements which would take full legal effect. This is in line with the standard. Another exception to the secrecy obligation benefits the Auditor-General (Section 202(3)(b), ITA). Under section 7 of the Audit Act read in conjunction with the ITA, the Auditor-General can audit the assessments made by the RSL. However, section 7(3) of the Audit Act also gives the Auditor General broader roles not limited to "the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes …". The Auditor-General is mandated to ensure, among other things, that all moneys appropriated by Parliament and disbursed are applied for the purpose for which they were appropriated and to audit accounts of officers and authorities of the government and every other commission or body established by or under the Constitution or any other law (like the RSL). Consequently, the treaty-exchanged information that may be accessed by the Auditor-General may be consequently used in the discharge of these other roles. The Lesotho authorities consider that in the hierarchy of laws in Lesotho, international agreements precede statutory law. Therefore, in case the Auditor-General would ask for information not related to Lesotho taxes (for instance information in a request for information received from a partner), the RSL would deny it access. However, this statement is not supported by any legal provision nor by court decision. Therefore, it is not certain that in practice any issue would be resolved in the expected manner. **Lesotho should ensure that disclosure of information received pursuant to its exchange of information agreements is consistent with the standard**.

357. As noted under Element B.2, Lesotho's legislation does not require the notification of the person who is the object of a request for information. Lesotho authorities indicate that taxpayers have a right to access their tax files, but information exchanged under an EOI instrument is not kept in the tax files. Where the auditor has received this information, they must not make it part of the tax files and are obligated to return it to the EOI unit for disposal when the audit or investigation is complete.

C.3.2. Confidentiality of other information

358. The confidentiality provisions in Lesotho's EOI agreements and domestic law do not draw a distinction between information received in response to requests or information forming part of the requests themselves. As such, these provisions apply equally to all requests for such information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

Confidentiality in practice

Human resources

359. At the domestic level, the Human Capital Management Division and the Internal Affairs Unit of the RSL conduct background checks to vet potential staff before they are offered an employment contract. Then, section 202(5) of the ITA requires that all RSL officials must first take an oath of secrecy before taking up their duties at the tax administration. Through the oath of secrecy, officials agree and solemnly swear that they shall not divulge or disclose or be party to divulging or disclosing to any unauthorised person, any information, documents or others, relating to the income, expenditure or other financial dealings or status of any taxpayer or other person involved in the operations in furtherance of the RSL Act, and any confidential information including instructions, directives or orders in respect of the administration of the RSL Act which may come to their possession, knowledge or attention, either in the course of their duties or in their capacity as an officer or staff member. Any person employed to audit the assessments and accounts of the RSL is also deemed to be a person employed to carry out the provisions of the ITA and must therefore ensure the confidentiality of information (section 202(2), ITA). The oath of secrecy is binding even after the employee has left the services of the RSL. Lesotho authorities indicate that no further background checks are necessary when an official who is already vetted and has taken the oath of secrecy changes positions within the RSL.

360. New employees receive training on the mandate of the RSL, including the laws it administers, as well as policies governing its work. These onboarding training sessions also covers issues relating to ethics as a public officer and the requirement to keep information obtained or accessed in the course of their employment confidential. In 2021, the two EOI officials have received training on EOI, including confidentiality, under the Train the Trainer programme run by the Global Forum Secretariat. In turn, in 2021 they conducted training sessions on EOI, including on the confidentiality of exchanged information, for 35 staff members whose work is relevant to EOI in 2021.

361. Independent contractors are required to sign an oath of secrecy committing that they will not disclose official information to unauthorised parties. Moreover, the contracts signed with the RSL include a clause compelling them not to disclose official information. The RSL can unilaterally terminate a contract where unauthorised disclosure occurs. Contractors do not have access to information exchanged under EOI agreements.

Labelling and handling of confidential information within the tax administration

362. Only officials with delegated Competent Authority status (Manager and Supervisor in the EOI unit) can access the generic, secure email for the EOI unit. While both the Manager and the Supervisor have access to the mailbox of the EOI unit, it is the primary responsibility of the manager to allocated cases to the Supervisor. The EOI manual mandates that all communications emanating from the EOI unit should be by courier services or secure email transmission using the secure EOI email address.

