

Botswana Pensions Society

Anti-Money Laundering and Countering Financing of Terrorism Seminar

Defining Money Laundering And Terrorist Financing Risks And Application Of Risk-Based
Mitigating Controls In The Retirement Industry

15 August 2019

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Setting the Scene: Origins of AML/CFT International Standards

□ **Global Network Architecture against money laundering (ML) and terrorist financing (TF)**

Defining basic terminology:

- Money Laundering (ML): conversion of proceeds of crime to make them appear lawful (i.e., laundering).
- Terrorist Financing (TF): raising, moving, and using property legally and illegally obtained for carrying out of terrorist acts.
- **1988:** G-7 Countries established the Financial Action Task Force (FATF) which developed 40 Recommendations against money laundering (primary focus was on drugs proceeds laundered in banking sector by transnational criminal groups).
- **2001:** The FATF expanded the Recommendations to cover terrorist financing (40+9 FATF Recommendations).
- **2012:** The FATF introduced flexibility in implementation of the FATF Standards. This means that countries, supervisors and entities must identify, assess and understand their ML/TF risks and use it for risk-based approach.

Setting the Scene: Botswana Legal Framework

□ AML/CFT REGULATORY UNIVERSE

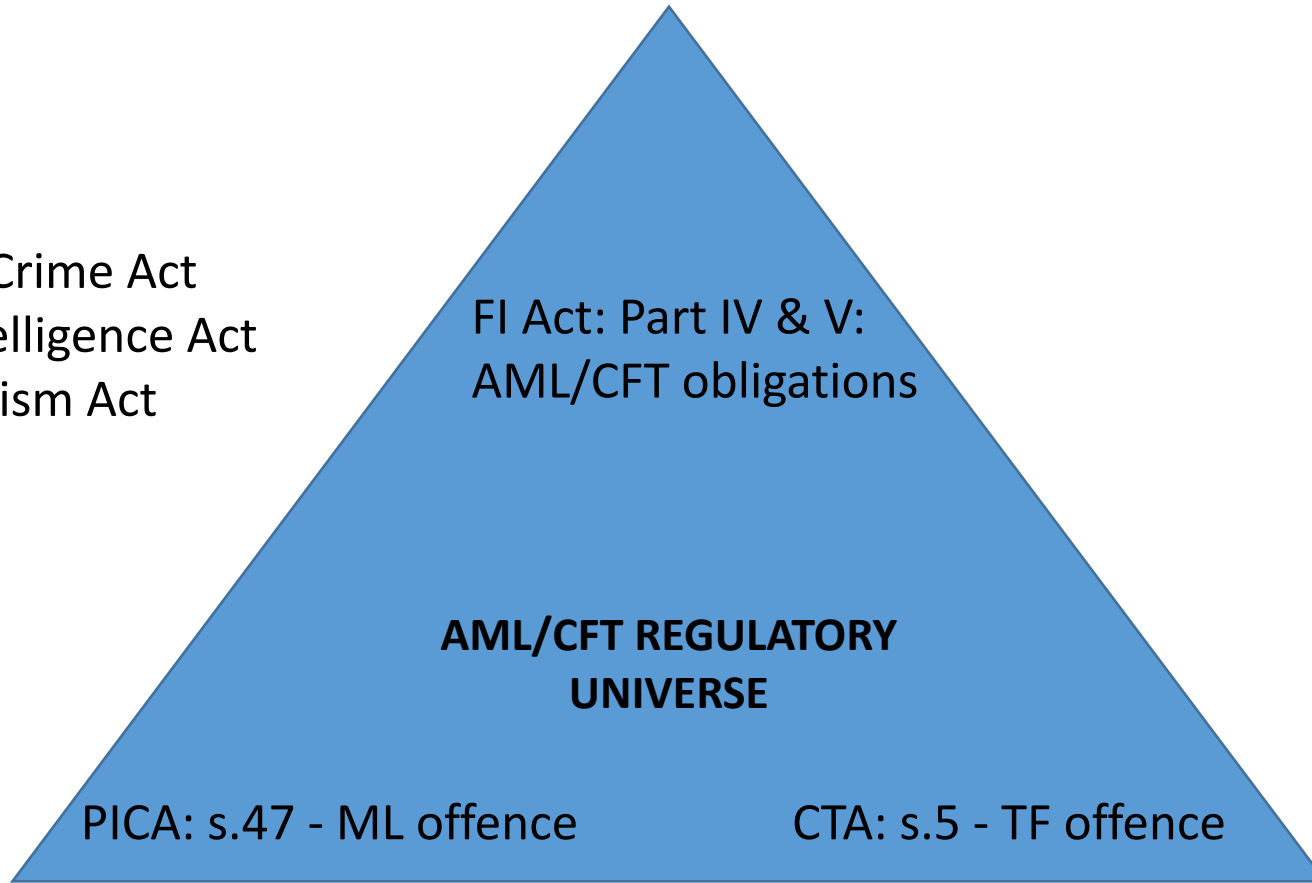
PICA – Proceeds and
Instrumentalities of Crime Act
FI Act – Financial Intelligence Act
CTA – Counter Terrorism Act

