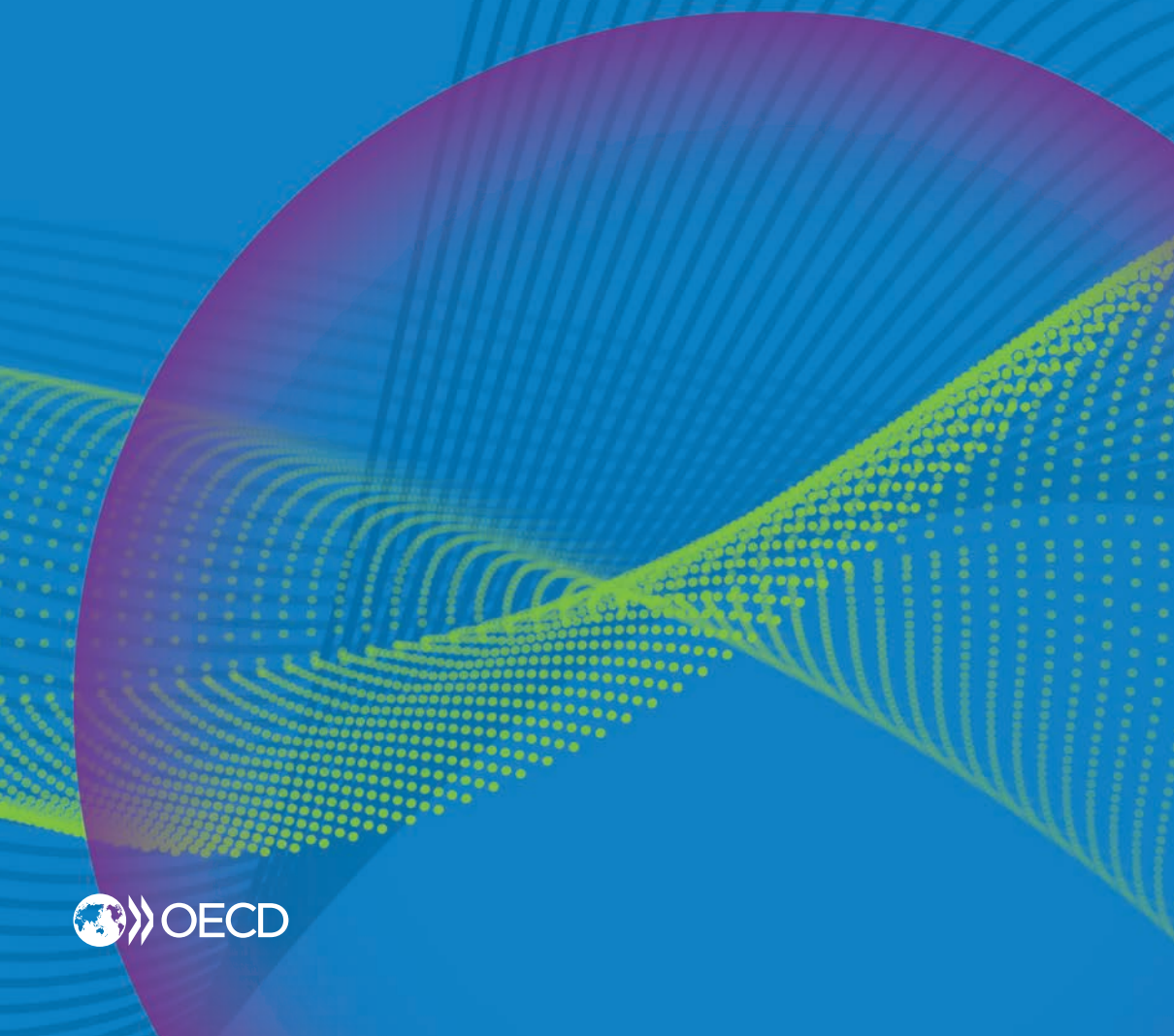
GLOBAL FORUM ON
TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

BOTSWANA

2023 (Second Round, Supplementary Report)



OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: Botswana 2023 (Second Round, Supplementary Report)

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 (Global Forum) on 2 October 2023 and adopted by the Global Forum members on 3 November 2023. The report was prepared for publication by the Global Forum Secretariat.

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: Botswana 2023 (Second Round, Supplementary Report): 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/10.1787/1372013f-en.

ISBN 978-92-64-87582-1 (print)
ISBN 978-92-64-92647-9 (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.

© OECD 2023

The use of this work, whether digital or print, is governed by the Terms and Conditions to be found at https://www.oecd.org/termsandconditions.

Table of contents

Reader's guide 5

Abbreviations and acronyms 9

Executive summary 11

Summary of determinations, ratings and recommendations 15

Overview of Botswana 23

Part A: Availability of information 29

A.1. Legal and beneficial ownership and identity information 29
A.2. Accounting records 66
A.3. Banking information 73

Part B: Access to information 81

B.1. Competent authority's ability to obtain and provide information 81
B.2. Notification requirements, rights and safeguards 85

Part C: Exchange of information 87

C.1. Exchange of information mechanisms 87
C.2. Exchange of information mechanisms with all relevant partners 93
C.3. Confidentiality 94
C.4. Rights and safeguards of taxpayers and third parties 98
C.5. Requesting and providing information in an effective manner 98

Annex 1. List of in-text recommendations 105

Annex 2. List of Botswana's EOI mechanisms 106

Annex 3. Methodology for the review 110

Annex 4. Botswana's response to the review report 113

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 Assessment Criteria Note	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015
2016 Methodology	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015
2016 Terms of Reference	Terms of Reference related to Exchange of Information on Request (EOIR), as approved by the Global Forum on 29-30 October 2015
AMATM	Multilateral African Tax Administration Forum Agreement on Mutual Assistance in Tax Matters
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
BICA	Botswana Institute of Chartered Accountants
BoB	Bank of Botswana
BURS	Botswana Unified Revenue Service
BWP	Botswana Pula (national currency)
CDD	Customer Due Diligence
CIPA	Companies and Intellectual Property Authority
DTC	Double Taxation Convention
EOI	Exchange of Information
EOIR	Exchange of Information on Request
ESAAMLG	Eastern and Southern Africa AML Group
EUR	Euro
FATF	Financial Action Task Force

FI Act	Financial Intelligence Act
FI Agency	Financial Intelligence Agency
FI Regulations	Financial Intelligence Regulations
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
IFSC	International Financial Services Centre
MOU	Memorandum of Understanding
Multilateral Convention	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
NBFIRA	Non-Bank Financial Institution Regulatory Authority
OBRS	Online Business Registration System
PRG	Peer Review Group of the Global Forum
SADC Agreement	Southern African Development Community's Agreement on Assistance in Tax Matters
TIEA	Tax Information Exchange Agreement
TIN	Taxpayer Identification Number
TPC Act	Trust Property Control Act

Executive summary

1. This report analyses the implementation of the standard of transparency and exchange of information on request in Botswana on the second round of reviews conducted by the Global Forum. It assesses both the legal and regulatory framework in force as of 7 July 2023 and the practical implementation of this framework against the 2016 Terms of Reference, including in respect of EOI requests received and sent during the review period from 1 October 2019 to 30 September 2022.

2. The report supplements the findings and analysis in the 2019 Report that had assessed Botswana's legal and regulatory framework as of April 2019 and the practical application of that framework, in particular in relation to EOI requests processed during the period from 1 January 2015 to 31 December 2017. The 2019 Report concluded that Botswana was overall Partially Compliant with the EOIR standard based on a global consideration of its compliance with the individual Elements. Since then, Botswana has made progress in both its legislation and implementation of the standard in practice, which led Botswana requesting a supplementary review on 3 November 2021. This request was accepted by the Peer Review Group of the Global Forum and has resulted in the present supplementary report.

3. This report concludes that Botswana is rated overall Largely Compliant with the standard.

Comparison of ratings for Second Round Report and Supplementary Report

Element		Second Round Report (2019)	Supplementary Report (2023)
A.1	Availability of ownership and identity information	Partially Compliant	Largely Compliant
A.2	Availability of accounting information	Partially Compliant	Partially Compliant
A.3	Availability of banking information	Partially Compliant	Largely Compliant
B.1	Access to information	Compliant	Compliant
B.2	Rights and Safeguards	Compliant	Compliant
C.1	EOIR Mechanisms	Compliant	Compliant
C.2	Network of EOIR Mechanisms	Compliant	Compliant
C.3	Confidentiality	Compliant	Compliant
C.4	Rights and safeguards	Compliant	Compliant
C.5	Quality and timeliness of responses	Partially Compliant	Largely Compliant
	OVERALL RATING	**Partially Compliant**	**Largely Compliant**

Note: the four-scale ratings are Compliant, Largely Compliant, Partially Compliant, and Non-Compliant

Progress made since previous review

4. Botswana underwent a review in 2019 and obtained an overall rating of Partially Compliant, with four Essential Elements rated only Partially Compliant: the three elements related to the availability of information (Elements A.1, A.2, A.3) and the one on the quality and timeliness of exchange (Element C.5). All other elements were rated as Compliant.

5. Botswana made progress in the implementation of the standard since its last Round 2 review, notably in respect of the availability of beneficial ownership information. In 2022, Botswana enacted legislative changes in respect of the definition and methods of identification of beneficial owners, in the Financial Intelligence Act, the Companies Act and the Trust Property Control Act. The definition is now in line with the standard.

6. Binding guidelines have been published by some regulatory authorities to support a smooth implementation. To this end, the Online Business Registration System (OBRS), launched in 2019, has transformed the companies and business names registry from a manual to a fully automated online system. The Companies and Intellectual Property Authority (CIPA) embarked on a re-registration exercise for both companies and business names with the objective of updating the data on the registry. Ownership, identity information and some accounting information is now readily

available online for the benefit of all users of corporate data, including tax authorities. The new online system has also made it possible for the CIPA to collect and maintain information on the ultimate beneficial owners of legal persons that wish to either register or re-register on the system.

Key recommendations

7. To ensure the availability of beneficial ownership information on all relevant entities and arrangements and comply with the standard, Botswana relies on annual filing obligations contained under the Companies Act and the customer due diligence obligations under the anti-money laundering (AML) framework. Botswana recently introduced some amendments to align the definition of beneficial owners on the standard and some guidance to provide support for the identification of beneficial owners. However, certain aspects for the updating of beneficial ownership information need improvement as the company legislation does not provide a frequency for the review and the AML legislation does not cover all legal persons and arrangements as there is no requirement to engage AML-obliged persons. Given their recent introduction, the implementation in practice of those amendments could not be fully assessed. Botswana is recommended to monitor the practical application of these rules.

8. The 2019 Report included recommendations that Botswana enhance the monitoring and enforcement of the availability of accounting records for companies. Despite an improvement of the compliance rate of accounting filing obligations with the CIPA, but on a scope limited to companies with turnover of more than a certain threshold, Botswana has not taken all the necessary measures to address these recommendations and therefore these recommendations continue to apply.

Exchange of information in practice

9. During the three-year review period from 1 October 2019 to 30 September 2022, Botswana received 2 requests for information and sent no requests to its treaty partners. Communication with partners is positive and the authorities in Botswana are considered by peers as accessible and effective. Partners are satisfied with the information they have received from Botswana. Requested information related to beneficial ownership information or information on registration and has been provided within 90 days.

10. Botswana made progress in respect of its practice to access and exchange information for tax purposes. Since the 2019 Report, Botswana has successfully used its access power for the two requests received during the review period and shared this information in a timely manner.

11. Botswana greatly expanded its network of partners with the signature and entry into force of the multilateral Convention on Administrative Assistance in Tax Matters with effect from October 2021. The number of EOIR relationships of Botswana raised from 30 to 155 partners.

12. Botswana received two requests during the review period. Although the new process for responding to EOI requests after the end of the previous review period and its effectiveness were tested in practice on these two requests, the experience of Botswana is limited. Botswana should monitor the practical implementation of the organisational processes and resources of its EOI Unit to ensure that they are sufficient at all times for effective EOI in practice.

Overall rating

13. Botswana has achieved a rating of Compliant for six elements (B.1, B.2, C.1, C.2, C.3, and C.4), Largely Compliant for three elements (A.1, A.3 and C.5) and Partially Compliant for one element (A.2). Botswana's overall rating is Largely Compliant based on a global consideration of its compliance with the individual elements.

14. This report was approved at the Peer Review Group of the Global Forum on 2 October 2023 and was adopted by the Global Forum on 3 November 2023. A follow up report on the steps undertaken by Botswana to address the recommendations made in this report should be provided to the Peer Review Group 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 (Element A.1)		
The legal and regulatory framework is in place but needs improvement.	In Botswana, all companies incorporated under the Companies Act and external companies are required to maintain up-to-date records of their beneficial owners and to submit an annual return to the Companies and Intellectual Property Authority. However, there are no binding guidelines applicable to legal entities and legal arrangements to explain how to identify their beneficial owners with examples of direct or indirect control or control through other means. This raises doubt on the accuracy of such information. A second source of beneficial ownership information relies on AML-obliged persons. Beneficial ownership information should be updated by the AML-obliged persons throughout the business relationship when they become aware of any change. However, in the absence of known change, there is no specified frequency for updating beneficial ownership information. In addition, the beneficial ownership information may not be available in all cases, as there is no requirement for all legal persons and arrangements to engage AML-obliged persons. Therefore the deficiencies of the company law approach are not compensated by the AML law approach.	Botswana should ensure that adequate, accurate and up-to-date beneficial ownership information is available for all relevant legal entities and legal arrangements in line with the standard.

Determinations and ratings	Factors underlying recommendations	Recommendations
	In respect of partnerships, the definition of beneficial owner in the Financial Intelligence Act applies only in respect of legal persons like companies. The term "legal persons" explicitly excludes partnerships from its ambit. The Financial Intelligence Act does not provide for specific measures of identification of natural persons in the context of partnerships. There is also no guidance available on how beneficial owners of a partnership are to be identified when the partners themselves are legal entities or arrangements.	Botswana is recommended to ensure beneficial owners of partnerships are identified in line with the standard in all cases.
	For trusts and similar legal arrangements, the Trust Property Control Act does not contain any provision for the update of beneficial owner information in case of a change and the AML legislation does not contain any specified frequency for updating beneficial ownership information in the absence of known change.	Botswana should ensure that adequate, accurate and up-to-date beneficial ownership information is available for all trusts and similar legal arrangements in line with the standard.
EOIR Rating: Largely Compliant	The requirement for companies and partnerships to maintain and report beneficial ownership information to the Companies and Intellectual Property Authority began in 2019 with a comprehensive project to digitalise the operation and clean up the Register with the de-registration and re-registration process. Botswana has established a supervisory framework to monitor the compliance of the legal obligations to maintain beneficial ownership information and reasonably exercised enforcement powers in case non-compliance was detected. However, the definition of beneficial owner, as well as the ability to impose administrative penalties under the Companies Act have been newly introduced in 2022. The implementation of these recently enacted changes could not be fully assessed.	Botswana is recommended to monitor the implementation of the new framework for the identification of beneficial owners for all legal entities and partnerships, in line with the standard. Botswana should continue the implementation of a comprehensive and effective supervision and enforcement programme to ensure the availability of accurate and up-to-date legal and beneficial ownership information and exercise its enforcement powers where necessary.

Determinations and ratings	Factors underlying recommendations	Recommendations
	For trusts and similar legal arrangements, the Trust Property Control Act requires all trustees in Botswana to register and report identity information to the Master of the High Court since 2019. This law covers new persons who were previously not required to register and report to government authorities. An office was established in 2021, headed by an AML/CFT expert, for monitoring compliance with the Trust Property Control Act enacted in 2018 and amended in 2022 about registration and reporting requirements. As the new laws only recently came into effect, their implementation in practice could not be fully assessed.	Botswana is recommended to monitor the implementation of the new framework for the identification of beneficial owners for all trusts and similar legal arrangements, in line with the standard. Botswana should continue the implementation of a comprehensive and effective supervision and enforcement programme to ensure the availability of accurate and up-to-date legal and beneficial ownership information and exercise its enforcement powers where necessary.
	The measures taken by the AML/CFT supervisors to ensure that the beneficial ownership information maintained by AML-obliged persons is adequate, accurate and up to date are at an early stage. Also, recent enactments to the AML/CFT laws, which took effect in 2018 and 2022, broaden AML-obliged persons' obligations to maintain beneficial ownership information. As the new laws only recently came into effect, their implementation in practice could not be fully assessed.	Botswana is recommended to further ensure that all AML-obliged persons receive adequate oversight, and to maintain vigilant oversight and enforcement of the effective execution of the new AML/CFT obligations.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (Element A.2)		
The legal and regulatory framework is in place		

Determinations and ratings	Factors underlying recommendations	Recommendations
EOIR Rating: Partially Compliant	Public companies and companies with turnover of more than BWP 10 000 000 (EUR 685 610) file their financial statements with their annual returns. Despite an increase of the compliance rate since the last review, this requirement concerns only few entities (0.42% of all entities in Botswana). Some accounting information is filed on the tax return. However, the auditing of taxpayers' accounting records is undertaken on a relatively small number of taxpayers. It is therefore not ensured that accounting records are always available and retained for at least five years.	Botswana should enhance the monitoring and enforcement of the availability of accounting records of these companies by the Companies and Intellectual Property Authority and enhance the monitoring and enforcement of availability of accounting records for tax purposes for at least five years.
	Companies with turnover of BWP 10 000 000 (EUR 685 610) or less are not required to file financial statements and there is no monitoring by the Companies and Intellectual Property Authority of the obligation on these companies to maintain accounting records. Some accounting information is filed on the tax return. However, the auditing of taxpayers' accounting records is undertaken on a relatively small number of taxpayers. It is therefore not ensured that accounting records are always available and retained for at least five years.	Botswana should monitor the availability of accounting records in respect of these companies and enhance the monitoring and enforcement of availability of accounting records for at least five years.
	A new obligation under the Financial Intelligence Act amended in 2022 requires all legal entities to maintain certain accounting information. This law is recent and it is not clear how this obligation is supervised.	Botswana should enforce the implementation and monitor the effectiveness of the new obligation under the Financial Intelligence Act to maintain certain accounting information by all legal entities.

Determinations and ratings	Factors underlying recommendations	Recommendations
	The Trust Property Control Act amended in 2022 requires all trustees in Botswana to maintain accounting information. This law is recent and there is no experience with its application and supervision in practice.	Botswana should enforce the implementation and monitor the effectiveness of the amendments to the Trust Property Control Act to ensure that accounting records and underlying documentation of all trusts are available in line with the standard.
Banking information and beneficial ownership information should be available for all account-holders (Element A.3)		
The legal and regulatory framework is in place		
EOIR Rating: Largely Compliant	Botswana improved its legal framework regarding the availability of beneficial ownership information in 2022, notably the implementation of a new definition of beneficial owner, the issuance of binding guidance on the identification of beneficial owners in relation to bank accounts of entities and arrangements and on identification, monitoring and reporting of suspicious transactions (containing the frequency to review and update documents, data, identification information of customers and beneficial owners. The implementation in practice of these new measures could not be assessed.	Botswana is recommended to continue monitoring the implementation of the recent changes to ensure the availability of adequate, accurate and up-to-date beneficial ownership information on 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) (Element B.1)		
The legal and regulatory framework is in place		
EOIR Rating: Compliant		

Determinations and ratings	Factors underlying recommendations	Recommendations
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 (Element B.2)		
The legal and regulatory framework is in place		
EOIR Rating: Compliant		
Exchange of information mechanisms should provide for effective exchange of information (Element C.1)		
The legal and regulatory framework is in place		
EOIR Rating: Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (Element C.2)		
The legal and regulatory framework is in place		
EOIR Rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (Element C.3)		
The legal and regulatory framework is in place		
EOIR Rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (Element C.4)		
The legal and regulatory framework is in place		

Determinations and ratings	Factors underlying recommendations	Recommendations
EOIR Rating: Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner (Element C.5)		
Legal and regulatory framework	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	
EOIR Rating: Largely Compliant	Botswana received two requests during the review period. Although the new process for responding to EOI requests after the end of the previous review period and its effectiveness were tested in practice on these two requests, the experience of Botswana is limited.	Botswana should monitor the practical implementation of the organisational processes and resources of its EOI Unit to ensure that they are sufficient at all times for effective EOI in practice.