363. The EOI manual provides that information received from EOI partners should be marked with a confidentiality stamp indicating that "This information is furnished under the provisions of an International Agreement on EOI and its use and disclosure are governed by the provisions of that Agreement". The response received from the EOI partner is not shared with officials outside the EOI unit in the form it was received but kept in a file in a locked cabinet, within the EOI office. Instead, the EOI unit drafts a memorandum detailing the response obtained as well as the documents provided by the EOI partner for the use of the requesting officials. The communication from the EOI partners is only accessible subject to the permission of the delegated Competent Authority.

364. The EOI unit maintains a clean desk policy. EOI officers are regularly cautioned against leaving information exchanged under EOI agreements in a place where they are unprotected and accessible by unauthorised persons. Such information must always be filed away in the lockable cabinets within

the EOI office when not in use. The EOI unit also reminds RSL officials who use the information received from Lesotho's EOI partners to maintain a clean desk. The information provided to such officers is also treaty marked as a reminder to maintain its confidentiality. When the information is no longer required by the auditors, it is returned to the EOI Unit and shredded.

365. The RSL has a hardware disposal procedure which is used to dispose of assets such as laptops and desktops. The hard drives for the hardware to be disposed are removed from machines and kept in a safe place. This procedure is applicable to all units, including the EOI unit, whose officials are allocated laptops and computers secured by BitLocker.

Incident/breach management

366. The RSL has an Internal Affairs Unit that monitors that secrecy provisions are respected by all RSL officials. The RSL has a Disciplinary Manual governing the use of official information, including information exchanged under EOI agreements, which authorises the Internal Investigation Function (under the Internal Affairs Unit) to conduct investigations on the allegations of corruption, including the disclosure or sharing of official information to unauthorised parties. Part of the Internal Affairs Unit's mandate is prevention undertaken through integrity building initiatives including awareness campaigns that should be held regularly for staff. The provisions relating to confidentiality and secrecy are part of the integrity building initiative.

367. The implementation in practice of Lesotho's EOI mechanisms and legislation concerning confidentiality will be assessed during the Phase 2 review.

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.

368. The 2016 Report concluded that Lesotho's legal framework and practices concerning rights and safeguards of taxpayers and third parties are in line with the standard. The legal framework and network was determined to be "in place" and Lesotho was rated "Compliant" with Element C.4 of the standard.

369. With the exception of the TIEAs with Guernsey and the Isle of Man, all of Lesotho's EOI instruments include a provision equivalent to the exceptions provided in Article 26(3) of the OECD Model Tax Convention, which envisages cases where the requested jurisdiction can legitimately decline the EOI request. The TIEAs indicate that the requested jurisdiction "shall

use its best endeavours" to ensure that the effective exchange of information is not unduly prevented or delayed by the applicability of the rights and safeguards secured to persons. As noted in the 2016 Report (see paragraph 316), Guernsey and Lesotho have clarified the interpretation of their TIEA through a Memorandum of Understanding. The TIEA with the Isle of Man continues to contain a deviation where the applicability of the rights and safeguards secured to persons is detached from the conditionality that it is only to the extent that they do not unduly prevent or delay effective exchange of information. While Lesotho has commenced the process of clarifying the interpretation of this provision with the Isle of Man to align it with the standard, the rights and safeguards that may be applicable are not expected to be obtrusive to an effective exchange of information. Lesotho should continue to monitor that appropriate measures are in place to ensure that the application of rights and safeguards does not unduly prevent the effective exchange of information with the Isle of Man (see Annex 1).

370. All of Lesotho's EOI agreements ensure that the contracting parties are not obliged to provide information which is subject to legal professional privilege and the domestic definition of this privilege is in line with the standard (see section B.1.5).

371. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the information exchange mechanisms of Lesotho in respect of the rights and safeguards of taxpayers and third parties.

Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

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.

372. The 2016 Report noted that Lesotho had allocated resources and had in place organisational processes for exchange of information that appeared to be adequate for dealing with incoming requests in a timely manner. As Lesotho had received only two requests between 1 July 2012 and 30 June 2015, it was recommended that Lesotho continue to monitor the practical implementation of the organisation processes of the EOI unit, in particular taking into account any significant changes to the volume of

incoming EOI requests, to ensure that they are sufficient and effective in practice. Lesotho was rated "Largely Compliant" with Element C.5.

373. During the current review, Lesotho sent 12 requests but did not receive any request from partners. This low experience has been taken into account in accordance with the Methodology to conduct the review of Lesotho in two phases. As a consequence, this report focuses on the legal and regulatory aspect of the EOI framework of Lesotho.