FI Act: Part IV & V:
AML/CFT obligations

**AML/CFT REGULATORY
UNIVERSE**

PICA: s.47 - ML offence

CTA: s.5 - TF offence



TIMELINES OF BOTSWANA'S EFFORTS TO COMPLY, AND IMPLICATIONS TO DATE

❑ **Botswana joins global network for compliance with global AML/CFT standards**

Adopting FATF Standards for promotion of sound and safe financial sector:

- 1999: Botswana commits to implementing the FATF Standards by becoming a founding member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG).
- The primary aim of Botswana is to protect and safeguard the integrity of its financial system, and contribute to a safe and sound global financial system.

TIMELINES OF BOTSWANA'S EFFORTS TO COMPLY, AND IMPLICATIONS TO DATE

❑ **Global AML/CFT Network tests Botswana's level of commitment to comply:**

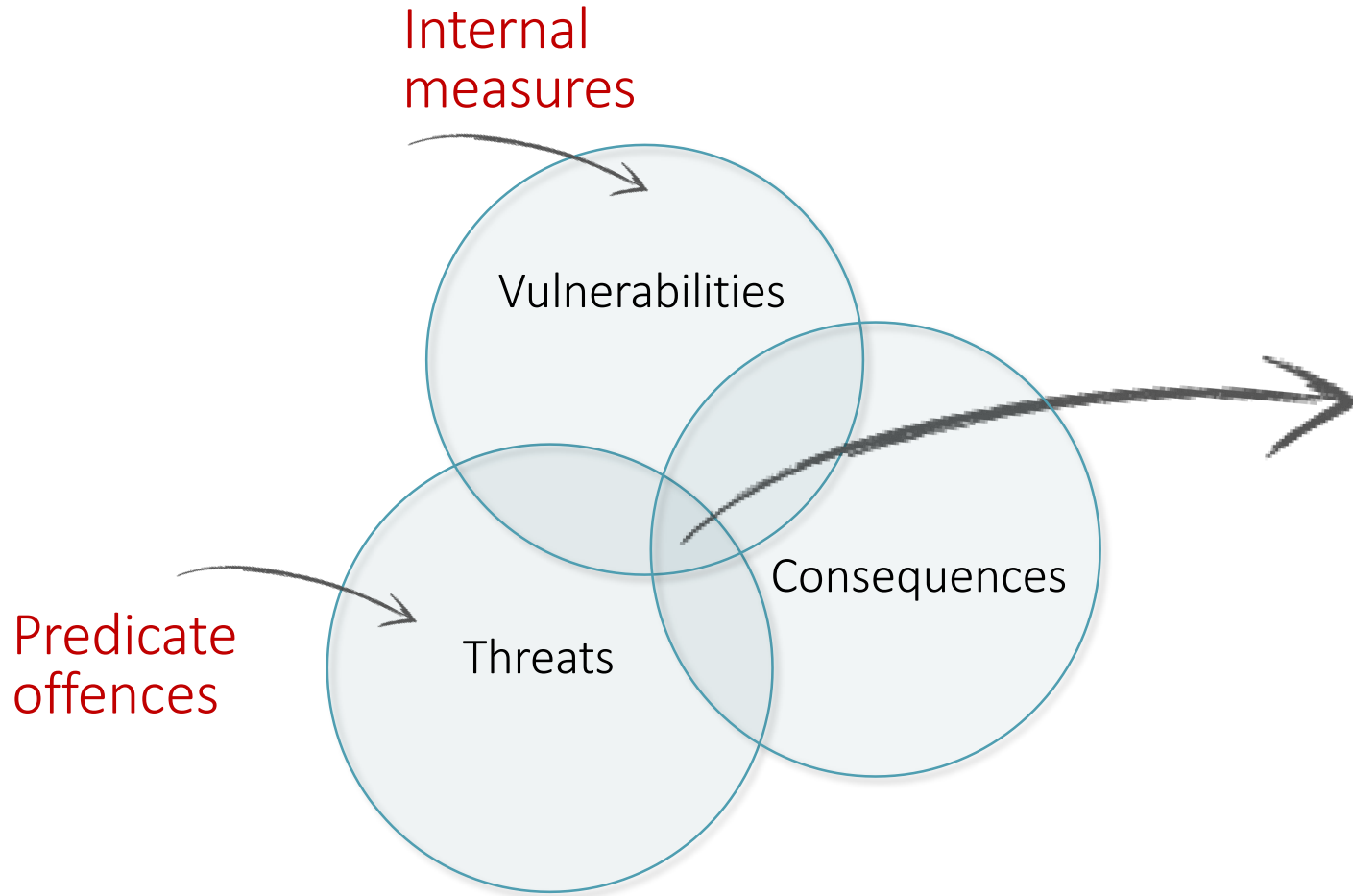
- **2007 World Bank:** assesses Botswana AML/CFT system and determines existence of strategic deficiencies which makes the country vulnerable to abuse by money launderers.
- **2016 ESAAMLG:** assesses Botswana AML/CFT system and determines existence of strategic deficiencies which makes the country vulnerable to abuse by money launderers and financiers of terrorism.

TIMELINES OF BOTSWANA'S EFFORTS TO COMPLY, AND IMPLICATIONS TO DATE

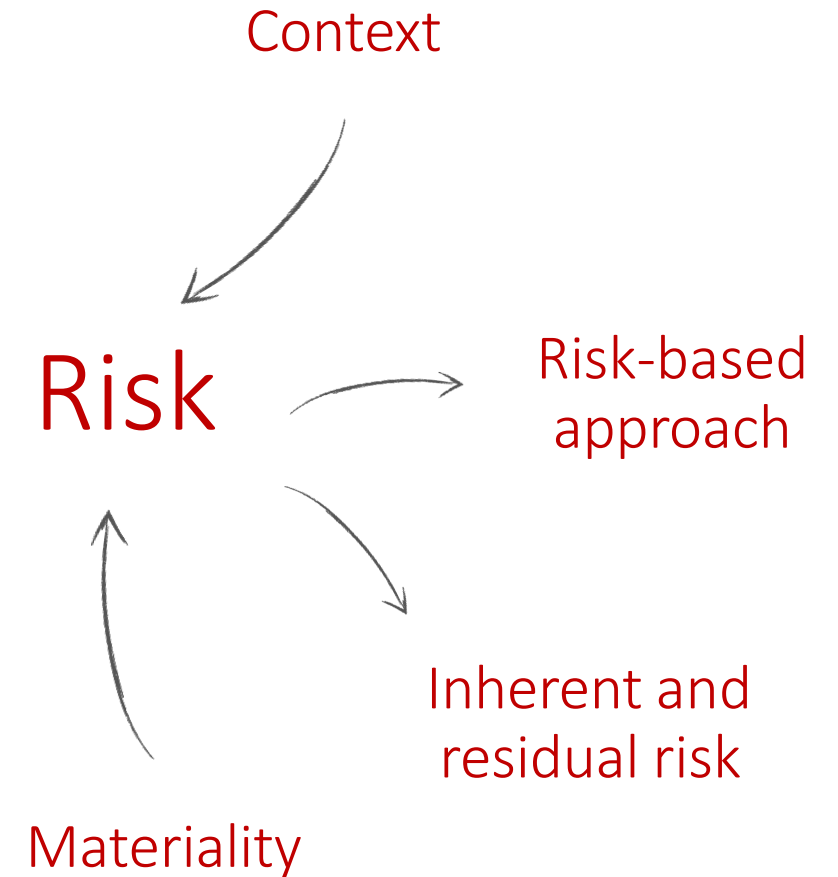
□ Implications for Botswana and its financial sector