Overview of Botswana

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

Legal system

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

17. The Constitution establishes that the head of state is the President. The legislature is the National Assembly, a unicameral parliament comprising 57 elected members, 6 Specially Elected members and the President as an ex officio member. In addition, the House of Chiefs acts as an advisory body to the National Assembly, comprised of 35 members that advise on matters of customary and tribal law. The executive comprises the President, Vice-President, and a cabinet of Ministers. The highest court is the Court of Appeal, to which final appeals from other courts lie. The High Court has original jurisdiction to hear criminal and civil matters. The Magistrates courts are subordinate courts created by statute and deal with matters such as civil, family and criminal matters.

Tax system

18. Persons are subject to tax in Botswana if they have income sourced in Botswana or income deemed to be sourced in Botswana. Income of a person is deemed to be sourced in Botswana in a number of circumstances, including if it is in respect of a contract made by the person in Botswana for the sale of goods, a service, or work done by the person in

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

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

20. Generally, any person earning taxable income in Botswana must register with, and file an annual return with, the Botswana Unified Revenue Service (BURS) for tax purposes. Resident individuals pay tax at progressive rates between 0% and 25% and non-resident individuals pay tax at progressive rates between 5% and 25%. Resident companies pay tax at a rate of 22% and non-resident companies at a rate of 30%. Manufacturing companies that have the approval from the Minister of Finance for a special tax rate will be charged at the rate of 15%. International Financial Services Centre companies are taxed at the rate of 15% on income arising from approved financial transactions among themselves and with non-residents (see below). Tax in respect of trusts is charged in the hands of the trustee and will therefore be paid at the relevant rate depending on whether the trustee is an individual or company. Partnerships are not charged tax in their own right, but a partnership with taxable income in Botswana will register for tax purposes and file tax returns. The partners with taxable income in Botswana are also each subject to filing and tax obligations. Certain types of investment income are taxed by withholding, such as dividends and rental income.

Financial services sector

21. The Bank of Botswana (BoB) is the central bank, established under the Bank of Botswana Act, which licenses and supervises banks in Botswana. As of 31 December 2022, there were 9 commercial banks, 2 statutory banks, 1 deposit-taking micro-finance institution, 61 money exchange offices and 23 Money or Value Transfer Services.

22. As of 31 March 2022, the non-bank financial sector includes capital market entities (115), non-bank lenders (347), insurance entities (250) and retirement funds (87). These entities are licensed and supervised by the Non-Bank Financial Institution Regulatory Authority (NBFIRA).

International Financial Services Centre (IFSC)

23. In 2003, Botswana established the IFSC, which is marketed on behalf of the Botswana government by the Botswana Investment and Trade Centre, with the aim of developing Botswana as a hub for cross border financial and business services into Africa and the region. The attraction of the IFSC is the tax benefits that are granted to IFSC companies. These include a discounted corporate tax rate of 15% on profits, although they are taxable on their worldwide income. Payments of interest, dividends, management fees and royalties are exempt from tax when paid to a non-resident and to another IFSC company and specified collective investment undertakings. IFSC companies are also exempted from Value Added Tax and capital gains tax. The IFSC regime plays a role in job creation. In 2022, IFSC companies demonstrated remarkable growth in terms of job creation. In 2021, these companies employed 226 individuals, with 184 of them being citizens. By 2022, the workforce had expanded to 384, out of which 311 were citizens.

24. The activities permitted in the IFSC include: banking and financing operations; the broking and trading of securities; investment advice; management and custodial functions in relation to collective investment schemes; insurance and related activities; registrars and transfer agency services; accounting and financial administration; holding and administration of group companies; shared financial services; business process outsourcing and call centres; and mutual funds. In practice, the most undertaken activities under the IFSC regime are international holding, accounting-financial administration, financing operations, insurance activities and investment advice.

25. IFSC companies that carry on their business as a bank or non-bank financial institution are licensed and supervised by the BoB or NBFIRA, as relevant. As of April 2023, the IFSC regime has 24 operational companies, including 2 newly registered entrants into the regime. None of them operate as a bank.

Special Economic Zones

26. An Act to create a Special Economic Zone Authority was passed in August 2015, creating an authority to establish, license, and oversee special economic zones. The purpose includes attracting business

to Botswana, generating economic growth, and creating employment. Statutory Instrument 89 of 2021 Order gives legislative effect to the income tax incentives that are available to investors and developers operating in special economic zones. Income accruing to an investor or developer from Special Economic Zone-licensed operations is to be taxed at a special rate of 5% for the first 10 years and 10% thereafter. Since operationalisation of the Special Economic Zones Reform in 2018, the Special Economic Zones Authority licensed a total of nine companies. As of April 2023, additional two companies are at appraisal stage, and it is anticipated that they will be licensed within the 2022/23 financial year. All tax filing and reporting obligations mentioned in the report applies to them.

Anti-money laundering framework

Domestic framework

27. During the past and current review period, AML/CFT obligations on banks were imposed under the Banking Act, the Banking (AML) Regulations, the Financial Intelligence Act (FI Act), and the Financial Intelligence Regulations (FI Regulations). The FI Act and FI Regulations also imposed AML/CFT obligations on non-bank financial institutions and other designated persons, including attorneys and accountants.

28. Some changes to the framework took place before and after the review period. First, in 2018, as part of the amendments to the AML/CFT laws, the Banking (AML) Regulations were repealed.

29. Then, the FI Act and its Regulations were re-enacted in February 2022. The purpose of re-enactment was to align with the Financial Action Task Force (FATF)'s 40 recommendations and address the deficiencies identified in the country's Mutual Evaluation Report. Section 16 of the FI Act requires AML-obliged persons (called "Specified Parties" in Botswana) to implement Customer Due Diligence (CDD) measures, including establishing and verifying the identity of a beneficial owner of a legal person, a trust and other legal arrangements.

30. The Financial Intelligence Agency (FI Agency) is statutorily mandated to act as a central Agency responsible for requesting, receiving, analysing and disseminating disclosures of financial information but the agency does not perform any supervision.

Financial Action Task Force (FATF) last review

31. The second MER of Botswana's compliance with the AML/CFT standards was conducted by the Eastern and Southern Africa AML Group (ESAAMLG) in 2016. The MER[1] concluded that, in general, Botswana's legal framework did not provide for a requirement to identify and verify the identity information related to legal persons and legal arrangements, or a requirement to identify and retain information on beneficial ownership. Further, Botswana's AML/CFT regime was found not to be fully developed, with competent authorities still in the process of understanding their responsibilities and building their capacities. Also, although the supervisory bodies had powers to issue sanctions for non-compliance, the sanctions were not dissuasive or proportionate, and had not been applied. As such, Immediate Outcome 5 concerning the implementation of rules ensuring the availability of beneficial ownership information in respect of legal persons and arrangements was rated Low. Botswana's technical compliance with FATF's recommendations 10 (Customer Due Diligence) 11 (Record keeping), 24 (Transparency and beneficial ownership of legal persons), and 25 (Transparency and beneficial ownership of legal arrangements) was rated Non-Compliant and Partially Compliant on recommendation 22 (DNFBPs: Customer due diligence).

32. Since 2017, Botswana has taken measures aimed at addressing the technical compliance deficiencies identified. Overall, Botswana has made progress in addressing deficiencies on technical compliance to justify re-rating of Recommendations 10, 11, 22 and 25 to Largely Compliant as well as Recommendation 24 to Partially Compliant, as detailed in the 8th Enhanced Follow-up Report and 4th Technical Compliance Re-Rating Report.[2]

Recent developments

33. In 2019, the CIPA introduced the Online Business Registration System (OBRS) to facilitate the move from a manual to an online system of registration, and more importantly to facilitate the collection of beneficial ownership information. Pursuant to section 21 of the Companies Act (as amended in 2018 and again in 2022), all registered companies are required

1. ESAAMLG (2017), *Anti-money laundering and counter-terrorist financing measures – Botswana*, Second Round Mutual Evaluation Report, ESAAMLG, Dar es Salaam: https://www.esaamlg.org/reports/MER%20of%20Botswana%20-%20Council.pdf.
2. ESAAMLG (2022), Anti-money laundering and counter-terrorist financing measures – Botswana, 8th Enhanced Follow-up Report and 4th Technical Compliance Re-Rating, ESAAMLG, Dar es Salaam: https://www.esaamlg.org/reports/8th%20FUR%20of%20Botswana-Sept2022.pdf.

to declare their beneficial owners to the CIPA. Through the OBRS, the CIPA has been collecting this information from both existing and new companies since February 2019 and continues to do so. Information on beneficial ownership is available on the OBRS, albeit presently only accessible to law enforcement authorities and other competent authorities (as defined in the Act and including BURS). In this regard, section 21 of the Act was further amended in February 2022 to allow beneficial ownership information to be publicly available on the register. Other changes to the Act include the introduction of administrative penalties; the need to identify nominator information; retention period for beneficial ownership information and requirements for verification of beneficial ownership information.

34. The 2022 Trust Property Control Act (TPC Act) introduced the concept of beneficial ownership. The definition is aligned to the ones of the Financial Action Task Force and Global Forum standards.

35. The Financial Intelligence Act was amended in 2022, and trust service providers were listed as AML-obliged persons under Schedule I of the Act and defined according to the FATF standard. Trustees are now required to obtain and hold adequate, accurate and current beneficial ownership information regarding the trust. Among other changes, the new legislation amends the beneficial ownership definition and customer due diligence (CDD) obligations and narrow down the definition of accountable institutions, defined by the FI Act as "any society, association or non-profit organisation registered under the Societies Act or any other law or a trustee".

36. The Societies Act was amended in February 2022 to include the possibility to request information from office bearers and officers acting on behalf of the societies and to include sanctions that are specific to office bearers and officers acting on behalf of the society.

Part A: Availability of information

37. 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.

38. The 2019 Report found that Botswana's legal and regulatory framework for maintaining legal and beneficial ownership information was in place, but certain aspects of the legal implementation needed improvement as the definition of beneficial owner did not cover all relevant entities and arrangements. Botswana was found Partially Compliant with the implementation of the standard because the availability of ownership information was not assured and the monitoring activities were still at initial stages after recent legal amendments.

39. Since the last assessment, Botswana enacted legislative changes in respect of the definition and methods of identification of beneficial owners in the Financial Intelligence Act, the Companies Act and the Trust Property Control Act. The definition is now in line with the standard, and the recommendations related to the definition of beneficial ownership for all relevant entities and arrangements are addressed. Binding guidelines have been published by some regulatory authorities to support a smooth implementation. A gap nonetheless remains in the legal and regulatory framework in the absence of binding regulations or guidelines applicable to all legal entities and legal arrangements.

40. In 2019, Botswana introduced the Online Business Registration System (OBRS), which has transformed the companies and business names registry from a manual to a fully automated online system. The Companies and Intellectual Property Authority (CIPA) embarked on a re-registration

exercise for both companies and business names, with the objective of updating the data on the registry. This exercise was concluded in 2020 and ownership and identity information are now readily available online for the benefit of all users of corporate data, including tax authorities. The new online system has also made it possible for the CIPA to collect and maintain information on the beneficial owners of legal persons that wish to either register or re-register on the system. Beneficial ownership is directly available to the supervisory authorities, including the BURS, which internal databases are interfaced with the OBRS.

41. Supervisory authorities have all conducted monitoring activities and many of them have carried out remedial actions or applied sanctions. However, the supervision needs to be further strengthened to encompass the new definition of beneficial owners and to counter-balance a low tax filing compliance rate.

42. 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
In Botswana, all companies incorporated under the Companies Act and external companies are required to maintain up-to-date records of their beneficial owners and to submit an annual return to the Companies and Intellectual Property Authority. However, there are no binding guidelines applicable to legal entities and legal arrangements to explain how to identify their beneficial owners with examples of direct or indirect control or control through other means. This raises doubt on the accuracy of such information. A second source of beneficial ownership information relies on AML-obliged persons. Beneficial ownership information should be updated by the AML-obliged persons throughout the business relationship when they become aware of any change. However, in the absence of known change, there is no specified frequency for updating beneficial ownership information. In addition, the beneficial ownership information may not be available in all cases, as there is no requirement for all legal persons and arrangements to engage AML-obliged persons. Therefore, the deficiencies of the company law approach are not compensated by the AML law approach.	Botswana should ensure that adequate, accurate and up-to-date beneficial ownership information is available for all relevant legal entities and legal arrangements in line with the standard.

Deficiencies identified/Underlying factor	Recommendations
In respect of partnerships, the definition of beneficial owner in the Financial Intelligence Act applies only in respect of legal persons like companies. The term "legal persons" explicitly excludes partnerships from its ambit. The FI Act does not provide for specific measures of identification of natural persons in the context of partnerships. There is also no guidance available on how beneficial owners of a partnership are to be identified when the partners themselves are legal entities or arrangements.	Botswana is recommended to ensure beneficial owners of partnerships are identified in line with the standard in all cases.
For trusts and similar legal arrangements, the Trust Property Control Act does not contain any provision for the update of beneficial owner information in case of a change and the AML legislation does not contain any specified frequency for updating beneficial ownership information in the absence of known change.	Botswana should ensure that adequate, accurate and up-to-date beneficial ownership information is available for all trusts and similar legal arrangements in line with the standard.

Practical Implementation of the Standard: Largely Compliant

Deficiencies identified/Underlying factor	Recommendations
The requirement for companies and partnerships to maintain and report beneficial ownership information to the Companies and Intellectual Property Authority began in 2019 with a comprehensive project to digitalise the operation and clean up the Register, with the de-registration and re-registration process. Botswana has established a supervisory framework to monitor compliance with the legal obligations to maintain beneficial ownership information and reasonably exercised enforcement powers in case non-compliance was detected. However, the definition of beneficial owner, as well as the ability to impose administrative penalties under the Companies Act have been newly introduced in 2022. The implementation of these recently enacted changes could not be fully assessed.	Botswana is recommended to monitor the implementation of the new framework for the identification of beneficial owners for all legal entities and partnerships, in line with the standard. Botswana should continue the implementation of an effective supervision and enforcement programme to ensure the availability of accurate and up-to-date legal and beneficial ownership information and exercise its enforcement powers where necessary.

Deficiencies identified/Underlying factor	Recommendations
For trusts and similar legal arrangements, the Trust Property Control Act requires all trustees in Botswana to register and report identity information to the Master of the High Court since 2019. This law covers new persons who were previously not required to register and report to government authorities. An office was established in 2021, headed by an AML/CFT expert, for monitoring compliance with the Trust Property Control Act enacted in 2018 and amended in 2022 about registration and reporting requirements. As the new laws only recently came into effect, their implementation in practice could not be fully assessed.	Botswana is recommended to monitor the implementation of the new framework for the identification of beneficial owners for all trusts and similar legal arrangements, in line with the standard. Botswana should continue the implementation of a comprehensive and effective supervision and enforcement programme to ensure the availability of accurate and up-to-date legal and beneficial ownership information and exercise its enforcement powers where necessary.
The measures taken by the AML/CFT supervisors to ensure that the beneficial ownership information maintained by AML-obliged persons is adequate, accurate and up to date are at an early stage. Also, recent enactments to the AML/CFT laws, which took effect in 2018 and 2022, broaden AML-obliged persons' obligations to maintain beneficial ownership information. As the new laws only recently came into effect, their implementation in practice could not be fully assessed.	Botswana is recommended to further ensure that all AML-obliged persons receive adequate oversight, and to maintain vigilant oversight and enforcement of the effective execution of the new AML/CFT obligations.

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

43. The legal framework to ensure the availability of legal ownership and beneficial ownership information for various types of companies in Botswana is analysed below.

Types of companies and registration process

44. Botswana's law provides for the creation of various types of companies:

- Private Company: A private company is formed with the intention of making a profit and has a maximum of 25 shareholders. This type of company does not make any offer to the public to subscribe to its shares or debentures.

- Public Company: A public company has an unlimited number of shareholders and is usually listed with the Botswana Stock Exchange. The shares of a public company are made available to the public for sale.
- Close Company: A close company is formed by one to five individuals, who qualify for membership. No corporate body or trustee can directly or indirectly hold a member's interest in a close company. Every person who is to become a member upon registration must make to the company an initial contribution of money, property, or services rendered in connection with the purposes of the formation and incorporation of the company. It may not be established for or carry on business of banking or insurance but may otherwise be formed to carry out any lawful business.
- Company Limited by Guarantee: This type of company is an entity that does not declare dividends or share profits amongst members. When applying for a company limited by guarantee, it is necessary to describe as clearly as possible what the company is being formed to do, who the donors are, as well as any projects that are already in place. The proceeds of the company must be issued to promote the objects of the company and only support the objectives of the company.
- External Company: The Botswana Companies Act requires any foreign company to apply for registration as an external company in order to operate or to do business in Botswana. A foreign operating company in Botswana must apply for external company registration within 30 days.

45. In order to incorporate in Botswana, an applicant must register the company and a business name with the CIPA. Information provided at registration includes: the full name and address of the applicant, and each director, secretary, and all shareholders or members of the company (Companies Act, s. 21). A notice must be filed with the CIPA for any changes to a director or secretary within 20 days of the change (Companies Act, s. 155).

46. As of 30 September 2022, the number of companies registered with the CIPA is as follows:

Type of company	Total number
Domestic companies with share capital, including:	
Private company	122 393
Public company	178
Close company	129
Company Limited by Guarantee	158
External companies	114
Total	**122 972**

47. A comparison with the 2019 Report highlights the consequence of the implementation of the new framework and the improvement of the accuracy and up-to-date ownership information held by the CIPA. As of 31 December 2017, there were 197 297 companies registered with the CIPA, a difference of 74 325 fewer companies between 2017 and 2022 (i.e. there are about 38% fewer companies registered now, see paragraph 67).

Legal ownership and identity information requirements

48. The requirement on the availability of legal ownership and identity information on companies are found mainly in the Company Law and the Tax Law. 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[3]

Type	Company Law	Tax Law	AML Law[4]
Companies limited by shares	All	Some	Some
Close companies	All	Some	Some
Companies limited by guarantee	All	Some	Some
External companies	All	Some	Some

Companies Law requirements

49. In 2019, the CIPA introduced the Online Business Registration System (OBRS) to facilitate the move from a manual to an online system of registration. Through the OBRS, the CIPA has been collecting legal ownership information from both existing and new companies since February 2019 and continues to do so. For citizens of Botswana, their identity is verified through the National Identity Registration System. Non-citizens are required to upload copy of an identity document or passport. Registrants must file information including the registered office, principal place of business, contact details, directors/members/shareholders names and their addresses. Once the registration details are complete, they are submitted and the registrant is directed to the payment gateway; once the payment is made, the registration details are received by the business register for processing.

3. 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.

4. There is no requirement in Botswana for domestic and external companies to have an ongoing relationship with an AML-obliged person.

50. The Companies Act governs the requirements regarding legal ownership information for domestic and external companies. Legal ownership information is available as follows:

- With domestic companies:
  - Private and public companies (except listed ones) must maintain, in Botswana, a share register, setting out the names and the latest known address of each person who is, or has within the last seven years been, a shareholder (Companies Act, ss. 83, 84).
  - A close company, must maintain in Botswana a register of members, stating the name and address of all members, the date at which each person was entered in the register, and the date at which a person ceased to be a member (Companies Act, s. 83(3)).
  - A company limited by guarantee is subject to similar requirements and must maintain a register of members in Botswana (Companies Act, s. 83(3)).
- With the CIPA: domestic and external companies must submit ownership information to the CIPA at registration. All changes to such ownership information must be submitted to the CIPA within 30 days after a change occurs. Pursuant to section 217 of the Companies (Amendment) Act 2018, all registered companies are required to submit company returns annually on their original month of incorporation. Filing an annual return confirms that the company is still in existence and that its corporate information is up to date. The annual return includes updated information on the name, address and identity number of directors and all shareholders; and a list of the shares transferred since the last annual return (including the name of the transferor and transferee).

51. Botswana's legislation complies with the minimum requirement of retaining information for at least five years, as per the standard. The CIPA must keep all documents received for a minimum of seven years from receipt. The Companies Act requires companies to retain documents for the same period in order to fulfil any follow-up requests made by the division "Competent and Law Enforcement Authorities" of the Registrar.

52. Any company failing to comply with any obligations under the Companies Act commits an offence and is liable to a fine not exceeding BWP 400 000 (EUR 27 400) for the company (Companies Act, s. 492(4)) and BWP 200 000 (EUR 13 700) for each director (Companies Act, s. 493(2)). Also, under the Registration of Business Names Act, failure to register or

update information may result in a fine not exceeding BWP 2 500 (EUR 170) for each day on which the failure occurs or continues to occur, up to a maximum of 90 days. If the failure continues past 90 days, the CIPA may cancel the registration of the business name (Registration of Business Names Act, s. 12). Failure to file an annual return subject the directors to a penalty of up to BWP 20 000 (EUR 1 370). An amendment to the Companies Act in 2022 has complemented the sanction regime by introducing administrative sanctions with fines in case of failure to provide or notify changes of ownership information, therefore the CIPA can now apply directly sanctions without the approval of a judge (see the section on enforcement below).