374. The conclusions are as follows:

Legal and Regulatory Framework

This element involves issues of practice. Accordingly, no determination has been made.

Practical Implementation of the Standard: no rating is assigned on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

The Phase 2 recommendation issued in the 2016 Report is reproduced below for the reader's information.

Deficiencies identified/ Underlying factor	Recommendations
Lesotho has allocated resources and has in place organisational processes for exchange of information that appear to be adequate for dealing with incoming EOI requests in a timely manner. Lesotho has only received two requests for information.	Lesotho should continue to monitor the practical implementation of the organisational processes of the EOI unit, in particular taking account of any significant changes to the volume of incoming EOI requests, to ensure that they are sufficient for effective EOI in practice.

C.5.1. Timeliness of responses to requests for information

375. Lesotho's DTCs as well as the ATAF AMATM and the SADC Agreement do not contain any provision on the timeline for answering an EOI request. The TIEAs with Guernsey and the Isle of Man require that the Competent Authority of the requested jurisdiction confirms receipt of a request within 30 days; notifies any deficiencies in the request within 60 days; and, if unable to obtain and provide the requested information within 90 days, immediately inform the requesting jurisdiction and explain the reason for its inability, the nature of the obstacles or the reasons for refusing to provide information (Article 4(6) of both TIEAs). These provisions are aligned on the Model TIEA.

376. There are no specific legal or regulatory requirements in place that would prevent Lesotho from responding to a request for information by providing the information requested or providing a status update within 90 days of receipt of the request.

377. The 2016 Report (paragraph 338) noted that Lesotho had recently put in force an EOI Manual for the handling of EOI requests (validating the request, gathering information and compiling responses) but it did not refer to specific timelines that needed to be followed for each step: it included the final objective to respond to a request within 90 days and 182 days depending on whether the information was or was not readily available within the RSL.

378. Although not a formal recommendation, Lesotho was invited to include specific timelines for the completion of each of the steps involved in processing the EOI request to ensure that the response will be provided within the timeframes set out in the EOI Manual and to monitor the practical implementation of the EOI Manual to ensure that the EOI requests are dealt with effectively and efficiently.

379. Since the 2016 Report, Lesotho has updated the EOI Manual to set out timelines for the treatment of the EOI requests by the Competent Authority:

- A request of information must be acknowledged within 7 days of receipt.
- A letter informing that a request for information is rejected or a request for clarification must be sent within two weeks (14 days) of receiving the request.
- If the Competent Authority determines that the request is valid, information that is readily available within the tax administration's databases must be provided within 90 days of receiving the request. Where the information is not readily available within the tax administration's database, it must be provided within 180 days of receiving the request.
- A partial or final response must be provided depending on whether only part of the information or the full information requested by the EOI partner has been gathered by the Competent Authority.

380. The implementation of the EOI manual will be assessed in the Phase 2 review.

Status updates and communication with partners

381. The EOI Manual did not include any section in which an update is provided to the EOI partner where a response cannot be provided within the 90 days. While the EOI manual provides for the Competent Authority to

request a progress report from its EOI partners concerning the handling of a request originating from Lesotho and a template for this request, there is no similar provision for providing a progress or status update for requests sent to Lesotho.

382. Although Lesotho did not receive any request during the current review and the impact of not providing for a status update is therefore minimal, there is a possibility that in the future Lesotho may receive requests and may not provide a progress report where the information cannot be obtained within 90 days. The practical implementation of the EOI Manual will be assessed during the Phase 2 review.

383. Lesotho maintains close communication with its important EOI partner, South Africa, through regular update of contact details and regular meetings. Lesotho has also created a specific email address for the Competent Authority which is only accessible by the EOI unit for communication with EOI partners. The contact details of Lesotho's Competent Authority are published in the Global Forum's Competent Authorities secure database and this information is kept up to date.

C.5.2. Organisational processes and resources

Organisation of the Competent Authority

384. Lesotho's Competent Authority for exchange of information purposes is the Commissioner General, who has delegated the Competent Authority functions to the Manager of the ITC Section (the EOI unit). These details are also provided to Lesotho's EOI partners, when they require confirmation or in case of any changes.

385. The daily functions of the Competent Authority are carried out by the EOI unit, which is responsible for implementing all EOI agreements, processing all EOI requests and maintaining a regular contact with Lesotho's EOI partners.