- **2017 – 2019:** Botswana is considered a High Risk Country: Enhanced Follow-Up (**ESAAMLG**), 2017; Grey List (ICRG, **FATF**), October 2018 and EU List (**EU**), 14 February 2019. (e.g., Iran, North Korea, Nigeria, Iraq, Tunisia, Ghana, Ethiopia). which means that transactions and business relationships emanating from Botswana are deemed to pose higher ML/TF risks to which enhanced due diligence measures (unfortunate de-risking phenomenon incidences) should be applied.
- Proving that an entity understand its risks and has applied adequate AML/CFT Policies and Procedures becomes pivotal for engaging in cross-border transactions.
- Botswana is making great strides but it started from a low base of compliance and therefore there is a lot more to do to before a pop-a-champagne event.

Defining “risk”



Dealing with “risk”



Sources of information—entity ML/TF risk assessment

Thematic	Sectoral	Geographical	National	International
Proceeds and Instrumentalities of Crime Act				
Specific issues or crime types	Specific sectors	Risks in a region within a country	The country's risk profile as a whole	Regional risks between countries
<i>Risk assessment on proceeds of diamond smuggling</i>	<i>Pensions funds risk assessment</i>	<i>Risk assessment on illicit trade in wildlife in Maun</i>	<i>Comprehensive National ML/TF risk assessment</i>	<i>CMA / SACU/ SADC Supranational ML/TF risk assessment</i>

Risk and materiality – retirement industry

❑ The extent to which the pensions funds industry is exposed to ML and TF is dependent on its size, customers, and delivery channels. (Contextual information)

NBFIRA Annual Report, 2018:

- NBFI sector dominant at 57 % total assets to GDP compared to banking sector at 43 percent.
- Of 57 percent, Retirement industry occupies 37 percent, distantly followed by life insurance at 10 percent (valued at P82 billion being an increase of 9.2% from the previous year of P75.1 billion.)
- The primary aim of Botswana is to protect and safeguard the integrity of its financial system.
- The Botswana Public Officers Pension Fund is the largest Pension Fund in terms of membership and value.
- Introduction of offshore limits within Pension Fund Rule 2(PFR2).
- Total income increased by 11% with investment Income being a larger proportion of income spurred by rigorous investment management practices that are adopted by Pension Funds in an effort to grow the industry.

Risk and materiality – retirement industry

- ❑ **The extent to which the pensions funds industry is exposed to ML and TF is dependent on its size, customers, and delivery channels. (Contextual information)**

- ❑ **The NRA Findings**
 - **Threats** - corruption, fraud, tax evasion, theft and wild life poaching.
 - **Vulnerable** - banks, insurers, motor vehicle, accountancy services and precious stones/metals.

Scope of Item 8 on Schedule 1 to the FI Act

- ☐ **Item 8 on Schedule 1 to the Financial Intelligence Act, 2009 (as amended) lists financial activities licensed or authorised by the NBFIRA as “Specified Parties”.**
- ☐ **Section 4(d) of the NBFIRA Act, obliges regulated entities to combat financial crimes.**

Item 8 examples in the Workshop:

- Pension funds;
- Provident funds;
- Pension/provident fund administrators;
- Trustees/principal officers/employers;
- Asset managers etc.