Companies that ceased to exist

53. In Botswana, even in the case of companies that have ceased to exist, their ownership information is securely preserved within the OBRS, facilitating convenient access to this information.

54. Companies that are not carrying on business, amalgamating or wound up shall be de-registered from the register of companies through the process of company de-registration. For voluntary de-registration and amalgamation, application from the company has to be accompanied by a no objection letter from BURS, as a means to ensure that the company has no tax obligations and that BURS has approved its de-registration from the register.

55. In addition, legal and beneficial ownership information of companies that ceased to exist must be maintained by the Master of the High Court. Pursuant to sections 461 and 480 of the Companies Act, when a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidator should be delivered by a director, secretary or manager of the company to the Master of the High Court. Such books and papers would include ownership information and must be kept by the Master for five years from the date of wind-up or dissolution, which is in line with the standard.

56. Notwithstanding that a person ceases to hold office as a director (e.g. by vacating the office, de-registration of the company from the register, or the dissolution of the company), a director remains liable for acts or omissions while that person was a director (Companies Act, s. 152).

Tax law requirements

57. Companies are subject to tax obligations if they are earning taxable income in Botswana. External companies are subject to tax in Botswana in respect of their Botswana source income. Taxpayers (other than individual taxpayers earning less than BWP 48 000 (EUR 3 270) per year) must

initially register with the BURS. In order to register, the applicant must provide legal ownership information, including the name and address of two directors. Attachments must be submitted with the registration form, which include the memorandum and articles of a company. The BURS must be informed of any changes to directors.

58. Tax returns are filed annually. Since the implementation of the OBRS and the direct access to it by the BURS, tax returns no longer include a full list of shareholders, except for private companies, which must provide the name and address of, and number of shares held by, each shareholder on the last day of that tax year (Income Tax Act, s. 73).

59. Taxpayers are required to maintain and preserve, in Botswana, all books of account and documents for a period of eight years after the end of the tax year or accounting period to which such books of account or documents relate (Income Tax Act, s. 144). This applies to the register of shareholders or members. Penalties for failure to maintain records may be applied (a fine of BWP 10 000 (EUR 680) and/or imprisonment for one year in application of the Income Tax Act, s. 122(1)(e)).

Anti-Money Laundering law requirements

60. AML-obliged persons in Botswana (section 2 and schedule I of the FI Act) are designated as AML-obliged persons and include, inter alia, banks and other credit and financial institutions; legal professionals (including lawyers and notaries); tax advisors; auditors and accountants; trust and company service providers; virtual assets service providers and trustees. Although no statistics are available to support it, authorities of Botswana consider that it would be unfeasible for a company to operate in Botswana without having a bank account in Botswana as taxpayers are required to provide bank account information to the BURS in the registration form (form BURS 1) and in the Know Your Customer (KYC) form when a change must be reported. However, there is no obligation that the reported bank account be a domestic one.

61. There is no requirement for domestic and foreign companies to engage an AML-obliged person on an ongoing basis and therefore it cannot be concluded that such an engagement exists in all cases.

62. The FI Act requires AML-obliged persons to perform customer due diligence (CDD), including the identification of the customer. In cases of customers that are legal persons, the ownership and control structure would be verified (section 20(6)(d)(iii) of the FI Act). Some information on legal (as well as beneficial) ownership is thus available with AML-obliged persons with regard to their customers. On the other hand, verification of the ownership and control "structure" of the customer does not ensure that full legal ownership information is gathered by the AML-obliged person in all cases.

Nominees

63. Botswana recognises the concept of nominee ownership. Persons carrying out a business of providing nominee services (that is, professional nominees) are regulated under Botswana's AML regime and are subject to CDD obligations according to the FI Act. Consequently, professional nominee shareholders are required to identify the person for whom they act and take reasonable measures to verify the identity of this person. However, there is no impediment for non-professional persons to act as nominees. Accordingly, non-professional nominees would have no obligation to record the identity of the principal under the AML framework.

64. However, since the 2019 Report, Botswana amended its Companies Act in 2022 in a new section 329A requiring nominee shareholders or directors to disclose the identity of their nominator to the CIPA for inclusion in the CIPA register.[5] In Botswana, all nominees are appointed through a resolution. There is no distinction between professional and non-professional nominees for the disclosure. In case of a change of the nominator, a notice of change must be filed within 10 working days with the CIPA. Inspections are conducted by the CIPA to check if companies are compliant with the requirements of the Companies Act, including any failure to notify the CIPA of any changes that took place in the company, including a change of nominator information. A nominee shareholder or director who fails to comply is guilty of an offence and liable to a fine not exceeding BWP 100 000 (EUR 6 800). Further, Section 25 of the Companies (Amendment) Act, 2022 imposes a penalty not exceeding BWP 500 000 (EUR 34 280) where a person fails to notify the CIPA of a change in basic information of a registered company, including the nominee shareholder or nominator information. Botswana should monitor the implementation of the new framework for the disclosure of the identity of their nominator by nominees and exercise its enforcement powers where necessary (see Annex 1).

65. In conclusion, obligations under the Companies Act ensure that identity information of nominators will be available.

Legal ownership information – Enforcement measures and oversight

66. The entities charged with supervising compliance with the obligations to keep ownership information outlined above are mainly the CIPA and BURS (for all companies). An overview of the oversight activities undertaken by these authorities is presented below.

5. The CIPA is in the process of enhancing the OBRS to ensure that it captures nominator information. Nominees will be able to disclose the identity of their nominator information once the system has been upgraded.

Companies and Intellectual Property Authority (CIPA)

67. Botswana's sanctions framework for enforcing the obligation to report legal ownership information to the CIPA has significantly evolved. Initially, the system relied solely on criminal penalties, necessitating involvement of law enforcement before court proceedings, leading to delays in addressing non-compliance. As a result, the compliance rate with the annual filing obligation was low and Botswana counted many dormant companies.

68. Botswana has embarked on a transformative journey by introducing the new system OBRS to monitor and ensure the compliance of companies regarding registration and legal/beneficial ownership information. The obligation to re-register existing companies greatly facilitated the process of cleaning the register of dormant and non-compliant companies. Another shift occurred with the introduction of the Companies (Amendment) Act, 2022. This amendment introduced administrative sanctions, aiming to bolster the compliance strategy. Although these sanctions have yet to be implemented, the CIPA released guidelines on 30 June 2023, detailing the application of administrative penalties. This multifaceted approach underscores CIPA's commitment to enhancing its monitoring process through its Department of Compliance, Awareness and Client Services which monitors compliance with the obligation to register companies, provide legal ownership information and update such information on its business register. These actions are described below.

69. The criminal sanctions are available pursuant to Part XXIX of the Companies Act, which provides for offences and penalties under sections 492 to 507 for failure to comply with any provision of the Act by any person including a Director, company secretaries, Board of Directors, company Auditors, or any other person in the company. As those penalties are criminal in nature, they require that matters go through law enforcement authorities before reaching the courts, which results in delays in taking action against non-compliant companies.

70. During the last review, Botswana had dormant companies. A dormant company was a registered company which had not yet commenced operations and had not filed an annual return for a period of five years because no accounting transaction had occurred during those years that required the company to make an entry in its accounting records. In order to be declared dormant, the company had to notify the Registrar. The Companies (Amendment) Act 2018 has repealed sections 489-491 for dormant companies. On the OBRS, there are no longer any dormant companies. All companies that had been declared dormant on the old system were required to re-register and submit annual returns from 2020. According to Section 5 of the Companies Re-registration Act, an existing company that has not made an application for re-registration within the

transition period is de-registered from the register of companies by the CIPA. A comparison with the 2019 Report highlights the consequence of the implementation of the new framework. As of 31 December 2017, there were 197 297 companies registered with the CIPA, a difference of 74 325 fewer companies between 2017 and 2022 (i.e. there are about 38% fewer companies registered now).

71. For a general and more advanced monitoring, the Compliance Department commenced on-site inspections in November 2019, as a post-registration follow-up, to assess compliance with the Companies Act. From November 2019 to 30 September 2022, 28 companies have undergone on-site inspections. All the companies were compliant save for five companies. Four of these companies were guided on how to get the correct information based on the structure of the organisation and assisted to make the changes on the OBRS whilst one was referred to the FI Agency and BURS for further investigation.

72. To develop the compliance strategy, the Companies (Amendment) Act, 2022 has complemented the sanction regime by introducing administrative sanctions. Those sanctions have not yet been applied and the CIPA has published on 30 June 2023 guidelines on the application of administrative penalties for companies regarding the falsification of company information, failures to notify the CIPA of changes, to provide financial statements or to provide information to competent and law enforcement authorities. In the meantime, the CIPA nonetheless took actions.

73. In the meantime, the main monitoring activity focuses on the filing of annual returns. Since the last review, compliance to annual return filings has significantly improved from a compliance rate of 30% during the last review period to a compliance rate of 67% during this review period. This is thanks to the OBRS system sending now bulk reminders to companies on the 1st of every month, a second reminder on the 21st of the month and a final reminder on the 10th of the following month. In case of non-compliance, between the 1st and the 10th day of the month following the due month, there is a penalty fee of BWP 500 (EUR 34) in addition to the BWP 500 (EUR 34) annual return fee. On the 11th day of the month, all companies that have still not filed and paid are de-registered from the register. This compliance is also increased by the ongoing number of companies that are restored with penalties following de-registration from the Register due to failure to file annual returns (10 048 companies; see below). Adding the 8% restored companies to the average annual return compliance rate of 67% results in a total compliance rate of 75%.

74. Companies that are not compliant with the Companies Act shall be de-registered from the register of companies through the process of company de-registration. The de-registration process is a significant measure

employed by the CIPA to penalise non-compliant companies, encompassing those that fail to apply for re-registration within the transition period or those neglecting to submit annual returns after receiving three bulk reminders (section 217(6) of the Companies Act). Whatever the reason for de-registration, de-registered companies do not have legal capacity to act at all (Companies Act, s. 24) and lose their legal personality. Their status on the CIPA Register will appear as "Removed" (for Botswana, removed is akin to be de-registered). De-registration of companies does not always lead to dissolution. Dissolution of companies takes place under sections 399 and 364 of the Companies Act and involves the appointment of a liquidator. De-registration of companies from the register does not entail the appointment of liquidators nor does it lead to the formal process of dissolution, as the company can be restored back to the register through a formal process of restoration. There is no time limit for the company to apply for restoration, as the company would have lost its capacity to trade or transact. Out of 141 371 companies removed from the register during the review period, 10 048 companies were successfully restored, which represents only 7% of companies that were de-registered from the register during the review period. Assets that had not been distributed or disclaimed vest in the Consolidated Fund established by section 117 of the Constitution (Companies Act, s. 337(1)). The reclamation process is provided for under section 337 (3)-(6) of the Companies Act. It is confirmed that the assets vested in the Consolidated Fund may be reclaimed in accordance with Section 337(4) which provides that any person entitled to receive all or part of the property may apply for a court order to claim such property or assets, without limitation in time. Section 337(3) requires the CIPA, on becoming aware of the vesting of the property, to inform the office of the Minister of Finance and give public notice of the vesting, setting out the name of the former company and particulars of the property.

75. In addition to the automatic monitoring implemented with bulk reminders and to the de-registration process, as at the end of the review period, 1 178 audits of the quality of the information integrated in the OBRS have been carried out to authenticate and assure the integrity of information held on the system. Some common irregularities were identified from the audits, which included incomplete and/or inaccurate postal and residential addresses, incorrect Directors' or Shareholders' Consent Forms, non-readable underlying documentation like identity cards. As a remedial action, companies were contacted to address the anomalies on the system by filing the accurate information. Those that did not correct as advised were suspended from the system as a measure to force them to take corrective action. Suspension means taking a company off the public view on the OBRS. It is an internal measure used to force companies to come forward and update their information on the Register, as notified by CIPA. A company under suspension is not de-registered nor liquidated and still has legal

capacity to act and is still registered on the OBRS. However, such capacity is restricted until the suspension has been uplifted. Once suspended, the company is unable to apply for any new trading licences nor renew existing ones; participate in any public tenders; nor conduct any banking transaction or any other transactions requiring that company documents be verified on the CIPA system. CIPA has undertaken extensive consultative engagements with all stakeholders to sensitise them on the need to authenticate company information online through the OBRS before dealing with any company, and where this is not possible, the company cannot be assisted further by the respective service providers or regulators. Suspension was administered as an interim measure pending the approval of the Guidelines for the Implementation of Administrative Penalties. Following the approval of the Guidelines on 30 June 2023, penalties for non-compliance will be applied as provided for under section 25 of the Companies (Amendment) Act, 2022.

76. The administrative penalties are as described below:

- A fine not exceeding BWP 500 000 (EUR 34 280) on a company for:
  - failure to notify the Registrar of changes in basic information and beneficial ownership information
  - falsification of basic and beneficial ownership information
  - failure to provide basic and beneficial ownership information.
- A fine not exceeding BWP 250 000 (EUR 17 140) where a director, secretary or an auditor of a company who has knowledge or suspects another company of a suspicious conduct, fails to report such suspicion to the relevant authority.
- Where a company fails to pay any administrative penalty, the company is deregistered, and the directors, shareholders and auditors of the company is prohibited from registering any other company under the Act. The company may only be restored subject to payment of the administrative penalty in addition to payment of a restoration fee of BWP 2 500 (EUR 170). During the peer review period, 141 371 companies were de-registered due to failure to file annual returns.

77. The obligation to register, provide accurate identity and ownership details, and regularly update such information on the business register enables the CIPA and relevant authorities to access accurate information more effectively. Through this system and the implementation of administrative penalties, the Department of Compliance, Awareness and Client Services of the CIPA has the necessary means to supervise and monitor the compliance with the Companies Act requirements.

Master of the High Court

78. In Botswana, legal and beneficial ownership information of companies that ceased to exist must be maintained by the Master of the High Court. According to sections 461 and 480 of the Companies Act, once a company is in the process of dissolution after being wound up, its records and documents, including those of the liquidator, should be handed over to the Master of the High Court by a company's director, secretary or manager. These records would encompass ownership details and should be retained by the Master for five years following the date of dissolution or winding up, consistent with the standard. While this information is mandated to be submitted to the Master of the High Court, there currently exists no mechanism to enforce this requirement. Ownership information is already stored in the OBRS and the increasing compliance with filing requirements ensures that this information is becoming more readily available in practice.

The Botswana Unified Revenue Service (BURS)

79. Supervision of compliance with tax requirements is carried out by the BURS mainly through tax filing obligations and tax audits.

80. The BURS monitors the failure to register for tax, which can be examined through third party information from banks (which must collect the TIN of certain clients), employers, other government sources and informants. Where failure to register is detected, the policy of the BURS has been to ensure the taxpayer registers, rather than imposing fines. As of 31 December 2022, 175 241 legal persons and legal arrangements were registered with the BURS. The process of de-registration/re-registration was not undertaken by BURS. While these companies are registered, only 90 210 of them filed a tax return. In summary, the Tax Register's accuracy regarding active companies is inferior to that of the CIPA Register.

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

82. In terms of tax audits, taxpayers are targeted based on risk models, such as high net worth individuals, taxpayers that suppress sales, and taxpayers with government contracts. Taxpayers who do not file tax returns may also be subjected to audits on the basis of risk profiling. Where an audit is undertaken, the BURS will look at the taxpayer's files as well as third party information. The authorities indicated that ownership information

will necessarily be pertinent to the analysis conducted in many company audits. The number of auditors has risen from 66 tax auditors in 2019 to 103 in 2022.

83. The BURS imposes penalties on a case-by-case basis depending on the quantum of the possible tax loss and the nature of non-compliance.

84. The table below sets out the number of audits conducted (includes filers and non-filers), and the amount of tax assessed from 2020 to 2022.

	2020	2021	2022
Number of audits	288	185	279
Amount of tax assessed in BWP (in EUR)	BWP 998 012 605 (EUR 68 363 863)	BWP 132 375 047 (EUR 9 067 690)	BWP 543 399 251 (EUR 37 222 848)

Legal ownership information – Conclusion

85. Legal ownership information in respect of companies registered in Botswana is available with the companies themselves and/or the CIPA. In addition, legal ownership information must be reported to the BURS as part of the tax registration requirements and BURS has direct access to the information held by the CIPA.

86. Since the 2019 Report, Botswana made significant improvements in monitoring the compliance of legal obligations to maintain ownership information, and exercised enforcement powers in case non-compliance was detected. The CIPA and the BURS improved the robustness of their monitoring system and have started to exercise their enforcement powers. The CIPA has implemented with the OBRS a comprehensive open database and cleaned up the Register. The BURS has interfaced its system with the OBRS and therefore has access to legal and beneficial ownership information, including for the Competent Authority. This should align both registers and is part of the current digitalisation effort of Botswana.

Availability of legal ownership information in EOI practice

87. Since the 2019 Report, Botswana did not receive requests about legal ownership information.

Availability of beneficial ownership information

88. The standard was strengthened in 2016 to require that beneficial ownership information be available on companies. In Botswana, this aspect of the standard is mainly implemented through company law and

AML legislation. Each of these legal regimes is analysed below. The BURS does not receive any information on the beneficial owners of taxpayers.

Companies covered by legislation regulating beneficial ownership information

Type	Company Law	Tax Law	AML Law
Companies limited by shares	All	None	Some
Close companies	All	None	Some
Companies limited by guarantee	All	None	Some
External companies	All	None	All[6]

Definition of beneficial owner

89. The Financial Intelligence Act was amended in 2022 to rectify the deficiency noted in the definition of beneficial ownership in the 2019 Report.[7] The term "ultimate beneficiary" was not defined and no further guidance on how to interpret "beneficial owner" had been published. For consistency, in 2022, both the Companies (Amendment) Act and the Trust Property Control Act aligned the definitions contained therein by specifying that beneficial ownership has the same meaning as assigned under the Financial Intelligence Act through the following definition of beneficial owner:

> Beneficial owner means a natural person who ultimately owns or controls a customer or a natural person on whose behalf a transaction is being conducted, including a natural person who exercises ultimate effective control over a legal person or arrangement, such that
>
> (a) in relation to a legal person –
>
> (i) is a natural person who either directly or indirectly holds such percentage of shares, as may be prescribed, voting rights or other ownership interest: Provided that to the extent that there is doubt as to whether the person identified hereunder is the beneficial owner or where no natural person is identified

6. 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-obliged service provider that is relevant for the purposes of EOIR. (Terms of Reference A.1.1 Footnote 9).

7. The definition of beneficial owner in the FI Law and the Companies Act in 2018 was "beneficial owner means a natural person who, directly or indirectly through any contract, arrangement, understanding, relationship or otherwise, is the ultimate beneficiary of a share or other securities in a company".

> as the beneficial owner, the natural person exercising control of the legal person through other means shall be the beneficial owner, or
>
> (ii) is a person who holds the position of senior managing official where no natural person was identified as a beneficial owner in terms of subparagraph (i)

90. This definition is further refined in the Financial Intelligence Regulations through specifying that the beneficial owner is a natural person who either directly or indirectly holds more than 10% shares, voting rights or other ownership interest.

91. In March 2022, binding guidelines on the identification of beneficial ownership information was issued by the Bank of Botswana (BoB). However, these guidelines apply only to any institution licensed by the BoB under the Banking Act or other financial institutions falling within the purview of the BoB's supervision. Botswana will issue a second binding BO Guidelines, to be applied to the method of identification under the Companies Act (expected in 2023).

92. Both the definition in the FI Act and the BoB Guidelines clearly describe the method of identifying beneficial owners and describe the cascading approach in conformity with the standard. The BoB Guidelines clarify that beneficial owner should be understood as an individual or individuals (being a natural person or several natural persons), who fall under the definition or are captured by the method of identification. Both the definition in the FI Act and the BoB Guidelines cover control via ownership, control via other means and the back-stop option of capturing the natural person who holds the position of senior manager within the legal person, if the two steps of the cascading approach did not result in the identification of a beneficial owner.

93. The BoB Guidelines clarify that control via ownership should also cover joint control, as shareholders may collaborate to increase a person's level of control through formal or informal agreements. It requires that if no natural person meets the controlling ownership interest threshold, beneficial owners may be identified under the test of control through other means. Botswana's definition of beneficial ownership includes direct and indirect control by natural persons and individual and joint control, which is in conformity with the standard.