Resources and training

386. The EOI unit consists of two staff members, a Manager who heads the section and a supervisor. The EOI staff complement has not been increased since the last peer review. Considering that Lesotho has not received any request and has sent only 12 requests during the period under review, the staff resources allocated to the EOI unit for the handling of EOI requests are set at the appropriate level, but Lesotho should reconsider the staffing levels, should the number of requests increase in the future. The EOI officials have received training from the Global Forum and ATAF.

In addition, in 2021 these officers also participated in the Global Forum's "Train the Trainer Programme", a year-long programme which involved these officers undergoing training by experts from the Global Forum Secretariat, tailoring training materials provided to Lesotho's domestic circumstances and training other officials from RSL on EOI. The EOI officials also attend international and regional meetings and other initiatives on EOI to enhance knowledge and experience.

387. Lesotho has developed a comprehensive EOI Manual to guide staff on EOI processes and procedures and the handling of information received pursuant to a request. The EOI Manual describes the process for handling an EOI request and includes a checklist for examining the validity and the completeness of both incoming and outgoing requests in light of the relevant treaty requirements. As described above, the EOI Manual also sets out the timelines for the treatment of the EOI requests. It further outlines the confidentiality rules applicable to the information received and exchanged under Lesotho's EOI instruments.

388. Lesotho's Competent Authority has installed the EOI tracking system (case management system) based on a template in the Model EOI Manual to track and monitor the number of EOI cases and workflow. It captures the date the request was received, the requesting jurisdiction's reference number, Lesotho's internal reference number, the date the response is sent by Lesotho and other relevant case details. It generates automatic alerts before the deadline for handling the request.

Incoming requests

389. Lesotho's EOI Manual, issued on 28 July 2016 and subsequently updated, describes the steps to be followed by RSL's staff members in handling EOI requests. The EOI manual was last updated on 14 March 2023.

Competent Authority's handling of the request

390. The EOI manual provides that:

- Lesotho may receive an EOI request in the form of a letter directed to the Commissioner General of RSL, the Records Office or through the dedicated generic email for the EOI unit. Lesotho prefers that all EOI requests from its partners are channelled through the EOI unit generic email address. All requests sent to the Commissioner General's office, or the Records Office must be immediately sent, unopened, to the EOI unit. All requests must be date stamped to reflect the date of receipt and stamped with a confidentiality stamp followed by an update to the case management system reflecting the dates of receipt, the requesting EOI partner, among other details.

- The EOI unit must acknowledge the EOI request within seven calendar days, enter the details of such acknowledgement in the case management system and archive the acknowledgement letter. The EOI manual contains a template letter for acknowledging EOI requests.
- The request must thereafter be validated within one day of acknowledging receipt to determine its validity. The Competent Authority has developed a quality control template used for validating requests, a process which includes determining if the request is based on a valid legal instrument that is in force as well as the foreseeable relevance of the request.
- In cases where the request is unclear or incomplete, a request for clarification, following the template provided in the EOI manual, should be sent to the requesting jurisdiction.
- Where the EOI unit determines that the request is not valid, it must reject it, following the template letter in the EOI Manual.
- All relevant documentation used during the process outlined above must be stamped with the confidentiality stamp.

Gathering of the information and Verification of the information gathered

391. The EOI Manual provides that once the request has been verified by the Competent Authority and considered valid, the EOI unit begins to gather the information requested. As a first step, the EOI unit will determine whether the information is readily available within the RSL. If so, the designated EOI officer gathers the information using the RSL internal systems and prepares a response to be sent to the EOI partner within 90 days. Where the information requested is not readily available within the RSL and investigations have to be conducted to determine its location, the EOI manual indicates that EOI unit, within two days of deciding to honour the request, allocates the case to the relevant operations division to gather the information requested. Lesotho authorities indicate that this procedure would be undertaken when more resources are needed in order to provide the information in time and they consider the local unit is best placed to gather the information. The EOI manual contains a template letter used for forwarding the request to relevant operations department and gathering the information requested to ensure confidentiality is maintained. The case management system must be updated with all actions taken regarding the request.

392. Once the information is obtained from within the RSL or received from the third party, the EOI unit must assess the information collected

against the requested information to determine if it enables the Competent Authority to answer the request fully or partially. Where the information obtained does not fully answer the request, the EOI unit will communicate with the relevant RSL department to obtain additional information. Where a third party is involved, the EOI unit may involve the litigation department to consider taking action against the third-party information holder.