Setting up AML/CFT Compliance Programme of Item 8 entity

❑ **Part IV of the FI Act under Sections 9 to 16 – Governance of AML/CFT compliance (Top-down approach) (Discussion).**

- **AML/CFT Governance is the responsibility of a Board of Directors of a legal entity, or**
- **A Senior Management of a legal entity, or**
- **A person occupying a highest position, or**

of a legal entity without a Board of Directors to ensure compliance by the entity and its employees with provisions of the FI Act and its Risk Management Systems and Compliance Programme (RMSCP). This includes fiduciary duties under any law or the Common Law.

- **A person who is not a legal entity must appoint someone who is fit and proper** to assist the person or persons exercising the highest level of authority in the entity and its employees to comply with the obligations under Part IV and Part V of the FI Act.
- **Except where the Law or International Standard require otherwise, the Governance Structure must:**
 - (a) Set up a Compliance Function to assist the Board, or senior management, to discharge its function under the Act.**
 - (b) Assign a person who is fit and proper (sufficient competence and seniority) to ensure adequate implementation and effectiveness of the RMSCP across the entity.**

AML/CFT Obligations for Item 8 under the FI Act – Regulatory Universe

- ❑ Part IV of the FI Act under Sections 9 to 16 and Part V under Sections 17 to 26 provide for AML/CFT obligations for Item 8 entities (e.g., Retirement Funds businesses)
- **Section 9** of the FI Act obliges each NBFi to develop and implement an effective Risk Management System and Compliance Programme (RMSCP) commensurate to the ML/TF risks applicable to the entity.
- **Sections 9 and 9A – 9D** of the FI Act oblige each NBFi to establish a risk management and compliance function with adequate resources and authority which is commensurate to its size and risks.
- **Section 9** of the FI Act obliges each NBFi to undertake ML/TF risk assessment of the financial services/products it offers. Outcome: The AML Department determines the ML/TF risks facing an NBFi and the adequacy of the ML/TF risk assessment relative to the NBFi's RMSCP.
- **Section 10, 10A – 10G of the FI Act and Regulations 3 – 14 and 4A – 4F** of the FI Act Regulations oblige each NBFi to conduct customer due diligence on natural and legal persons including taking reasonable steps to verify the identity of an ultimate beneficial owner.
- **Sections 17 – 19** of the FI Act oblige each NBFi to have systems in place to detect and report suspicious and threshold reports to the FIA in a timely manner.
- **Sections 11 – 13** of the FI Act oblige each NBFi to maintain and keep up-to-date comprehensive information and data involving interaction with customers etc.
- **The CTA Regulations** obliges each NBFi to develop and implement adequate policies, procedures, processes and practices to implement freezing of property of individuals and legal entities on the UNSCRs Consolidated List.

SELECTED AML/CFT OBLIGATIONS - Nature and Scope of PROCEDURES

- ❑ **The AML/CFT Procedures are derived directly from the AML/CFT Policy of an entity and set out operational processes – the details of how the Policy is implemented in practice. This is the most detail-and-knowledge intensive part of the AML/CFT Programme.**
- The AML/CFT Procedures must set out in clear details **how each obligation is going to be implemented, or is being implemented**, informed by the AML/CFT Policy in accordance with the applicable AML/CFT Laws as per the entity's nature of financial services it provides (no generic procedures as each business is markedly different from the other even if in the same industry or, more clearly, in the same group) (Discussion).
 - (i) detail-intensive;
 - (ii) budget-intensive;
 - (iii) knowledge-intensive;
 - (iv) time-intensive;
 - (v) everything-intensive.
- It will define whether or not your financial services are in practice exposed to ML and TF.
- It will define whether or not the NBFIRA find compliance and non-compliance.
- It will determine the extent and nature of sanctions and/or remedial actions for non-compliance.