94. The BoB Guidelines provide instructions on the meaning of control via other means:

> 4.6 Natural persons may also exert control of a legal person through means such as:
>
> (i) exerting control of a legal person through personal connections to those owning or controlling a legal person;

(ii) exerting control without ownership, by participating in the financing of the enterprise, or because of close and intimate family relationships, historical or contractual associations, or use or benefit from company assets.

95. Botswana's definition is in line with the standard, and the methods for identifying the beneficial owners of legal persons and legal arrangements are also consistent with the standard.

Anti-Money laundering Law requirements

96. Botswana's AML regime establishes obligations on a broad range of AML-obliged persons to conduct customer due diligence (CDD), which includes the identification of beneficial owners of their clients as well as the retention of related information. However, not every company in Botswana has the obligation to engage with an AML-obliged person, nor has the obligation to have a bank account in a bank in Botswana, so this source of information is not complete.

97. The FI Act requires AML-obliged persons to identify and verify the identity of beneficial owners before or while establishing a business relationship. AML-obliged persons must take reasonable measures to verify the identity of beneficial owners and understand the ownership and control structure of their customers (section 20(1) FI Act). Reasonable measures include using reliable independent source documents, data or information per section 20(2) of FI Act. In practice, these sources are passports, public registries, and face-to-face meetings with the beneficial owners.

98. The FI Act requires to carry out enhanced identification and CDD in case the customer, the transaction or the business relationship pose increased risk of legitimisation of proceeds of crime or terrorist financing (sections 21 to 24) and, conversely, for the possibility under certain conditions to carry out simplified CDD when they pose lower risk of such abuse (section 28). In case of simplified CDD, the AML-obliged person must in any case gather and take record of the data necessary to verify the identity of the customer's beneficial owner, including the process of collecting such data (section 31). When an AML-obliged person is unable to establish, obtain or verify beneficial ownership information, the AML-obliged person must terminate the existing business relationship with the customer upon written notice and report such business relationship as a suspicious transaction to the FI Agency.

99. AML-obliged persons are required to keep all records obtained through compliance with CDD rules and supporting documents (including beneficial ownership information) for a minimum of 20 years after the

termination of the business relationship or after the date on which the relevant transaction was recorded (section 32 FI Act).

100. Section 31(3) of the FI Act further places an obligation on AML-obliged persons to ensure that all CDD documents are kept up to date. In addition, sections 16(1)(e) and 28(3)(c) prescribe a duty to conduct due diligence procedures when there is doubt about the veracity or adequacy of customer identification data previously obtained. Section 19 requires a specified party to conduct CDD with respect to an existing business relationship which is subject to the requirements of customer identification and verification, including periodic review of accounts, to maintain current information and records relating to customer and beneficial owners. The binding Guidance Note on Customer Due Diligence issued in October 2022 by the FI Agency specifies that on-going reviews of existing records, particularly for high-risk categories of customers or business relationships, must be carried out. In practice, Botswana indicated that AML-obliged persons update beneficial ownership information for high-risk customers annually at minimum. The FI Agency binding guidance notes[8] indicate that high risk customers include prominent influential persons and customers that are the target of economic sanctions. However, the law nor the guidelines specify a minimum frequency.

101. The FI Act allows AML-obliged persons to rely for some aspects on CDD previously conducted by credit or financial institutions, either domestic or foreign, operating within Botswana and applying similar obligations of CDD and record keeping. AML-obliged persons relying on a third party must immediately obtain identity and beneficial ownership information on the client from the third party and must be able to obtain from the third party on request and without delay, a copy of the identification data and other documents related to the CDD requirements (section 19(1) FI Regulations). In line with the standard, the AML-obliged person remains ultimately responsible for compliance with CDD obligations, as if it had performed CDD itself (sections 17(4) and 33(3)).

102. AML-obliged persons who do not comply with their CDD and record retention obligations commit an offence and are subject to an administrative fine not exceeding BWP 1 000 000 (EUR 68 560), as may be imposed by a supervisory authority (section 16(4) FI Act).

8. Despite not having a supervision function, the FI Agency provides guidance in collaboration with the supervisory authorities, e.g. the Guidance note on customer due diligence issued in October 2022, and the Guidance notes for attorneys issued in collaboration with the Law Society of Botswana in November 2021.

Companies Law requirements

103. Beneficial ownership information on domestic and external companies is available with the companies and with the CIPA, as set out below.

104. Domestic and external companies are required to maintain a register of their beneficial owners pursuant to the 2018 and 2022 amendments to the Companies Act. Section 186 as read with section 11 of the Companies Act requires all companies registered in Botswana to retain registers in Botswana. Further, section 15 of the Companies (Amendment) Act, 2022 amends section 84 which provides for the location of the share register and register of their beneficial owners and requires that the principal register shall be kept in Botswana.

105. Under section 186, the information to be maintained must include the name and address of the beneficial owners of the company as well as all supporting documents obtained in order to verify a person's identity. It does not include the reasoning of information on why the person is identified as a beneficial owner, so the accuracy of the information so registered is therefore not ensured.[9] In addition, unlike the BoB, the CIPA has not issued any guidance for companies on the identification of beneficial owners. No provisions exist to facilitate compliance with beneficial ownership requirements, in particular in case of complex structures (i.e. absence of obligations for persons in the chain of ownership and relevant parties to contribute to the identification, verification and update of beneficial ownership information).

106. Since 2019, beneficial ownership information must also be submitted by domestic and external companies to the CIPA for registration of their name and address (section 3 Companies Re-registration Act and section 7 Registration of Business Names Act). All changes to such information are also required to be submitted to the CIPA within 14 days through filing a notice of change (section 11 Registration of Business Names Act).

107. Pursuant to section 217 of the Companies (Amendment) Act 2018, all registered companies are required to submit company returns annually.[10] Filing an annual return confirms that the company is still in existence and that its corporate information is up to date, including beneficial ownership information.

---

9. Botswana is in the process of finalizing and publishing Companies Regulations. These forthcoming regulations will mandate the provision of explicit reasoning or justification when designating an individual as a beneficial owner. This is to enhance transparency and provide clarity on the criteria or grounds for such designation.
10. Annual returns must be submitted on their original month of incorporation, in exception of companies registered in January and December which should file in February and November respectively.

108. In case of non-compliance, between the 1st and the 10th day of the month following the due month, there is a penalty fee of BWP 500 (EUR 34) in addition to the BWP 500 (EUR 34) annual return fee. On the 11th day of the month, all companies that have still not filed and paid are de-registered from the register. A deregistered entity loses its legal personality and has no legal capacity to carry on business as it has no legal status. There is no time limit for the company to apply for restoration as the company would have lost its capacity to trade or transact. Restoration for a de-registered company is BWP 2 500 (EUR 170). The power of the CIPA to de-register defaulting companies from the register (section 331 Companies Act) also applies to companies that fail to file the annual return updating beneficial ownership information.

109. The CIPA must keep all documents received for a minimum of seven years from receipt (section 11 Companies Act). The Companies Act requires a company to retain documents for the same period in order to fulfil any follow-up requests made by the CIPA.

110. Companies failing to comply with any obligations under the Companies Act, which include the requirement of maintaining information on beneficial owners, are committing an offence and can be subject to the penalty provisions described in paragraph 52.

Conclusion on the legal framework

111. In Botswana, all companies incorporated under the Companies Act and external companies are required to maintain up-to-date records of their beneficial owners and to submit an annual return to the Companies and Intellectual Property Authority. However, there are no binding guidelines applicable to legal entities and legal arrangements to explain how to identify their beneficial owners with examples of direct or indirect control or control through other means. This raises doubt on the accuracy of such information.

112. A second source of beneficial ownership information relies on AML-obliged persons. Beneficial ownership information should be updated by the AML-obliged persons throughout the business relationship when they become aware of any change. However, in the absence of known change, there is no specified frequency for updating beneficial ownership information. In addition, the beneficial ownership information may not be available in all cases, as there is no requirement for all legal persons and arrangements to engage AML-obliged persons.

113. Therefore the deficiencies of the company law approach are not compensated by the AML law approach. **Botswana should ensure that adequate, accurate and up-to-date beneficial ownership information is available for all relevant legal entities and legal arrangements in line with the standard**.

Beneficial ownership – Enforcement measures and oversight

114. The CIPA is charged with monitoring the beneficial ownership obligations outlined above for all companies. The BURS does not receive any information on beneficial ownership and analysing beneficial ownership information has not formed a key area of tax audits during the review period. Obligations under the AML/CFT laws are supervised by the Bank of Botswana (BoB, in respect of banks – described in Element A.3 below), the Non-Bank Financial Institutions Regulatory Authority (NBFIRA, in respect of non-bank financial institutions), the Law Society of Botswana (in respect of attorneys and notaries), and the Botswana Institute of Chartered Accountants (BICA, in respect of accountants).

The Companies and Intellectual Property Authority (CIPA)

115. Regarding Companies Act provisions and the beneficial ownership Register, the CIPA, through the Department of Compliance, Awareness and Client Services, is mandated with supervising the obligations of entities required to submit beneficial ownership information to the CIPA Register.

116. As described in paragraph 73, compliance with general annual return filings have significantly improved from a compliance rate of 30% during the last review period to more than 70% during this review period, with the implementation of the OBRS system. During the peer review period, 141 371 companies were de-registered due to failure to file annual returns.

117. When information is submitted, the CIPA carries out automated checks and CIPA officers also carry out manual checks to ensure completeness of the submitted information. When the control is exercised through controlling ownership interest, the CIPA can check the accuracy with the information on legal ownership already held by the CIPA. In case of doubt or if the control seems to be exercised through other means, CIPA officers can request additional information to the company. Further, the CIPA has a built-in control measure. The mandatory annual return captures beneficial ownership information and therefore an existing company cannot renew its status neither would a new company complete its registration without submitting beneficial ownership information.

118. As described in paragraphs 71 et seq., the Compliance Department of the CIPA commenced on-site inspections in November 2019 and guided the non-compliant companies to provide beneficial ownership information. The same penalties described in paragraphs 69 to 76 for legal ownership information apply for beneficial ownership information.

119. Botswana has demonstrated commendable progress in aligning its legislation on beneficial ownership with the standard. By implementing necessary modifications in its registration process with the electronic

system OBRS and the re-registration mandatory procedure, Botswana has paved the way for a robust administrative framework that can improve an effective registration of beneficial owners. Furthermore, Botswana's implementation of an oversight framework, with a specific department within CIPA and an increasing number of audits carried out, highlights its dedication to monitoring compliance with these requirements.

The Non-Bank Financial Institutions Regulatory Authority (NBFIRA)

120. The NBFIRA supervises capital market entities (115), non-bank lenders (347), insurance entities (250) and retirement funds (87). The Anti-Money Laundering Department is the specialised organ of the NBFIRA charged with ensuring that these AML-obliged persons comply with the AML obligations on a risk-based approach.

121. Supervision is carried out through onsite and offsite inspections. The findings vary from serious non-compliance issues to minor infringements with many of them addressed within the given timeline. In case of failure, entities are referred for enforcement for failure to address issues on time. From 2019 to 2022, the NBFIRA found 29 deficiencies related to insufficient or no institutional risk assessment conducted, 38 deficiencies related to insufficient customer due diligence and enhanced due diligence, 22 deficiencies related to Insufficient or lack of information systems for record keeping and 18 cases where there were no outlined Beneficial Ownership processes.

122. During the review period, the NBFIRA conducted awareness workshops across Botswana. These workshops followed country-wide seminars conducted with the main aim being to sensitise the regulated entities on AML in general. In the quest to unbundle obligations under the FI Act for better appreciation, the NBFIRA conducted workshops on customer due diligence with primary focus on beneficial ownership. The sessions provided understanding on the relevant provisions of the FI Act, and the different levels of due diligence to be conducted on beneficial owners of their customers and transactions.

123. Many directives and guidance notes have been published. Specifically, a Guidance Note on Simplified Due Diligence was issued to enhance the understanding of the risk-based approach and focus entities on customers and transactions presenting high risks.

124. The NBFIRA regularly conducts internal reviews of legislations it is mandated to implement so as to recommend necessary amendments and ensure efficacy against changing market trends. As such, the NBFIRA participated in the review of the FI Act and the two Regulations which were enacted and commenced in February 2022. During the review period, the

NBFIRA continued to strengthen its supervisory role by conducting offsite inspections. In 2022, the NBFIRA focused its audits on the compliance with the new requirements implemented in 2022 (e.g. definition and identification of the beneficial owners according to the new legislation). Owing to continued COVID-19 transmission risks and subsequent national controls, the majority of these inspections were conducted virtually. Following audits, the NBFIRA supervisory actions are taken depending on the outcome of audits. Upon finding deficiencies and depending on the severity of non-compliance, the NBFIRA may suspend administrative penalties and issue time-bound plan of actions for an entity to return to good compliance status and/or immediately escalate for enforcement (application of administrative sanctions). In a case of direct involvement in criminal activities by the entity or staff members, the entity is referred to law enforcement agencies for further investigation and possible criminal sanctions. Regular progress reports are mandatory for entities issued with plan of actions until deficiencies are rectified. Non-compliance to a plan of actions may lead to enforcement depending on the reasonability of representations. During the review period, nine entities were found to have gross deficiencies and were referred for legal enforcement. The table below sets out the number of audits and referrals from 2019 to 2022.

	2019/2020	2020/2021	2021/2022
Number of audits	16	12	16
Number of referrals/contraventions	5	1	3

The Law Society of Botswana

125. The Law Society of Botswana supervises attorneys and firms (around 400) on a risk-based approach. The 2019 Report indicated that the Law Society did not conduct any AML/CFT supervision due to lack of capacity. Since the last review, in November 2021, Guidance notes were published by the Law Society of Botswana in collaboration with the FI Agency to support lawyers, as designated AML-obliged persons under Schedule I of the FI Act 2019. An update will be issued with the new requirements of the FI Act 2022.

126. In addition, some inspections are carried out to ensure that attorneys are complying with the FI Act (one inspection in 2020, two in 2021 and one in 2022). No failure was identified; therefore, no sanction was applied.

The Botswana Institute of Chartered Accountants (BICA)

127. BICA has 6 462 individual members and 265 firm members. The 2019 Report noted that it was only recently that supervision of AML/CFT obligations commenced, and the BICA's policy was to educate its members regarding their obligations.

128. Since then, the supervision was strengthened with 26 examinations in 2020, 35 in 2021 and 60 in 2022. The BICA sanctioned 5 firms in 2021 for failure to develop and implement AML/CFT programs.

Conclusion on enforcement

129. Botswana has established a supervisory framework to monitor the compliance of the legal obligations to maintain beneficial ownership information and reasonably exercised enforcement powers in case non-compliance was detected. The CIPA has a monitoring system and has undertaken a comprehensive project with OBRS to digitalise its operation and clean up the Register with the de-registration and re-registration process.

130. Additionally, at the time of the review, the definition of beneficial owner, as well as the ability to impose administrative penalties have been newly introduced into the Companies Act. The implementation of these recently enacted changes and clarifications could not be fully assessed. **Botswana is recommended to monitor the implementation of the new framework for the identification of beneficial owners for all legal entities and partnerships, in line with the standard. Botswana should continue the implementation of an effective supervision and enforcement programme to ensure the availability of accurate and up-to-date legal and beneficial ownership information and exercise its enforcement powers where necessary**.

131. The measures taken by the AML/CFT supervisors to ensure that the beneficial ownership information maintained by AML-obliged persons is adequate, accurate and up to date are at an early stage. Also, recent enactments to the AML/CFT laws, which took effect in June 2018 and in 2022, broaden their obligations to maintain beneficial ownership information. As the new laws only recently came into effect, their implementation in practice could not be fully assessed. **Botswana is recommended to further ensure that all AML-obliged persons receive adequate oversight, and to maintain vigilant oversight and enforcement of the effective execution of the new AML/CFT obligations**.

Availability of beneficial ownership information in EOI practice

132. Since the 2019 Report, Botswana received one request for beneficial ownership information. Botswana provided the information in a timely manner.

A.1.2. Bearer shares

133. The 2016 and 2019 Reports concluded that while there were no explicit prohibitions on bearer shares in the Companies Act, the rights attaching to the ownership of a share do not transfer until the transferee's name is entered in the share register.

134. In order to emphasise this ban, section 14 of the Companies (Amendment) Act 2022 amends section 50 of the Companies Act to make it explicit that no shares may be issued to bearer or unidentified shareholders.

A.1.3. Partnerships

135. Jurisdictions should ensure that information is available to their competent authorities that identifies the partners in, and the beneficial owners of, any partnership that (i) has income, deductions or credits for tax purposes in the jurisdiction, (ii) carries on business in the jurisdiction or (iii) is a limited partnership formed under the laws of that jurisdiction.

136. There are no statutory provisions relating to the formation or governance of partnerships under Botswana's laws. Partnerships are therefore governed by the common law, i.e. general partnerships without legal personality in which all partners have full responsibility. As of September 2022, 465 partnerships are registered with the BURS. The 2016 and 2019 Reports concluded that partner information was required to be available as the partnerships are subject to business name registration requirements, tax filing obligations, and to AML/CFT obligations when they engage with a service provider. Partnerships are subject to the same supervision as companies.

Identity information

Company law obligations

137. Since the 2019 Report, an amended Registration of Business Names Act and a Re-Registration of Business Names Act were enacted in 2019. Partnerships (including foreign partnerships) carrying on a business in Botswana, which want to use the optional procedure to reserve a name, are required to register a business name with the CIPA. Every partnership carrying on business under a name registered under the old Act had to

re-register with the CIPA before 3 June 2020 to avoid the cancellation of the registration of the business name of that partnership (Re-Registration of Business Names Act, ss. 3, 5).

138. Information to be filed with the CIPA now includes the full name, nationality, age, gender and residential address of the individual(s) who are partners, and the corporate name, registered and principal place of business of every body corporate that is a partner (Registration of Business Names Act, s. 7). Any changes to the information must be filed with the CIPA within 14 days of the change (Registration of Business Names Act, s. 11).

Tax law obligations

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

140. Partnerships earning income chargeable to tax in Botswana are required to file a tax return, and each partner must also file an individual return. The partnership return requires that the name and the Tax Identification Number (TIN) of each partner be included. The tax return used by individual partners requires the partner to disclose the share of profit and loss from the partnership.

Beneficial ownership information

141. 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.

142. In Botswana, the definition of beneficial owner in the FI Act applies only in respect of legal persons like companies. The term “legal persons” explicitly excludes partnerships from its ambit. The FI Act does not provide for specific measures to identify natural persons in the context of partnerships.

Company law obligations

143. Since 2019, partnerships must submit their beneficial ownership information to the CIPA for registration of their name and address (section 7, Registration of Business Names Act). The reporting requirements detailed in paragraph 106 made available the full name, nationality, age, gender and residential address of the individual(s) who are partners. However, those requirements do not provide beneficial ownership information where the partners themselves are legal entities or arrangements and no binding guidance provides further information to support the implementation of those requirements. Any changes to the information must be filed with the CIPA within 14 days of the change.

Anti-money laundering law obligations

144. The AML obligations described in respect of companies generally apply also in respect of partnerships where an AML-obliged service provider is engaged. In Botswana, partnerships are not required to engage an AML-obliged service provider because there is no requirement to have a registered agent, bank account or other similar requirement. The CDD requirements that the AML-obliged persons must conduct on the customer also apply where the customer is a partnership. However, there is no requirement for a partnership in Botswana to engage such a person throughout the partnership's life cycle so this information will not be complete. The tax authorities indicate that in practice the existing 465 partnerships registered for tax purposes all have a bank account in Botswana.

145. Further, there is no specified frequency for renewing the CDD and as such, it is not ensured that the beneficial ownership information kept by the AML-obliged person is up to date. However, this potential gap is mitigated by the Companies Act to submit identity and beneficial ownership information to the CIPA register, including any changes within 14 days of the change.

146. Even if an AML-obliged service provider is engaged, the lack of definition of beneficial owners of a partnership undermines the identification of all beneficial owners in all cases, when the partners themselves are legal entities or arrangements.