393. The EOI manual provides that upon obtaining the information requested, and exhausting all information gathering powers, the relevant EOI officer drafts a partial or final response, using the template in the EOI Manual, which is validated to ensure that information collected in Lesotho corresponds to the information requested. In all cases where the information gathering powers have not been exhausted but some information has been obtained, a partial response should be provided using the template in the EOI manual. The requesting jurisdiction will receive an update when further information is obtained or a final response when no further information can be obtained and the information gathering powers have been exhausted. At all times, all relevant documentation is to be stamped with the confidentiality stamp and all communication regarding the request stored. As Lesotho has not received a request for information since the last update of the EOI Manual, this process is untested.

Outgoing requests

394. The EOI Manual describes the steps required by RSL's staff members in processing outgoing EOI requests:

- A RSL official seeking information not available within Lesotho must complete a template provided in the EOI manual and submits it to the EOI Unit for review.
- The EOI Officer receives the request and validates it by checking that:
  - The proposed jurisdiction is the right jurisdiction to which a request should be sent.
  - A legal EOI instrument exists between Lesotho and the jurisdiction from which the information will be sought.
  - The request deals with periods or taxes which are covered by the EOI instrument.
  - The completed template provides sufficient background information and that the request is clear and specific.
  - The RSL official has exhausted all domestic means available to obtain the information.
  - The information is "foreseeably relevant".

- If the information provided by the tax auditor is insufficient, the EOI officer requests any additional details necessary for completing the request.
- The EOI officer will classify the request depending on whether it is a follow-up on a request that had been sent or a new request and then complete the request for review by the EOI unit manager.
- The request is signed by the EOI unit Manager (delegated Competent Authority) and dispatched to the EOI partner.

395. Requests are generally sent through either encrypted email or registered postal mail depending on the preference of the EOI partners. Depending on the response received, Lesotho may send a request for clarity or a new request to the requested jurisdiction.

396. During the years 2019 to 2022, Lesotho sent 12 requests to EOI partners. Its main trading and EOI partner, South Africa, indicated in its peer input that telephone contacts and meetings on EOI matters were easy to arrange and that it was generally satisfied with its EOI relationship with Lesotho.

397. An analysis of the organisational process and resources implemented by Lesotho in practice, including whether any unreasonable, disproportionate, or unduly restrictive conditions exist in practice, will be carried out during the Phase 2 review.

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

398. The 2016 Report concluded that there are no factors or issues identified in Lesotho that impose unreasonable, disproportionate, or unduly restrictive conditions. Whether any such conditions exist in practice will be assessed during the Phase 2 review.

Annex 1: List of in-text recommendations

The Global Forum may identify issues that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, the circumstances may change, and the relevance of the issue may increase. In these cases, a recommendation may be made; however, it should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be stated in the text of the report. A list of such recommendations is reproduced below for convenience.

- **Element C.2**: Lesotho should continue to conclude EOI agreements with any new relevant partner who would so require (paragraph 347).
- **Element C.4**: Lesotho should continue to monitor that appropriate measures are in place to ensure that the application of rights and safeguards does not unduly prevent the effective exchange of information with the Isle of Man (paragraph 369).

In addition, the Global Forum may identify aspects of the legal and regulatory framework that require follow-up in Phase 2. A non-exhaustive list of these aspects is reproduced below for convenience.

- **Element A.1.1**: The effectiveness of the enforcement of low financial sanctions (paragraph 62).
- **Element A.1.1**: The supervisory measures taken since 2016, the effectiveness of the system of enforcement and oversight for the availability of legal ownership and identity information for companies, including the filing of ownership and identity information at registration or after registration by all companies, the obligation to maintain a share register and keeping it updated with changes in ownership and the process of reinstating non-compliant companies that have been struck-off the register (paragraph 99).
- **Element A.1.1**: The effectiveness of the system of enforcement and oversight of the availability of beneficial ownership information (paragraph 130).