AML/CFT Procedures – ML/TF Risk Assessment

- ❑ **The AML/CFT Procedures provides for step-by-step process to identify and assess ML/TF risks of the entity and how the Board and the employees will understand the identified risk.**

Risk constitutes:

- **Threat:** any criminal which is out there to harm the business (e.g., receipt of proceeds of crime as premium from a customer);
- **Vulnerability:** any weakness in the entity's mitigating controls which could be exploited by the threat; and
- **Impact:** the undesirable effect in the event the threat exploits the vulnerability.

Step-by-step description (example):

- (i) Approval of process on ML/TF risk assessment and provision of resources to undertake the process.
- (ii) Identify risks of (a) ML and (b) TF
- (iii) Assess risks of (ML and (TF)
- (iv) Review of the risks identified
- (v) Training of highest authority and employees to promote understanding.

AML/CFT Procedures – Compliance function

- ☐ **The AML/CFT Procedures provides for internal structures, procedures, and controls on how the entity will have a dedicated focus on obligations consistent with the size of the entity, and ML and TF risks.**
- Compliance management arrangement depending on the size of business and ML/TF risks.
- Appointment of senior and competent compliance officer including reporting lines and operational independence.
- Employee integrity.
- Continuous AML/CFT specific training.
- Reviews including use of internal or external independent audit (depending on size of entity and ML/TF risks).
- Access to information by compliance function.

AML/CFT Procedures – Customer due diligence procedures

- ❑ The AML/CFT Procedures provides for internal structures, procedures, and controls on how the entity conduct customer due diligence in accordance with risk categorisation of clients and transactions.

- ❑ Customer Due Diligence – identification and verification of customer interaction must be consistent with Entity ML/TF Risk Assessment categorisation. It must clearly set out the circumstances under which **(Important: Discussion on CDD requirements under Section 10 of the FI Act)**.
 - (a) enhanced due diligence,
 - (b) simplified due diligence,
 - (c) normal CDD, and
 - (d) exemption is providedwill be undertaken.
- **(a) high risk business transactions, e.g., PEPs and ‘high risk jurisdictions’.**
- **(b) transactions, e.g., cash payment v wire transfers;**
- **(c) delivery channel, e.g., reliance on third parties or introduced business, or similar arrangement.**

AML/CFT Procedures – Transactions, records, & sanctions procedures

- ❑ **The AML/CFT Procedures provides for internal structures, procedures, and controls on how the entity conduct customer due diligence in accordance with risk categorisation of clients and transactions.**
- ❑ **Transactions Detection, monitoring, and reporting** – Entity must understand what must be reported, by when, by who, and must have the means on how to detect what must be reported
 - **suspicious v threshold reporting (Important: Discussion)**
- ❑ **Record Keeping** – entity must have systems in place that ensure that all data obtained is accurate, reliable, and accessible when required by the entity business units, the NBFIRA, the FIA, and the law enforcement agency, as well as Group. **(Important: Discussion** on what ‘record ‘is and what ‘keeping’ means, as well as the purpose of this obligation).
- ❑ **UNSCR Targeted Financial Sanctions** – entity must have a system that ensures it is able to screen persons and entities listed by the United Nations Security Council on financing of terrorism and proliferation of financing. **(Important Discussion:** what are these obligations?

Way Forward

☐ **The Society should:**

- ✓ Lobby for inclusion of third parties or introduced businesses requirements in the amendments to the FI Act.
- ✓ Consider carrying out industry-wide ML/TF risk assessment having regard to the NRA results.

☐ **Item 8 (e.g., a pension fund entity) highest authority (BoDs) and MLCO must:**

- ✓ Establish a compliance function headed by a senior and competent MLCO;
- ✓ Undertake entity ML/TF risk assessment;
- ✓ Design and implement AML/CFT Policy;
- ✓ Design and implement AML/CFT Procedures;
- ✓ Design and Implement Risk Management System and Compliance Programme, including:
 - (i) Customer Due Diligence and record keeping measures;
 - (ii) Suspicious transactions reporting procedures; and
 - (iii) United Nations Security Council Resolutions on terrorist property procedures.

Questions and comments

THANK YOU FOR YOUR ATTENTION

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