147. The legal framework, as stipulated in the Financial Intelligence Act, exhibits a gap in the context of partnerships. While the definition of a beneficial owner in the Act clearly extends to legal persons such as companies, it expressly leaves out partnerships, without outlining specific measures to identify natural persons within such partnerships. This ambiguity is further complicated when partners themselves are legal entities or arrangements, as there is an absence of guidance on determining their beneficial

owners. Therefore, **Botswana is recommended to ensure beneficial owners of partnerships are identified in line with the standard in all cases.** This shortcoming in the legislation intersects with another challenge on the ground. Although Botswana initiated a directive in June 2019, urging partnerships to maintain and report beneficial ownership details to the Companies and Intellectual Property Authority (CIPA), the practical implementation of this mandate faces uncertainties. The framework was introduced as part of an overarching digitalisation and clean-up effort of the Register. While Botswana does have a supervisory mechanism in place to ensure compliance and exercise enforcement in instances of non-compliance, the clear definition of "beneficial owner" and the capacity to levy administrative penalties under the Companies Act were only brought into the fold in 2022. As a result, the efficacy of these recent additions to the legislation cannot be assessed and **Botswana is recommended to monitor the implementation of the new framework for the identification of beneficial owners for all partnerships, in line with the standard**.

Availability of partnership information in EOIR practice

148. During the review period, Botswana did not receive any requests with respect to partnerships.

A.1.4. Trusts

149. Jurisdictions should take all reasonable measures to ensure that beneficial ownership information is available to their competent authorities in respect of express trusts (i) governed by the laws of that jurisdiction (ii) administered in that jurisdiction, or (iii) in respect of which a trustee is resident in that jurisdiction.

150. Botswana enacted the Trust Property Control Act (TPC Act) in 2018 that applies to trusts, non-profit trusts, foundations and any other similar arrangement. Prior to the enactment of the TPC Act, trusts could exist in Botswana without being registered. At the end of the last review period, there were 175 registered trusts. Botswana amended the TPC Act in 2022. The main change is to introduce the concept of beneficial ownership. The definition is aligned to the ones of the Financial Action Task Force and Global Forum standards. As of 30 September 2022, there were 325 trusts and 5 trust service providers registered with the Master of High Court.

151. The 2019 Report concluded that information on the identity of a settlor, a trustee, and beneficiaries of a trust is likely to be available under the tax, AML/CFT and trust laws. However, none of these laws explicitly required identification of all the beneficial owners of trusts as required under the standard.

152. Since the last review, the legal framework has changed as the AML regime has been amended and new rules on domestic and foreign trusts were issued in 2022. Based on the current legal framework in place, all relevant trusts are captured by a combination of tax law, AML requirements and trust law obligations.

Requirements to maintain identity information and beneficial ownership information in relation to trusts

Identification obligations of trustees in Botswana

153. Obligations of trustees to keep identity and beneficial ownership information derive from provisions in the TPC Act and the AML framework.

154. Section 4 of the TPC Act requires that trust instruments (trust deed) in Botswana be registered with the Master of the High Court (Registrar of Trusts under the TPC Act) also called the Master. Under the TPC Act, a "trust instrument" is a written document that establishes a trust, including agreements, wills, court orders, or notarial deeds. Additionally, any document formalising an oral agreement that creates or alters a trust is considered a trust instrument. In Botswana, all trustees, including foreign ones managing local trust properties, must adhere to this, with the latter required to establish a sub-trust and appoint a resident trustee for properties in Botswana. Upon registration, the trust deed is lodged with the Master, which contains the details of the founder/settlor, the beneficiaries and the initially appointed trustees. Section 6 requires that trustees provide their notification address to the Master and also inform the Master, should the address change at any stage.

155. In terms of section 7, the Master appoints/confirms the appointments of all trustees. Specifically, section 7(2)(c) specifies that the Master must not grant authority to the trustee unless the trustee has provided the full name, nationality, age, gender and residential address of the individual(s) who are beneficial owners and the relationship of the trustee to the beneficial owners. Section 23 prescribes the removal process of trustees by the court or the Master.

156. In respect of beneficial ownership information on trusts, the CDD requirements under the FI Act provide for the availability of such information. Schedule I of the FI Act defines a trustee as an AML-obliged person and Schedule III defines a trustee also as an "accountable institution".[11]

11. The law differentiates two categories of AML-obliged persons: the "specified parties" listed in Schedule I include "trust and company service providers" that cover "acting as a trustee of a trust or equivalent legal arrangement" and the "accountable

Section 51 applies to trusts as accountable institutions, thus to both professional and non-professional trustees. In respect of CDD requirements, section 51 of the FI Act specifically requires that a trustee, with respect to a trust, obtain and hold adequate, accurate and current information on the identity of the settlors, trustees, protectors, beneficiaries or a class of beneficiaries or any other natural person exercising ultimate effective control over a trust. Any record so obtained and maintained must be kept for 20 years but the provision does not refer to updating of the information. In case of failure, the trustee is liable to an administrative fine not exceeding BWP 500 000 (EUR 34 280), cancellation of registration or licensing, as the case may be, or to both penalties, as may be imposed by the supervisory authority.

157. The FI Act was amended in 2022 to rectify the deficiency noted in the definition of beneficial ownership in the 2019 Report. For consistency, the TPC Act aligned in 2022 the definition by specifying that beneficial ownership has the same meaning assigned under the FI Act with the following definition of beneficial owner:

> Beneficial owner means a natural person who ultimately owns or controls a customer or a natural person on whose behalf a transaction is being conducted, including a natural person who exercises ultimate effective control over a legal person or arrangement, such that;
>
> (b) in relation to a trust, is –
>
> (i) the settlor,
>
> (ii) a trustee,
>
> (iii) a protector, if any,
>
> (iv) a beneficiary of a trust, or a class of beneficiaries, where the individuals benefiting from the trust have yet to be determined, or
>
> (v) any other natural person exercising ultimate effective control over the trust by means of direct or indirect ownership or by other means, such as when he or she has the power, alone or jointly with another person or with the consent of another person, to –
>
> (aa) dispose of, advance, lend, invest, pay or apply trust property or property of the trust,

institutions" listed in Schedule III (together with non-profit organisations). Some provisions apply to both categories and others are specific to one category.

(bb) vary or terminate the trust,

(cc) add or remove a person as a beneficiary or from a class of beneficiaries,

(dd) appoint or remove a trustee or give another person control over the trust, or

(ee) direct, withhold consent or overrule the exercise of a power referred to in subparagraphs (aa)-(dd);

(c) in relation to other legal arrangements similar to trusts, is the natural person holding equivalent or similar positions to those referred to in paragraph (b)

158. Chapter 1.7 of the BoB BO Guidance reiterates that beneficial ownership information includes information on the identity of the settlor, trustee(s), protector (if any), all of the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust. Additionally, if a party to a trust is not a natural person, a look-though approach and the applicable rules regarding the beneficial ownership of the looked-through legal entities or arrangements need to be applied. While the Guidance is binding only for entities supervised by the BoB, it is also a non-binding guidance for other AML-obliged persons. This does not create a gap in the legal and regulatory framework as the need to look-through corporate parties to a trust is covered by sub-element (v). Accordingly, the definition and method of identifying beneficial owners of the trust is in line with the standard.

Foreign trusts

159. Section 9 of the TPC Act provides that trustees of foreign trusts who have to administer trust property in Botswana are subject to that Act. Section 8 further provides that when a person appointed as a trustee has to administer or dispose of trust property in Botswana, and this trustee is based outside Botswana, the provisions of the TPC Act will apply to such trustee in respect of such trust property. Accordingly, a trust that is formed outside of Botswana, or that is formed by persons who are not residents in Botswana, is nonetheless regulated by the TPC Act if the trust property is located in Botswana. The Master may authorise such trustee to act as trustee in respect of that property, provided that the foreign trustee creates a sub-trust to be registered in Botswana in accordance with section 4 of the TPC Act and appoints a resident trustee to co-administer and dispose of the trust property that is located in Botswana.

160. In addition, the FI Act defines as AML-obliged persons "trust and company service providers", which includes such trustees in Botswana acting in relation to foreign trusts, whether or not assets are held in Botswana.

Tax requirements

161. A trust is tax resident in Botswana if the trust was established in Botswana or is administered in Botswana. A trust must be registered with BURS and, if mandated, submit annual tax returns to BURS. These returns include identity information but do not contain beneficial ownership details. As of 31 December 2022, 1 506 trusts are registered with the BURS and 243 filed a tax return. Similar to the discrepancy observed on companies between CIPA and BURS (paragraph 80), BURS's data tends to be less accurate, compared to the Master's register. This discrepancy can be attributed to the lack of co-ordination between BURS and the Master. As for trusts that failed to re-register with the Master, there is not a direct mechanism in place to ensure that these entities are captured in either system due to the aforementioned lack of co-ordination. This lack of synchronisation and the resultant gaps could bolster the recommendation on strengthening enforcement measures. Tax in respect of trusts is charged in the hands of the trustee and will therefore be paid at the relevant rate depending on whether the trustee is an individual or company (s. 19 of the Income Tax Act).

162. Identity information on the trustee, settlor and beneficiaries of a trust must be available under the tax law. Trusts are identified as a person for tax purposes and must file tax returns if earning income from Botswana sources or sources deemed to be from Botswana. The trustee is responsible for the initial registration with the BURS and must provide a certified copy of the trust deed. Generally, the trust deed will provide the identity of the settlor, trustee, and beneficiaries or the class of potential beneficiaries. Any changes to this information, including changes to the trust deed, must be filed with the BURS.

163. The trustee is also responsible for filing the tax return. The tax return requires details of the name and TIN of each beneficiary (irrespective of whether the beneficiary is entitled to a distribution in the year), as well as a schedule explaining any payment, benefit, or property provided to a beneficiary during the year. Record keeping obligations and penalties for non-compliance are the same as those described in paragraph 59.

Oversight and enforcement

164. An office with three staff was established in 2021, headed by an AML/CFT expert, for monitoring compliance with the law introduced in

2018 and amended in 2022. In relation to the monitoring and enforcement of the requirement to register and report information in relation to trusts, all trusts were required to re-register with the Master of the High Court. At the end of the last review period, there were 175 registered trusts. With the supervision implemented in 2021, the compliance with the registration requirements improved as 325 trusts are registered with the Master of High Court as of September 2022. Those that did not re-register are considered illegal and are not able to transact without a certificate from the Master of the High Court. The Master takes possession and control of trust property of any trust which has been rendered null and void. The property vests with the state and is to be kept in the Void Trust Fund, which is yet to be established. Accordingly, the fund does not hold any assets at the moment. Once established, there will be rules of the Fund which will cater for its administration and matters incidental thereto. The intention is for the property to be reclaimable. In terms of section 28 TPC Act the Master only takes possession of the property, the property is not forfeited to the Master, and ownership rights are not passed to the Master. Further, considering the constitutional rights on protection from deprivation of property the envisioned rules should provide for the process of reclaiming such assets.

165. Section 30(3) of the TPC Act provides for sanctions, should a person fail to comply with his/her obligation of keeping the information and records required to be kept under the TPC Act, i.e. a fine not exceeding BWP 20 000 (EUR 1 370), or to imprisonment for a term not exceeding five years, or to both. Further, the enforcement provisions for trusts for beneficial ownership information are similar to those discussed under companies and are referred to in A.1.1. So far, the Master has issued guidance notes on registration of trusts, frequently asked question on anti-money laundering, conducted workshops on AML obligations. Off-site questionnaires were issued to all five trust service providers and the responses demonstrated varied understanding and implementation of the measures. No on-site inspections have been performed and no sanctions have been applied during the review period. The authorities indicate that a risk-based supervision will be fully implemented after the conclusion of the national risk assessment and sectoral risk assessment expected to be concluded in 2023.

Conclusion

166. To conclude, information on the parties and beneficial owners of domestic and foreign trusts administered in Botswana is available in line with the standard under the FI Act and the TPC Act. This is mainly based on the AML requirements of trustees specified under the law. However, the TPC Act does not contain any provision for the update of beneficial owner information in case of a change or any specified frequency for updating beneficial ownership information in the absence of known change. **Botswana**

should ensure that adequate, accurate and up-to-date beneficial ownership information is available for all relevant legal arrangements in line with the standard.

167. Following the obligation of re-registration of trusts and the enactment of the Trust Property Control Act in 2022, **Botswana is recommended to monitor the implementation of the new framework for the availability of beneficial ownership information on trusts and similar legal arrangements in line with the standard.** As such, the recommendation under A.1.1 to **continue the implementation of a comprehensive and effective supervision and enforcement programme to ensure the availability of accurate and up-to-date legal and beneficial ownership information and exercise its enforcement powers where necessary** also applies to trusts.

168. During the review period, Botswana did not receive any requests with respect to trusts.

A.1.5. Foundations

169. Botswana's laws do not provide for the establishment of foundations.

Other relevant entities and arrangements – Societies

170. Botswana's laws allow for the creation of societies. Societies include any association of 150 or more persons, formed for religious purposes, and any club or association of 20 or more persons. Most societies are religious organisations, sporting clubs and cultural groups. The 2019 Report concluded societies cannot be formed for the sole purpose of carrying on a business, therefore they are likely to be of limited relevance for EOI. However, it was found that there was no legal requirement for societies to maintain a record of their members and maintain this information for at least five years. As such, there was an in-text recommendation.

171. Since the 2019 Report, Botswana enacted the Societies Act 2022. It provides the legal framework to facilitate the establishment of societies in Botswana and governs all aspects of their existence and winding up. Section 5 requires that societies register with the Registrar of Societies. Every existing society must apply to the Registrar for reregistration in application of section 32 within 12 months after the commencement of the Societies Act in February 2022, i.e. up to February 2023. An existing society that has not made an application for the re-registration is deemed to be deregistered and must be removed from the register of societies by the Registrar, losing its legal personality.

172. There are no rules requiring that a register of each member of the society be maintained. However, under section 6, the Registrar may refuse to register a society where it is satisfied that the office-bearers of the society are unable to keep proper records of its members. Section 13 allows the Registrar to order a society to furnish him/her with a true and complete list of members residing or present in Botswana. Where a society fails to comply with this provision or provide incorrect or incomplete information, every office bearer of the society is liable to an administrative fine not exceeding BWP 50 000 (EUR 3 430).

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

174. In terms of tax obligations, societies register for tax even if they are not carrying on a business activity. Non business income is declared but not subjected to tax. For instance, if a society is generating profits that were not applied for the purposes of the society (such as a church renting out a property and not applying the revenue for the purposes of the church), it would be obligated to register for tax purposes and file tax returns. The information that would be included in a tax return would include the names of two persons holding positions of responsibility in the society, such as the manager or chairman of the society.

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

176. In summary, societies, the BURS, and AML-obliged persons do not maintain information on a society's membership. However, as societies generally do not conduct business, they continue to be of limited relevance for EOI, therefore the in-text recommendation from the 2019 Report that Botswana ensure that societies are required to maintain a register of members continues to apply. Further, Botswana should ensure that the beneficial owners of societies are identified in line with the standard (see Annex 1).

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

A.2. Accounting records

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

178. The 2019 Report concluded that Botswana's legal and regulatory framework generally requires legal entities and arrangements that are carrying on a business under commercial law and tax laws to maintain accounting records for at least five years. There was, however, no obligation for any entity or arrangement that was not carrying on a business to maintain underlying documentation under the Tax Law. It was recommended that Botswana closes this gap.

179. The obligations to keep accounting records and supporting documentation as mandated by the Companies Law, along with the newly instituted legal responsibilities under the FI Act and the TPC Act, collectively serve to address the existing gap in the Tax Law. As such, the recommendation made in the previous report is addressed.

180. New obligations to maintain accounting records have been imposed on trustees in section 20 of the Trust Property Control Act (TPC Act) amended in 2022. As these rules are very recent and there is no experience with their application and supervision in practice, Botswana should monitor their implementation.

181. The 2019 Report concluded that it was not clear whether accounting records for companies were always available and retained for at least five years due to the low compliance rate for filing annual returns with the Companies and Intellectual Property Authority (CIPA) and the low tax audit rate. The report included two recommendations that Botswana enhance the monitoring and enforcement of the availability of accounting records. Since the 2019 Report, the compliance rate of filing obligations with the CIPA improved but the scope of the obligation is limited to companies with turnover of more than BWP 10 000 000 (EUR 685 610). Despite the increase of tax auditors (from 66 in 2019 to 103 in 2022), the number of tax audits has not significantly increased. Botswana has not taken all the necessary measures to address these recommendations. Therefore these recommendations continue to apply. Additionally, the accounting records of a liquidated company must be provided to the Master of the High Court, but there is no enforcement of this obligation. Botswana should ensure that the accounting information, including the underlying documentation, is kept for at least five years following the liquidation or termination of all companies.

182. During the review period, Botswana has not received any request for accounting information.

183. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the legislation of Botswana in relation to the availability of accounting information.

Practical Implementation of the Standard: Partially Compliant

Deficiencies identified/Underlying factor	Recommendations
Public companies and companies with turnover of more than BWP 10 000 000 (EUR 685 610) file their financial statements with company's annual returns. Despite an increase of the compliance rate since the last review, this requirement concerns only few entities (0.42% of all entities in Botswana). Some accounting information is filed on the tax return. However, the auditing of taxpayers' accounting records is undertaken on a relatively small number of taxpayers. It is therefore not ensured that accounting records are always available and retained for at least five years.	Botswana should enhance the monitoring and enforcement of the availability of accounting records of these companies by the Companies and Intellectual Property Authority and enhance the monitoring and enforcement of availability of accounting records for tax purposes for at least five years.
Companies with turnover of BWP 10 000 000 (EUR 685 610) or less are not required to file financial statements and there is no monitoring by the Companies and Intellectual Property Authority of the obligation on these companies to maintain accounting records. Some accounting information is filed on the tax return. However, the auditing of taxpayers' accounting records is undertaken on a relatively small number of taxpayers. It is therefore not ensured that accounting records are always available and retained for at least five years.	Botswana should monitor the availability of accounting records in respect of these companies and enhance the monitoring and enforcement of availability of accounting records for at least five years.
A new obligation under the Financial Intelligence Act amended in 2022 requires all legal entities to maintain certain accounting information. This law is recent and it is not clear how this obligation is supervised.	Botswana should enforce the implementation and monitor the effectiveness of the new obligation under the Financial Intelligence Act to maintain certain accounting information by all legal entities.

Deficiencies identified/Underlying factor	Recommendations
The Trust Property Control Act amended in 2022 requires all trustees in Botswana to maintain accounting information. This law is recent and there is no experience with its application and supervision in practice.	Botswana should enforce the implementation and monitor the effectiveness of the amendments to the Trust Property Control Act to ensure that accounting records and underlying documentation of all trusts are available in line with the standard.

A.2.1. General requirements and A.2.2. Underlying documentation

184. In Botswana, the requirement to keep accounting records and their underlying documentation is ensured by a combination of obligations set in the company law and tax law requirements. In respect of other relevant entities and arrangements, specific laws do provide for accounting record keeping requirements. Below is the analysis of the various legal regimes.

Company Law

185. All companies (domestic and external) are required to maintain accounting records that: correctly record and explain the transactions of the company; enable the financial position of the company to be determined with reasonable accuracy; enable the preparation of financial statements. This also includes an obligation to maintain records containing entries of money received and spent each day and the matters to which it relates.

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

187. Companies must prepare financial statements that give a true and fair view of the state of affairs of the company and the profit and loss or income and expenditure. These financial statements must be in accordance with the International Financial Reporting Standards (IFRS) for public companies and companies with total assets of BWP 5 000 000 (EUR 342 805) or more and annual turnover of BWP 10 000 000 (EUR 685 610) or more, or in accordance with generally accepted accounting principles for other companies.

188. Where the board of directors fails to maintain accounting records in accordance with the law, each director is liable to a fine of BWP 100 000

(EUR 6 800). The CIPA can now enforce administrative penalties which are within its powers without the need to report the non-compliance to the law enforcement agencies. Notwithstanding that a person ceases to hold office as a director (e.g. by vacation of office or de-registration of the company from the register), he/she remains liable for acts or omissions committed while holding this position.

189. Public companies and companies with an annual turnover of BWP 10 000 000 (EUR 685 610) or more must submit audited financial statements to the CIPA with their annual returns. The CIPA maintains this information indefinitely.

Partnerships and trusts

190. The only source of an obligation on partnerships to maintain records, book of accounts and underlying accounting documentation arises from the income tax obligations.

191. For trusts, the Trust Property Control Act requires a trustee to maintain any accounting records and financial statements prepared during the trustee's trusteeship (TPC Act, s. 20). Such records must be kept for 10 years from the termination of the trust. The term "accounting records" is not defined in the Act. In terms of section 6(b) of the TPC Act a trustee must furnish the Master with an address for where records required by the Act are to be kept, and in terms of section 20(3) of the TPC Act, where there is more than one trustee, each trustee is obligated to keep or have in their custody accounting documents. As all such trusts must have a resident trustee, accounting records are maintained in Botswana.