- **Element A.1.4**: The implementation of the Friendly Societies Act in practice with regard to trusts, including effectiveness of the enforcement of low financial sanctions (paragraph 158).
- **Element A.1.4**: The implementation of the ITA in practice with regard to trusts (paragraph 165).
- **Element A.1.5**: The implementation of the Societies Act to ensure availability of ownership and identity information for foundations (paragraph 178).
- **Element A.3**: The effect of the repeal of the FI KYC Guidelines on the availability of banking information (paragraph 252).
- **Element B.1.1**: The effectiveness in practice of Lesotho's Competent Authority's access powers with regards to obtaining legal ownership and beneficial ownership information (paragraph 288).
- **Element C.1.1**: The impact of the deviation in Lesotho's TIEA with the Isle of Man (paragraph 324).

Annex 2: List of Lesotho's EOI mechanisms

Bilateral instruments for the exchange of information on request

	EOI partner	Type of agreement	Signature	Entry into force
1	Botswana	DTC	30 November 2017	31 January 2020
2	Eswatini	DTC	6 September 2019	2 October 2020
3	Guernsey	TIEA	3 July 2013	3 January 2015
4	Isle of Man	TIEA	16 September 2013	3 January 2015
5	Mauritius	DTC	2 March 2021	7 June 2021
6	Seychelles	DTC	5 September 2011	Not yet in force
7	South Africa	DTC	18 September 2014	27 May 2016
8	United Kingdom	DTC	3 November 2016	18 September 2018

Multilateral African Tax Administration Forum Agreement on Mutual Assistance in Tax Matters (ATAF AMATM)

The Multilateral African Tax Administration Forum Agreement on Mutual Assistance in Tax Matters (AMATM) came into force on 23 September 2017. Member states that have submitted their instrument of ratification are: South Africa, Gambia, Lesotho, Liberia, Mozambique, Nigeria and Uganda. Botswana, Eswatini, Ghana and Malawi have signed the AMATM but are yet to ratify it. Lesotho became a signatory to the ATAF AMATM on 15 May 2014 and deposited its instrument of ratification on 7 October 2014.

Southern African Development Community's Agreement on Assistance in Tax Matters (SADC Agreement)

The Southern African Development Community's Agreement on Assistance in Tax Matters was signed on 18 August 2012 by Angola, Botswana, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar,

Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe. It provides for a framework exchange of information automatically, spontaneously or upon request between the relevant competent authorities. It will only enter into force 30 days after two thirds of the Southern African Development Community member states submit their instrument of ratification. This agreement is not in force yet as only Botswana, Eswatini, Lesotho, Mauritius, Seychelles and South Africa have ratified it. Lesotho signed the SADC Agreement on 18 August 2012 and deposited its instrument of ratification on 7 October 2014.

Annex 3: Methodology for the review

The reviews are based on the 2016 Terms of Reference and conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and amended in December 2020 and November 2021, and the Schedule of Reviews.

The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 4 April 2023, Lesotho's responses to the EOIR questionnaire and inputs from peers on the negotiation of EOI arrangements with Lesotho. As Lesotho has limited experience in exchange of information on request, the review of this jurisdiction in two phases, in accordance with the new section V of the Methodology, as amended in 2021. As the first Phase of the review only refers to the legal and regulatory framework, no questionnaire peer input was required at the launch of this review.

List of laws, regulations and other materials received

Commercial laws

Accountants Act (Act No. 9 of 1977)

Business Licensing and Registration Act 2019 (Act No. 3 of 2019)

Business Licensing and Registration Regulations 2020 (Legal Notice No. 69 of 2020)

Business Licensing and Registration (Amendment) Regulations, 2021 (Legal Notice No. 100 of 2021)

Companies Act 2011 (Act No. 18 of 2011)

Companies Regulations 2012

Deeds Registry Act 12 of 1967 (GN 51/1967)

Partnership Proclamation No. 78 of 1957

Friendly Societies Act, No. 7 of 1882

Societies Act, No. 20 of 1966

Legal Practitioners Act 1983

Taxation laws

Income Tax Act 1993 (Act No. 9 of 1993)

Income Tax Explanatory Memorandum 1996

Revenue Appeals Tribunal Act 2005

Banking and anti-money laundering laws

Central Bank of Lesotho Act 2000 (Act No. 2 of 2000)

Financial Institutions Act 2012 (Act No. 3 of 2012)

Financial Institutions (Anti-Money Laundering) Guidelines 2000 (Legal Notice No. 199 of 2000)

Financial Institutions (Anti-Money Laundering and Combating of Financing of Terrorism) Regulations, 2015 (Legal Notice No. 77 of 2015)