192. Although the TPC Act does not explicitly provide that underlying documentation must be maintained, it may be inferred, when reading section 20 of the Act in its entirety, that trustees maintain underlying documentation. **Botswana should enforce the implementation and monitor the effectiveness of the amendments to the Trust Property Control Act to ensure that accounting records and underlying documentation of all trusts are available in line with the standard**.

193. The trustee must also provide to the Master of the High Court, upon written request, any record or document relating to the trustee's administration or disposal of the trust property (TPC Act, s. 18). A trustee who fails to perform or comply with any requirement under this Act commits an offence and is liable to a fine not exceeding BWP 20 000 (EUR 1 370) or to imprisonment for a term not exceeding five years, or to both.

Societies

194. There are no specific requirements under the Societies Act regarding the maintenance of accounting records. However, the Registrar may, at his/her discretion, require the production of accounts (Societies Act, s. 13). Societies generally do not conduct business, but if they did, they would be subject to tax obligations (and have obligations to maintain accounting information).

Tax Law

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

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

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

Anti-Money Laundering Law

198. The FI Act imposes an obligation on "accountable institutions" defined as "any society, association or non-profit organisation registered under the Societies Act or any other law or a trustee" to maintain proper record keeping of financial statements and issue annual financial statements that provide detailed breakdown of income and expenditure with respect to a non-profit organisation. There are a number of concerns with this new

obligation under the FI Act. First, it applies to a very limited scope of entities. Second, there is no explicit requirement to maintain underlying documentation, such as invoices and contracts. However, for trustees, the Trust Property Control Act requires a trustee to maintain any accounting records and financial statements (TPC Act, s. 20). **Botswana should enforce the implementation and monitor the effectiveness of the new obligation under the Financial Intelligence Act to maintain certain accounting information by all legal entities**.

Companies that ceased to exist and retention period

199. Pursuant to sections 461 and 480 of the Companies Act, when a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidator should be delivered by a director, secretary or manager of the company to the Master of the High Court. The Master will keep them for five years from the date of dissolution. Once an order has been issued by the Court to dissolve a company, orders are served with the Master and the CIPA.

200. Courts have the power to declare dissolution of company void. The court may, at any time within two years of the date of the dissolution, on an application by the liquidator of the company, or by any other person who appears to the court to be interested, make an order, upon such terms as the court considers appropriate, declaring the dissolution to have been void. In accordance with section 19 of the Companies (Amendment) Act which amends section 186 of the Companies Act, the records of a dissolved company shall be kept for 20 years. Thus, if the dissolution of the company is declared void by the Court within two years of the dissolution, the records of the company will still be available. Where a company is wound up, and it is shown that proper books of account were not kept by the company, every officer who is in default shall be guilty of an offence and liable to a penalty.

201. Also, the Act provides that the former directors or shareholders' liabilities in the dissolved company are not eroded by the de-registration of the company from the register, in respect of any act or omission that took place before the de-registration (Companies Act, ss. 339, 441). The liability continues and may be enforced as if the company had not been de-registered from the register. De-registered companies may also be restored to the register, without limit of time, where it has been satisfied that at the time of de-registration the company was still carrying on business or other reasons existed for the company to continue in existence; or the company was party to legal proceedings; or for any other reason that is just and equitable to restore the company to the register. There is no time limit for the company to apply for restoration, as the company would have lost its capacity to trade or transact (paragraph 108).

Conclusion

202. To conclude, the 2019 Report identified a legal gap with respect to the absence of an obligation on any legal entity or arrangement (other than trusts) that is not carrying on a business to maintain underlying documentation under the Tax Law. This gap under the Tax Law is mitigated by the general obligation to maintain accounting records and the underlying documentation under the Companies Law and the new legal obligations implemented under the FI Act and the TPC Act.

Oversight and enforcement of requirements to maintain accounting records

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

204. Persons are subject to tax in Botswana if they have income sourced in Botswana or income deemed to be sourced in Botswana. The table in paragraph 84 sets out the number of audits conducted in 2020 to 2022. The compliance rate with tax filing obligations and the number of tax audits remain low and the accuracy of accounting information held by taxpayers and the BURS cannot be assured.

205. The monitoring of annual returns filed with the CIPA is as described in section A.1.1 above. With the re-registration process and the implementation of the online OBRS, the compliance rate with annual filing obligations increased significantly from 30% to more than 70%. Although public companies and companies with an annual turnover of BWP 10 000 000 (EUR 685 610) or more must submit audited financial statements with their annual returns, the CIPA does not verify the statements as they are verified by external auditors. Monitoring with respect to the maintenance of accounting records by private companies with a turnover of less than BWP 10 000 000 (EUR 685 610), i.e. the financial statements of which are not verified by an external auditor, is done during the on-site visits described in paragraph 71. In Botswana, while there is a stipulation that the books and papers of a wound-up company, along with those of the liquidator, be delivered by a director, secretary, or manager of the company to the Master of the High Court for retention for five years post-dissolution, there is currently no enforcement mechanism in place to ensure companies adhere to this obligation.

206. For the monitoring and enforcement of trusts, sanctions are enforced through the litigation process before a court of law. In addition, a trustee may at any time be removed from his or her office by the Master if the trustee fails to perform satisfactorily any duty imposed upon him or her to comply with any lawful request of the Master.

207. Finally, there is no enforcement to ensure that obligations to file accounting records of companies dissolved or liquidated with the Master of the Court are complied with, as the companies are no longer subject to tax.

208. In summary, the 2019 Report included two monitoring recommendations. Botswana has not taken measures to address these recommendations, nevertheless, there has not been any negative impact on EOI because no request for accounting records was received. Accordingly, the recommendations continue to be applicable (**Botswana should enhance the monitoring and enforcement of the availability of accounting records of these companies and enhance the monitoring of availability of accounting records for tax purposes and Botswana should monitor the availability of accounting records in respect of these companies and enhance the monitoring and enforcement of availability of accounting records for tax purposes**).

Availability of accounting information in EOIR practice

209. During the review period, Botswana did not receive any request for accounting information.

A.3. Banking information

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

210. The 2019 Report concluded that the new AML/CFT laws defining beneficial owner and broadening banks' obligations required adjustment in the banks' processes and practices to ensure their implementation. New changes in the provisions of the FI Act (definition of beneficial owner in line with the standard) and in the practice following the issuance of guidelines by the Bank of Botswana (BoB) took place since this report. Botswana's banking laws require banks to maintain full identity and beneficial ownership information on their clients and keep full records of their transactions.

211. The availability of beneficial ownership information on bank accounts is part of banks' AML obligations. The 2019 Report identified that although beneficial ownership information was available to a large extent, not all beneficial owners were identified in line with the standard (e.g. individuals

exercising control through other means than ownership or based on formal position held within the company, beneficial owners of a partnership, a trust or a foundation). It was therefore recommended that Botswana take appropriate measures to meet the standard. Since the 2019 Report, Botswana amended the Financial Intelligence Act in 2022 with a definition of beneficial ownership in line with the standard.

212. In addition, at the time of the 2019 Report, implementation and enforcement of the definition of beneficial ownership introduced in June 2018 was not established. Therefore, it was recommended that Botswana ensures effective implementation of AML/CFT obligations to ensure the availability of beneficial ownership information. Since the 2019 Report, the BoB published guidelines on identification of beneficial ownership information in March 2022. Numerous practical measures associated with the sensitisation of banks in relation to beneficial ownership information requirements, including in relation to trusts and legal arrangements, were carried out as soon as the FI Act was enacted. Enforcement measures were also undertaken rapidly to verify the existence and adequacy of customer due diligence by banks.

213. During the review period, Botswana received one request for banking information, specifically on beneficial ownership. The Peer was satisfied with the information provided.

214. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the legislation of Botswana in relation to the availability of banking information.

Practical Implementation of the Standard: Largely Compliant

Deficiencies identified/Underlying factor	Recommendations
Botswana improved its legal framework regarding the availability of beneficial ownership information in 2022, notably the implementation of a new definition of beneficial owner, the issuance of binding guidance on the identification of beneficial owners in relation to bank accounts of entities and arrangements and on identification, monitoring and reporting of suspicious transactions (containing the frequency to review and update documents, data, identification information of customers and beneficial owners). The implementation in practice of these new measures could not be assessed.	Botswana is recommended to continue monitoring the implementation of the recent changes to ensure the availability of adequate, accurate and up-to-date beneficial ownership information on bank accounts is available in line with the standard.

A.3.1. Record-keeping requirements

215. Botswana has nine commercial banks, eight are subsidiaries of international banks, one is a local bank, and two are statutory banks. Each bank must be formed as a Botswana domestic company under the Companies Act, and be licensed by the BoB (Banking Act, s. 3). Licences are renewed annually and are not transferrable without the prior written approval of the BoB (Banking Act, ss. 6(7), 9(2)). Also, banks must register with the BURS, and file tax returns.

216. Banks wishing to operate as IFSC companies are also licensed by the BoB. These banks are supervised by the BoB and subject to the banking and AML/CFT laws.

217. In order to be licensed, the BoB examines the financial viability of the applicant and evaluates the members and senior management as to expertise and integrity (fit and proper test), and any potential for conflict of interest. The BoB also assesses the transparency of the ownership structure, the sources of initial capital and the ability of the shareholders to provide additional financial support where needed. Any change in ownership or management requires regulatory approval.

Availability of banking information

218. The 2019 Report concluded that banks' record-keeping requirements and their implementation in practice were in line with the standard. There have been no relevant changes to the legal framework since then.

219. Every bank in Botswana must keep records that exhibit clearly and accurately the state of its affairs and to explain its transactions and financial position so as to enable the BoB to determine whether the bank concerned has complied with the provisions of the law (Banking Act, s. 18). These records need to be kept for a minimum of five years after the day on which an account is closed (Banking Act, s. 44). Non-compliance can amount to a penalty amounting to BWP 10 000 (EUR 685).

220. The Master of the High Court has the responsibility of keeping all records of a liquidated bank in Botswana. Therefore, if a bank ceases to exist in Botswana, the records are available with the Master of the High Court for five years from the date of dissolution. There is no enforcement to ensure that banks are complying with these obligations. Botswana should ensure that banking information, including the underlying documentation, is kept for at least five years following the liquidation or termination of all banks (see Annex 1).

Availability of beneficial ownership information

221. The standard, as strengthened in 2016, specifically requires that beneficial ownership information be available in respect of all bank accounts. The 2019 Report identified that although beneficial ownership information is available to a large extent, not all beneficial owners are identified in line with the standard.

222. The FI Act requires banks to identify and verify the identity of the beneficial owners of a client before or while establishing a business relationship. It further stipulates that the bank should take reasonable measures to verify the identity of the beneficial owners and understand the ownership and control structure of the customer (FI Act, s. 20). Reasonable measures include the use of reliable independent source documents, data or information. The FI Regulations further stipulate that the records in relation to verification need to comprise the names and addresses of the beneficial owners of the product and also any counterparty to a transaction.

223. The FI Act 2022 introduced a new definition of beneficial owner, which is the same as the one applicable under the Companies Act and the TPC Act. The analysis of this definition is set out in section A.1 of this report. The definition is complemented by the BO Guidance, which stipulates the method of identifying beneficial owners for bank accounts of entities and arrangements in conformity with the standard:

- For companies: The BO Guidance captures control via ownership (including direct, indirect and aggregate control), control via other means, and the default option of capturing the natural person who holds the position of senior manager within the legal person if the first two steps of the cascading approach did not result in the identification of a beneficial owner (see paragraphs 89-94).
- For partnerships: The BO Guidance clarifies that all partners within the partnership and other natural person with effective control over the partnership need to be identified. There is no guidance to identify beneficial owners when the partners themselves are legal entities or arrangements.
- For trusts: The BO Guidance stipulates that beneficial ownership information includes information on the identity of the settlor, trustee(s), protector (if any), all the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust. If a party to a trust is not a natural person, a look-though approach and the applicable rules regarding the beneficial ownership of the looked-through legal entities or arrangements need to be applied (see paragraph 158).

224. Banks are required to keep all records obtained through CDD measures and supporting documents for at least 20 years following the termination of the business relationship or after the date on which the transaction was recorded (FI Act, s. 32).

225. Section 31(3) of the FI Act further places an obligation on banks to ensure that all CDD documents are kept up to date. Section 19(1) of the FI Act requires periodic review of accounts to maintain current information and records relating to the customer and beneficial owners. While banks are expected to keep the CDD on their customers up to date (FI Act, s. 19(1)), they are expected to do so based on their own internal risk compliance programmes.

226. During the onsite visit, it was ascertained that there was a fair understanding and application of the AML framework in respect of beneficial ownership information. The Bank of Botswana (BoB) delved into their monitoring practices regarding Customer Due Diligence (CDD). Without prompting, the BoB highlighted the importance they place on the periodic updating of client information as a crucial component of their onsite inspections. In practice, banks undertake CDD, and do not proceed with the customer relationship where they are unable to identify the beneficial owners. It was also noted that usually, banks' internal Risk Management and Compliance Programmes would specify that CDD be updated at least once in five years for low-risk customers, once in three years for medium risk customers and once annually for high-risk customers. This stratified approach ensures that banks stay vigilant and responsive to the varying risk levels associated with different customer profiles. However, no internal Risk Management and Compliance Programme was provided by Botswana to confirm this practice as a requirement. The BoB further stated that the frequency of updating client information forms part of their onsite inspections. However, the BoB has not provided evidence that they check specifically the frequency of the review for updating beneficial ownership information. In addition, the BoB has not demonstrated that the deficiencies on CDD information (see paragraph 232) come from a lack of due diligence or an insufficient frequency of the review. The BoB published "Guidelines on identification, monitoring and reporting of suspicious transactions" in December 2021 where it is specified that Financial Institutions should review and update documents, data, identification information of customer and beneficial owner every year for high-risk customers and update CDD information every five years for low-risk customers.

227. Banks are permitted to rely on third parties to conduct CDD measures or intermediaries to introduce business on their behalf (FI Act, s. 17). Additionally, banks are required to take adequate steps to be satisfied that copies of identification, data and other relevant documentation relating to

the customer due diligence requirements will be made available from the intermediary or third party upon request without delay (FI Regulations, s. 19), and that the intermediary or third party is appropriately regulated and supervised, to ensure that customer due diligence requirements are in place (FI Act, s. 17(3)). The FI Act emphasises that where a bank relies on intermediaries or other third parties, the ultimate responsibility for customer identification and verification remains with the bank with sanctions in case of failure (FI Act, s. 17(4)). The Bob indicated that in practice banks do not rely on third parties.

228. Banks who do not comply with CDD are subject to an administrative fine not exceeding BWP 1 000 000 (EUR 68 560). Failure to keep records can lead to an administrative fine not exceeding BWP 500 000 (EUR 34 280). A person who destroys or removes any record, register or document commits an offence and is liable to a fine not exceeding BWP 500 000 (EUR 34 280) or to imprisonment for a term not exceeding 10 years or to both (FI Act, s. 35).

Oversight and enforcement

229. The BoB supervises banks in Botswana. While the BoB had always supervised banks for compliance with AML/CFT obligations, this area was given more prominence with the establishment of an AML/CFT Unit within the Banking Supervision Department in 2019. The division has 5 staff members with a dedicated attention to bank's compliance with AML/CFT.

230. In accordance with section 49(1(b)) of the FI Act, the BoB employs a risk-based approach to supervision and carries out full-scope and limited scope onsite examinations. Full scope AML/CFT onsite examinations covers all the entity's AML/CFT programmes while limited scope will be focused on AML/CFT elements that are determined to be of high-risk.

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

232. During the review period, the onsite inspection programme was affected by COVID limitations. However, since 2018, all the banks in Botswana were reviewed through an onsite inspection. Violations identified consisted in inconsistency of information in the system and the customer

documentary files or failure to conduct ongoing customer due diligence, establish and verify the identity of beneficial owners. The number of onsite inspections conducted during the review period and the amount of penalties applied are as follows:

	2018	2019	2020	2021	2022
Onsite examination	6	4	4	2	4
Identification of failure	2	1	2	0	0
Penalties for failure with CDD requirements	BWP 280 000 EUR 19 200	BWP 50 000 EUR 3 430	BWP 100 000 EUR 6 860	0	0

233. Following an onsite inspection, the BoB will produce an examination report, detailing deficiencies or weaknesses in the examined bank and recommendations. The bank must provide quarterly updates to the BoB regarding the actions being taken to address the recommendations. The BoB will assess these quarterly updates. If the BoB is satisfied with the updates, then it will close the report. However, if the recommendations are not being addressed, a follow-up onsite may be required (which often occurs 12 months after the initial onsite inspection). During 2020, the BoB conducted three follow-up on-site examinations. If a bank fails to address the recommendations, fines may be imposed.

Conclusion

234. From 2019, improvements were made to provide the means for the BoB to carry out a stronger oversight programme. The planned oversight activities were affected by the COVID-19 pandemic, which resulted in social distancing requirements. However, all the banks in Botswana have been monitored through an onsite examination since 2018 and effective sanctions were applied in case of failure with CDD requirements.

235. Botswana recently improved its legal framework regarding availability of beneficial ownership information. The definition of beneficial owner was amended in the FI Act in February 2022 and guidelines for the identification of beneficial owners of bank accounts of entities and arrangements on the one hand, on identification, monitoring and reporting of suspicious transactions on the other hand, have also been issued. **Botswana is recommended to continue monitoring the implementation of the recent changes to ensure the availability of adequate, accurate and up-to-date beneficial ownership information on bank accounts is available in line with the standard**.

Availability of banking information in EOIR practice

236. During the review period, Botswana received one request for banking information, specifically on beneficial ownership. The peer was satisfied with the information provided.

Part B: Access to information

237. 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).

238. The 2019 Report concluded that the Commissioner General of Botswana Unified Revenue Service (BURS) has broad access powers to obtain all types of information, including ownership, accounting and banking information, from any person both for domestic tax purposes and in order to comply with obligations under Botswana's EOI agreements. These broad access powers can be used for EOI purposes regardless of domestic tax interest. Access powers are available also in cases where information is requested for criminal tax purposes. In the case of failure to provide the requested information, the BURS has adequate powers to compel the production of information. In terms of the secrecy provisions, the report concluded that these were in line with the standard. No changes have been made to the legal framework or practice since that report.

239. The BURS' access powers are also effectively used in practice. During the review period, Botswana received two EOI requests and fully responded to both requests, effectively using its access powers where needed.

240. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the legislation of Botswana in relation to access powers of the competent authority.

Practical Implementation of the Standard: Compliant

No issues in the implementation of access powers have been identified that would affect EOIR in practice.

B.1.1. Ownership, identity and banking information and B.1.2. Accounting records

Accessing information generally

241. Botswana's legal and regulatory framework permits access to information for the purposes of responding to a valid request for information pursuant to an EOI agreement.

242. Pursuant to the Income Tax Act, the Commissioner General of BURS may, by notice in writing, require any person to furnish any information considered necessary to fulfil his/her duties under this Act (s. 69(1)), including providing assistance pursuant to EOI agreements (s. 53).

243. The power granted to the Commissioner General under subsection 69(1) is quite broad as it covers all types of information and all types of persons.

Access to ownership, accounting and banking information in practice

244. A large amount of ownership and accounting information is already at the disposal of the BURS in its database. Further, the BURS has direct access to the database of the CIPA, which allows it to obtain relevant information. The BURS can also access information held on the databases of the national identity card (identity information), the government procurement contracts system (identity and accounting information), and the immigration authorities (identity information). In addition, the BURS has entered into working arrangements on information sharing with the Master of the High Court, and MOUs with the FI Agency and the NBFIRA.

245. Where the requested information is not already at the disposal of the BURS, it uses its access powers to obtain the requested information. The procedure to obtain ownership, accounting and banking information is

the same. A letter from the Commissioner General is sent to the information holder requesting that information be provided within 30 days (15 days in the case of banks) of the date of the letter. If no response is received, a follow-up letter is sent to the information holder with additional time (less than 30 days) granted to the information holder to respond. If this period elapses without a full response, the EOI Unit management decides the next action to take – applying a sanction (see section B.1.4 below) or, where the information is also relevant for domestic purposes, apply search and seizure (s. 70 of the Income Tax Act).

246. For banking information, Botswana does not have a central register of bank accounts. However, Botswana has only nine commercial banks and it would be easy for the Competent Authority to reach out to them in order to identify the information holder (in case the EOI request contains only a bank account number or only the name of the person).

247. Botswana received two EOI requests during the review period and was able to respond to both requests. The first request was related to tax information and therefore the information was available in the BURS database. The second request was related to beneficial ownership of a bank account so the Commissioner General of BURS required the bank to provide the information within 15 days and obtained part of the information within the time limit. The remaining information, related to communications between the bank and the taxpayer, took more time to be provided. No peers raised any concerns.

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

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

249. The powers granted to the Commissioner General of BURS to obtain information can be used to respond to an EOI request regardless of whether the BURS has any need for the information for its own tax purposes.

250. Botswana's ability to provide information regardless of domestic tax interest was confirmed in practice as it obtained and provided information in respect of persons that have no tax liability in Botswana. There was no case where a domestic tax interest restriction prevented the BURS from accessing and providing the requested information. This was also confirmed by peers.

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

251. Botswana has enforcement provisions to compel the production of information. A person who fails to supply any information or provides this information late is guilty of an administrative offence and is liable to a fine of BWP 1 000 (EUR 68) and imprisonment for one year (Income Tax Act, s. 122). Although the Income Tax Act provides for search and seizure powers, these powers apply only for the purposes of obtaining information necessary to the determination of a liability for tax in Botswana. Therefore, they could not be usually used to provide assistance pursuant to EOI agreements.

252. In practice, during the review period, the BURS had no issues accessing information in order to respond to EOI requests. As such, the EOI Unit has not had to decide what further action to take if the information holder fails to provide a full response within the time period. BURS officials advise that the most likely course of action would be to apply sanctions under section 122 of the Income Tax Act.

B.1.5. Secrecy provisions

Bank secrecy

253. There are no statutory bank secrecy or professional secrecy provisions in place that restrict the Commissioner General's access powers or prevent effective EOI.

254. Subsection 43(1) of the Banking Act provides that information maintained by banks concerning any customer's deposits, borrowings or transactions, or other personal, financial or business affairs, may not be disclosed without the written and freely given permission of the customer concerned. However, the duty to keep customers' banking information confidential does not apply where the information is required by the BURS "for the purpose of responding to a valid request for information under an agreement referred to under section 53 of the Income Tax Act". Section 53 of the Income Tax Act provides for the entry into EOI agreements.

255. According to BURS officials and representatives of the financial institutions, there are no access issues in obtaining information from banks and non-bank financial institutions. This was confirmed during the period under review as Botswana received a request for banking information and obtained this information from the relevant bank. The relevant peer confirmed that it was satisfied by the information received.

Professional secrecy

256. Legal professional privilege is governed by the common law in Botswana and applies in respect of "information communicated by a lawyer to his client or vice versa, [where] such information is of a confidential nature and furnished for the purpose of obtaining legal advice."[12] The scope of this privilege continues to be in accordance with the standard. To the extent, therefore, that an attorney acts as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, exchange of information resulting from and relating to any such activity cannot be declined on the basis of the attorney-client privilege rule, which is in line with the standard. This has been confirmed during the on-site visit by the Law Society of Botswana.

257. There was no instance during the review period where a person subject to professional secrecy was requested information.

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.

258. Application of rights and safeguards in Botswana does not unduly restrict the scope of information that the BURS can obtain. The 2019 Report found the notification rules and safeguards in Botswana to be in line with the standard. There have been no changes to the applicable legal framework since the 2019 Report.

259. The conclusions are as follows:

Legal and Regulatory Framework: in place

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

Practical Implementation of the Standard: Compliant

> The application of the rights and safeguards in Botswana is compatible with effective exchange of information.

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

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

Notification and Post-exchange notification

260. The Income Tax Act is silent on the need to inform a taxpayer when information is exchanged. This is interpreted as not requiring the BURS to inform the taxpayer when fulfilling such an exchange. There has been no change to the law or to this interpretation since the 2019 Report. This interpretation also applies to post-exchange notification. The BURS' policy continues to be that taxpayers are not to be notified that a request for information pertaining to that taxpayer has been received or that information pertaining to that taxpayer has been provided to Botswana's EOI partner.

261. In practice, when seeking information from an information holder, the letter provides only the minimum amount of information needed to allow the information holder to provide the required information. Generally, the letter does not indicate that the taxpayer should not be notified of the existence of the EOI request. On the other hand a third-party information holder requested to provide information is not informed that the information is required in order to respond to an EOI request. This limits the risk that the taxpayer be informed of the existence of the EOI request.

262. If the requesting competent authority had stated that the taxpayer is not to be notified, and the taxpayer is the only available source of information, the BURS would advise the requesting competent authority before contacting the taxpayer. In practice, during the review period, the BURS did not need to contact the taxpayer in order to obtain the information necessary to respond to an EOI request.

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

Appeal rights

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

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

Part C: Exchange of information

266. Sections C.1 to C.5 evaluate the effectiveness of Botswana's network of EOI mechanisms – whether these EOI mechanisms provide for exchange of the right scope of information, cover all Botswana's relevant partners, whether there were adequate provisions to require the confidentiality of information received, whether Botswana's network of EOI mechanisms respects the rights and safeguards of taxpayers and whether Botswana 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.

267. The 2019 Report concluded that Botswana's network of EOI mechanisms was in line with the standard and provided for effective EOI.

268. Since the 2019 report, Botswana signed the multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention) on 29 September 2020 and deposited the instrument of ratification on 15 June 2021. The Multilateral Convention is in force in respect of Botswana since 1 October 2021. The participation in the Multilateral Convention greatly increased the number of EOIR partners of Botswana from 30 in the previous report to 155.

269. Botswana also completed the necessary procedures to bring four bilateral EOI agreements signed into force (with Guernsey, Lesotho, Luxembourg and United Arab Emirates). One additional bilateral EOI agreement has been signed and has entered into force with the Czech Republic. Three bilateral EOI agreements are signed but not yet into force (Belgium and Malawi already mentioned in the 2019 Report and Kenya signed in July 2019), although only the EOI relationship with Malawi is not supplemented by the Multilateral Convention.

270. Botswana has signed but not yet ratified the Multilateral African Tax Administration Forum Agreement on Mutual Assistance in Tax Matters (ATAF AMATM) and the Southern African Development Community's Agreement on Assistance in Tax Matters (SADC Agreement).

271. During the review period, Botswana's application and interpretation of its EOIR instruments met the standard when handling the two EOI requests it received, which was also confirmed by the peers.

272. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the EOI mechanisms of Botswana

Practical Implementation of the Standard: Compliant

No issues have been identified that would affect EOIR in practice.

C.1.1. Standard of foreseeable relevance

273. Exchange of information mechanisms should allow for EOIR where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. This concept, as articulated in Article 26 of the OECD Model Tax Convention, is to be interpreted broadly, but does not extend so far as to allow for "fishing expeditions". The Article 26 commentary recognises that the standard of "foreseeable relevance" can be met when alternative terms are used in an agreement, such as "necessary" or "relevant". The 2019 Report concluded that all of Botswana's agreements met this standard. This continues to be the case.

274. The EOI agreements entered into force since the 2019 Report with the Czech Republic, Lesotho, Luxembourg and the United Arab Emirates contain the language "foreseeably relevant". In conclusion, all of Botswana's agreements use the specific language "foreseeably relevant" (in particular the agreements signed or amended after 2010) or an alternative wording that is interpreted consistently with the standard (e.g. "is necessary", "may be relevant" or "is relevant").

Clarifications and foreseeable relevance in practice

275. Concerning the practical application of the criteria of foreseeable relevance, the 2019 Report did not identify any issues. This continues to be the case and no concerns were raised by peers.

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

277. During the period under review, Botswana did not refuse to answer any EOI requests on the basis of lack of foreseeable relevance and there were no cases where it requested clarification on belief that the request was overly broad or vague.

Group requests

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

279. Botswana never received or made any group request. However, during the on-site visit, the Competent Authority explained that Botswana would be able to reply to a request without identification of the persons concerned. The same access powers and general procedures will apply as in respect of other types of requests (see below section C.5.2).

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

280. All of Botswana's EOI relationships allow for EOI with respect to all persons.

281. No restriction in respect of persons on whom information can be exchanged has been experienced in practice. During the review period, information was sought on tax residents of the requesting jurisdictions and no peers raised any concerns.

C.1.3. Obligation to exchange all types of information

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

ownership interest (OECD Model Tax Convention Article 26(4) and OECD Model TIEA Article 5(2)). The Multilateral Convention, the two regional agreements and the bilateral EOI agreements negotiated, signed and ratified since the 2019 Report contain the equivalent of Article 26(5).

283. Some EOI agreements did not contain a provision that expressly provides for the exchange of all types of information. Botswana' domestic law allows for access to bank information and the country is ready to exchange such information on a reciprocal basis in the absence of a provision similar to Article 26(5) when no other agreement applies, such as the Multilateral Convention or a regional agreement. This concerns today Mozambique and Zimbabwe, with which the DTCs are in force but not the regional agreements. Botswana and Mozambique have renegotiated their DTC and they are working on the legal procedures to bring it into force. Botswana and Zimbabwe started negotiation on their DTC, which should conclude in 2023. With the ATAF AMATM and the SADC Agreement signed by Botswana but not yet into force, Botswana could have EOI relations with Mozambique and Zimbabwe in line with the standard if Botswana ratifies those regional agreements and when the conditions will be met for the entry into force. Therefore, Botswana should work with Mozambique and Zimbabwe to ensure that these EOI relationships are in line with the standard and should finalise the process to ratify and deposit the instrument of ratification of the Multilateral African Tax Administration Forum Agreement on Mutual Assistance in Tax Matters (see Annex 1).

284. During the period under review, Botswana received a request for banking information and provided the requested information. No issues were reported by peers (see sections B.1 and C.5).

C.1.4. Absence of domestic tax interest

285. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if the requested jurisdiction has an interest in the requested information for its own tax purposes. A refusal to provide information based on a domestic tax interest requirement is not consistent with the standard. EOI partners must be able to use their information gathering measures even when invoked solely to obtain and provide information to the requesting jurisdiction for use solely by that jurisdiction.

286. Botswana's EOI relationships usually meet these aspects of the standard although there is not always an explicit provision in this regard. Botswana has signed the AMATM and the SADC Agreement. Those regional agreements are not yet in force in Botswana but as they contain provisions in line with the standard, the new relationships following the entry into force will meet the standard.

287. In practice, a domestic tax interest is not a prerequisite for Botswana to respond to a request for information. During the on-site visit, Botswana authorities confirmed they can reply to a request concerning a person who is not a taxpayer in Botswana and that when such requests were received, they were duly responded to, as evidenced with one of the requests received during the review period, for which Botswana provided banking information on a non-tax resident and to which no domestic tax interest applies. Hence, no difficulties or issues were raised by either Botswana or the peers during the current review period.

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

288. All of Botswana's EOI agreements provide for EOI in both civil and criminal matters. There are no dual criminality provisions in any of Botswana's EOI agreements, including those entered into since the 2019 Report.

289. In practice, Botswana received no request for criminal tax matters and answered all requests for civil tax matters during the review period. Peers have not raised any issues.

C.1.7. Provide information in specific form requested

290. There are no restrictions in Botswana's EOI agreements or domestic laws that would prevent it from providing information in a specific form. During the review period, Botswana provided information in the specific form requested by a partner, if so indicated. No peer requested information in any specific form nor raised any concerns.

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

291. Botswana's EOI bilateral relationships now covers 32 jurisdictions through 24 DTCs and 8 TIEAs. Since the 2019 report, Botswana has signed DTCs with Czech Republic and Kenya and the TIEA with Guernsey and the DTCs with the Czech Republic, Lesotho, Luxembourg and the United Arab Emirates have been brought into force. Today, all TIEAs and all but three DTCs are in force. The DTCs with Belgium and Kenya are complemented with other instruments that are in force, but not the DTC with Malawi. Botswana is working with the three partners to bring these DTCs in line with the Base Erosion and Profit Shifting Minimum Standards.

292. Botswana signed the Multilateral Convention on 29 September 2020 and deposited the instrument of ratification on 15 June 2021. The Multilateral Convention is in force since 1 October 2021.

293. Botswana has signed the Multilateral African Tax Administration Forum Agreement on Mutual Assistance in Tax Matters (AMATM). According to Botswana, there is no need to ratify the Agreement since Botswana had acceded to it.[13]

294. The Southern African Development Community's Agreement on Assistance in Tax Matters (SADC Agreement) was signed on 18 August 2012 by Botswana, but this agreement is not in force yet. The SADC Agreement covers 16 member states. The agreement shall enter into force 30 days after two thirds of the Member States have submitted their instrument of ratification to the Executive Secretary of SADC. Botswana is one of the 5 Member states that have submitted their instrument of ratification (see Annex 2).

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

296. The following table summarises outcomes of the analysis under Element C.1 in respect of Botswana's bilateral EOI mechanisms:

EOI mechanisms

Total EOI relationships, including bilateral and multilateral or regional mechanisms	155
In force	142
In line with the standard	140
Not in line with the standard	2[a]
Signed but not in force	13[b]
In line with the standard	13[b]
Not in line with the standard	0
Total bilateral EOI relationships not supplemented with multilateral or regional mechanisms	0

Notes: a. Mozambique and Zimbabwe.

b. **Multilateral Convention**: Gabon, Honduras, Madagascar, Papua New Guinea, Philippines, United States, Togo and Viet Nam; **ATAF AMATM**: Gambia; **SADC Agreement**: Angola, Democratic Republic of Congo and Tanzania; **AMATM and SADC Agreement**: Malawi.

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

13. The ATAF AMATM could only enter into force 30 days after 5 ATAF Member States had deposited their instruments of ratification.

298. The Minister of Finance can negotiate and sign DTCs and TIEAs (Income Tax Act, s. 53). International agreements do not have the force of law in Botswana until ratified by Parliament and enacted into domestic law. A signed EOI agreement, once vetted by the Office of the Attorney General and approved by the Ministry of Finance, is published in the Gazette and is laid before Parliament. Once approved by Parliament, the EOI agreement comes into effect or is deemed to have come into effect on the date specified in the agreement. The authorities then deposit the instrument of ratification or notify the treaty partner.

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

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

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

300. The 2019 Report did not identify any issue in respect of the scope of Botswana's EOI network or its negotiation policy. It was recommended that Botswana continue to develop its EOI network with all relevant partners.

301. Since that report, Botswana has expanded its EOI network from 30 to 155 EOI relationships, among which 142 are in force, through the Multilateral Convention, 24 DTCs (and Protocols) and 8 TIEAs.

302. No Global Forum members indicated, in the preparation of this report, that Botswana refused to negotiate or sign an EOI instrument with it. As the standard ultimately requires that jurisdictions establish an EOI relationship up to the standard with all partners who are interested in entering into such relationship, Botswana should continue to conclude EOI agreements with any new relevant partner who would so require (see Annex 1).

303. The conclusions are as follows:

Legal and Regulatory Framework: in place

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

Practical Implementation of the Standard: Compliant

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

C.3. Confidentiality

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

304. The 2019 Report concluded that the applicable EOI agreements and statutory rules that apply to officials with access to EOI information and the practice in Botswana regarding confidentiality were in accordance with the standard. The EOI agreements entered into force since the 2019 Report with the Czech Republic, Lesotho, Luxembourg and the United Arab Emirates and the EOI agreement signed with Kenya but not yet into force meet the standard in terms of confidentiality.

305. Since the 2019 Report, Botswana has continued to ensure that its EOI confidentiality practices meet the requirements of the standard. There are adequate confidentiality provisions protecting tax information under Botswana's domestic tax laws. No case of breach of confidentiality has been encountered in the EOI context and no concerns have been reported by peers.

306. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the EOI mechanisms and legislation of Botswana concerning confidentiality.

Practical Implementation of the Standard: Compliant

No material deficiencies have been identified and the confidentiality of information exchanged is effective.

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

307. All of Botswana's bilateral and regional EOI agreements meet the standards for confidentiality including the limitations on disclosure of information received, and use of the information exchanged, which are reflected in Article 26(2) of the OECD Model Tax Convention and Article 8 of the OECD Model TIEA. The Multilateral Convention, which came into force after the 2019 Report also provides for confidentiality in line with the standard.

308. There are adequate confidentiality provisions (Income Tax Act, s. 5(3) and (4) protecting tax information contained in Botswana's domestic laws which are supported by administrative and criminal sanctions applicable in the case of breach of these obligations by current and former officials.

309. BURS officials are subject to fines or imprisonment for disclosing taxpayer information in violation of the confidentiality laws (Income Tax Act, s. 5). The associated penalty is a fine of BWP 1 000 (EUR 68) and imprisonment for 1 year (Income Tax Act, s. 121).

310. The information contained in an EOI request or in a reply received by Botswana is treated as secret. Information received from a treaty partner is only used for the purposes provided for it in the EOI agreement. As explained in the 2016 Phase 2 Report (paragraphs 221 to 228), given the legal effect of ratified international agreements, and the approach mandated by the Interpretation Act in the event of ambiguity, section 5 of the Income Tax Act is adequate to ensure that information obtained pursuant to exchange of information mechanisms will be treated confidentially.

311. 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 agreement provides that the information may be used for such other purposes under the laws of both contracting parties and the competent authority supplying the information authorises the use of information for purposes other than tax purposes. All EOI relationships covered under the Multilateral Convention, the AMATM or the SADC Agreement provide for this possibility. In the period under review Botswana reported that there were no requests where the requesting partner sought Botswana's consent to utilise the information for non-tax purposes, and similarly Botswana did not request its partners to use information received for non-tax purposes.

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

C.3.2. Confidentiality of other information

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

Confidentiality in practice

314. The BURS has proper security measures, both in terms of physical security and in terms of procedure relating to staff rotation and conduct, as already established by the 2019 Report. The Information System Unit, the internal auditor, and managers are responsible for the upkeep of the general security.

Human resources and training

315. All new employees of the BURS are specifically advised of the rules relating to the confidentiality of information and the penalties for breaching those rules. Additionally, all staff are given training on policies relating to unauthorised use, clean desk, departure, computer and internet acceptable use.

Physical and logical security measures, labelling and storage

316. All staff have an individual key card which gives access to the parts of the premises that are not accessible to the public. These cards are part of the card access system, which is used in all the BURS' physical locations. Access cards have different tiers which restrict access to premises depending on the roles and responsibilities of the employee. For example, rooms containing information received through EOI are separately locked and accessible only to authorised staff, i.e. the delegated competent authority, the administrative assistant and the EOI staff. Visitors are required to be accompanied by a staff member to enter non-public areas.

317. In addition, security guards and cameras are posted at strategic points. Areas where confidential information is housed (physical and electronic) are not easily accessible even by staff members, who would require the requisite key card authorisation or log in credentials. Authorisation can only be granted by the management.

318. Only EOI officers have access to the EOI files and EOI database. Communication is mainly done by encrypted emails. When an EOI file is not being worked on, it is kept in a fire-proof locked cabinet in the EOI Manager's office. This office is locked whenever the manager is not in the office.

319. All documents pertaining to an EOI request are stamped "confidential" and the responses provided by Botswana always contain the standard wording stating that the information is furnished under the provisions of a tax treaty and is subject to tax confidentiality under the provisions of that treaty. If a reply received by Botswana does not contain such wording, the EOI Unit makes it clear to the person receiving the information that it is treaty-protected confidential information. The cover letter (or e-mail in case of electronic mail) states that the information must be kept confidential, that the documents must be stored in a secure place and that copies of the material should not be made (nor should e-mails containing the information be forwarded) without consent of the EOI Unit. In addition, the EOI manual explicitly states that any information that has been furnished by the competent authority of the requesting jurisdiction to facilitate a request, that is, documentation pertinent to the case, must remain confidential and be

stamped on each page (physically as well as electronically) with the following inscription:

> "THIS INFORMATION IS FURNISHED UNDER THE PROVISIONS OF A TAX TREATY AND ITS USE AND DISCLOSURE ARE GOVERNED BY THE PROVISIONS OF SUCH TAX TREATY."

320. If it is necessary to ask other officials in the BURS to gather information to respond to an EOI request, for instance officials in regional offices or officials that have access to other government databases, they are advised only of the minimum information necessary to collect the information, i.e. only the information requested, no background information. It would be made clear to the person asked to obtain such information that the information is treaty-protected confidential information. The letter would state that the information must be kept confidential, that the documents must be stored in a secure place, and that copies of the material should not be made, nor should e-mails containing the information be forwarded, without consent of the EOI Manager.

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

322. In conclusion, Botswana has sufficient provisions both in its EOI agreements and in its domestic laws to ensure the confidentiality of all information exchanged as well as all information relating to requests with its treaty partners. In addition, the organisational processes and procedures are adequate and applied in practice to safeguard proper conduct of staff members and hence to ensure the confidentiality of information received from EOI partners.

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

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.