Financial Institutions (Anti-Money Laundering and Combating of Financing of Terrorism) (Amendment) Regulations, 2019 (Legal Notice No. 79 of 2019)

Financial Institutions (Know Your Customer) Guidelines 2007 (Legal Notice No. 3 of 2007)

Financial Institutions (Know Your Customer) Guidelines, 2021 (Legal Notice No. 101 of 2021)

Money Laundering and Proceeds of Crime Act 2008 (Act No. 4 of 2008) Money Laundering and Proceeds of Crime (Amendment Act), 2016 (Legal Notice No. 7 of 2016)

Money Laundering (Accountable Institutions) Guidelines, 2013 (Legal notice No. 55 of 2013)

Money Laundering and Proceeds of Crime Regulations 2019 (Legal Notice No. 29 of 2019)

Current and previous reviews

Due to the limited practical experience of Lesotho in EOIR, this report analyses only Lesotho's legal and regulatory framework in relation to the standard of transparency and EOIR, in the second round of reviews conducted by the Global Forum.

In accordance with the 2016 Methodology for peer reviews and non-member reviews, as amended in 2021, a Phase 2 review, on the practical

implementation of the legal and regulatory framework, will be scheduled at the earlier of: (i) the expiry of a period of four years from the date of launch of the Phase 1 review, i.e. in the second quarter of 2026 in the case of Lesotho, and (ii) the establishment of EOIR experience in respect of criteria that include the number of requests received (around ten requests over a three year review period); the number of taxpayers involved in the requests; the amounts involved; and the complexity of the requests received, as well as the existence of outgoing requests and their nature and characterisation, subject to a contrary indication by the Steering Group of the Global Forum. Progress made since the adoption of the Phase 1 report will be assessed during the Phase 2 review.

Lesotho previously underwent a review of the legal and regulatory framework for EOIR (Phase 1 review) in 2015 and a review of the implementation of the legal and regulatory framework in practice (Phase 2 review) in 2016. The 2015 Phase 1 Review and the 2016 Phase 2 Review were conducted according to the Terms of Reference approved by the Global Forum in February 2010 and the Methodology used in the first round of reviews.

Information on each of Lesotho's reviews is listed in the table below.

Summary of reviews

Review	Assessment team	Period under review	Legal framework as of	Date of adoption by Global Forum
Round 1 Phase 1	Mr Abdul Galfur (Indonesia), Mr Philip Mensah (Ghana), and Ms Audrey Chua from the Global Forum Secretariat	Not applicable	22 May 2015	August 2015
Round 1 Phase 2	Mr Abdul Galfur (Indonesia), Mr Philip Mensah (Ghana), and Mr Ervice Tchouata and Ms Ana Rodriguez-Calderon from the Global Forum Secretariat	1 July 2012 to 30 June 2015	12 August 2016	November 2016
Round 2 Phase 1	Ms Margaret Ansumana (Liberia), Mr Abdullah Z. Al Dahasi (Saudi Arabia), and Mr Clement Migai from the Global Forum Secretariat	Not applicable	4 April 2023	14 July 2023

Annex 4: Lesotho's response to the review report[65]

The Kingdom of Lesotho expresses its thanks and gratitude to the assessment team for their diligence, guidance, patience and constructive collaboration throughout the review process and to the Global Forum Secretariat for their support and high-quality assistance.

The Kingdom of Lesotho also thanks the members of the Peer Review Group as well as all other partners for their invaluable input and contributions to its assessment.

The Kingdom of Lesotho agrees with the conclusions reached in the Phase 1 report in that it reflects the current state of Lesotho's legal and regulatory framework in relation to the 2016 Terms of Reference.

The Kingdom of Lesotho also takes note of the recommendations issued in the Phase 1 report and reassures peers of its determination and commitment to review and enhance its legal and regulatory framework to implement these recommendations for a successful Phase 2 review.

Finally, the Kingdom of Lesotho reiterates its commitment to implement the standards of transparency and exchange of information for tax purposes and to take full advantage of this framework to improve tax revenue mobilisation.

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

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request LESOTHO 2023 (Second Round, Phase 1)

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 160 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 publication contains the 2023 Second Round Peer Review on the Exchange of Information on Request for Lesotho. It refers to Phase 1 only (Legal and Regulatory Framework).

PRINT ISBN 978-92-64-70658-3
PDF ISBN 978-92-64-93566-2