324. All of Botswana's EOI agreements, including the ones signed since 2019, contain provisions that the requested party is not obliged to provide information considered professional or trade secrets, or information the disclosure of which would be contrary to public policy. All these provisions are in line with the standard described in Article 7(2) of the OECD Model TIEA and Article 26(3)(c) of the OECD Model Tax Convention.

325. Furthermore, the scope of the attorney-client privilege in Botswana is in line with the standard. In Botswana, communications between a client and an attorney are, generally, only privileged to the extent that the attorney or other legal representative acts in his/her capacity as an attorney or other legal representative. As Botswana did not receive any EOI request for information held by a lawyer, it did not decline to provide the requested information because it was covered by legal professional privilege or any other professional secret.

326. The conclusions are as follows:

Legal and Regulatory Framework: in place

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

Practical Implementation of the Standard: Compliant

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

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.

327. The 2016 Report concluded that Botswana had adequate resources and organisational processes in place to handle incoming EOI requests, but as Botswana had not yet received any incoming requests, it was recommended to monitor the implementation of its procedures once it started receiving requests. During the review period of the 2019 Report, Botswana received four requests and fully responded to one request within 180 days,

two requests within a year, and one request more than one year after it was received. Botswana was rated Partially Compliant on Element C.5 of the standard due to staffing and workload issues and lack of provision of status updates within 90 days of the receipt of the request.

328. In the current review period (1 October 2019 to 30 September 2022), Botswana further improved its procedures and processes. It received 2 requests and answered both in less than 90 days. In one case, banking information was requested, and Botswana successfully exercised its access powers to obtain the requested information and exchange it in a timely manner. In the other case, the information requested was readily available within BURS. Accordingly, the procedures of the EOI Unit were tested and appear appropriate to address the recommendations on the lack of status update and on the lack of organisational processes and resources. Nevertheless, the experience of Botswana in EOIR is still limited.

329. 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: Largely Compliant

Deficiencies identified/Underlying factor	Recommendations
Botswana received two requests during the review period. Although the new process for responding to EOI requests after the end of the previous review period and its effectiveness were tested in practice on these two requests, the experience of Botswana is limited.	Botswana should monitor the practical implementation of the organisational processes and resources of its EOI Unit to ensure that they are sufficient at all times for effective EOI in practice.

C.5.1. Timeliness of responses to requests for information

330. Over the period under review (1 October 2019 to 30 September 2022), Botswana received two requests for information.

331. The first request sought banking information in the form of beneficial ownership information identifying the owner of the accounts, together with bank statements and copies of communications and correspondence between the bank and the account holder. Botswana gathered the information from a financial institution and, considering the different type of information requested, Botswana provided an interim reply to the requesting jurisdiction before sending the final reply in 88 days. The requesting jurisdiction was satisfied with the replies.

332. The second request aimed to seek confirmation of tax registration and tax information. As this information was directly available to the competent authority through the BURS database, Botswana replied to this request in 53 days. The requesting jurisdiction was satisfied with the reply.

Status updates and communication with partners

333. In 2022, Botswana updated its EOI Manual with the support of the Global Forum Secretariat and implemented the EOI Tracking Tool provided during the technical assistance. The EOI Manual requires status updates to be provided within 90 days. To ensure this requirement is fulfilled, the EOI Manual provides for the EOI Supervisor to track progress with alerts in the tracking tool and to inform the requesting Competent Authority regularly. All requests received during the peer review period were answered within 90 days, so that no status update was necessary. While the capability to offer status updates is a commendable step, it is crucial to ensure practice (see Annex 1). Considering the improvements in the organisational processes and resources, the in-box recommendation on this aspect is transformed into an in-text recommendation.

334. Peer input is positive in connection with the ease of contacting the competent authority of Botswana. Botswana accepts requests in English. If the request is not in English, the requesting competent authority will be asked to translate the request. Botswana would send outgoing requests in English as agreed with the particular treaty partner.

335. Communication with other Competent Authorities is done mostly through email. The BURS has not made any requests for clarification.

C.5.2. Organisational processes and resources

Organisation of the competent authority

336. The Competent Authority of Botswana is the Minister of Finance represented by the Commissioner General of BURS or his authorised representative. In practice, this function is delegated to the Commissioner of Domestic Taxes. The contact details of the Competent Authority, including postal and electronic addresses, are published on the Global Forum's secure competent authorities' database.

Resources and training

337. The Botswana EOI Unit currently comprises four staff, all of whom work in the Domestic Taxes of BURS and are trained in EOI matters. These are the Director of the Technical Services Section (the manager of the

EOI Unit), the Revenue Manager of the Tax Treaties and Agreements Unit (supervisor of the EOI Unit), and two Principal Revenue Officers (the case officers in the EOI Unit). All of them have other missions as negotiations of tax treaties, follow-up and implementation of international taxation, mutual agreement procedures.

338. Anyone entering the Unit – whether in a supervisory or other role – is provided with the EOI manual, which is regularly updated. EOI Officers have received specific EOIR training provided by the Global Forum. In addition, Botswana noted that the competent authority is taking full advantage of the KSP online trainings provided by the Global Forum. Thanks to these online trainings, the audit staff from the BURS also benefit from the trainings through increasing their awareness of the benefits of sending EOI requests.

339. Considering the number of requests received or sent, the authorities of Botswana considered that there is no adequate justification to have dedicated funds for this function and all of its activities are therefore budgeted for as part of the Domestic Taxes' operational budget. The same applies for personnel. The level of resources and the level of EOIR knowledge in the EOI Unit are commensurate to the number and level of complexity of requests Botswana receives and are proportionate to ensure effective EOI in practice. However, the entry into force of the Multilateral Convention might change the volume of incoming requests and Botswana confirmed during the on-site visit that the organisation is flexible to adapt in the future.

340. Although the improvements brought since the 2019 Report appear to make the organisation and resources appropriate, the experience of Botswana in EOIR is limited. Therefore, **Botswana should monitor the practical implementation of the organisational processes and resources of its EOI Unit to ensure that they are sufficient at all times for effective EOI in practice**.

Incoming requests

341. All incoming requests are logged into an EOI database with an allocated reference number. Upon receipt, requests are treaty stamped. The EOI Unit reviews the request and verifies that it stems from the Competent Authority jurisdiction lists and reviews the request for completeness. The Unit will determine if the request meets the requirements of foreseeable relevance. The EOI Manual enumerates items, which should be particularly looked at in the verification process, including that:

- The request fulfils the conditions set forth in the Exchange Agreement with the respective country.
- The request is signed by the competent authority of the requesting country and includes all necessary information to process it.

- The information requested is of a nature which can be provided, having regard to the legal instrument on which it is based and the relevant laws of Botswana.
- Sufficient information is provided to identify the taxpayer.
- Sufficient information is given to understand the request.
- The information requested is necessary or foreseeably relevant.

342. The EOI Unit usually acknowledges receipt of the request within seven days and proceeds to write to the relevant entities to obtain the required information, as confirmed by one of the peers. In case a request is unclear or incomplete, the Unit will inform the requesting jurisdiction whether the request will commence or be paused until the additional information is received. This has not been necessary during the review period.

343. Before domestic requests for information are sent to third parties, the EOI Officer(s), with the assistance of other key personnel within the Domestic Taxes Department, will ascertain if such information is readily available in-house. If so, relevant personnel will work together to collate and prepare the data for replying to the EOI request. Official internal communication within the BURS is carried out by telephone, in person, or by internal courier system. If information is not readily available, the EOI Officer(s) will make requests to third parties.

344. In general, Botswana indicated that if the information is in the Department, the EOI Unit tries to obtain such information within one week. If the information is held within another governmental authority, is in possession or control of a third party (including taxpayers, service providers) the EOI Unit provides 30 days to obtain information (15 days in case of banks).

345. Once information is received, it is reviewed by the EOI officers to ensure that it corresponds to the request made and for completeness. If the officers are not satisfied with the documents presented, then the information holder will be contacted to obtain the required information. The requesting jurisdiction will be given whatever relevant information has been received and will be informed of efforts being made to obtain missing documents. This good practice of sending partial answers and informing on the process to gather the remaining information was applied during the review period.

346. Botswana has in place a process that ensures the quality of replies made.

Outgoing requests

347. Botswana did not send any EOI requests during the review period, but it has in place a process that should ensure the quality of requests sent.

348. Botswana's EOI Manual provides rules for handling outgoing requests and establishes procedures to ensure the quality of EOI requests. Botswana's procedures for outgoing requests follow the Global Forum's EOI Working Manual. All outgoing requests would be sent from the operations departments of the BURS to the EOI Unit. Within the EOI Manual, tax auditors have a checklist of all the information to include in a request and a model template to draft their request. The request is then assigned to EOI case officers who review it to ensure that all the relevant information as required in the template used by the Competent Authority of Botswana has been included and that the request is foreseeably relevant. Once the case officer is satisfied with the adequacy and foreseeable relevance of the outgoing request, the request is submitted to the authorised Competent Authority for sending to the appropriate treaty partner(s).

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

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

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 A.1.1**: Botswana should monitor the implementation of the new framework for the disclosure of the identity of their nominator by nominees and exercise its enforcement powers where necessary (paragraph 64).
- **Element A.1.5**: Botswana should ensure that the beneficial owners of societies are identified in line with the standard (paragraph 176).
- **Element A.3**: Botswana should ensure that banking information, including the underlying documentation, is kept for at least five years following the liquidation or termination of all relevant entities and arrangements (paragraph 220).
- **Element C.1**: Botswana should work with Mozambique and Zimbabwe to ensure that these EOI relationships are in line with the standard and should finalise the process to ratify and deposit the instrument of ratification of the Multilateral African Tax Administration Forum Agreement on Mutual Assistance in Tax Matters (paragraph 283).
- **Element C.2**: Botswana should continue to conclude EOI agreements with any new relevant partner who would so require (paragraph 302).
- **Element C.5**: While the capability to offer status updates is a commendable step, it is crucial to ensure practice (paragraph 333).

Annex 2. List of Botswana's EOI mechanisms

Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Signature	Entry into force
1	Barbados	DTC Protocol	23/02/2005 04/09/2014	01/07/2006 11/12/2015
2	Belgium	DTC	30/11/2017	Not yet in force
3	China (People's Republic of)	DTC	11/04/2012	18/09/2018
4	Czech Republic	DTC	29/10/2019	26/11/2020
5	Denmark	TIEA	20/02/2013	14/05/2015
6	Eswatini	DTC	20/04/2010	16/03/2017
7	Faroe Islands	TIEA	20/02/2013	16/03/2016
8	Finland	TIEA	20/02/2013	16/05/2015
9	France	DTC Protocol	15/04/1999 27/07/2017	01/06/2003 20/06/2018
10	Greenland	TIEA	20/02/2013	11/10/2015
11	Guernsey	TIEA	10/05/2013	26/07/2019
12	Iceland	TIEA	20/02/2013	18/08/2015
13	India	DTC	08/12/2006	30/01/2008
14	Ireland	DTC	10/06/2014	03/02/2017
15	Isle of Man	TIEA	14/06/2013	05/03/2016
16	Kenya	DTC	13/07/2019	Not yet in force
17	Lesotho	DTC	20/04/2010	30/01/2020
18	Luxembourg	DTC	19/09/2018	06/07/2021
19	Malawi	DTC	15/03/2016	Not yet in force
20	Malta	DTC	02/10/2017	13/11/2018

	EOI partner	Type of agreement	Signature	Entry into force
21	Mauritius	DTC Protocol	26/09/1995 15/08/2015	01/07/1996 13/07/2016
22	Mozambique	DTC	27/02/2009	24/11/2011
23	Namibia	DTC	16/06/2004	01/07/2005
24	Norway	TIEA	20/02/2013	26/03/2016
25	Russia	DTC	08/04/2003	23/12/2009
26	Seychelles	DTC Protocol	26/08/2004 12/03/2013	01/07/2005 08/04/2014
27	South Africa	DTC Protocol	07/08/2003 21/05/2013	20/04/2004 19/08/2015
28	Sweden	DTC Protocol	19/10/1992 20/02/2013	01/07/1993 14/05/2015
29	United Arab Emirates	DTC	12/10/2018	07/05/2021
30	United Kingdom	DTC	09/09/2005	01/07/2007
31	Zambia	DTC	09/03/2013	14/08/2015
32	Zimbabwe	DTC	16/06/2004	25/02/2008

Convention on Mutual Administrative Assistance in Tax Matters (as amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention).[14] The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

The original 1988 Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The Multilateral Convention was opened for signature on 1 June 2011.

14. The amendments to the 1988 Convention were embodied into two separate instruments achieving the same purpose: the amended Convention (the Multilateral Convention) which integrates the amendments into a consolidated text, and the Protocol amending the 1988 Convention which sets out the amendments separately.

The Multilateral Convention was signed by Botswana on 29 September 2020 and entered into force on 1 October 2021 in Botswana. Botswana can exchange information with all other Parties to the Multilateral Convention.

The Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Antigua and Barbuda, Argentina, Armenia, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Benin, Bermuda (extension by the United Kingdom), Bosnia and Herzegovina, Botswana, Brazil, British Virgin Islands (extension by the United Kingdom), Brunei Darussalam, Bulgaria, Burkina Faso, Cabo Verde, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus,[15] Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Eswatini, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Grenada, Guatemala, Guernsey (extension by the United Kingdom), Hong Kong (China) (extension by China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Jordan, Kazakhstan, Kenya, Korea, Kuwait, Latvia, Lebanon, Liberia, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), North Macedonia, Malaysia, Maldives, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Moldova, Monaco, Mongolia, Montenegro, Montserrat (extension by the United Kingdom), Morocco, Namibia, Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Poland, Portugal, Qatar, Romania, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Türkiye, Turks and Caicos Islands (extension by the

15. Note by 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.

United Kingdom), Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay and Vanuatu.

In addition, the Multilateral Convention was signed by the following jurisdictions, where it is not yet in force: Gabon, Honduras, Madagascar, Papua New Guinea (entry into force on 1 December 2023), Philippines, Togo, United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010) and Viet Nam (entry into force on 1 December 2023).

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

The Multilateral African Tax Administration Forum Agreement on Mutual Assistance in Tax Matters (AMATM) came into force on 23 September 2017. It provides for a framework exchange of information automatically, spontaneously or upon request between the relevant competent authorities. 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.

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. This agreement is not in force yet.

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, and the Schedule of Reviews.

List of laws, regulations and other materials received

Bank of Botswana Act

Banking Act and Banking (AML) Regulations

Collective Investment Undertakings Act

Companies Act and Companies Amendment Act 2018

Companies Re-Registration Act

Constitution

EOI Work Manual

Financial Intelligence Act and Financial Intelligence Regulations

Income Tax Act and Income Tax Act Subsidiary Legislation

Non-Bank Financial Institutions Regulatory Authority Act

Proceeds and Instruments of Crime Act

Registration of Business Names Act

Re-Registration of Business Names Act

Societies Act and Registration of Societies Regulations

Trust Property Control Act

Authorities interviewed during on-site visit

Bank of Botswana

Botswana Institute of Chartered Accountants

Botswana Investment and Trade Centre

Botswana Unified Revenue Service

Companies and Intellectual Property Authority

Financial Intelligence Agency

Law Society of Botswana

Ministry of Finance

Non-Bank Financial Institutions Regulatory Authority

Office of the Attorney General

Registrar of Deeds

Registrar of Societies

Current and previous reviews

Botswana previously underwent an EOIR review through three assessments during the first round of reviews: the 2010 Phase 1 Report, the 2014 Supplementary Phase 1 Report, and the 2016 Phase 2 Report; and one assessment during the second round of reviews: the 2019 Report.

The first assessment in 2010, on the legal and regulatory framework of Botswana, identified serious deficiencies (nominees, bank secrecy, inadequate confidentiality rules, lack of exchange of information agreements) and concluded that Botswana was not able to move to a Phase 2 review. To address the recommendations identified in the 2010 Report, Botswana has amended its legal and regulatory framework and has signed a number of Tax Information Exchange Agreements and protocols amending existing Double Tax Conventions. In consequence, the 2014 Supplementary Phase 1 Report concluded Botswana had made sufficient progress to move to Phase 2. Under the first round of review, Botswana has been assigned a Largely Compliant rating in the 2016 Phase 2 Report.

350. Under the second round of review, the 2019 Report combined the assessments of the legal and regulatory framework and of the implementation of that framework in practice. It identified gaps regarding the availability of beneficial ownership information (Elements A.1 and A.3), the lack of strong supervision programmes for ensuring the availability of legal and beneficial ownership information and accounting records (Elements A.1, A.2 and A.3) and the lack of timeliness of providing requested information to partners and status updates (Element C.5). Botswana was therefore rated

Partially Compliant with the standard. After Botswana enacted legislative changes in respect of the definition and methods of identification of beneficial owners, in the Financial Intelligence Act, the Companies Act and the Trust Property Control Act, a supplementary review was accepted in 2022.

This evaluation was based on information available to the assessment team, including the EOI agreements signed, laws and regulations in force or effective as of 7 July 2023, Botswana's EOIR practice in respect of EOI requests made and received during the review period (1 October 2019 to 30 September 2022), Botswana's responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Botswana during the onsite visit that took place from 4 to 6 April 2023 in Gaborone, Botswana.

Summary of reviews

Review	Assessment team	Period under review	Legal framework as of	Date of adoption by Global Forum
Round 1 Phase 1	Ms Hyonae Park of Korea; Ms Oshna Maharaj of South Africa; and Mr Andrew Auerbach of the Global Forum Secretariat.	n.a.	May 2010	September 2010
Round 1 Supplementary to Phase 1	Ms Yanga Mputa of South Africa; Ms Ann Andréasson of Sweden; and Ms Melissa Dejong of the Global Forum Secretariat.	n.a.	February 2014	April 2014
Round 1 Phase 2	Mr Morne van Niekerk of South Africa; Ms Ann Andréasson of Sweden; and Ms Melissa Dejong of the Global Forum Secretariat.	1 January 2012 to 31 December 2014	December 2015	March 2016
Round 2	Dr Vivek Upadhyay of India; Mr Stefan Schenker of Switzerland; and Ms Kaelen Onusko of the Global Forum Secretariat.	1 January 2015 to 31 December 2017	April 2019	July 2019
Round 2 Supplementary	Dr Vivek Upadhyay of India; Ms Caroline Luetzelschwab of Switzerland; and Mr Raynald Vial of the Global Forum Secretariat.	1 October 2019 to 30 September 2022	7 July 2023	3 November 2023

Annex 4. Botswana's response to the review report[16]

The Government and the people of the Republic of Botswana extends its heartfelt gratitude for an opportunity to present to the Peer Review Group, the position of Botswana in the area of transparency and exchange of information for tax purposes. We therefore thank the Global Forum for having acceded to Botswana's request for a Supplementary Review. We also thank the Global Forum Secretariat and the Assessment Team for all the assistance extended to and for constructively engaging the Botswana delegation during the review process before and after the Review was launched.

We appreciate the assistance provided by the Global Forum Secretariat in ensuring that the legislative changes Botswana made were sound and meaningful in enhancing our legal and administrative framework for Botswana to be able to comply with the international standards. We could not have done it effectively alone.

As a country, we have learnt a lot in the previous reviews as well as the Supplementary Review, and going forward, we will ensure that we work very hard to continue to comply with the Standards. We shall continue to engage all legal entities in Botswana to ensure that up-to-date beneficial ownership information as well as accounting information are always available to all the regulators in Botswana. We shall continue to strive to exchange information with other jurisdictions in the shortest possible period; and we believe that this will be possible since we keep on improving our information systems.

The fact that some of the latest legislative changes that Botswana made fell outside the Review period reflects Botswana's determination and continued efforts to improve the legal and administrative framework in order to comply with the ever-improving international standards.

We are very thankful to the Peer Review Group for the rating of Largely Compliance that Botswana attained, which is an improved rating compared to the rating of Partially Complaint that Botswana attained in June 2019.

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

We therefore make a commitment to continue to work very hard to ensure that we become fully compliant in all the elements. We are in the process of holistically reviewing Botswana's tax laws; and we are hopeful that, subsequent to the review, Botswana will have better levels of taxpayer audits as well as better tax compliance levels.

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request BOTSWANA 2023 (Second Round, Supplementary Report)

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 supplementary peer review report analyses the practical implementation of the standard of transparency and exchange of information on request in Botswana, as part of the second round of reviews conducted by the Global Forum on Transparency and Exchange of Information for Tax Purposes since 2016.

PRINT ISBN 978-92-64-87582-1
PDF ISBN 978-92-64-92647-9

9 789264 875821